

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**

<b>Exhibit No.</b>	<b>Description</b>
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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<b><u>EXHIBITS:</u></b>	

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



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**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 (1<sup>st</sup>) 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 (2<sup>nd</sup>) 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 (2<sup>nd</sup>) 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: \_\_\_\_\_

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## 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

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: \_\_\_\_\_

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**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 property). At Landlord's option, the policy of insurance may include a business interruption insurance endorsement for loss of rents. The cost of the insurance obtained under this Section 21.2 shall be an Operating Cost under Article 5 of this Lease.

**ARTICLE 22. DAMAGE AND DESTRUCTION OF PREMISES**

- 22.1 If the Premises or the Building are damaged by fire or other casualty (a Casualty), Landlord shall use good faith efforts to deliver to Tenant within sixty (60) days after such Casualty a good faith estimate (the Damage Notice) of the time needed to repair the damage caused by such Casualty.
- 22.2 If a material portion of the Premises is damaged by Casualty such that Tenant is prevented from conducting its business in the Premises in a manner reasonably comparable to that conducted immediately before such Casualty and Landlord estimates that the damage caused thereby cannot be repaired within one hundred eighty (180) days after the commencement of repairs (the Repair Period), then Tenant may terminate this Lease by delivering written notice to Landlord of its election to terminate within thirty (30) days after the Damage Notice has been delivered to Tenant.
- 22.3 If a Casualty damages the Premises or a material portion of the Building and: (1) Landlord estimates that the damage to the Premises cannot be repaired within the Repair Period; (2) the damage to the Premises exceeds fifty percent (50%) of the replacement cost thereof (excluding foundations and footings), as estimated by Landlord, and such damage occurs during the last two (2) years of the Term; (3) regardless of the extent of damage to the Premises, Landlord makes a good faith determination that restoring the Building would be uneconomical; or (4) Landlord is required to pay any insurance proceeds arising out of the Casualty to a deed of trust holder, mortgagee or ground lessor under, then Landlord may terminate this Lease by giving written notice of its election to terminate within thirty (30) days after the Damage Notice has been delivered to Tenant.
- 22.4 If neither party elects to terminate this Lease following a Casualty, then Landlord shall, within a reasonable time after such Casualty, begin to repair the Premises and shall proceed with reasonable diligence to restore the Premises to substantially the same condition as they existed immediately before such Casualty; however, other than building standard leasehold improvements Landlord shall not be required to repair or replace any Alterations or betterments within the Premises (which shall be promptly and with due diligence repaired and restored by Tenant at Tenant's sole cost and expense) or any furniture, equipment, trade fixtures or personal property of Tenant or others in the Premises or the Building, and Landlord's obligation to repair or restore the Premises shall be limited to the extent of the insurance proceeds actually received by Landlord for the Casualty in question. If this Lease is terminated under the provisions of this Article 22, Landlord shall be entitled to the full proceeds of the insurance policies providing coverage for all alterations, improvements and betterments in the Premises (and, if Tenant has failed to maintain insurance on such items as required by this Lease, Tenant shall pay Landlord an amount equal to the proceeds Landlord would have received had Tenant maintained insurance on such items as required by this Lease).
- 22.5 If the Premises are damaged by Casualty, Rent for the portion of the Premises rendered untenable by the damage shall be abated on a reasonable basis from the date of damage until the completion of Landlord's repairs (or until the date of termination of this Lease by Landlord or Tenant as provided above, as the case may be), unless Tenant or a Tenant Permittee caused such damage, in which case, Tenant shall continue to pay Minimum Monthly Rent and all other rent without abatement and Tenant shall be liable to Landlord for the cost and expense of the repair and restoration of the Premises or the Building caused thereby to the extent that costs and expense is not covered by insurance proceeds.

**ARTICLE 23. EMINENT DOMAIN**

- 23.1 If the entire Building or Premises are taken by right of eminent domain or conveyed in lieu thereof (a Taking ), this Lease shall terminate as of the date of the Taking.
- 23.2 If any part of the Building becomes subject to a Taking and such Taking will prevent Tenant from conducting its business in the Premises in a manner reasonably comparable to that conducted immediately before such Taking for a period of more than one hundred eighty (180) days, then Tenant may terminate this Lease as of the date of such Taking by giving written notice to Landlord within thirty (30) days after the Taking, and Rent shall be apportioned as of the date of such Taking. If Tenant does not terminate this Lease, then Rent shall be abated on a reasonable basis as to that portion of the Premises rendered untenable by the Taking.
- 23.3 If any material portion, but less than all, of the Building becomes subject to a Taking, or if Landlord is required to pay any of the proceeds arising from a Taking to a deed of trust holder, mortgagee or ground lessor, then Landlord may terminate this Lease by delivering written notice thereof to Tenant within thirty (30) days after such Taking, and Rent shall be apportioned as of the date of such Taking. If Landlord does not so terminate this Lease, then this Lease will continue, but if any portion of the Premises has been taken, Rent shall abate as provided in Section 22.5.

Landlord: \_\_\_\_\_  
Tenant: \_\_\_\_\_



- 23.4 If any Taking occurs, then Landlord shall receive the entire award or other compensation for the Land, the Building, and other improvements taken; however, Tenant may separately pursue a claim (to the extent it will not reduce Landlord's award) against the condemnor for the value of Tenant's personal property which Tenant is entitled to remove under this Lease, moving costs, loss of business, and other claims it may have.

