

ARCA biopharma, Inc.
Form 424B4
August 06, 2013
Prospectus Supplement No. 5

Filed pursuant to Rule 424(b)(4)

(to Prospectus dated May 30, 2013)

Registration No. 333-187508

125,000 Shares of Series A Convertible Preferred Stock

12,500,000 Shares of Common Stock Underlying the Preferred Stock

Warrants to Purchase up to 6,250,000 Shares of Common Stock and

6,250,000 Shares of Common Stock Underlying the Warrants

ARCA biopharma, Inc.

This prospectus supplement supplements the prospectus dated May 30, 2013 (the "Prospectus"), as supplemented by that certain Prospectus Supplement No. 1 dated July 17, 2013 ("Supplement No. 1"), by that certain Prospectus Supplement No. 2 dated July 19, 2013 ("Supplement No. 2"), by that certain Prospectus Supplement No. 3 dated July 24, 2013 ("Supplement No. 3"), and by that certain Prospectus Supplement No. 4 dated July 30, 2013 ("Supplement No. 4"), which forms a part of our Registration Statement on Form S-1 (Registration No. 333-187508). This prospectus supplement is being filed to update and supplement the information in the Prospectus, Supplement No. 1, Supplement No. 2, Supplement No. 3 and Supplement No. 4 with the information contained in our current report on Form 8-K, filed with the Securities and Exchange Commission (the "Commission") on August 6, 2013 (the "Current Report"). Accordingly, we have attached the Current Report to this prospectus supplement.

The Prospectus, Supplement No. 1, Supplement No. 2, Supplement No. 3, Supplement No. 4 and this prospectus supplement relate to the offer and sale of up to 125,000 shares of Series A Convertible Preferred Stock ("Preferred Stock") which are convertible into 12,500,000 shares of Common Stock, warrants to purchase up to 6,250,000 shares of our Common Stock and 6,250,000 shares of Common Stock underlying the warrants.

This prospectus supplement should be read in conjunction with the Prospectus, Supplement No. 1, Supplement No. 2, Supplement No. 3 and Supplement No. 4. This prospectus supplement updates and supplements the information in the Prospectus, Supplement No. 1, Supplement No. 2, Supplement No. 3 and Supplement No. 4. If there is any inconsistency between the information in the Prospectus, Supplement No. 1, Supplement No. 2, Supplement No. 3, Supplement No. 4 and this prospectus supplement, you should rely on the information in this prospectus supplement.

Our common stock is traded on the Nasdaq Global Market under the trading symbol "ABIO". On August 6, 2013, the last reported sale price of our common stock was \$1.45 per share.

Investing in our securities involves a high degree of risk. You should review carefully the risks and uncertainties described under the heading "Risk Factors" beginning on page 5 of the Prospectus and beginning on page 23 of our quarterly report on Form 10-Q for the quarterly period ended March 31, 2013 before you decide whether to invest in shares of our common stock.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if the Prospectus or this prospectus supplement is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus supplement is August 6, 2013

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): August 6, 2013 (August 1, 2013)

ARCA biopharma, Inc.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction

of Incorporation)

000-22873
(Commission File Number)

8001 Arista Place, Suite 430, Broomfield, CO 80021

36-3855489
(I.R.S. Employer

Identification No.)

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(Address of Principal Executive Offices) (Zip Code)

(720) 940-2200

(Registrant's Telephone Number, Including Area Code)

Not Applicable

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- .. Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

- .. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

- .. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

- .. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement

On August 1, 2013, ARCA biopharma, Inc. (ARCA) and Circle Point Properties, LLC (Landlord) entered into an Office Lease Agreement (the Agreement).

Under the terms of the Agreement, ARCA is leasing approximately 5,300 square feet of office facilities in Westminster, Colorado for a 36 month term beginning October 1, 2013. Minimum lease payments committed under the Agreement through September 2016 are approximately \$240,000. The lease includes an option to renew for an additional 36 month term at the then prevailing rental rates.

The Agreement is filed as Exhibit 10.1 to this Current Report on Form 8-K, and the description of the Agreement is qualified in its entirety by reference to such exhibit.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

Exhibit No.	Description
10.1	Office Lease Agreement, effective August 1, 2013, between ARCA biopharma, Inc. and Circle Point Properties, LLC.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: August 6, 2013

ARCA biopharma, Inc.

(Registrant)

By: /s/ Patrick M. Wheeler
Name: Patrick M. Wheeler
Title: Chief Financial Officer

EXHIBIT INDEX

Exhibit No.	Description
10.1	Office Lease Agreement, effective August 1, 2013, between ARCA biopharma, Inc. and Circle Point Properties, LLC.

