

DESCRIPTION OF CAPITAL LEASE FOR CONSIDERATION

November 2, 2017

MEDICAL UNIVERSITY OF SOUTH CAROLINA

PROJECT NAME: Harborview Office Tower (HOT) Parking

REQUESTED ACTION: New Lease (1 Year)

REQUESTED ACTION AMOUNT: \$600,000

PREVIOUS CHE ACTIONS: N/A

DESCRIPTION:

MUSC is in the process of selling its Harborview Office Tower and requests to lease back all 730 parking spaces in the vicinity for one year at closing. The University requests to maintain its current usage of all spaces during the year of the sale to meet the parking needs of employees and students. During this period, the University will continue to manage and maintain the facility as it does now. Average operating costs for spaces within the University's Parking Management system equates to \$43.48/space/month. The current average parking rate paid by faculty and staff at this location is \$66.31. Comparable costs in the area ranged from \$125/space to \$200/space.

One (1) Year Lease Term

Number of Spaces: 730

Cost per Space: \$68.59 space/month / Triple Net

Annual Rent: \$600,000

Annual Rent Increase: None

Estimated Start Date: February 2018

Lease Term: 1 Year

Extended Term: None

Total Amount of Term: \$600,000

GOVERNMENTAL REAL ESTATE LEASE – PARKING

THIS LEASE AGREEMENT ("Lease") is made as of the Effective Date (which is the date on which the South Carolina Department of Administration, Real Property Services, executes this Lease as set forth on the signature page) by and between Bennett Hospitality, LLC ("Landlord") having an address at: 17 Lockwood Drive, 4th Floor, Charleston, South Carolina 29401 Attention Ms. Kim Brown and the Medical University of South Carolina ("Tenant") having an address at: 28 Ehrhardt Street, MSC 205, Charleston, SC, 29425.

ARTICLE 1 - DEMISE OF PREMISES

1.1. Landlord hereby leases and lets to Tenant and Tenant hereby takes and hires from Landlord, upon and subject to the terms, covenants and provisions hereof, approximately 729 parking spaces for Tenants exclusive use of all parking spaces (the "Parking Spaces"), (642 garage parking spaces and 87 surface parking spaces) of the lease located at: 19 Hagood Avenue, Charleston, South Carolina 29403, Charleston County, South Carolina (the "Parking Garage and Surface Lot(s)"), together with the benefit of any and all easements, appurtenances, rights and privileges now or hereafter belonging thereto.

ARTICLE 2 - TERMS

2.1. The term of this Lease shall be one (1) year (the "Term") beginning on the date of the sale of 19 Hagood Avenue, Columbia, South Carolina 29403 to the Landlord (the "Commencement Date") and, unless terminated or extended, shall end one (1) year of the Commencement Date, (the "Termination Date").

ARTICLE 3 - BASIC RENT

3.1. Tenant shall pay rent (the "Basic Rent") to Landlord during the Term a parking rental rate of \$68.59 (rounded) per parking space rented per month. The annual aggregate amount of \$600,000.00 for 729 Parking Spaces, payable in equal monthly installments of \$50,000.00 in advance on or before the tenth (10th) day of each consecutive calendar month of the Term.

3.2. All payments to be made by Tenant pursuant to this Lease shall be apportioned and prorated as of the Commencement Date and the Termination Date or as of the date of an earlier termination pursuant to this Lease, as the case may be.

3.4. Unless notified otherwise in writing, all payments shall be mailed to Landlord at:

Bennett Hospitality, LLC
17 Lockwood Drive, 4th Floor
Charleston, South Carolina 29401
Attention M. Kim Brown

ARTICLE 4 - USE

4.1. Tenant shall have the right to use the Parking Garage and Surface Lot(s) for parking only.

4.2. If during the Term the application of any statute, code or ordinance of any government, authority, agency, official or officer applicable to the Demised Premises makes it impossible for Tenant to operate in the Demised Premises in accordance with subparagraph 4.1 or 4.2, then Tenant, at its option, may terminate this Lease, whereupon the Basic Rent and all other charges payable hereunder by Tenant shall be apportioned as of such date of termination.

ARTICLE 5 - ASSIGNMENT AND SUBLETTING

5.1. Tenant may assign this Lease or sublet the Parking Spaces to any State agency, institution, department, bureau, political subdivision or State-operated entity, provided that any such assignment or sublease shall be upon the same terms and conditions as this Lease and is by Landlord's prior written approval, which will not be unreasonably withheld.

