

ORDINANCE NO.: 2009-058

Authorizing the Interim City Manager to execute a Lease Agreement between the City of Columbia and South Carolina Research Authority for lease of the unopened section of Park Street Right-of-Way located North of the intersection of Park Street and Catawba Street

ORIGINAL
STAMPED IN RED

BE IT RESOLVED by the Mayor and City Council this 17th day of June, 2009, that the Interim City Manager is authorized to execute the attached Lease Agreement between the City of Columbia and South Carolina Research Authority for lease of an approximately 0.843 acre or thirty-six thousand seven hundred thirteen (36,713) square feet unopened section of Park Street Right-of-Way located North of the intersection of Park Street and Catawba Street to South Carolina Research Authority.

Requested by:



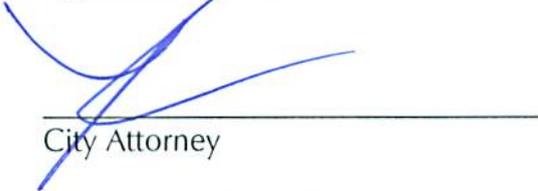
MAYOR

Approved by:



Interim City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 6/3/2009

Final Reading: 6/17/2009

LEASE AGREEMENT

LANDLORD: CITY OF COLUMBIA

TENANT: SOUTH CAROLINA RESEARCH AUTHORITY

_____, 2009

agreed to lease from the City, the Demised Premises, all on the terms and conditions more particularly set forth hereinbelow.

WITNESSETH:

**ARTICLE 1.
DEMISED PREMISES - TERM OF LEASE**

1.1 Landlord hereby demises and leases to Tenant, subject to all matters of record in the Register of Deeds Office for Richland County ("ROD"), and to the remaining terms hereof, and Tenant hereby hires and takes from Landlord, the following described premises (the "Demised Premises"):

(a) All that certain piece, parcel, tract, strip, lot or plot of land lying and being in the City of Columbia, County of Richland, State of South Carolina, containing approximately 0.843 acre or 36,713 square feet identified as that unopened section of Park Street Right-of-Way located North of the intersection of Park Street and Catawba Street with the following metes and bounds, to wit:

Beginning at the Northwestern intersection of the rights-of-way of Park Street and Catawba Street (Point of Beginning) and running therefrom N 19° 30' 0" W for a distance of 417.4 feet to a point; thence turning and running S 62° 41' 5" E along property now or formerly Norfolk Southern Railroad for a distance of 147.5 feet; thence turning and running along lands now or formerly of Norfolk Southern Railroad S 19° 30' 0" E for a distance of 310.0 feet; thence turning and running along the right-of-way of Catawba Street S 70° 35' 6" W for a distance of 100.9 feet to the Point of Beginning. All measurements being a little more or less.

Within 90 days of the date of this Lease, the Demised Premises shall be surveyed at the expense of the tenant to be approved by both parties and prepared by a licensed surveyor and to be filed of record in the ROD (the "Plat"). Upon the recording of the Plat, the Demised Premises shall be as reflected on the Plat, rather than the description above, and this Lease will be deemed to have been amended as necessary to accomplish the same.

(b) All the right, title and interest of Landlord, in and to the improvements erected or to be erected thereon (the "Improvements"), if any, and any easements required by Tenant as set forth and limited by Article 7 hereof to access, or to provide utilities to, the Demised Premises (all of the same being deemed part of the Demised Premises and included

in any reference thereto), any such easement shall only be valid through the duration of the Lease.

1.2 TO HAVE AND TO HOLD for a term of twenty (20) years (the "Initial Term") which Initial Term shall commence on _____, 2009 (the "Lease Term Commencement Date"), and shall end at 5:00 p.m. on _____, 2029, unless sooner terminated or extended as hereinafter provided. The term "Lease Year" as used in this Lease shall mean a period of twelve (12) consecutive full calendar months beginning on the Lease Term Commencement Date if such date occurs on the first day of the calendar month; if not, then on the first day of the calendar month next succeeding the calendar month in which the Lease Term begins. Subsequent Lease Years shall run consecutively, each such Lease Year beginning on the first day of the calendar month succeeding the last calendar month of the previous Lease Year. The Lease Term is hereinafter sometimes referred to as the "Lease Term" or "Term".