OFFICE LEASE AGREEMENT

CIRCLE POINT PROPERTIES, LLC

CIRCLEPOINT

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<u>EXHIBITS:</u>	

- (A) PREMISES
- (B) BUILDING RULES AND REGULATIONS
- (C) PARKING RULES AND REGULATIONS
- (D) TENANT IMPROVEMENTS
- (E) CONFIRMATION OF COMMENCEMENT DATE
- (F) RENEWAL OPTION

OFFICE LEASE AGREEMENT

THIS OFFICE LEASE AGREEMENT, dated July _____, 2013, is made and entered into by CIRCLE POINT PROPERTIES, LLC, a Delaware limited liability company (the Landlord) and ARCA BIOPHARMA, INC., a Delaware corporation (the Tenant). In consideration of the mutual promises and representations set forth in this Lease, Landlord and Tenant agree as follows:

ARTICLE 1. SUMMARY AND DEFINITION OF CERTAIN LEASE PROVISIONS AND EXHIBITS

1.1 The following terms and provisions of this Lease, as modified by other terms and provisions hereof, are included in this Section 1.1 for summary and definitional purposes only. If there is any conflict or inconsistency between any term or provision in this Section 1.1 and any other term or provision of this Lease, the other term or provision of this Lease shall control:

(a) Landlord:

Circle Point Properties, LLC, a Delaware limited liability company

(b) Address of Landlord for Notices:

Cushman & Wakefield

11080 Circle Point Road, Suite 420

Westminster, CO 80020

Attn: Property Manager

With a copy to:

CirclePoint Properties, LLC

c/o Northridge Capital, LLC

1101 30th Street, NW

Suite 150

Washington, DC 20007

Attn.: Kevin Fay

(c) Tenant:

ARCA Biopharma, Inc., a Delaware corporation

(d) Address of Tenant for Notices:

(Include Main/Hdq. Address)

AT THE PREMISES

Attn: _____

- (e) Lease Term: Thirty-Six (36) months, plus the remainder of any partial calendar month in which the Lease Term commences, commencing on October 1, 2013 (the Commencement Date), and expiring on September 30, 2016, subject to adjustment and earlier termination as provided in the Lease.
- (f) Building: The office building located at 11080 CirclePoint Road, Westminster, Colorado 80020 (the Building).
- (g) Premises: Suite 140 on the First (1st) floor of the Building, as shown on Exhibit A, consisting of approximately 5,326 Rentable Square Feet.
- (h) Minimum Monthly Rent:

Lease Months	Rental Rate per RSF/Net	Minimum Monthly Rent
10/1/13 09/31/14	\$ 14.50	\$ 6,435.58
10/1/14 09/31/15	\$ 15.00	\$ 6,657.50
10/1/15 09/31/16	\$ 15.50	\$ 6,879.42

plus applicable Rent Tax.

- (i) Security Deposit: A Security Deposit of \$73,223.07 is required and shall be deposited with Landlord at the time the Lease is signed by Tenant.

Landlord: _____
 Tenant: _____

- (j) Parking: Twenty-Five (25) surface unreserved spaces at no extra charge.
- (k) Building Hours: 7:00 a.m. to 6:00 p.m. on Business Days and 8:00 a.m. to 12:00 p.m. on Saturdays, exclusive of legal holidays. Closed Sundays and all legal holidays. Business Day shall mean Monday through Friday of each week, exclusive of holidays.

1.2 The following exhibits (the Exhibits) and addenda are attached hereto and incorporated herein by this reference:

<u>Exhibit A</u>	Premises
<u>Exhibit B</u>	Rules and Regulations
<u>Exhibit C</u>	Parking Rules and Regulations
<u>Exhibit D</u>	Tenant Improvements
<u>Exhibit E</u>	Confirmation of Commencement Date
<u>Exhibit F</u>	Renewal Option

The Office Lease Agreement and the Exhibits are collectively referred to herein as the Lease.

ARTICLE 2. PREMISES/RIGHT TO USE COMMON AREAS

- 2.1 Landlord leases to Tenant and Tenant leases from Landlord the Premises, for and subject to the terms and provisions set forth in this Lease. This Lease is subject to all liens, encumbrances, parking and access easements, restrictions, covenants, and all other matters of record, the Rules and Regulations described in Article 14 and the Parking Rules and Regulations described in Article 6. Tenant and Tenant's agents, contractors, customers, directors, employees, invitees, officers, and patrons (collectively, the Tenant's Permittees) have a non-exclusive privilege and license, during the Lease Term, to use the non-restricted Common Areas in common with all other authorized users thereof.
- 2.2 For purposes of this Lease, the following terms have the definitions set forth below:
 - (a) Automobile Parking Areas means all areas designated for automobile parking upon the land. Automobile Parking Areas are Common Areas, but certain parking areas are restricted. (See Parking Rules & Regulations).
 - (b) Common Areas means those areas within the Building and Project not leased to any tenant and which are intended by Landlord to be available for the use, benefit, and enjoyment of all occupants of the Building.
 - (c) Interior Common Facilities means lobbies, corridors, hallways, elevator foyers, restrooms, mail rooms, mechanical and electrical rooms, janitor closets, and other similar facilities used by tenants or for the benefit of tenants on a non-exclusive basis. Access to certain Interior Common Facilities is restricted.
 - (d) Project means the Building and the building located at 11030 CirclePoint Road, Westminster, Colorado, and the parcel(s) of land containing said building, all known collectively as CirclePoint Corporate Center in Westminster, Colorado.
 - (e) Rentable Square Footage means (1) with respect to the Building, the sum of the total area of all floors in the Building (including Interior Common Facilities but excluding stairs, elevator shafts, vertical shafts, parking areas and exterior balconies), computed by measuring to the exterior surface of permanent outside walls; and (2) with respect to the Premises, the area of the Premises (or other space occupiable by tenants as the case may be) computed by measuring to the exterior