**ARTICLE 24. ASSIGNMENT AND SUBLETTING**

- 24.1 Tenant agrees not to assign, mortgage, or pledge this Lease, and shall not sublet the Premises without Landlord's prior written consent, which shall not be unreasonably withheld if Landlord does not elect to terminate this Lease as provided herein. Without limitation, it is agreed that Landlord's consent shall not be considered unreasonably withheld if: (1) the proposed transferee's financial condition does not meet the criteria Landlord uses to select Building tenants having similar leasehold obligations; (2) the proposed transferee's use is not suitable for the Building considering the business of the other tenants and the Building's prestige; (3) the proposed transferee is a governmental agency or occupant of the Project; (4) Tenant is in default after the expiration of the notice and cure periods in this Lease; or (5) any portion of the Premises or Building would likely become subject to additional or different laws as a consequence of the proposed assignment or subletting. Tenant shall not be entitled to receive any monetary damages based upon a claim that Landlord unreasonably withheld its consent to a proposed sublease or assignment and Tenant's sole remedy shall be an action to enforce any provision through specific performance or declaratory judgment. Any attempted sublease or assignment in violation of this Article shall, at Landlord's option, be void. Consent by Landlord to one or more subleases or assignments shall not operate as a waiver of Landlord's rights to approve any subsequent subleases or assignments. Any assignment or subletting hereunder shall not release or discharge Tenant of or from any liability under this Lease, and Tenant shall continue to be fully liable thereunder. As part of its request for Landlord's consent to a sublease or assignment, Tenant shall provide Landlord with financial statements for the proposed transferee, a complete copy of the proposed sublease, assignment and other contractual documents and such other information as Landlord may reasonably request. Landlord shall, by written notice to Tenant within thirty (30) days of its receipt of the required information and documentation, either: (1) consent to the sublease or assignment by the execution of a consent agreement in a form reasonably designated by Landlord or reasonably refuse to consent to the sublease or assignment in writing; or (2) exercise its right to terminate this Lease with respect to the portion of the Premises that Tenant is proposing to sublease or assign. Any such termination shall be effective on the proposed effective date the sublease or assignment for which Tenant requested consent. If Tenant shall assign or sublet the Lease or request the consent of Landlord to any assignment or subletting or if Tenant shall request the consent of Landlord for any act Tenant proposes to do, then Tenant shall pay Landlord's reasonable costs and expenses incurred in connection therewith, including attorneys', architects', engineers' or other consultants' fees, which fee shall be no less than \$500.00. Consent by Landlord to one assignment, subletting, occupation, or use by another person shall not be deemed to be consent to any subsequent assignment, subletting, occupation, or use by another person. Tenant shall pay fifty percent (50%) of all rent and other consideration which Tenant receives as a result of a sublease or assignment that is excess of the Rent payable to Landlord for the portion of the Premises and Lease Term covered by the sublease or assignment. Tenant shall pay Landlord for Landlord's share of any excess within thirty (30) days after Tenant's receipt of such excess consideration. Tenant may deduct from the excess all reasonable and customary expenses directly incurred by Tenant attributable to the sublease or assignment (other than Landlord's costs and expenses), including brokerage fees, legal fees and construction costs. If Tenant is a corporation, an unincorporated association or a partnership, unless listed on a national stock exchange, the transfer, assignment or hypothecation of any stock or interest in such corporation, association or partnership in the aggregate in excess of fifty percent (50%) shall be deemed an assignment of this Lease. Tenant agrees to immediately notify Landlord in writing of any change in its ownership.
- 24.2 Notwithstanding anything in this Article 24 to the contrary, Tenant may Transfer all or part of its interest in this Lease or all or part of the Premises (a Permitted Transfer) to the following types of entities (a Permitted Transferee) without the written consent of Landlord: (1) a person or entity which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Tenant (Affiliate); (2) any corporation, limited partnership, limited liability partnership, limited liability company or other business entity in which or with which Tenant, or its corporate successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions governing merger and consolidation of business entities, so long as (A) Tenant's obligations hereunder are assumed by the entity surviving such merger or created by such consolidation; and (B) the Tangible Net Worth of the surviving or created entity is similar to the Tangible Net Worth of Tenant as of the date of execution of this Lease; or (3) any corporation, limited partnership, limited liability partnership, limited liability company or other business entity acquiring all or substantially all of Tenant's assets if such entity's Tangible Net Worth after such acquisition is similar to the Tangible Net Worth of Tenant as of the date of execution of this Lease. Tenant shall promptly notify Landlord of any such Permitted Transfer. Tenant shall remain liable for the performance of all of the obligations of Tenant hereunder, or if Tenant no longer exists because of a merger, consolidation, or acquisition, the surviving or acquiring entity shall expressly assume in writing the obligations of Tenant hereunder. Additionally, the Permitted Transferee shall comply with all of the terms and conditions of this Lease, including the Permitted Use, and the use of the Premises by the Permitted

Landlord: \_\_\_\_\_  
Tenant: \_\_\_\_\_

Transferee may not violate any other agreements affecting the Premises, the Building or the Project, Landlord or other tenants of the Project. No later than five (5) business days after the effective date of any Permitted Transfer, Tenant agrees to furnish Landlord with (A) copies of the instrument effecting any of the foregoing Transfers, (B) documentation establishing Tenant's satisfaction of the requirements set forth above applicable to any such Transfer, and (C) evidence of insurance as required under this Lease with respect to the Permitted Transferee. The occurrence of a Permitted Transfer shall not waive Landlord's rights as to any subsequent Transfers. Tangible Net Worth means the excess of total assets over total liabilities, in each case as determined in accordance with generally accepted accounting principles consistently applied (GAAP), excluding, however, from the determination of total assets all assets which would be classified as intangible assets under GAAP including goodwill, licenses, patents, trademarks, trade names, copyrights, and franchises. Any subsequent Transfer by a Permitted Transferee shall be subject to the terms of this Article 24.

#### **ARTICLE 25. SALE OF PREMISES BY LANDLORD**

In the event of any sale of the Building or the property upon which the Building is located or any assignment of this Lease by Landlord (or a successor in title), the assignee or purchaser shall be deemed, without any further agreement between the parties, to have assumed and agreed to carry out any and all of the covenants and obligations of Landlord under this Lease, and shall be substituted as Landlord for all purposes from and after the sale or assignment: and Landlord (or such successor) shall automatically be entirely freed and relieved of all liability under any and all of Landlord's covenants and obligations contained in this Lease or arising out of any act, occurrence, or omission occurring after such sale or assignment.

#### **ARTICLE 26. SUBORDINATION/ATTORNMEN/MODIFICATION/ASSIGNMENT**

Tenant's interest under this Lease is subordinate to all terms of and all liens and interests arising under any ground lease, deed of trust, or mortgage now or hereafter placed on the Landlord's interest in the Premises, the Building, or the Project. Tenant consents to an assignment of Landlord's interest in this Lease to Landlord's lender as required under such financing. If the Premises or the Building is sold as a result of a default under the mortgage, or pursuant to a transfer in lieu of foreclosure, Tenant shall, at the mortgagee's, purchaser's or ground lessor's sole election, attorn to the mortgagee or purchaser. This Article is self-operative. However, Tenant agrees to execute and deliver, if Landlord, any deed of trust holder, mortgagee, or purchaser should so request, such further instruments necessary to subordinate this Lease to a lien of any mortgage or deed of trust, to acknowledge the consent to assignment and to affirm the attornment provisions set forth herein.

#### **ARTICLE 27. LANDLORD'S DEFAULT AND RIGHT TO CURE**

Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

#### **ARTICLE 28. ESTOPPEL CERTIFICATES**

Tenant agrees at any time and from time to time upon request by Landlord, to execute, acknowledge, and deliver to Landlord, within ten (10) calendar days after demand by Landlord, a statement in writing certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications), (b) the dates to which the Minimum Monthly Rent and other rent and charges have been paid in advance, if any, (c) Tenant's acceptance and possession of the Premises, (d) the commencement of the Lease Term, (e) the rent provided under the Lease, (f) that Landlord is not in default under this Lease (or if Tenant claims such default, the nature thereof), (g) that Tenant claims no offsets against the rent, and (h) such other information as may be requested with respect to the provisions of this Lease or the tenancy created by this Lease. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one month's rent has been paid in advance.

#### **ARTICLE 29. TENANT'S DEFAULT AND LANDLORD'S REMEDIES**

29.1 Tenant will be in default under the Lease if any of the following occurs, and same shall be deemed an Event of Default :

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- (a) If Tenant fails to pay the Minimum Monthly Rent or make any other payment required by the Lease within three (3) business days after Landlord sends Tenant a written notice or demand for payment.