1.3 This Lease is granted and accepted upon the foregoing and upon the following covenants and conditions, and subject to the following restrictions, to all and every one of which the parties consent; and each of the parties hereby expressly covenants and agrees to keep, perform and observe all the terms, covenants and conditions herein contained on its part to be kept, performed and observed:

Provided that Tenant is not in default hereunder, Tenant shall have the right and option to renew/extend for up to two (2) Extended Terms of ten (10) years each at the same Rent as is set out in Section 2.1 below, each such term commencing the day after expiration of the Initial Term or preceding Extended Term, as applicable. Tenant shall provide notice to Landlord with written notice of Tenant's intention to exercise the option to renew/extend at least sixty (60) days prior to the expiration of the preceding term. The "Initial Term" plus the two (2) ten (10) year extensions (each an "Extended Term"), are collectively referred to herein as the "Lease Term."

ARTICLE 2. RENT

2.1 Tenant has paid, in full, the Rent of \$1.00 per year for the Lease Term. Landlord and Tenant acknowledge and agree this is fair rent for the Demised Premises, and Landlord waives any right, for itself and its successors and assigns, to challenge the validity of this Lease based on a lack of consideration.

ARTICLE 3. PAYMENT OF TAXES, ASSESSMENTS, ETC.

3.1 Tenant is an IRC §501(c)(3) non-profit entity and was created and exists pursuant to S.C. Code Ann. § 13-17-10 et seq. which includes specifically § 13-17-90, under

which Tenant pays no income or real property taxes. Landlord pays no real property tax on the Demised Premises. Landlord shall cooperate with Tenant to the extent that is reasonable, in order to assist Tenant's efforts to retain its exempt status with respect to any and all taxes relating to the Demised Premises. Notwithstanding the foregoing, to the extent real property taxes are assessed with respect to the Demised Premises, the same shall be the obligation of Tenant to pay in full and when due.

3.2 To the extent there are any taxes, charges, fees, levies, assessments of or relating to the Demised Premises (together with any fines, fees or penalties owing with respect thereto, "Impositions") and utilities, if any, Tenant shall be obligated to pay the same in full and when due.

ARTICLE 4. SURRENDER

4.1 Except as is herein otherwise provided, Tenant shall on the last day of the Lease Term or upon any earlier termination of this Lease, well and truly surrender and deliver up the Demised Premises to the possession and use of Landlord in good and working condition, with all improvements thereon in the same condition as existed upon the commencement of this Lease, or in the case of improvements constructed during the term of this Lease, as existed upon the completion of the construction thereof, normal wear and tear excepted, without delay, and free and clear of all liens and encumbrances other than those, if any, (a) existing prior to the commencement of this Lease or (b) created by or permitted by Landlord, or as a result of the actions of or approval by Landlord, and not otherwise the responsibility of Tenant to remove pursuant to the terms of this Lease.

4.2 Any personal property of Tenant remaining in or on the Demised Premises after the termination of this Lease and after Tenant has been given the opportunity to remove in accordance with Article 4, may, at the option of Landlord, be deemed abandoned by Tenant and either may be retained by Landlord as Landlord's property or be disposed of, without accountability, in such manner as Landlord may see fit. Notwithstanding the foregoing, after termination of this Lease, immediately upon request by Landlord, Tenant shall immediately remove, at Tenant's sole cost and expense, any and all personal property from the Demised Premises placed thereon by Tenant, its guests, invitees, licensees, tenants, or subtenants (other than Landlord as subtenant under the Sublease). Tenant shall immediately repair or replace any damage to the Leased Premises caused by the removal of personal property therefrom in accordance with the terms of this Paragraph.

ARTICLE 5. REPRESENTATIONS AND COVENANTS OF LANDLORD

5.1 Landlord makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) Demised Premises is one of the original unopened streets conveyed to the City by legislative act. The City makes no representations or warranties, express or implied, as to its title to the Demised Premises. Upon approval by a majority vote of the City Council, the City will be authorized to enter in this transaction and to carry out its obligations under this Agreement. <THE PARTIES ACKNOWLEDGE THAT THIS LEASE IS NOT BINDING UNTIL AND UNLESS THERE IS A FAVORABLE MAJORITY VOTE OF CITY COUNCIL APPROVING ENTRY INTO THIS LEASE. THIS PROVISION WILL BE REMOVED FROM THE FINAL EXECUTION VERSION HEREOF.>

**ARTICLE 6.
LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS**

6.1 If Tenant shall at any time fail to pay any Imposition in accordance with the provisions of Article 3 hereof, then Landlord shall notify Tenant in writing and provide Tenant with a thirty (30) day right to cure and pay the Imposition. If, after the expiration of the cure period Tenant has not paid the Imposition, Landlord, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease or from any default by Tenant and without waiving Landlord's right to take such action as may be permissible under this Lease as a result of such default, may (but shall be under no obligation to) pay any Imposition payable by Tenant pursuant to the provision of Article 3 hereof. Upon payment by Landlord, the Imposition shall be due and payable by Tenant without notice or demand.