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surface of permanent outside walls, to the midpoint of corridor and demising walls and to the Tenant side of permanent interior walls and Interior Common Facilities walls (other than corridor walls).

- (f) Tenant's Proportionate Share 3.518%, which is the percentage obtained by dividing (a) the number of Rentable Square Feet in the Premises as stated above by (b) the Rentable Square Feet in the Building at the time a respective charge was incurred, which at the time of execution of this Lease is 151,412 Rentable Square Feet. Landlord and Tenant stipulate that the number of Rentable Square Feet in the Premises and in the Building set forth above is conclusive as to the square footage in existence on the date of this Lease and shall be binding upon them.

ARTICLE 3. TERM

The term of this Lease and the Commencement Date shall be as specified in Section 1.1. Landlord shall provide the Premises per the attached space plan (Exhibit A) on or before the Commencement Date. If there are delays, which delays are not caused by Tenant, and the Premises are not substantially complete enough that Tenant can reasonably take occupancy of the Premises on or before October 1, 2013, which is the Anticipated Commencement Date, Landlord shall not be deemed in default of the Lease, and the parties agree to amend the Commencement Date and Rent (as defined herein) schedule, accordingly. If the Premises are not substantially complete enough that Tenant can reasonably take occupancy of them within 90 days after the Anticipated Commencement Date, Tenant's sole

Landlord: _____

Tenant: _____

remedies shall be to either enter into a mutually acceptable revision of the appropriate terms of the Lease with Landlord, which appropriate terms shall include a day of Minimum Monthly Rent abatement for each day that the Commencement Date is more than thirty (30) days beyond the Anticipated Commencement Date, or to cancel the Lease with ten (10) days written notice to Landlord. Notwithstanding the foregoing, if said delays are caused by Tenant, then the Lease, and all of the obligations therein, shall commence on the date that would have been the Commencement Date absent such Tenant delays. By occupying the Premises, Tenant shall be deemed to have accepted the Premises in their condition as of the date of such occupancy, subject to the performance of punch-list items that remain to be performed by Landlord, if any. Prior to occupying the Premises, Tenant shall execute and deliver to Landlord a letter substantially in the form of Exhibit E hereto confirming: (1) the Commencement Date (as defined in the Basic Lease Information and as may be adjusted pursuant to the terms of this Paragraph) and the expiration date of the initial Term (as defined in the Basic Lease Information); (2) that Tenant has accepted the Premises; and (3) that Landlord has performed all of its obligations with respect to the Premises (except for punch-list items specified in such letter); however, the failure of the parties to execute such letter shall not defer the Commencement Date or otherwise invalidate this Lease. Tenant's failure to execute such document within ten (10) days of receipt thereof from Landlord shall be a default by Tenant under this Lease and shall be deemed Tenant's agreement to the contents of such document. Occupancy of the Premises by Tenant prior to the Commencement Date (Early Occupancy) shall be subject to all of the provisions of this Lease, including the payment of Minimum Monthly Rent prorated on a per diem basis for each day of Early Occupancy. Notwithstanding the foregoing, provided that Tenant does not commence operating its business from the Premises, moving in furniture and equipment and/or installing wiring and cabling shall not be considered Early Occupancy and shall not trigger the payment of Minimum Monthly Rent; provided, however, provided that such activities shall be coordinated with Landlord and Landlord's contractors and that it shall in no way interfere with or delay Landlord's completion of the improvements to the Premises or violate code restrictions. Tenant and its contractors shall observe all rules and regulations of the Building, including Landlord's insurance requirements.

ARTICLE 4. MINIMUM MONTHLY RENT

Tenant shall pay to Landlord, without deduction, setoff, prior notice, or demand, the Minimum Monthly Rent, payable in advance on the first day of each calendar month during the Lease Term. The obligations of Tenant to pay Minimum Monthly Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. The first (1st) monthly installment of Minimum Monthly Rent shall be payable contemporaneously with the execution of this Lease; thereafter, Minimum Monthly Rent shall be payable on the first (1st) day of each month beginning on the first (1st) day of the second (2nd) full calendar month of the Term. If the Lease Term commences on a date other than the first day of a calendar month, the Minimum Monthly Rent for that month shall be prorated on a per diem basis and be paid to Landlord on or before the Commencement Date.