ARTICLE 6 - SERVICES

6.1. Tenant is responsible for all maintenance and operating costs and for all maintenance of and repairs to the Parking Garage and Surface Lot(s) which shall be maintained through the MUSC Parking Management Department and the MUSC Facilities Department.

6.2. Tenant shall make direct payment for all utility services which shall include, but are not limited to, water, sewer, electric, cable, telephone and any other utility needed to maintain and operate the Parking Garage and Surface Lot(s).

6.2. Tenant shall pay as additional rent ("Additional Rent") for Real Estate, ad valorem, special assessment and personal property taxes and any tax on rent (exclusive of Landlord's income taxes) attributable to the Parking Garage and Parking Lot(s) of this Lease (the "Property Tax"). PROVIDED, HOWEVER, that in no event shall Tenant be liable for or obligated to pay any portion of the Property Tax increases which exceed \$99,999.99.

ARTICLE 7 - LANDLORD'S REPRESENTATIONS AND WARRANTIES

7.1. Landlord represents and warrants to Tenant that:

(a) Landlord and Tenant acknowledge that on the executed date of this Lease, Landlord is not the fee title owner of the Demised Premises. Landlord shall use its best efforts to close and acquire the fee title to the Demise Premises as soon as possible following the executed date of this Lease. If Landlord shall fail to acquire fee title to the Demised Premises within thirty (30) days following the executed date of this Lease, Tenant shall have the right to terminate this Lease, in which event neither Landlord or Tenant shall have any further rights or obligations hereunder;

(b) The use of the Parking Garage and Surface Lot(s) and exclusive use of all parking spaces contemplated by this Lease will be a permitted use under all applicable statutes, codes, rules, regulations and ordinances now in effect and, to the best of the Landlord's knowledge, there are no pending proceedings or plans to change such statutes, codes, rules, regulations and ordinances; and,

(c) Neither the Land, the Parking Garage, or Surface Lot(s) nor any portion thereof, is being condemned or taken by eminent domain and, to the best of Landlord's knowledge, no such proceedings are contemplated by any lawful authority;

(d) Tenant will keep the Parking Garage and Surface Lot(s) in good order and repair and make all reasonable improvement to maintain the Parking Garage and Surface Lot(s), normal wear and tear accepted.

7.2. Landlord acknowledges that Tenant is relying upon each of the representations and warranties set forth in subparagraph 7.1 and that the matters represented and warranted by Landlord are substantial and material to Tenant. In the event such representations and warranties shall be breached by Landlord, Tenant, at its sole election, may terminate this Lease in accordance with subparagraph 10.1(d).

ARTICLE 8 - TENANT'S COVENANTS

8.1. Tenant covenants and agrees that it shall:

(a) Pay Basic Rent when due without notice or demand provided, however, that should any Basic Rent become more than fifteen (15) days past due, Landlord shall give Tenant notice in writing to pay the same within fifteen (15) days of receipt of such notice;

(b) Comply with all statutes, codes, ordinances, rules and regulations applicable to the Parking Garage and Surface Lot(s);

(c) Give Landlord reasonable notice of any accident, damage, destruction or occurrence affecting the Parking Garage and Surface Lot(s);

ARTICLE 9 - CONDEMNATION AND CASUALTY

9.1. If there be any damage to or destruction of the Parking Garage and Surface Lot(s) or any portions thereof, or if any proceedings or negotiations are instituted which do or may result in a taking by condemnation or eminent domain ("Taking"), each party will promptly give notice thereof to the other, describing the nature and extent thereof. In such event, either party shall have the right to terminate this lease at no cost to either party.