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Landlord: \_\_\_\_\_

Tenant: \_\_\_\_\_

- (b) If Tenant assigns the Lease or mortgages its interest in the Lease or sublets any part of the Premises without first obtaining Landlord's written consent, as required by Article 24.
- (c) If Tenant abandons the Premises, or ceases to operate its business on the Premises, or becomes bankrupt or insolvent, or makes any general assignment of all or a substantial part of its property for the benefit of creditors, or if a receiver is appointed to operate Tenant's business or to take possession of all or a substantial part of Tenant's property.
- (d) If a lien attaches to the Lease or to Tenant's interest in the Premises, and Tenant fails to post a bond or other security or to have the lien released within ten (10) days of its notification thereof, or if a mortgagee institutes proceedings to foreclose its mortgage against Tenant's leasehold interest or other property and Tenant fails to have the foreclosure proceedings dismissed within ten (10) calendar days after the entry of any judgment or order declaring the mortgage to be valid and Tenant to be in default on the obligation secured thereby, or directing enforcement of the mortgage.
- (e) If Tenant fails to maintain any of the insurance as required by the Lease.
- (f) If Tenant breaches any other provision of the Lease and fails to cure the breach within fifteen (15) calendar days after Landlord sends it written notice of the breach, or if the breach cannot be cured within fifteen (15) calendar days, then if Tenant does not proceed with reasonable diligence to cure the breach within such additional time as may be reasonably necessary under the circumstances, not to exceed sixty (60) calendar days.

29.2 If Tenant is in default, then Landlord may take any one or more of the following actions:

- (a) Landlord may re-enter and take possession of all or any part of the Premises and remove Tenant and any person claiming under Tenant from the Premises, using reasonable force, if necessary, and without committing a trespass or becoming liable for any loss or damage that may be occasioned thereby. Landlord may also change the locks to the Premises without notice at Tenant's expense. Re-entry and possession of the Premises will not by themselves terminate the Lease.
- (b) Landlord may remove any property, including fixtures, from the Premises and store the same at Tenant's expense in a warehouse or any other location, or Landlord may lease the property on the Premises pending sale or other disposition. If Landlord leaves the property on the Premises or stores it at another location owned or controlled by Landlord, then Landlord may charge Tenant a reasonable fee for storing and handling the property comparable to what Landlord would have had to pay to a third party for such services. Landlord will not be liable under any circumstance to Tenant or to anyone else for any damage to the property. Landlord may proceed to sell Tenant's property, which shall be sold in accordance with the laws of the state in which the Premises are located.
- (c) Landlord may collect any rents or other payments that become due from any subtenant, concessionaire or licensee, and may in its own name or in Tenant's name bring suit for such amounts, and settle any claims therefore, without approving the terms of the sublease or Tenant's agreement with the concessionaire or licensee and without prejudice to Landlord's right to terminate the sublease or agreement without cause and remove the subtenant, concessionaire or licensee from the Premises.
- (d) Landlord may relet the Premises at whatever rent and on whatever terms and conditions it deems advisable. The term of any new lease may be shorter or longer than the remaining term of this Lease. In reletting the Premises, Landlord may make any alterations or repairs to the Premises it feels necessary or desirable; may subdivide the Premises into more than one unit and lease each portion separately; may sell Tenant's improvements, fixtures and other property located on the Premises to the new tenant, or include such improvements, fixtures and property as part of the Premises without additional cost; may advertise the Premises for sale or lease; may hire brokers or other agents; and, may do anything else it deems necessary or helpful in reletting the Premises. Tenant will be liable to Landlord for all costs and expenses of the reletting including but not limited to rental concessions to the new tenant, broker's commissions and tenant improvements, and will remain liable for the Minimum

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Monthly Rent and all other charges arising under the Lease, less any income received from the new tenant, unless the Lease is terminated as set forth below. In the event an existing tenant of the project is moved into the Premises, Tenant will be liable for the damages suffered by Landlord (as calculated herein) as the result of the vacancy of the premises occupied by the existing tenant.

- (e) Landlord may terminate the Lease at any time after Tenant defaults by sending a written notice to Tenant expressly stating that the Lease is being terminated. Termination will be effective on the date of the notice or on any other date set forth in the notice. Until Landlord sends Tenant such a notice, the Lease will remain in full force and effect, and Tenant will remain liable for paying the Minimum Monthly Rent and other charges that come due under the Lease and for performing all other terms and conditions of the Lease. No other action by Landlord, including repossession of the Premises, removing or selling Tenant's separate property, reletting the Premises, or filing suit for possession or for damages, will terminate the Lease or release Tenant from its continuing liability for complying with the terms and conditions.

Landlord: \_\_\_\_\_  
Tenant: \_\_\_\_\_

- (f) Landlord may recover from Tenant all costs and expenses Landlord incurs as a direct or indirect consequence of Tenant's breach, including the cost of storing and selling Tenant's property, reletting the Premises, and bringing suit against Tenant for possession or damages. If Landlord made or paid for any improvements to the Premises, or granted Tenant any improvement allowance or credit against the Minimum Monthly Rent or other charges due hereunder for Tenant's improvements, then Landlord shall also be entitled to recover the unamortized portion of the cost of such improvements or the amount of such allowance or credit, determined by multiplying the total amount of such cost or allowance or credit by a fraction, the denominator of which is the total number of months of the initial Lease Term and the numerator of which is the number of months of the Lease Term remaining at the time of Tenant's default. Also, if the Lease provides for any months for which no Minimum Monthly Rent or a reduced Minimum Monthly Rent is payable, or for any other rent concession to Tenant, then, upon default, Tenant shall become liable for the full amount of the Minimum Monthly Rent (or other rent concession), plus applicable taxes, for such months, and Landlord shall be entitled to recover as additional rent the amount that would have been payable by Tenant for such months if the Minimum Monthly Rent provided for herein had been payable by Tenant throughout the entire Lease Term. Unless Landlord terminates the Lease, Tenant will also remain liable for any difference between the Minimum Monthly Rent and other charges called for by the Lease and the rent and other charges collected by Landlord from any new tenant. For any month in which Landlord collects less from a successor tenant than is payable under this Lease, Landlord may demand that Tenant immediately make up the difference, and Landlord may bring suit against Tenant if Tenant fails to do so. If Landlord does terminate the Lease, then Tenant will no longer be liable on a continuing monthly basis for the Minimum Monthly Rent and other charges that would have become due under the Lease thereafter, but Tenant will remain liable for all sums accrued under the Lease to the date of termination, as well as for all costs and expenses incurred by Landlord, and any other damages sustained by Landlord, as a consequence of Tenant's breach. Also Landlord may recover from Tenant the difference between the present value at the date of termination to the end of the Lease Term and the present value of the Minimum Monthly Rent and other charges Landlord could have obtained if Landlord had rented the Premises for the same period at its fair rental value at the end of termination. The present value of the amounts referred to in the preceding sentence shall be computed using a discount rate equal to the prime rate charged by Wells Fargo Bank (or its successor) at the date of termination.
- (g) Landlord may sue Tenant for possession of the Premises, for damages for breach of the Lease, and for other appropriate relief, either in the same or in separate actions. Landlord may recover all costs and expenses it incurs in any such suit, including reasonable attorneys' fees.
- (h) Landlord may exercise any other right or remedy available at law or in equity for breach of contract, damages or other appropriate relief. The rights and remedies described herein are cumulative, and Landlord's exercise of any one right will not preclude the simultaneous exercise of any other right or remedy.