6.2 All sums so paid by Landlord and all costs and expenses incurred by Landlord, including reasonable attorneys' fees, in connection with the performance of any such act, together with interest thereon at the rate of the Wall Street Journal Prime Rate per annum (or such other federally insured banking institution as the Landlord selects in the event Wall Street Journal is not in existence or has ceased to publish a prime rate), from the date of such payment or incurrence by Landlord of such cost and expense.

**ARTICLE 7.
AS IS/WHERE IS CONDITION; REPAIRS AND MAINTENANCE OF THE DEMISED
PREMISES**

7.1 Notwithstanding anything contained in this Lease, except as may be set out in Article 11, Landlord shall in no event be required to make any alterations, rebuildings, replacements or repairs to the Demised Premises during the Term of this Lease. Landlord shall not be required to furnish to Tenant any facilities, utilities or services of any kind whatsoever during the Lease Term, such as, but not limited to, water, sewer, gas, electricity, telephone, internet, light and power, and Landlord makes no warranty, express or implied, as to the presence on or availability to the Demised Premises of any such facilities, utilities or services; provided, however, that Landlord shall, from time to time upon Tenant's request, grant easements, to the extent practicable and under the terms and conditions acceptable to

City, in order to allow Tenant (without obligation to do so) to install any or all of the utilities indicated above on the Demised Premises. In the event the scope and terms of any such easement cannot be established, City shall be under no obligation to provide such easement. Any easement granted under this provision shall be valid only under the term of this Lease and shall cease to be effective upon the expiration or termination of the Lease.

**ARTICLE 8.
CONSTRUCTION, ALTERATIONS AND USE OF DEMISED PREMISES**

8.1 Subject to the provisions of this Article and the other terms herein, Tenant, at its option and at its expense, shall have the right but no obligation to demolish any existing improvements and to construct, in accordance with its plans, new improvements on the Demised Premises specifically for the purposes of providing parking and related improvements (including without limitation and without an obligation to build, install or construct security, lighting, landscaping or other Project related improvements).

8.2 Tenant may use the Demised Premises for those purposes authorized under Tenant's enabling act contained within Chapter 17 of Title 13 of the Code of Laws of South Carolina, (the "SCRA Enabling Act") as the same exists as of the date of this Lease. It is anticipated that the Demised Premises will be used as parking for employees, agents, contractors, subcontractors, guests and invitees of Tenant and lessees of Tenant start-up, incubation, laboratories, technology and research facilities and office space. Landlord shall have the right to reject any change in such proposed use of the premises (and hereby specifically approves its use as a parking facility), but shall not unreasonably withhold its approval.

8.3 In the event Tenant has not materially commenced construction of the parking improvements and the Project within five (5) years from the date of this Lease Agreement, Landlord and Tenant shall renegotiate their understanding with respect to the Demised Premises. In the event such renegotiation does not yield a resolution satisfactory to both parties, Landlord shall have the right to terminate this Lease.

**ARTICLE 9.
INDEMNIFICATION OF LANDLORD AND TENANT; INSURANCE**

9.1 To the fullest extent allowed under applicable law, Tenant hereby agrees to include in each of its subleases by Tenant as Sub-lessor and various subtenants (each a "Subtenant") a provision whereby each Subtenant agrees (a) to indemnify, defend, protect and hold Tenant and Landlord harmless from and against any and all claims, losses, demands, liabilities, and expenses, including reasonable attorneys' fees, arising from each Subtenant's respective use of the Demised Premises or from any act, or any omission to act, in or about the Demised Premises by each Subtenant or its respective agents, employees, contractors, subcontractors, representatives, visitors or invitees unless solely caused by Landlord's or

Tenant's gross negligence or willful misconduct; (b) in case any action or proceeding is brought against Tenant or Landlord by reason of any such claim, such Subtenant shall, upon written notice from Landlord or Tenant, at such Subtenant's sole cost and expense, resist or defend Landlord and Tenant in such action or proceeding by counsel approved by Landlord and Tenant in writing, which approval Landlord and Tenant agree not to unreasonably withhold.