ARTICLE 5. ADDITIONAL RENT

This Lease is intended by Landlord and Tenant to be a net lease; accordingly, Tenant shall pay as additional rent each year the amount of Tenant's Proportionate Share of Operating Costs for the Project during each Operating Year of the Lease Term (Operating Cost Rent). Landlord may make a good faith estimate of the Operating Cost Rent to be due by Tenant for any Operating Year or part thereof during the Lease Term. During each Operating Year or partial Operating Year of the Lease Term, Tenant shall pay to Landlord, in advance concurrently with each monthly installment of Minimum Monthly Rent, an amount equal to the estimated Operating Cost Rent for such Operating Year or part thereof divided by the number of months therein. From time to time, Landlord may estimate and re-estimate the Operating Cost Rent to be due by Tenant and deliver a copy of the estimate or re-estimate to Tenant. Thereafter, the monthly installments of Operating Cost Rent payable by Tenant shall be appropriately adjusted in accordance with the estimations so that, by the end of the Operating Year in question, Tenant shall have paid all of the Operating Cost Rent as estimated by Landlord. Any amounts paid based on such an estimate shall be subject to adjustment as herein provided when actual Operating Costs are available for each Operating Year. In the event the Building is not fully occupied during any Operating Year, an adjustment shall be made by Landlord in calculating the Operating Costs for such Operating Year so that the Operating Costs shall be adjusted to the amount that would have been incurred had the Building been occupied to the extent of 100% during such Operating Year. Because the Building is one of several buildings in the Project, Operating Costs may be allocated among the buildings of the Project, as reasonably determined by Landlord. By May 1 of each Operating Year, or as soon thereafter as practicable, Landlord shall furnish to Tenant a statement of Operating Costs for the previous year, adjusted as provided above (the Operating Costs Statement). If Tenant's payments of estimated Operating Cost Rent for the year covered by the Operating Costs Statement exceed Tenant's Proportionate Share of such items as indicated in the Operating Costs Statement, then Landlord shall promptly credit or reimburse Tenant for such excess; likewise, if Tenant's estimated payments of Operating Costs for such year are less than Tenant's share of such items as indicated in the Operating Costs Statement, then Tenant shall promptly pay Landlord such deficiency, notwithstanding that the Term has expired and Tenant has vacated the Premises. For purposes of this Lease (a) Operating Costs means and includes all costs of management, maintenance, and operation of the Project, including but not limited to the costs of cleaning, repairs, utilities, air conditioning, heating, plumbing, elevator, parking, landscaping, insurance, property taxes and special assessments, and all other costs which can properly be considered operating expenses but excluding costs of property additions (except additions and improvements made in order to comply with any law hereafter promulgated by any governmental authority or any interpretation hereafter rendered with respect to any existing law), alterations for tenants, leasing commissions, advertising, depreciation, interest, income taxes and administrative costs not specifically incurred in the management, maintenance and operation of the Project; and (b) Operating Year means a year beginning January 1 and ending December 31. Tenants with leases expiring or terminating prior to the end of the Operating Year shall be responsible for their portion of Operating Costs based on Landlord's estimate of Operating Costs.

Landlord: _____
Tenant: _____

ARTICLE 6. PARKING

Nothing contained herein shall be deemed to create liability upon Landlord for any damage to motor vehicles of Tenant's Permittees, or from loss of property from within such motor vehicles while parked in the Automobile Parking Areas. Landlord has the right to establish and to enforce against all users of the Automobile Parking Areas, reasonable rules and regulations (the Parking Rules and Regulations). Landlord shall assign and identify Reserved Parking Spaces. Landlord will not police nor be responsible for any vehicle parked in Tenant's reserved parking space.

ARTICLE 7. RENT TAX AND PERSONAL PROPERTY TAXES

If imposed, Tenant shall pay to Landlord, in addition to, and simultaneously with, any other amounts payable to Landlord under this Lease, a sum equal to the aggregate of any municipal, county, state, or federal excise, sales, use, or transaction privilege taxes now or hereafter legally levied or imposed against, or on account of, any amounts payable under this Lease by Tenant or the receipt thereof by Landlord (collectively, Rent Tax). Tenant shall pay, prior to delinquency, all taxes levied upon fixtures, furnishings, equipment, and personal property placed on the Premises by Tenant.