#### **ARTICLE 30. TENANT'S RECOURSE**

Anything in this Lease to the contrary notwithstanding, Tenant agrees to look solely to the estate and property of Landlord in the Building and the Project, subject to prior rights of any ground lessor, mortgagee, or deed of trust of the Building and the Project or any part thereof, for the collection of any judgment requiring the payment of money by Landlord in the event of any default by Landlord under this Lease. Tenant agrees that it is prohibited from using any other procedures for the satisfaction of Tenant's remedies. Neither Landlord nor any of its respective officers, directors, employees, heirs, successors, or assigns, shall have any personal liability of any kind or nature, directly or indirectly, under or in connection with this Lease.

#### **ARTICLE 31. HOLDING OVER**

Subject to prior written consent by Landlord, if Tenant holds over after the Expiration Date, or any extension thereof, Tenant shall be a tenant at sufferance, the Minimum Monthly Rent shall be increased to 150% of the then current lease rate at the Building or the Tenant's lease rate at the time the Lease expired, whichever is higher, plus any amounts due under Article 5, which shall be payable in advance on the first day of such holdover period and on the first day of each month thereafter. Tenant will be considered to be on a month-to-month basis during any holdover period.

#### **ARTICLE 32. GENERAL PROVISIONS**

32.1 This Lease is construed in accordance with the laws of the state in which the Premises are located.

32.2 If Tenant is composed of more than one person or entity, then the obligations of such entities or parties are joint and several.

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Landlord: \_\_\_\_\_  
Tenant: \_\_\_\_\_



- 32.3 If any term, condition, covenant, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, conditions, covenants, and provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- 32.4 The various headings and numbers herein and the grouping of the provisions of this Lease into separate articles and sections are for the purpose of convenience only and are not be considered a part hereof.
- 32.5 Time is of the essence of this Lease.
- 32.6 Other than for Tenant's obligations under this Lease that can be performed by the payment of money (e.g., payment of Rent and maintenance of insurance), whenever a period of time is herein prescribed for action to be taken by either party hereto, such party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war (declared or undeclared), acts of terrorism, governmental laws, regulations, or restrictions, or any other causes of any kind whatsoever which are beyond the control of such party.
- 32.7 In the event either party initiates legal proceedings or retains an attorney to enforce any right or obligation under this Lease or to obtain relief for the breach of any covenant hereof, the party ultimately prevailing in such proceedings or the non-defaulting party shall be entitled to recover all costs and reasonable attorneys' fees.
- 32.8 This Lease, and any Exhibit or Addendum attached hereto, sets forth all the terms, conditions, covenants, provisions, promises, agreements, and undertakings, either oral or written, between the Landlord and Tenant. No subsequent alteration, amendment, change, or addition to this Lease is binding upon Landlord or Tenant unless reduced to writing and signed by both parties.
- 32.9 Subject to [Article 24](#), the covenants herein contained shall apply to and bind the heirs, successors, executors, personal representatives, legal representatives, administrators, and assigns of all the parties hereto.
- 32.10 No term, condition, covenant, or provision of this Lease shall be waived except by written waiver of Landlord, and the forbearance or indulgence by Landlord in any regard whatsoever shall not constitute a waiver of the term, condition, covenant, or provision to be performed by Tenant to which the same shall apply, and until complete performance by Tenant of such term, condition, covenant, or provision, Landlord shall be entitled to invoke any remedy available under this Lease or by law despite such forbearance or indulgence. The waiver by Landlord of any breach or term, condition, covenant, or provision hereof shall apply to and be limited to the specific instance involved and shall not be deemed to apply to any other instance or to any subsequent breach of the same or any other term, condition, covenant, or provision hereof. Acceptance of rent by Landlord during a period in which Tenant is in default in any respect other than payment of rent shall not be deemed a waiver of the other default. Any payment made in arrears shall be credited to the oldest amount outstanding and no contrary application will waive this right.
- 32.11 The use of a singular term in this Lease shall include the plural and the use of the masculine, feminine, or neuter genders shall include all others.
- 32.12 Landlord's submission of a copy of this Lease form to any person, including Tenant, shall not be deemed to be an offer to lease or the creation of a lease unless and until this Lease has been fully signed and delivered by Landlord.
- 32.13 Every term, condition, covenant, and provision of this Lease, having been negotiated in detail and at arm's length by both parties, shall be construed simply according to its fair meaning and not strictly for or against Landlord or Tenant.

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32.14 If the time for the performance of any obligation under this Lease expires on a Saturday, Sunday, or legal holiday, the time for performance shall be extended to the next succeeding day which is not a Saturday, Sunday, or legal holiday.

32.15 If requested by Landlord, Tenant shall execute written documentation with signatures acknowledged by a notary public, to evidence when and if Landlord or Tenant has met certain obligations under this Lease.

**ARTICLE 33. NOTICES**

Wherever in this Lease it is required or permitted that notice or demand be given or served by either party to or on the other, such notice or demand shall be in writing and shall be given or served and shall not be deemed to have been duly given or served unless (a) in writing; (b) either (1) delivered personally, (2) deposited with the United States Postal Service, as registered or certified mail, return receipt requested, bearing adequate postage, or (3) sent by overnight express courier (including, without limitation, Federal Express, DHL Worldwide Express, Airborne Express, United States Postal Service Express Mail) with a request that the addressee sign a receipt evidencing delivery; and (c) addressed to the party at its address in Section 1.1. Either party may change such address by written notice to the other. Service of any notice or demand shall be deemed completed forty-eight (48) hours after deposit thereof, if deposited with the United States Postal Service, or upon receipt if delivered by overnight courier or in person.

Landlord: \_\_\_\_\_  
Tenant: \_\_\_\_\_

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#### ARTICLE 34. BROKER S COMMISSIONS

Tenant represents and warrants that it has had no dealing with any broker or agent in connection with the negotiation or execution of this Lease except CBRE, Inc. which has acted as Landlord s leasing agent and CBRE, Inc., which collectively, have acted as Tenant s broker and which Landlord shall be paid a commission by Landlord pursuant to a separate agreement. Tenant represents and warrants that, to the best of its knowledge, there are no claims for brokerage commissions or finder s fees in connection with this Lease (excepting commissions or fees approved or authorized in writing by Landlord). Tenant shall indemnify, defend and hold Landlord harmless for, from and against all costs, expenses, attorneys fees, liens and other liability for commissions or other compensation claimed by any broker or agent claiming the same by, through or under Tenant. The foregoing indemnity shall survive the expiration or earlier termination of the Lease.