9.2 To the fullest extent allowed under applicable law, Tenant hereby agrees to include in each contract it enters into for work to be performed on or about the Demised Premises (each a "Contract") by any contractor or other service provider (each a "Contractor"), a provision whereby each Contractor agrees (a) to indemnify, defend, protect and hold Tenant and Landlord harmless from and against any and all claims, losses, demands, liabilities, and expenses, including reasonable attorneys' fees, arising from each Contractor's respective activities at the Demised Premises or from any act, or any omission to act, in or about the Demised Premises by each Contractor or its respective agents, employees, contractors, subcontractors, representatives, visitors or invitees unless solely caused by Tenant's gross negligence or willful misconduct; (b) in case any action or proceeding is brought against Tenant or Landlord by reason of any such claim, such Contractor shall, upon written notice from Landlord or Tenant, at such Contractor's sole cost and expense, resist or defend Landlord and Tenant in such action or proceeding by counsel approved by Landlord and Tenant in writing, which approval Landlord and Tenant agree not to unreasonably withhold.

9.3 To the fullest extent allowed under applicable law, Tenant hereby agrees to require any sub-tenant or successor to indemnify, defend and pay all damages, costs, expenses, including attorney fees, and otherwise hold harmless the City of Columbia (as Landlord), its employees, and agents, from any liability, not negotiated, of any nature or kind and against any liability or damages, costs, expenses, including attorney fees, incurred or arising as a result of any use, occupancy, or other activity of the Tenant on the Demised Premises or any use, occupancy, or other activity of the sub-tenants, agents, contractors, or other person(s) or entities on the Demised Premises with Tenant's permission, express or implied or by operation of law or contract.

9.4 Insurance

(a) Liability Insurance. Tenant, or its successors or assigns, agrees to maintain liability insurance with limits in the amount of \$1,000,000 covering the Demised Premises and naming the Landlord as an additional insured on all such policies. The liability insurance will be reviewed each five years to determine whether coverage should be increased to reflect current market conditions.

(b) Property Insurance. Throughout the Term of this Lease, Tenant shall at its own expense cause all improvements, if any, and to the reasonable extent such improvements may be insured, placed upon the Demised Premises to be insured against loss by fire, flood, earthquake, and so-called extended coverage perils, in an amount at least

equal to 100% of the replacement value of the improvements, excluding footings and foundation, with (i) an insurance company licensed to issue such policies in the State of South Carolina, or (ii) the South Carolina Insurance Reserve Fund, at Tenant's option. Landlord shall be named as a loss payee on such policy, and Tenant shall provide an insurance certificate to Landlord evidencing the same.

ARTICLE 10. CONDEMNATION

10.1 In the event that the Demised Premises, or any part thereof, shall be taken in condemnation proceedings or by exercise of any right of eminent domain or by agreement between Landlord (as applicable, the "Taken Property"), Tenant and those authorized to exercise such right (any such matters being hereinafter referred to as a "Taking"), Landlord, Tenant and any person or entity having an interest in the award or awards shall have the right to participate in any such condemnation proceedings or agreement for the purpose of protecting their interests hereunder, subject to the remainder of this Paragraph 10. Each party so participating shall pay its own expenses incurred therein.

10.2 In the event of a Taking of all or part of the Demised Premises, this Lease shall continue without change, as between Landlord and Tenant, and Tenant shall be entitled to the value of any portion of the Taken Property, less any residual value attributable to same beyond the remaining Term of the Lease (the "Residual Value"). The Landlord shall be entitled to the value of the Taken Property constituting land and any remaining portion of the award or awards.

10.3 Either party shall be entitled to file and prosecute any claim against the condemnor for damages and to recover the same, for any negligent use, waste or injury to the Demised Premises throughout the balance of the Lease Term.