ARTICLE 8. PAYMENT OF RENT/LATE CHARGES/INTEREST ON PAST-DUE OBLIGATIONS

Tenant shall pay the rent and all other charges specified in this Lease to Landlord at the address set forth on Section 1.1 of this Lease, or to another person and at another address as Landlord from time to time designates in writing. All monetary obligations of Tenant, including Minimum Monthly Rent, additional rent, or other charges payable by Tenant to Landlord under the terms of this Lease shall be deemed Rent, and any Rent not received within ten (10) days after the due date (the Delinquency Date) thereof shall automatically (and without notice) incur a late charge of five percent (5%) of the delinquent amount. Except as otherwise provided herein, any Rent due to Landlord not paid when due shall bear interest, from the date due, at the maximum rate then allowable by law or judgments. Payment of such interest shall in no way excuse or cure any default by Tenant under this Lease; provided, however, that interest shall not be payable on late charges incurred by Tenant.

ARTICLE 9. SECURITY DEPOSIT

Tenant shall, upon execution of this Lease, deposit with Landlord the Security Deposit, as security for the performance of terms and provisions of this Lease by Tenant, which shall be returned to Tenant within the time period required by law if it has discharged its obligations to Landlord in full. The Security Deposit shall not be used to pay the last month's lease payment. Unless required otherwise by applicable law, the Security Deposit may be commingled with other funds, and no interest shall be paid thereon. Notwithstanding anything in this Article 9 to the contrary, provided that there have been no Events of Default by Tenant up to the date of reduction of the Security Deposit, upon the first (1st) anniversary of the Commencement Date (and again on the second (2nd) anniversary) upon written request from Tenant, the amount of the Security Deposit shall be reduced annually by an amount equal to one-third of the amount of the original Security Deposit, such that after the second (2nd) reduction the Security Deposit shall equal one-third (1/3) of the original amount of the Security Deposit for the remainder of the Term as may be extended. In the event of an Event of Default by Tenant, the amount of the Security Deposit shall be restored to its original amount as set forth in Section 1.1(i).

ARTICLE 10. CONSTRUCTION OF THE PREMISES

Except as otherwise set forth on Exhibit D, if any, attached hereto, Landlord shall construct Tenant's leasehold improvements in accordance with plans and specifications prepared by Landlord's architect. Prior to the Commencement Date, any work performed by Tenant or any fixtures or personal property moved onto the Premises shall be at Tenant's own risk, Tenant's entry onto the Premises shall be subject to all provisions of the Lease (other than the payment of Minimum Monthly Rent and additional rent) and neither Landlord nor Landlord's agents or contractors shall be responsible to Tenant for damage or destruction of Tenant's property.

ARTICLE 11. ALTERATIONS

After completion of Landlord's construction obligations under Article 10, Tenant shall not make or cause to be made any further additions, alterations, improvements, Utility Installations or repairs in, on or about the Premises, the Building or the Project without the prior written consent of Landlord, which shall not be unreasonably withheld. As used in this Article, the term Utility Installation shall mean carpeting, window and wall coverings, power panels, electrical distribution systems, lighting fixtures, air conditioning, plumbing, and telephone and telecommunication wiring and equipment. At the expiration of the term, Landlord may require the removal of any and all of said additions, alterations, improvements or Utility Installations, and the restoration of the Premises, Building and Project to their prior condition, at Tenant's expense. Should Landlord permit Tenant to make its own additions, alterations, improvements or Utility Installations, Tenant may only use such contractor as has been expressly approved by Landlord, and Landlord may require Tenant to provide Landlord, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure Landlord against any liability for mechanic's and materialmen's liens and to insure completion of the work. Should Tenant make any additions, alterations,

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improvements or Utility Installations without the prior approval of Landlord, or use a contractor not expressly approved by Landlord, Landlord may, at

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Landlord: _____
Tenant: _____

any time during the Lease Term, require that Tenant remove any part or all of the same. All additions, alterations, improvements and Utility Installations (whether or not such Utility Installations constitute trade fixtures of Tenant), which may be made to the Premises by Tenant, including but not limited to, floor coverings, panelings, doors, drapes, built-ins, moldings, sound attenuation, and lighting and telephone or communication systems, conduit, wiring and outlets, shall be made and done in a good and workmanlike manner and of good and sufficient quality and materials and shall be the property of Landlord and remain upon and be surrendered with the Premises at the expiration of the Lease Term, unless Landlord requires their removal as described above. Provided Tenant is not in default, notwithstanding the provisions of this Article, Tenant's personal property and equipment, other than that which is affixed to the Premises so that it cannot be removed without material damage to the Premises or Building or Project, and other than Utility Installations, shall remain the property of Tenant and may be removed by Tenant as provided herein. Tenant shall provide Landlord with as-built plans and specifications for any additions, alterations, improvements or Utility Installations.

ARTICLE 12. PERSONAL PROPERTY/SURRENDER OF PREMISES

All personal property located in the Premises shall remain the property of Tenant and may be removed by Tenant not later than the Expiration Date or the earlier termination of the Lease Term. Tenant shall promptly repair, at its own expense, any damage resulting from such removal. All cabinetry, built-in appliances, wall coverings, floor coverings, window coverings, electrical fixtures, plumbing fixtures, conduits, lighting, and other special fixtures that may be placed upon, installed in, or attached to the Premises by Tenant shall, at the termination of this Lease be the property of Landlord unless Landlord requires its removal as set forth in Article 11. At the Expiration Date or upon the earlier termination of the Lease Term, Tenant shall surrender the Premises in good condition, reasonable wear and tear excepted, and shall deliver all keys to Landlord.