#### ARTICLE 35. INDEMNIFICATION/WAIVER OF SUBROGATION

35.1 Tenant shall indemnify, defend, and hold Landlord and any lender of Landlord harmless against all Claims (as defined below) and costs incurred by Landlord arising from: (a) any act or omission of Tenant or Tenant s Permittees which results in personal injury, loss of life, or property damage sustained in and about the Premises, the Building, or the Project; (b) attachment or discharge of a lien upon the Premises, the Building, or the Project; (c) Tenant s and Tenant s Permittees use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Premises, the Building, or the Project; (d) any default of Tenant under this Lease; and (e) any claims for brokerage commissions or finder s fees claimed through Tenant in connection with this Lease (excepting commissions or fees authorized in writing by Landlord). As used in this Lease, Claims means any claim, suit, proceeding, action, cause of action, responsibility, demand, judgment and execution, and attorneys fees and costs related thereto or arising therefrom.

35.2 Tenant hereby releases, discharges, and waives any right of recovery from Landlord and Landlord s agents, directors, officers, and employees, and Landlord hereby releases, discharges, and waives any right of recovery from Tenant and Tenant s Permittees, from all Claims, liabilities, losses, damages, expenses, or attorneys fees and costs incurred arising from or caused by any peril required to be covered by insurance obtained by Landlord or Tenant under this Lease, or covered by insurance in connection with (a) property on the Premises, the Building, or the Project; (b) activities conducted on the Premises, the Building, or the Project; and (c) obligations to indemnify under this Lease, regardless of the cause of the damage or loss. Landlord and Tenant shall give their respective insurance carriers notice of these waivers and shall secure an endorsement from each carrier to the effect that the waivers given in this Article 35 shall not adversely affect or impair the policies of insurance or prejudice the right of the named insured on the policy to recover thereunder. These waivers apply only to the extent such Claims, liabilities, losses, damages, expenses, or attorneys fees are covered by insurance required pursuant to this Lease.

35.3 Notwithstanding anything in this Lease to the contrary, Landlord shall not be responsible or liable to Tenant for any Claims for loss or damage caused by the acts or omissions of any persons occupying any space elsewhere in the Building.

#### ARTICLE 36. WAIVER OF TRIAL BY JURY

**Landlord and Tenant waive any right to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Lease or the use and occupancy of the Premises. This Waiver is knowingly, intentionally and voluntarily made by Tenant, and Tenant acknowledges that neither Landlord or any person acting on behalf of Landlord has made any representations of fact to induce this Waiver of Trial by Jury or in any way to modify or nullify its effect. Tenant further acknowledges that it has been represented (or has had the opportunity to be represented) in the signing of this Lease and in the making of this Waiver by independent legal counsel, selected of its own free will, and that Tenant has had the opportunity to discuss this Waiver with counsel. Tenant further acknowledges that it has read and understands the meaning and ramifications of this Waiver provision, as evidenced by its signature below.**

#### ARTICLE 37. USA PATRIOT ACT AND ANTI-TERRORISM LAWS

37.1 Tenant represents and warrants to, and covenants with, Landlord that neither Tenant nor any of its respective constituent owners or affiliates currently are, or shall be at any time during the Term hereof, in violation of any laws relating to terrorism or money laundering (collectively, the Anti-Terrorism Laws ), including without limitation Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the Executive Order ) and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to

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Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (the USA Patriot Act ).

37.2 Tenant covenants with Landlord that neither Tenant nor any of its respective constituent owners or affiliates is or shall be during the Term hereof a Prohibited Person, which is defined as follows: (i) a person or entity that is listed in the Annex to, or is otherwise subject to, the provisions of the Executive Order; (ii) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order; (iii) a person or

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Landlord: \_\_\_\_\_  
Tenant: \_\_\_\_\_

entity with whom Landlord is prohibited from dealing with or otherwise engaging in any transaction by any Anti-Terrorism Law, including without limitation the Executive Order and the USA Patriot Act; (iv) a person or entity who commits, threatens or conspires to commit or support terrorism as defined in Section 3(d) of the Executive Order; (v) a person or entity that is named as a specially designated national and blocked person on the then-most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/offices/eofafc/ofac/sdn/t11sdn.pdf>, or at any replacement website or other replacement official publication of such list; and (vi) a person or entity who is affiliated with a person or entity listed in items (i) through (v), above.

37.3 At any time and from time-to-time during the Term, Tenant shall deliver to Landlord, within ten (10) days after receipt of a written request therefor, a written certification or such other evidence reasonably acceptable to Landlord evidencing and confirming Tenant's compliance with this Section 37.

**ARTICLE 38. ADDITIONAL PROVISIONS.**

LANDLORD AND TENANT EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR TENANT'S INTENDED COMMERCIAL PURPOSE, AND TENANT'S OBLIGATION TO PAY RENT HEREUNDER IS NOT DEPENDENT UPON THE CONDITION OF THE PREMISES OR THE PERFORMANCE BY LANDLORD OF ITS OBLIGATIONS HEREUNDER, AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, TENANT SHALL CONTINUE TO PAY THE RENT, WITHOUT ABATEMENT, DEMAND, SETOFF OR DEDUCTION, NOTWITHSTANDING ANY BREACH BY LANDLORD OF ITS DUTIES OR OBLIGATIONS HEREUNDER, WHETHER EXPRESS OR IMPLIED.

[Signature page follows]

Landlord: \_\_\_\_\_  
Tenant: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have duly executed this Lease as of the day and year first above written.

*LANDLORD*

CIRCLE POINT PROPERTIES, LLC,

a Delaware limited liability company

By: NORTHTRIDGE CAPITAL, LLC,

a Delaware limited liability company,

its Manager

By:

Name:

Title:

Date:

*TENANT*

ARCA BIOPHARMA, INC.,

a Delaware corporation

By:

Its:

Date:

ATTEST:

By:

Its:

Date:

**EXHIBIT A**

**PREMISES**

**[Floor Plan Diagram]**

A-1

Landlord: \_\_\_\_\_

Tenant: \_\_\_\_\_

**EXHIBIT B**

**BUILDING RULES AND REGULATIONS**

The following rules and regulations shall apply to the Premises, the Building, the parking garage associated therewith, and the appurtenances thereto:

1. Sidewalks, doorways, vestibules, halls, stairways, and other similar areas shall not be obstructed by tenants or used by any tenant for purposes other than ingress and egress to and from their respective leased premises and for going from one to another part of the Building.
2. Plumbing, fixtures and appliances shall be used only for the purposes for which designed, and no sweepings, rubbish, rags or other unsuitable material shall be thrown or deposited therein. Damage resulting to any such fixtures or appliances from misuse by a tenant or its agents, employees or invitees, shall be paid by such tenant.
3. No signs, advertisements or notices (other than those that are not visible outside the Premises) shall be painted or affixed on or to any windows or doors or other part of the Building without the prior written consent of Landlord.
4. Landlord shall provide all door locks in each tenant's leased premises, at the cost of such tenant, and no tenant shall place any additional door locks in its leased premises without Landlord's prior written consent. Landlord shall furnish to each tenant a reasonable number of keys to such tenant's leased premises, at such tenant's cost, and no tenant shall make a duplicate thereof.
5. If the Building is multi-tenant, movement in or out of the Building of furniture or office equipment, or dispatch or receipt by tenants of any bulky material, merchandise or materials which require use of elevators or stairways, or movement through the Building entrances or lobby shall be conducted under Landlord's supervision at such times and in such a manner as Landlord may reasonably require. Each tenant assumes all risks of and shall be liable for all damage to articles moved and injury to persons or public engaged or not engaged in such movement, including equipment, property and personnel of Landlord if damaged or injured as a result of acts in connection with carrying out this service for such tenant.
6. Landlord may prescribe weight limitations and determine the locations for safes and other heavy equipment or items, which shall in all cases be placed in the Building so as to distribute weight in a manner acceptable to Landlord which may include the use of such supporting devices as Landlord may require. All damages to the Building caused by the installation or removal of any property of a tenant, or done by a tenant's property while in the Building, shall be repaired at the expense of such tenant.
7. Corridor doors, when not in use, shall be kept closed. Nothing shall be swept or thrown into the corridors, halls, elevator shafts or stairways. No birds or animals (other than seeing-eye dogs) shall be brought into or kept in, on or about any tenant's leased premises. No portion of any tenant's leased premises shall at any time be used or occupied as sleeping or lodging quarters.
8. Tenant shall not make or permit any vibration or improper, objectionable or unpleasant noises or odors in the Building or otherwise interfere in any way with other tenants or persons having business with them.
9. No machinery of any kind (other than normal office equipment) shall be operated by any tenant on its leased area without Landlord's prior written consent, nor shall any tenant use or keep in the Building any flammable or explosive fluid or substance (other than typical office supplies [e.g., photocopier toner] used in compliance with all Laws).