10.4 None of the provisions of 10.1 through 10.3 shall apply if the City of Columbia is the condemning authority. In such case, the Tenant and any sub-tenant thereof shall be deemed to have no interest in the Demised Premises and shall not be entitled to an award based upon any such condemnation action or under the theory of inverse condemnation; provided, however, Tenant and any subtenant shall be entitled to recovery for the costs of improvements placed upon the Demised Premises the value of which shall be calculated taking into account the remaining the life of the Lease and any depreciation of such improvements. Tenant hereby acknowledges the City of Columbia's right to condemn the property for public use without violating the terms and conditions of this Lease Agreement and without causing damage to Tenant other than the provision regarding improvements set forth in the sentence next-above.

ARTICLE 11.
HAZARDOUS MATERIALS; ENVIRONMENTAL INDEMNITIES

11.1 Tenant and Landlord recognize and agree that Tenant will merely be a lessee of the Demised Premises and is not assuming control or responsibility over the soils, groundwater, or environmental conditions of the Demised Premises. Furthermore, in entering into this Lease Agreement, Tenant, out of an abundance of caution, has complied with the "all appropriate inquiry" requirements of 42 U.S.C. §§9601 (35), (40)(B), and 40 CFR Part 312 by performing a phase I environmental assessment in compliance with ASTM E-1527-05 less than 180 days before executing this Lease Agreement. Accordingly, Tenant is not assuming or otherwise agreeing to bear any liability or responsibility for the environmental conditions of the Demised Premises. Should Tenant or any Subtenant cause Hazardous Materials to be located on the Demised Premises for which the United States Environmental Protection Agency (USEPA), DHEC, or any other state or municipal agency with jurisdiction over the Demised Premises or said Hazardous Materials requires any assessments, investigations, evaluations, and/or remediation of such, Tenant or Subtenants shall be responsible for that portion of the cost of any such obligations attributable to the Tenant or such Subtenant's actions. Should any Subtenants fail to properly satisfy the obligations under the preceding sentence, Tenant is ultimately responsible for such obligations. Tenant, further, agrees to include within any Subtenant lease or rental agreement an obligation that the Subtenant indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses, including, without limitation, reasonable attorneys' fees, consultants' fees, investigative costs and court costs that arise due to Subtenant's release or discharge of Hazardous Materials at the Demised Premises.

11.2 As used in this Lease, the term "Hazardous Material" means any substance, material or waste now or hereafter determined by any federal, state or local governmental authority to be capable of posing a risk of injury to health, safety or property, including, but not limited to, any substance, material or waste: (i) containing asbestos that is or could become friable, radioactive materials, petroleum, petroleum fractions, or petroleum distillates, urea formaldehyde foam insulation, or radon gas; (ii) now or hereafter defined as "hazardous waste", "hazardous material", "hazardous substance", "extremely hazardous waste", "restricted hazardous waste", "toxic substance", "toxic pollutant", "contaminant", or "pollutants" or words of similar import under any applicable Environmental Law, as hereinafter defined, or (iii) or any other substance, regulated by any governmental authority for the protection of human health or the environment. As used in this Lease, the term "Environmental Law" means any federal, state or local statute, law, rule, regulation, ordinance, code, policy or rule of common law and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, health, safety, or Hazardous Materials including without limitation the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§9601 et seq.; the Resource Conservation and Recovery Act

("RCRA"), 42 U.S.C. §§6901 et seq.; the Clean Water Act, 33 U.S.C. §§1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; the Clean Air Act, 42 U.S.C. §§7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§300f et seq.; the Atomic Energy Act, 42 U.S.C. §§2001 et seq.; and the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§136 et seq., the South Carolina Pollution Control Act, S.C. Code Ann. §§ 48-1-10 et seq., the South Carolina Hazardous Waste Management Act, S.C. Code Ann. §§44-56-10 et seq., and the South Carolina Solid Waste Policy and Management Act, S.C. Code Ann. §§44-96-10 et seq.

ARTICLE 12. DEFAULT

12.1 If default shall be made by Tenant or Landlord in the performance or compliance with any of the agreements, terms, covenants or conditions in this Lease or in the event of any breach or threatened breach by Tenant or Landlord of any of the agreements, terms, covenants or conditions contained in this Lease, Tenant or Landlord shall be entitled to terminate this Lease upon the occurrence of such default. Termination of this Lease shall be the sole remedy allowed to either party in the event of default under the terms of the Lease. Notwithstanding the foregoing, if either Landlord or Tenant contemplate placing the other party in default under the Lease, Landlord or Tenant must give the other party sixty (60) days prior written notice specifying the default and a sixty (60) day opportunity to cure. If, however, such default, violation, breach, or failure shall not be reasonably susceptible of being cured within sixty (60) days, then Landlord or Tenant shall not be in default hereunder unless either Landlord or Tenant, as the case may be, fails to commence to cure the same within such sixty (60) day period and prosecute the performance of the same to completion with due diligence.