ARTICLE 13. LIENS

Tenant shall keep the Premises, Building, and the Project free from any liens arising out of work performed, material furnished, or obligations incurred due to the actions of Tenant or Tenant's Permittees or the failure of Tenant to comply with any law. In the event any such lien does attach against the Premises, Building, or Project, and Tenant does not discharge the lien or post bond (which under law would prevent foreclosure or execution under the lien) within ten (10) days after demand by Landlord, such event shall be a default by Tenant under this Lease and, in addition to Landlord's other rights and remedies, Landlord may take any action necessary to discharge the lien at Tenant's expense.

ARTICLE 14. USE OF PREMISES/RULES AND REGULATIONS

14.1 Without the prior approval of Landlord, Tenant shall not use the Premises for any use other than for general business office purposes (the Permitted Use) and Tenant agrees that it will use the Premises in such manner as to not interfere with or infringe on the rights of other tenants in the Building or Project. Tenant agrees to comply with all applicable laws, ordinances and regulations in connection with its use of the Premises, agrees to keep the Premises in a clean and sanitary condition, and agrees not to perform any act in the Building which would increase any insurance premiums related to the Building or Project or would cause the cancellation of any insurance policies related to the Building or Project. Tenant shall not use, generate, manufacture, store, or dispose of, in, under, or about the Premises, the Building, the or the Project or transport to or from the Premises, the Building, the or the Project, any Hazardous Materials. For purposes of this Lease, Hazardous Materials includes, but is not limited to: (i) flammable, explosive, or radioactive materials, hazardous wastes, toxic substances, or related materials; (ii) all substances defined as hazardous substances, hazardous materials, toxic substances, or hazardous chemical substances or mixtures in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq., as amended by Superfund Amendments and Re-authorization Act of 1986; the Hazardous Materials Transportation Act, 49 U.S.C. § 1901, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; (iii) those substances listed in the United States Department of Transportation Table (49 CFR 172.10 and amendments thereto) or by the Environmental Protection Agency (or any successor agent) as hazardous substances (40 CFR Part 302 and amendments thereto); (iv) any material, waste, or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a hazardous substance pursuant to § 311 of the Clean Water Act, 33 U.S.C. S 1251 et seq. (33 U.S.C. § 1321) or listed pursuant to the Clean Water Act (33 U.S.C. § 1317); (E) flammable explosives; or (F) radioactive materials; and (v) all substances defined as hazardous wastes in the statutes of the state in which the Premises are located.

14.2 Tenant shall comply with the rules and regulations of the Building which are attached hereto as Exhibit B. Landlord may, from time to time, change such rules and regulations for the safety, care, or cleanliness of the Building and related facilities, provided that such changes are applicable to all tenants of the Building, will not unreasonably interfere with Tenant's use of the Premises and are enforced by Landlord in a non-discriminatory manner. Tenant shall be responsible for the compliance with such rules and regulations by any assignees claiming by, through, or under Tenant; any subtenants claiming by, through, or under Tenant; and any of their respective

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agents, contractors, employees, and invitees. In the event of a conflict between the rules and regulations and the provisions of this Lease, the provisions of this Lease shall control.

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Landlord: _____

Tenant: _____

ARTICLE 15. RIGHTS RESERVED BY LANDLORD

In addition to all other rights, Landlord has the following rights, exercisable without notice to Tenant and without effecting an eviction, constructive or actual, and without giving right to any claim for set off or abatement of rent: (a) to decorate and to make repairs, alterations, additions, changes, or improvements in and about the Building during Building Hours; (b) to reasonably approve the weight, size, and location of heavy objects in and about the Premises and the Building, and to require all such items to be moved into and out of the Building and Premises in such manner as Landlord shall direct in writing; (c) to take all such reasonable measures for the security of the Building and its occupants (provided that Landlord shall have no obligation to provide any such security unless required by law); and (d) to temporarily block off parking spaces for maintenance or construction purposes.

ARTICLE 16. QUIET ENJOYMENT

Landlord agrees that, provided a default by Tenant has not occurred, neither Landlord nor anyone claiming through Landlord will do anything that will prevent Tenant from quietly enjoying and occupying the Premises during the Lease Term. Tenant agrees this Lease is subordinate to the Parking Rules and Regulations described in [Article 6](#).