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10. Landlord will not be responsible for lost or stolen personal property, money or jewelry from tenant's leased premises or public or common areas regardless of whether such loss occurs when the area is locked against entry or not.
11. No vending or dispensing machines of any kind may be maintained in any leased premises without the prior written permission of Landlord, other than those used for Tenant's employees.
12. Tenant shall not conduct any activity on or about the Premises or Building which will draw pickets, demonstrators, or the like.
13. No tenant may enter into phone rooms, electrical rooms, mechanical rooms, or other service areas of the Building unless accompanied by Landlord or the Building manager.
14. Tenant shall not permit its employees, invitees or guests to smoke in the Premises or the lobbies, passages, corridors, elevators, vending rooms, rest rooms, stairways or any other area shared in common with other tenants in the Building. Nor shall the tenant permit its employees, invitees, or guests to loiter at the Building entrances for the purposes of smoking. Landlord may, but shall not be required to, designate an area for smoking outside the Building.
15. Canvassing, soliciting or peddling in or about the Premises or the Property is prohibited and Tenant shall cooperate to prevent same.

B-1

Landlord: \_\_\_\_\_  
Tenant: \_\_\_\_\_

EXHIBIT C

PARKING RULES AND REGULATIONS

During the initial Term, Tenant and its employees shall have the right to use up to TWENTY-FIVE (25) total surface, unreserved parking spaces, at no charge per space per month for the Term of the Lease, subject to the terms and conditions of this Lease and to reasonable Rules and Regulations prescribed from time to time by Landlord, including the designation of specified areas in which automobiles operated by Tenant and its employees shall be parked. Upon request of Landlord, Tenant shall furnish to Landlord a complete list of the license numbers of all automobiles operated by Tenant and its employees.

Landlord reserves the right to enter into an agreement for the management of the parking area. In the event Landlord enters into such parking management agreement, Tenant shall enter into a parking agreement directly with the company which manages the parking area associated with the Building and Landlord agrees to use commercially reasonable efforts to preserve any pre-existing parking privileges of Tenant as contained herein. Tenant acknowledges that a default by Tenant under the Lease shall be a default under such parking agreement, and a default under such parking agreement shall be a default under the Lease.

The parking rules & regulations are designed to assure our tenants and visitors safe use and enjoyment of the facilities. Please remove or hide any personal items of value from plain sight to avoid temptation leading to vandalism of vehicles. Please exercise added caution when using parking lot at night. Please keep vehicle locked at all times. Please report violations of these rules to the Landlord immediately. Please report any lights out or other possibly dangerous situations to the Landlord as soon as possible.

Restrictions

Damage caused by vehicles is the responsibility of vehicle owner.

Landlord is not responsible for theft or damage to any vehicle.

Landlord is not responsible for water damage from leaks in any surface parking area.

Vehicles that leak excessive fluids will be required to protect parking surface.

Mechanical repairs to vehicles are not permitted on property.

Large or oversize vehicles such as motor homes, boats or trailers are not permitted.

No parking in fire lanes, loading zones or any other areas not designated as a parking space.

Landlord, at Landlord's sole discretion, may add or modify the parking rules.

Landlord reserves the right to relocate the location of reserved spaces from time to time.

Rental for reserved spaces shall be paid to Landlord by Tenant along with, and on the same due date as, the Minimum Monthly Rent. Violations of rules & regulations may result in towing from the Project. Towing from the Project can only be ordered by Landlord or Landlord's property manager. Charges for towing are to be paid by vehicle owner.

C-1

Landlord: \_\_\_\_\_  
Tenant: \_\_\_\_\_

**EXHIBIT D**

**TENANT IMPROVEMENTS**

**TENANT FINISH-WORK: LANDLORD BUILDS TO PLANS**

1. **Acceptance of Premises.** Except as set forth in this Exhibit, Tenant accepts the Premises in their AS-IS condition on the date that this Lease is entered into.

2. **Space Plans.** Landlord agrees, at its sole cost and expense, to finish the Premises using Building Standard (as hereinafter defined) materials and quantities in accordance with a mutually acceptable space plan prepared by Interior Architects, Inc. (the Architect), dated July 15, 2013 (the Space Plans) to be attached as Schedule 1 hereto and incorporated herein by this reference, including installing (a) three (3) floor boxes for cubicles in the Premises; (b) power and blocking for TV's in the Conference Rooms located in the Premises; (c) a water line in break room portion of the Premises for refrigerator and coffee machine; and (d) a dedicated circuit in break room portion of the Premises for microwave (collectively, the Work). Landlord shall also construct two (2) additional offices (as shown on the Space Plans), including any other work to the Building Systems and Building's Structure as may be required in connection therewith (e.g. electrical, data, fire/life safety and HVAC), the cost of which shall be borne solely by Tenant (the Tenant Work).