ARTICLE 13. INVALIDITY OF PARTICULAR PROVISIONS

13.1 If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

13.2 This Lease shall have a duration of twenty (20) years with two (2) ten (10) year extensions. If South Carolina law hereafter limits any period of the Lease to be invalid, then to the extent consistent with such law, this Lease shall automatically be extended at the expiration of such period for successive periods of 10 years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Lease shall be unlawful, void, or voidable for violation

of the rule against perpetuities, then such provision shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**ARTICLE 14.
NOTICES**

14.1 Except as herein provided, a bill, statement, notice, or communication which Landlord desires or is required to give to Tenant, including any notice of termination, shall be deemed sufficiently given or rendered in writing, delivered to Tenant personally, telecopied or sent by registered or certified mail, addressed to Tenant at the address set forth below or at such other address as Tenant may have requested Landlord to send notices. Any notice by Tenant to Landlord must be served by telecopy or registered or certified mail addressed to Landlord at the address set forth below Tenant, or at such other place as Landlord designates.

IF TO LANDLORD:

City of Columbia
Attention City Manager
PO Box 147
Columbia, SC 29217

With copy to

City of Columbia
City Attorney
PO Box 667
Columbia, SC 29202

With copy to

City of Columbia
Chief Financial Officer
PO Box 147
Columbia, SC 29217

IF TO TENANT:

South Carolina Research Authority
Attention: President
1330 Lady Street, Ste. 503
Columbia, SC 29211

with copy to:

Glen P. Caulk, Esquire
Nelson Mullins Riley & Scarborough LLP
1320 Main Street, 17th Floor (29201)
PO Box 11070 (29211-1070)
Columbia, SC

**ARTICLE 15.
QUIET ENJOYMENT**

15.1 Tenant and its successors and assigns, upon the observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Demised Premises during the Lease Term without claim, hindrance or molestation by anyone claiming by, through or under Landlord its successors or assigns as such.

**ARTICLE 16.
LEASEHOLD FINANCING**

16.1 Subject to the express conditions contained herein, Tenant shall have the right, at any time on one or more occasions, to mortgage its leasehold interest in the Demised Premises and the Tenant Improvement(s) and the Building(s), if any (the "Leasehold Interest"), on such terms, conditions, and for such duration not to exceed the termination date of this Lease as Tenant shall determine, and to enter into any and all extensions, modifications, amendments, replacements, and refinancings of any such leasehold mortgage (the "Leasehold Mortgage Interest") as Tenant may desire, without the consent of Landlord.

16.2 If Tenant shall mortgage the Leasehold Interest, as long as any such leasehold mortgage shall remain unsatisfied of record, the following provisions shall apply, notwithstanding anything to the contrary contained in this Lease, and any pertinent provisions of this Lease shall be deemed to be amended and modified to the extent necessary so as to provide as follows:

(a) The holder (the "Leasehold Mortgagee") of any leasehold mortgage on the Leasehold Interest (but only the holder of a first leasehold mortgage if there is more than one leasehold mortgage) shall register with Landlord its legal name and address in writing. Landlord, on serving Tenant any notice of default, notice of a matter on which Landlord may predicate or claim a default, or any other notice pursuant to the provisions of, or with respect to, this Lease, shall at the same time serve a duplicate counterpart of such notice on the then Leasehold Mortgagee by certified mail, return receipt requested, addressed to the Leasehold Mortgagee at the address registered with Landlord, and no notice by Landlord to Tenant hereunder shall be deemed to have been duly given to Tenant unless and until such duplicate counterpart thereof has been so served on the Leasehold Mortgagee.

(b) Tenant agrees to provide the Leasehold Mortgagee (but only the holder of the first leasehold mortgage if there is more than one leasehold mortgage) with notice of any default hereunder by Landlord by certified mail, return receipt requested, addressed to the Leasehold Mortgagee at the address registered by Leasehold Mortgagee with

Landlord and Tenant agrees not to terminate this Lease as a result of a default by Landlord hereunder without the prior written consent of such Leasehold Mortgagee.