ARTICLE 17. MAINTENANCE AND REPAIR

17.1 Landlord shall, subject to reimbursement for Operating Costs, keep and maintain in good repair and working order, subject to reasonable wear and tear: (1) structural elements of the Building; (2) standard mechanical (including HVAC), electrical, plumbing and fire/life safety systems serving the Building generally, together with air filters provided by Landlord for the HVAC serving the Premises, if any and standard light fixtures provided by Landlord to the Premises, if any; (3) Common Areas; (4) the roof of the Building; (5) exterior windows of the Building; and (6) elevators serving the Building, reasonable wear and tear excepted. Tenant waives all rights to make repairs at the expense of Landlord. If Landlord would be required to perform any maintenance or make any repairs because of: (a) modifications to the roof, walls, foundation, and floor of the Building from that set forth in Landlord's plans and specifications which are required by Tenant's design for improvements, alterations and additions; (b) installation of Tenant's improvements, fixtures, or equipment; (c) a negligent or wrongful act of Tenant or Tenant's Permittees; or, (d) Tenant's failure to perform any of Tenant's obligations under this Lease, Landlord may perform the maintenance or repairs and Tenant shall pay Landlord the cost thereof.

17.2 Tenant agrees to: (a) pay Landlord's cost of maintenance and repair, including additional janitorial costs of any non-building standard improvements and non-building standard materials and finishes as additional rent hereunder; (b) if Tenant is responsible for damage, repair or replace all ceiling and wall finishes (including painting) and floor or window coverings which require repair or replacement during the Lease Term, at Tenant's sole cost; and (c) at Tenant's sole cost, maintain and repair interior partitions; doors; electronic, phone and data cabling and related equipment that is installed by or for the benefit of Tenant and located in the Premises or other portions of the Building or Project; supplemental air conditioning units, private showers and kitchens, including hot water heaters, plumbing, dishwashers, ice machines and similar facilities serving Tenant exclusively; phone rooms used exclusively by Tenant; alterations performed by contractors retained by or on behalf of Tenant; and all of Tenant's furnishings, trade fixtures, equipment and inventory. It is generally understood that mold spores are present essentially everywhere and that mold can grow in most any moist location. Emphasis is properly placed on prevention of moisture and on good housekeeping and ventilation practices. Tenant acknowledges the necessity of housekeeping, ventilation, and moisture control (especially in kitchens, janitor's closets, bathrooms, break rooms and around outside walls) for mold prevention. In signing this Lease, Tenant has first inspected the Premises and certifies that it has not observed mold, mildew or moisture within the Premises. Tenant agrees to immediately notify Landlord if it observes mold/mildew and/or moisture conditions (from any source, including leaks), and allow Landlord to evaluate and make recommendations and/or take appropriate corrective action. Tenant relieves Landlord from any liability for any bodily injury or damages to property caused by or associated with moisture or the growth of or occurrence of mold or mildew on the Premises. In addition, execution of this Lease constitutes acknowledgement by Tenant that control of moisture and mold prevention are integral to its Lease obligations.

17.3 Notwithstanding anything in this Lease to the contrary, to the extent the terms and provisions of [Article 22](#) conflict with, or are inconsistent with, the terms and provisions of this [Article 17](#), the terms and provisions of [Article 22](#) shall control. Tenant shall take all reasonable precautions to insure that the Premises are not subjected to excessive wear and tear, i.e. chair pads should be utilized by Tenant to protect carpeting.

ARTICLE 18. UTILITIES AND JANITORIAL SERVICES

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Landlord agrees to furnish to the Premises during normal Building Hours as defined in Section 1.1, and subject to the Rules and Regulations, electricity suitable for general office use of the Premises, heat and air conditioning required in Landlord's reasonable judgment for normal use and occupation of the Premises, and during such hours as determined by Landlord, janitorial services for the Premises and Common Areas. Landlord further agrees to furnish hot and cold water to those areas provided for general use of all tenants in the Building. Landlord will use diligent efforts to provide continuous elevator service for the Building. If Tenant shall require electric current, water, heating, cooling, or air outside of normal Building Hours which will result in excess consumption of such utilities or services, Tenant shall first obtain the written consent of Landlord to the use thereof. If, in Landlord's

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Landlord: _____
Tenant: _____

reasonable discretion, Tenant consumes any utilities or services in excess of the normal consumption of such utilities and services for general office use, Tenant agrees to pay Landlord for the cost of such excess consumption of utilities or services as additional rent, upon receipt of a statement of such costs from Landlord, at the same time as payment of the Minimum Monthly Rent is made. Landlord shall have the right to install separate electrical meters, at Landlord's expense, to measure excess consumption or establish another basis for determining the amount of excess consumption of electrical current. Further, Landlord shall have the right to install electronic HVAC over-time hour meters for Tenant's convenience. These meters shall be used, in part, by Landlord to determine Tenant's excess HVAC consumption for purposes of billing Tenant for such excess charges. If Tenant desires HVAC at a time other than Building Hours: (i) Tenant shall give Landlord such prior notice as Landlord shall from time to time establish as appropriate of Tenant's desired use; (ii) Landlord shall supply such after-hours HVAC to Tenant at such hourly costs to Tenant as Landlord shall from time to time establish; and (iii) Tenant shall pay such cost as additional rent within ten (10) days after billing. Landlord shall not be liable for damages nor shall rent or other charges abate in the event of any failure or interruption of any utility or service supplied to the Premises, Building or Project by a regulated utility or municipality, or any failure of a Building system supplying any such service to the Premises (provided Landlord uses diligent efforts to repair or restore the same) and no such failure or interruption shall entitle Tenant to abate rent or terminate this Lease.