ARTICLE 10 - TENANT CANCELLATION PRIVILEGE/ TERMINATION

10.1. Notwithstanding the Commencement Date and Termination Date set forth in subparagraph 2.1 of this Lease, either Party shall have the right to cancel this Lease upon giving the other Party thirty (30) days written notice of its cancellation hereof upon the occurrence of any one or more of the following:

(a) If, at the end of the State fiscal year (June 30th) after the Commencement Date, appropriations, revenues, income, grants or other funding are not provided by the General Assembly to the Tenant in an amount sufficient to carry out the purposes and programs of Tenant, including the payment of Basic Rent, Additional Rent and all other payment obligations of Tenant pursuant to this Lease, the sufficiency of such funds to be determined solely by the Department of Administration; or

(b) If either the Tenant or Landlord is dissolved and no longer performs the functions and purposes ascribed to it; or

(c) If, at any time during the Term the area in the Parking Garage and Surface Lot(s) are, in the sole opinion of the Department of Administration, Real Property Services, inadequate, insufficient or unnecessary for the normal operations and maximum efficiency of Tenant; or

(d) If either Party shall have breached any covenant, condition, representation or warranty made by them in this Lease and such breach shall have continued uncured or uncorrected for a period of thirty (30) days after notice by the non-breaching Party to the breaching Party of such breach and request to cure or correct.

10.2. Tenant shall have the right to terminate the Lease at any time by giving the Landlord at least sixty (60) days prior written notice and

ARTICLE 11 - SURRENDER

11.1. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Parking Spaces and all rights to the Parking Garage and Surface Lot(s) to Landlord in good order and condition, except for ordinary wear and tear.

Tenant shall remove from the Parking Garage and Surface Lot(s) on or prior to such expiration or earlier termination all of its property situated therein.

11.2. Upon damage or destruction to the Parking Garage and Surface Lot(s) or upon a Taking thereof which does not result in termination, Basic Rent and any other payments and charges payable by Tenant hereunder shall abate as of the date of the occurrence, or in the case of partial damage, destruction or Taking which does not cause Tenant to discontinue use of the Parking Garage and Surface Lot(s) as contemplated herein, the Basic Rent and any other payments and charges shall be equitably apportioned.

ARTICLE 12 - NOTICES

12.1. All notices, demands, requests, consents, approvals, offers, statements and other instruments or communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when delivered or when mailed by first class mail, postage prepaid, to the following:

To Landlord:	Bennett Hospitality, LLC Attention: Ms. Kim Brown 17 Lockwood Drive, 4 th Floor Charleston, South Carolina 29401
To Tenant:	Medical University of South Carolina Office of Space Management Support 28 Ehrhardt Street, MSC 205 Charleston, South Carolina 29425

ARTICLE 13 - AMENDMENTS

13.1. This Lease may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective for any purposes unless it is in writing and signed by the party against whom enforcement thereof is sought.

ARTICLE 14 - HOLDOVER

14.1. In the event Tenant shall remain in the Demised Premises after the Term has expired, Tenant shall be deemed to be a tenant from month to month and Tenant shall continue to pay the Basic Rent in effect for the Term until either Landlord or Tenant, by thirty (30) days written notice to the other, shall terminate this Lease, whereupon the Basic Rent and all other charges payable by Tenant hereunder shall be apportioned as of such date of termination.

ARTICLE 15 - MISCELLANEOUS

15.1. If any provision of the Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such provision shall not be affected thereby.

15.2. This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto.

15.3. This Lease may be executed in counterparts, each of which when so executed and delivered, shall constitute an original, fully executed counterpart for all purposes, but such counterparts shall constitute but one instrument.

15.4. The Article headings of this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

15.5. This Lease shall be governed by and construed in accordance with the laws of the State of South Carolina.

15.6. In the event Landlord or Tenant is involved in any bankruptcy or insolvency proceedings and trustee fails to perform or rejects any of the Bankrupt Party's obligations under this Lease, the non-bankrupt Party shall have the option to terminate this Lease.

15.7. This Lease is subject to and conditioned upon the approval of the Department of Administration, Real Property Services, and shall be of no force or effect until the consent of such office shall be endorsed hereon.

ARTICLE 16 – WAIVER OF CONTRACTUAL RIGHTS

16.1 The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

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

WITNESS:

LANDLORD:

Bennett Hospitality, LLC

(signature for landlord)

(printed name and title of signatory)

Date

WITNESS:

TENANT:

Medical University of South Carolina

Lisa P. Montgomery, EVP for Finance and Operations

Date

This Lease is approved in accordance with the South Carolina Code of Regulations §19-447.1000 by the Department of Administration, Real Property Services, this ____ day of _____, 2017. This Lease was approved by the Joint Bond Review Committee at its _____, 2017 meeting and by the State Fiscal Accountability Authority at its _____, 2017 meeting.

Ashlie Lancaster

Director