(c) The Leasehold Mortgagee shall have the right, within the period and otherwise as herein provided, to remedy or cause to be remedied any default or matter on which Landlord may predicate or claim a default noticed by Landlord, and Landlord shall accept such performance by or at the instigation of the Leasehold Mortgagee as if the same had been performed by Tenant. Tenant constitutes and appoints the Leasehold Mortgagee as Tenant's agent and attorney-in-fact with full power, in Tenant's name, place and stead, and at Tenant's cost and expense, to perform any of Tenant's obligations according to the provisions of this Lease. In this regard, the Leasehold Mortgagee is irrevocably granted full and complete access and right of entry to the Demised Premises by Landlord and Tenant for purposes of curing any non-monetary default of Tenant declared to exist by Landlord under the terms of this Lease.

(d) During such time as the Leasehold Mortgage Interest of any Leasehold Mortgagee remains unsatisfied of record, and provided Leasehold Mortgagee notifies Landlord within thirty (30) days after receipt from Landlord of any notice of default by Tenant that Leasehold Mortgagee wishes to reserve the right to cure, Landlord shall not terminate this Lease or evict the Tenant as a result of any default by Tenant hereunder if before the expiration of ninety (90) days after the date of service of notice of default under this Lease, the Leasehold Mortgagee shall have cured or caused to be cured such event of default; provided, however, that:

(i) in the event any non-monetary default is not cured or caused to be cured by the Leasehold Mortgagee prior to the expiration of the ninety (90) day period specified herein, the default shall nevertheless be deemed cured if within said ninety (90) day period the Leasehold Mortgagee commences or causes to commence curative action and the same is continued to completion with reasonable diligence;

(ii) nothing herein contained shall in any way affect, diminish, or impair Landlord's right during said ninety (90) day period to pursue any remedy specified herein other than termination of this Lease or eviction of the Tenant, subject, however, to all of the provisions hereof;

(iii) if the Leasehold Mortgagee, after use of its good faith reasonable efforts, is unable to cure any default which exists under this Lease within the aforesaid ninety (90) day period as a result of any bankruptcy proceeding, court order or the unenforceability or potential unenforceability of any self-help provisions provided for in this Lease or in the Leasehold Mortgagee's respective loan documents, the Landlord shall not terminate this Lease or seek to evict the Tenant even after the ninety (90) day period otherwise specified

herein has expired so long as: (1) the Leasehold Mortgagee provides Landlord with a written undertaking to promptly cure the subject default as soon as the Leasehold Mortgagee is permitted to do so; (2) a letter of credit, surety bond or financial guarantee acceptable to Landlord is deposited in trust with Landlord to assure Landlord that the subject default will be so cured; (3) the Leasehold Mortgagee diligently and continuously seeks to obtain appropriate legal relief to permit it to cure the subject default, including proceeding with foreclosure to the extent permitted to do so; and (4) the Leasehold Mortgagee promptly proceeds to cure the subject default as soon as it is permitted to do so.

(e) The parties hereto shall give the Leasehold Mortgagee written notice of any condemnation proceedings affecting the Demised Premises. The Leasehold Mortgagee shall have the right to intervene and be made a party to any such condemnation proceedings and the parties hereto hereby consent that the Leasehold Mortgagee may be made such party or intervenor.

(f) Except as otherwise expressly provided herein, no Leasehold Mortgagee shall be liable to perform any of Tenant's obligations under this Lease.

(g) This Lease shall not be modified, surrendered or cancelled by Tenant (whether pursuant to the terms of this Lease or otherwise), nor shall the Landlord accept a surrender of this Lease, without the prior written consent of the Leasehold Mortgagee, nor shall any merger result from the acquisition by, or devolution upon, any one entity of the fee and leasehold estates in the Demised Premises so long as any Leasehold Mortgage Interest remains in existence; provided, however, that nothing contained in this paragraph shall diminish the rights otherwise expressly provided to Landlord herein upon the occurrence of any event of default.