ARTICLE 19. ENTRY AND INSPECTION

Landlord shall have the right, after reasonable advanced notice (which may be oral) to Tenant, except in the case of an emergency or for recurring services, when no notice shall be required, to enter into the Premises at reasonable times for the purpose of inspecting the Premises and reserves the right, during the last six months of the term of the Lease, to show the Premises at reasonable times to prospective tenants. Landlord shall be permitted to take any action under this Article without causing any abatement of rent or liability to Tenant for any loss of occupation or quiet enjoyment of the Premises, nor shall such action by Landlord be deemed an actual or constructive eviction; provided however that Landlord shall use commercially reasonable efforts not to materially and adversely disturb Tenant's normal use and occupancy of the Premises.

ARTICLE 20. ACCEPTANCE OF THE PREMISES/LIABILITY INSURANCE

20.1 All personal property and fixtures belonging to Tenant shall be placed and remain on the Premises at Tenant's sole risk. Upon taking possession of the Premises and thereafter during the Lease Term, the Tenant shall, at Tenant's sole cost and expense, maintain insurance coverage with limits not less than the following: (a) Worker's Compensation Insurance, minimum limit as defined by applicable laws; (b) Employer's Liability Insurance, minimum limit \$1,000,000; (c) Commercial General Liability Insurance, Bodily Injury/Property, Damage Insurance (including the following coverages: Premises/Operations, Independent Contractors, Broad Form Contractual in support of the indemnification obligations of Tenant under this Lease, and Bodily and Personal Injury Liability), minimum limits of \$1,000,000 Each Occurrence and \$2,000,000 General Aggregate (with an additional \$2,000,000 umbrella policy for Each Occurrence and \$2,000,000 General Aggregate); (d) All Risk Property insurance covering the full value of all furniture, trade fixtures and personal property (including property of Tenant or others) in the Premises or otherwise placed in the Project by, through or under Tenant it being understood that no lack or inadequacy of insurance by Tenant shall in any event make Landlord subject to any claim by virtue of any theft of or loss or damage to any uninsured or inadequately insured property; (e) All Risk Property insurance covering the full value of all additions, alterations, improvements, Utility Installations and betterments in the Premises, naming Landlord and any deed of trust holder or mortgagee as additional loss payees as their interests may appear; (f) business interruption insurance in an amount that will reimburse Tenant for direct or indirect loss of earnings attributable to all perils insured against; (g) Automobile Liability Insurance, minimum combined single limit \$3,000,000; and (h) in the event Tenant performs any alterations or repairs in, on, or to the Premises, Builder's Risk Insurance on an All Risk basis (including collapse) on a completed value (non-reporting) form, or by endorsement including such coverage, for full replacement value covering all work incorporated in the Building and all materials and equipment in or about the Premises. All such policies shall include a waiver of subrogation in favor of Landlord and shall name Landlord and such other party or parties as Landlord may require as additional insureds. Tenant's insurance shall be primary, with any insurance maintained by Landlord to be considered excess. Tenant's insurance shall be maintained with an insurance company qualified to do business in the state in which the Premises are located and having a current A.M. Best manual rating of at least A-X or better. Before entry into the Premises and before expiration of any policy, evidence of these coverages represented by Certificates of Insurance issued by the insurance carrier must be furnished to Landlord. Certificates of Insurance should specify the additional insured status, the waiver of subrogation, and that such insurance is primary, and any insurance by Landlord is excess. The Certificate of Insurance shall state that Landlord will be notified in writing thirty (30) days before cancellation or non-renewal of insurance except in the event of non-payment of premium, then a ten (10) day notice shall be given to Landlord.

20.2 During the entire Lease Term, Landlord agrees to maintain public liability insurance in such forms and amounts as Landlord shall determine. The cost of the insurance obtained under this Section 20.2 shall be an Operating Cost under Article 5 of this Lease.

Landlord: _____
Tenant: _____

ARTICLE 21. CASUALTY INSURANCE

- 21.1 Tenant shall maintain fire and extended coverage insurance (full replacement value) with a business interruption and extra expense endorsements, on personal property and trade fixtures owned or used by Tenant.
- 21.2 Landlord shall maintain property insurance for the Building's replacement value, less a commercially reasonable deductible if Landlord so chooses including endorsements as determined by Landlord throughout the Lease Term on the Building (excluding Tenant's trade fixtures and personal