3. **Working Drawings/Performance of the Work.** If the scope of the Work and/or the Tenant Work so requires, Landlord's architects and engineers will prepare architectural, mechanical and electrical working drawings that are consistent with the Space Plans (the Working Drawings). If any of Tenant's proposed construction work will affect the Building's exterior walls, roof, elevator shafts (if any), footings, foundations, structural portions of load-bearing walls, structural floors and subfloors, and structural columns and beams (Building's Structure) or the Premises and Building's HVAC, life-safety, plumbing, electrical, and mechanical systems (Building's Systems), then the working drawings pertaining thereto must be approved by Landlord's engineer. Landlord's approval of such working drawings shall not be unreasonably withheld, provided that (1) they comply with all Laws, (2) the improvements depicted thereon do not adversely affect (in the reasonable discretion of Landlord) the Building's Structure or the Building's Systems (including the Building's restrooms or mechanical rooms), the exterior appearance of the Building, or the appearance of the Building's Common Areas or elevator lobby areas (if any), (3) such working drawings are sufficiently detailed to allow construction of the improvements in a good and workmanlike manner, and (4) the improvements depicted thereon conform to the rules and regulations promulgated from time to time by Landlord for the construction of tenant improvements (a copy of which has been delivered to Tenant). As used herein, Working Drawings shall mean the final working drawings approved by Landlord, as amended from time to time by any approved changes thereto, and Work shall mean all improvements (excluding the Tenant Work) to be constructed in accordance with and as indicated on the Working Drawings, together with any work required by governmental authorities to be made to other areas of the Building as a result of the improvements indicated by the Working Drawings. Landlord's approval of the Working Drawings shall not be a representation or warranty of Landlord that such drawings are adequate for any use or comply with any applicable law, but shall merely be the consent of Landlord thereto. Tenant shall, at Landlord's request, sign the Working Drawings to evidence its review and approval thereof. After the Working Drawings (if required, else the Space Plans) have been approved, Landlord shall cause the Work and, if applicable, the Tenant Work to be performed in substantial accordance with the Working Drawings, using contractors and subcontractors selected by Landlord. Landlord assumes no liability for special, consequential, or incidental damages of any kind whatsoever in connection with the design or construction of the Work and/or the Tenant Work, and makes no representations, warranties, or guaranties regarding the same, expressed or implied, including, without limitation, warranties of merchantability, fitness for a particular purpose, or of habitability.

4. **Change Orders.** Tenant may initiate changes in the Work. Each such change must receive the prior written approval of Landlord, such approval not to be unreasonably withheld or delayed; however, (a) if such requested change would adversely affect (in the reasonable discretion of Landlord) (1) the Building's Structure or the Building's Systems (including the Building's restrooms or mechanical rooms), (2) the exterior appearance of the Building, or (3) the appearance of the Building's Common Areas or elevator lobby areas (if any), or (b) if any such requested change might delay the Commencement Date, Landlord may withhold its consent in its sole and absolute discretion. Tenant shall, upon completion of the Work, furnish Landlord with an accurate architectural as-built plan of the Work as constructed, which plan shall be incorporated into this Exhibit D by this reference for all purposes.

5. **Definitions.** As used herein, a Tenant Delay Day shall mean each day of delay in the performance of the Work and/or the Tenant Work that occurs (a) because of Tenant's failure to timely deliver or approve any required documentation such as the Space Plans or Working Drawings, (b) because of any change by Tenant to the Space Plans or Working Drawings, (c) because of any specification by Tenant of materials or installations in addition to or other than Landlord's standard finish-out materials, or (d) because a Tenant Party otherwise delays completion of the Work and/or the Tenant Work. As used herein Substantial Completion, Substantially Completed, and any derivations thereof mean the Work and/or the Tenant Work in the Premises has been performed in substantial accordance with the Working Drawings, as reasonably determined by Landlord (other than any details of construction, mechanical adjustment or other similar matter, the noncompletion of which does not materially interfere with Tenant's use or occupancy of the Premises).

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6. **Walk-Through: Punchlist.** When Landlord considers the Work and the Tenant Work in the Premises to be Substantially Completed, Landlord will notify Tenant and within three (3) Business Days thereafter, Landlord's representative and Tenant's representative shall conduct a walk-through of the Premises and identify any necessary touch-up work, repairs and minor completion items that are necessary for final completion of the Work and the

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Landlord: \_\_\_\_\_

Tenant: \_\_\_\_\_

Tenant Work. Neither Landlord's representative nor Tenant's representative shall unreasonably withhold his or her agreement on punchlist items. Landlord shall use reasonable efforts to cause the contractor performing the Work to complete all punchlist items within thirty (30) days after agreement thereon; however, Landlord shall not be obligated to engage overtime labor in order to complete such items.

7. **Costs.** Landlord shall bear the entire cost of performing the Work depicted on the Space Plans initially submitted to and approved by Landlord. Tenant shall bear the entire costs incurred by Landlord in performing the Tenant Work and the additional costs incurred in performing the Work because of any event specified in clause 4, 5.(a), 5.(b), 5.(c), or 5.(d) of this Exhibit. Tenant shall pay Landlord an amount equal to fifty percent (50%) of the estimated costs of the Tenant Work and the estimated additional costs of any change to the Space Plans or the Working Drawings at the time of such change; Tenant shall pay to Landlord the remaining portion of additional costs incurred in performing the Tenant Work and in performing the Work because of an event specified in clauses 4, 5.(a), 5.(b), 5.(c), or 5.(d) of this Exhibit upon Substantial Completion of the Work. In consideration for Landlord's management and supervision for services performed in connection with clauses 4, 5.(a), 5.(b), 5.(c), or 5.(d), Tenant shall pay to Landlord a construction management fee equal to five percent (5%) of the additional costs specified in this Section 7.

8. **Construction Representatives.** Landlord's and Tenant's representatives for coordination of construction and approval of change orders will be as follows, provided that either party may change its representative upon written notice to the other:

Landlord's Representative:

Susan Roberts  
c/o Cushman & Wakefield  
11080 Circle Point Road, Suite 420  
Westminster, Colorado 80020  
Telephone: (303) 410-8979  
Telecopy: (303) 410-8980

Tenant's Representative:

c/o \_\_\_\_\_  
\_\_\_\_\_

Telephone:  
Telecopy:

9. **Miscellaneous.** To the extent not inconsistent with this Exhibit, Sections 11 and 12 of this Lease shall govern the performance of the Work and Landlord's and Tenant's respective rights and obligations regarding the improvements installed pursuant thereto.

EXHIBIT E

CONFIRMATION OF COMMENCEMENT DATE

\_\_\_\_\_, 2013

Re: Lease Agreement (the Lease ) dated \_\_\_\_\_, 2013, between Circle Point Properties, LLC, a Delaware limited liability company ( Landlord ), and ARCA Biopharma, Inc., a Delaware corporation ( Tenant ). Capitalized terms used herein but not defined shall be given the meanings assigned to them in the Lease.

Ladies and Gentlemen:

Landlord and Tenant agree as follows:

1. **Condition of Premises.** Tenant has accepted possession of the Premises pursuant to the Lease. Any improvements required by the terms of the Lease to be made by Landlord have been completed to the full and complete satisfaction of Tenant in all respects except for the punchlist items described on Exhibit A hereto (the Punchlist Items ), and except for such Punchlist Items, Landlord has fulfilled all of its duties under the Lease with respect to such initial tenant improvements. Furthermore, Tenant acknowledges that the Premises are suitable for the Permitted Use.
2. **Commencement Date.** The Commencement Date of the Lease is October 1, 2013.
3. **Expiration Date.** The Term is scheduled to expire on the last day of the thirty-sixth (36<sup>th</sup>) full calendar month of the Term, which date is September 30, 2016.
4. **Contact Person.** Tenant's contact person in the Premises is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
\_\_\_\_\_  
Telecopy: \_\_\_\_\_  
\_\_\_\_\_

5. **Ratification.** Tenant hereby ratifies and confirms its obligations under the Lease, and represents and warrants to Landlord that it has no defenses thereto. Additionally, Tenant further confirms and ratifies that, as of the date hereof, (a) the Lease is and remains in good standing and in full force and effect, and (b) Tenant has no claims, counterclaims, set-offs or defenses against Landlord arising out of the Lease or in any way relating thereto or arising out of any other transaction between Landlord and Tenant.