(h) Notwithstanding anything herein to the contrary, Landlord agrees, in the event of a foreclosure by the Leasehold Mortgagee on its Leasehold Mortgage Interest that it will permit the assignment of the Leasehold Interest by the Leasehold Mortgagee to such person or persons as Leasehold Mortgagee may reasonably select and consistent with applicable law, provided the Leasehold Mortgagee or its assignee cures all curable defaults and pays all costs and expenses incurred by Landlord due to Tenant's default. Notwithstanding any other provision of this Lease to the contrary, nothing shall limit the right of any third party purchaser of the Leasehold Interest at a judicial foreclosure sale to succeed to the rights of Tenant under this Lease, provided however, that any third party purchaser shall purchase the Leasehold Interest in an "as is" condition, and would be responsible for curing all existing defaults. No such assignment shall be given absent written approval by Landlord of any proposed change in use of the Demised Premises. Landlord shall not unreasonably withhold such approval.

16.3 Notwithstanding anything to the contrary contained herein, any Leasehold Mortgagee shall give Landlord thirty (30) days written notice of any default by Tenant under any leasehold mortgage or leasehold deed of trust prior to exercising any remedy thereunder; and Landlord shall have the right, but not the obligation, to cure any such default.

16.4 Landlord hereby agrees to modify the provisions of this Article 16 at its reasonable discretion as may be required by a Leasehold Mortgagee and evidence same by entering into a written agreement with the Leasehold Mortgagee in the form of a Subordination of Non-Disturbance and Attornment Agreement and other documents which the Leasehold Mortgagee may reasonably require.

ARTICLE 17. MISCELLANEOUS PROVISIONS

17.1 The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in masculine gender include the feminine and neuter. If there be more than one Tenant, the obligations hereunder imposed upon Tenant shall be joint and several. The captions in this Lease are for convenience only, are not a part of this Lease. and shall have no effect upon the construction or interpretation of any part hereof.

17.2 All Exhibits to this Lease shall be considered incorporated into and a part of this Lease previous written and oral agreements between Landlord and Tenant are hereby terminated without penalty or cost to either Landlord and Tenant.

17.3 This Lease shall be construed in accordance with and governed in all respects by the laws of the State of South Carolina without regard to any provisions regarding conflicts of law. The language of this Lease shall be interpreted without reference to which party prepared this Lease or any portion of this Lease.

17.4 This Lease may not be amended or supplemented except by means of a written agreement executed on behalf of both Landlord and Tenant.

17.5 The parties hereby represent and warrant that they have all necessary power and authority to execute and deliver this Lease on behalf of Landlord and Tenant, respectively. <UNTIL AND UNLESS LANDLORD SHALL OBTAIN SUCH POWER AND AUTHORITY UPON APPROVAL OF ALL THE TERMS AND CONDITIONS OF THIS LEASE BY MAJORITY VOTE OF THE CITY COUNCIL OF COLUMBIA, THIS LEASE SHALL NOT BE ENFORCEABLE. THIS PROVISION SHALL BE REMOVED FROM THE FINAL EXECUTION VERSION HEREOF.>

17.6 The covenants and conditions herein contained shall apply to and bind

successors and permitted assigns of the parties hereto and all of the parties hereto shall be jointly and severally liable hereunder.

17.7 Nothing in this Lease is intended to provide any rights or remedies to any person other than to Landlord and Tenant and their respective successors and assigns. The terms of this section shall survive the cancellation, termination or consummation of this Lease.

17.8 This Lease or a memorandum of this Lease may be recorded by either Landlord or Tenant in the ROD.

17.9 This Lease may be assigned by Tenant, upon written approval by Landlord (such approval to not unreasonably be withheld), provided that the assignee shall be committed (contractually or otherwise, to the reasonable satisfaction of Landlord) to perform the same actions as the Tenant under this Lease, including, without limitation those relating to possession, subletting and intended uses (expressly and specifically including those set forth in Section 8.2 hereinabove) of the Demised Premises. Should Tenant, Tenant's assigns, Leasehold Mortgagee or its assigns wish to make a use of the Demised Premises other than that set forth in Section 8.2, the Landlord reserves the right, in its sole and exclusive discretion, without obligation, to deny such request or, if it wishes, to consider a modified or different use and, if it desires, to renegotiate the terms of this Lease including, without limitation, the Rent as is set forth in Section 2.1 hereinabove.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed under seal as of the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Eric D. Salley
S. Donalds

LANDLORD:

CITY OF COLUMBIA

By: Steven A. Gantt

Its: Interim City Manager

TENANT:

SOUTH CAROLINA RESEARCH AUTHORITY

By: _____
Bill Mahoney

Its: President, Director and
Chief Executive Officer

