

**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 (10 Years)**REQUESTED ACTION AMOUNT:** \$6,78,352**PREVIOUS CHE ACTIONS:** N/A**DESCRIPTION:**

MUSC requests to continue to utilize the parking garage at the HOT location for 10 years upon vacating the building. Approximately 515 MUSC employees and students park within the HOT parking garage and surface lots that are not housed within the building and will continue to need long-term parking spaces. The spaces lost will be absorbed into the University's parking system and the affected parkers will be reassigned to a different location.

A solicitation was completed, with two responses received. This location was selected due to proximity to campus. The landlord will be responsible for all operating and maintenance costs during the term of the lease. Users of this parking facility will continue to pay the off-campus parking rate, which currently averages \$66.31/month, rather than the leased cost of \$125/space. Comparable costs in the area ranged from \$125/space to \$200/space.

**Ten (10) Year Lease Term**

Number of Spaces: 400

Cost per Space: \$125/space/month / Full Service

Annual Rent: \$600,000

Annual Rent Increase: Annual CPI not to exceed 3% / max \$175 per space over 10 year term

Estimated Start Date: December 2018

Lease Term: 10 Years

Extended Term: None

Total Amount of Term: \$6,787,352

## **GOVERNMENTAL REAL ESTATE LEASE – SURFACE 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, 4<sup>th</sup> 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, 400 parking access cards for non-reserved parking spaces (the "Parking Access Cards"), of the lease located at: 19 Hagood Avenue, Charleston, South Carolina 29403, Charleston County, South Carolina (the "Parking Garage"), 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 ten (10) years (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 on ten (10) years of the Commencement Date, (the "Termination Date"). Provided there is no continuing event of default hereunder by Tenant and subject to the approval of the Real Property Services and any other required State and/or Federal approvals, Tenant shall have the right to extend the term of this lease for up to one (1) consecutive term of five (5) years (the "Extended Term") upon the same terms and conditions contained herein, except the amount of Basic Rent, by giving written notice to Landlord of Tenant's intent to extend the then existing term at least sixty (60) days prior to the expiration of the then existing term.

### **ARTICLE 3 - BASIC RENT**

3.1. Tenant shall pay rent (the "Basic Rent") to Landlord during the Term a parking rental rate of \$125.00 per Parking Access Card rented per month. The annual aggregate amount of \$600,000.00 for 400 Parking Access Cards, 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. Rent Adjustment: Basic Rent on the anniversary of the Commencement Date and on each anniversary for the remainder of the Initial Term and for the Extended Term shall be increased annually each year for the change in the U.S. Consumer Price Index for all Urban Consumers (CPU-U) based on the percent change in the monthly index, subject, however, to a 3% cap on annual increases over the immediately preceding year, regardless of whether the percent change in the CPI-U is higher than said cap. In addition, the Basic Rent is also capped by the cost per space, per month which shall not exceed \$175.00 per space through the Initial Term and for the Extended Term.

3.3. 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, 4<sup>th</sup> Floor  
Charleston, South Carolina 29401  
Attention M. Kim Brown

#### **ARTICLE 4 - USE**

4.1. Tenant shall have the right to use the Parking Garage for parking only.

4.2. Tenant shall have the right to use the Parking Access Cards for parking Monday through Friday between the hours of 7:00 AM and 6:00 PM.

4.3. 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 Access Cards 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. Landlord is responsible for all maintenance and operations costs and for all maintenance of and repairs to the Parking Garage.

#### **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 Parking Access Cards 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, 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) Landlord will keep the Parking Garage in good order and repair and make all reasonable improvement to maintain the Parking Garage, normal wear and tear accepted, with the exception of damage to the Parking Garage which is caused by Tenant or any of its Parking Access Card users.

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;

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

#### **ARTICLE 9 - CONDEMNATION AND CASUALTY**

9.1. If there be any damage to or destruction of the Parking Garage 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 30<sup>th</sup>) 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 is, 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 give back parking access cards the Landlord at any time after the fifth year of the Lease by giving Landlord at least ninety (90) days prior written notice and by turning in the cards to the Landlord. Once Tenant turns in Parking Access Cards, the Landlord shall no longer be obligated to provide that number of Parking Access Cards to the Tenant for the remainder of the Initial Term or the Extended Term.

**ARTICLE 11 - SURRENDER**

11.1. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Parking Access Cards and all rights to the Parking Garage to Landlord in good order and condition, except for ordinary wear and tear. Tenant shall remove from the Parking Garage 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 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 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<sup>th</sup> Floor  
Charleston, South Carolina 29401

To Tenant: Medical University of South Carolina  
Office of Planning & Special Projects  
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.

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Ashlie Lancaster  
Director