6. **Binding Effect; Governing Law.** Except as modified hereby, the Lease shall remain in full effect and this letter shall be binding upon Landlord and Tenant and their respective successors and assigns. If any inconsistency exists or arises between the terms of this letter and the terms of the Lease, the terms of this letter shall prevail. This letter shall be governed by the laws of the state in which the Premises are located.

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Please indicate your agreement to the above matters by signing this letter in the space indicated below and returning an executed original to us.

Agreed and accepted:

ARCA BIOPHARMA, INC.,  
a Delaware corporation

By:  
Name:  
Title:

Sincerely,

CIRCLE POINT PROPERTIES, LLC,  
a Delaware limited liability company

By: NORTHRIDGE CAPITAL, LLC,  
a Delaware limited liability company,  
its Manager

By:  
Name:  
Title:

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Landlord: \_\_\_\_\_  
Tenant: \_\_\_\_\_



EXHIBIT A

PUNCLIST ITEMS

Please insert any punchlist items that remain to be performed by Landlord. If no items are listed below by Tenant, none shall be deemed to exist.

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Landlord: \_\_\_\_\_  
Tenant: \_\_\_\_\_

**EXHIBIT F**

**RENEWAL OPTION**

If an Event of Default does not exist at the time of exercise or at the commencement of the Renewal Term (as hereinafter defined), and Tenant is occupying the entire Premises at the time of such election, Tenant may renew this Lease for one (1) additional period of Three (3) years (the Renewal Term), by delivering written notice of the exercise thereof to Landlord not earlier than twelve (12) months nor later than six (6) months before the expiration of the Term. The Minimum Monthly Rent payable for each month during such Renewal Term shall be the prevailing rental rate (the Prevailing Rental Rate), at the commencement of such Renewal Term, for renewals of space in the Northwest Denver submarket for Class A Buildings, if applicable, of equivalent quality, size, utility and location, with the length of the extended Term, concessions and the credit standing of Tenant to be taken into account. Within thirty (30) days after receipt of Tenant's notice to renew, Landlord shall deliver to Tenant written notice of the Prevailing Rental Rate and any refurbishment allowance and shall advise Tenant of the required adjustment to Minimum Monthly Rent, if any, and the other terms and conditions offered. Tenant shall, within ten (10) days after receipt of Landlord's notice, notify Landlord in writing whether Tenant accepts or rejects Landlord's determination of the Prevailing Rental Rate. If Tenant timely notifies Landlord that Tenant accepts Landlord's determination of the Prevailing Rental Rate, then, on or before the commencement date of the Renewal Term, Landlord and Tenant shall execute an amendment to this Lease for the Renewal Term on the same terms provided in this Lease, except as follows:

- (a) Minimum Monthly Rent shall be adjusted to the Prevailing Rental Rate;
- (b) Tenant shall have no further renewal option unless expressly granted by Landlord in writing.

If Tenant rejects Landlord's determination of the Prevailing Rental Rate, then the Prevailing Market Rate shall be determined as set forth below. If Tenant fails to timely notify Landlord in writing that Tenant accepts or rejects Landlord's determination of the Prevailing Rental Rate, time being of the essence with respect thereto, Tenant's rights under this Exhibit shall terminate and Tenant shall have no right to renew this Lease.

Tenant's rights under this Exhibit shall terminate if (1) this Lease or Tenant's right to possession of the Premises is terminated, (2) Tenant assigns any of its interest in this Lease or sublets any portion of the Premises except in connection with a Permitted Transfer, (3) Tenant fails to timely exercise its option under this Exhibit, time being of the essence with respect to Tenant's exercise thereof, or (4) Landlord determines, in its sole but reasonable discretion, that Tenant's financial condition or creditworthiness has materially deteriorated since the date of this Lease.

All terms and conditions of this Lease shall be applicable during the Renewal Term except that the amount of Minimum Monthly Rent charged during the Renewal Term shall be at the then Prevailing Market Rent. If within thirty (30) days following delivery of Tenant's notice, Landlord and Tenant have not mutually agreed on the Prevailing Market Rent for the Renewal Term, then Tenant may elect (A) not to renew this Lease by providing written notice of the same to Landlord, or (B) Tenant may notify Landlord, that Tenant will be hiring a Disinterested Broker (as hereinafter defined), in which case Tenant shall be obligated to renew this Lease. Within ten (10) days after the expiration of the thirty (30) day negotiation period, each party shall give written notice to the other setting forth the name and address of a Disinterested Broker selected by such party who has agreed to act in such capacity, to determine the Prevailing Market Rent. If either party shall fail to select a Disinterested Broker as aforesaid, then the Disinterested Broker selected by the other party shall determine the Prevailing Market Rent; provided, however, that in no event shall the Prevailing Market Rent determined as aforesaid be deemed to be less than the Minimum Monthly Rent payable under this Lease during the calendar year immediately preceding the first year of the Renewal Term. Each Disinterested Broker shall thereupon independently make his determination of the Prevailing Market Rent within twenty (20) days after the appointment of the second Disinterested Broker. If the two Disinterested Brokers' determinations are not the same, but the higher of such two values is not more than one hundred ten percent (110%) of the lower of them, then the Prevailing Market Rent shall be deemed to be the average of the two values; provided, however, that in no event shall the Prevailing Market Rent determined as aforesaid be deemed to be less than the Minimum Monthly Rent payable under this Lease during the Lease Year immediately preceding the first Lease Year of the Renewal Period. If the higher of such two values is more than one hundred percent ten (110%) of the lower of them, then the two Disinterested Brokers shall jointly appoint a third Disinterested Broker within ten (10) days after the second of the two determinations described above has been rendered. The third Disinterested Broker shall independently make his determination of the Prevailing Market Rent within twenty (20) days after his appointment. The highest and the lowest determinations of value among the three Disinterested Brokers shall be disregarded and the remaining determination shall be deemed to be the Prevailing Market Rent; provided, however, that in no event shall the Prevailing Market Rent determined as aforesaid be deemed to be less than the Minimum Monthly Rent payable under this Lease during the calendar year immediately preceding the first Lease Year of the Renewal Period. Within thirty (30) days after the Prevailing Market Rent is determined as aforesaid, the Tenant shall execute an amendment to this Lease setting forth the new Minimum Monthly Rent to be paid for the Renewal Period. If Tenant fails to execute an amendment or deliver such written notice as set forth hereinabove, Tenant's rights under this Exhibit F shall terminate and this Lease shall terminate at the end of the initial Lease Term.

For the purposes of this Exhibit F, Disinterested Broker shall mean a real estate broker licensed in the Colorado, who has been regularly engaged in such capacity in the business of commercial office leasing in the Northwest Submarket for at least ten (10) years immediately preceding such person's appointment hereunder. Each party shall pay for the cost of its Disinterested Broker and one-half of the cost of the third Disinterested

Broker.

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Landlord: \_\_\_\_\_  
Tenant: \_\_\_\_\_