

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)
_____)

ORDINANCE NO. 2016- 5-327-0


AN ORDINANCE AUTHORIZING THE LEASE OF SPACE TO CAPITAL CARE RESOURCES OF SOUTH CAROLINA LLC.

Be it enacted that Barnwell County Council hereby authorizes the lease of 1,418 square feet of space, known as Suite ____ in its building located at 11015 Ellenton Street, Highway 278, Barnwell South Carolina, in accordance with the terms of the lease attached hereto as Exhibit A to this ordinance.

This ordinance shall take effect after public notice and hearing upon its third and final reading and vote. Upon passage, the Chairman of Council is hereby authorized to execute documents needed to lease this property to the Grantee.

FIRST READING: 3/8/16
SECOND READING 4/12/16
THIRD READING 5/10/16
Public Hearing 5/10/16

BARNWELL COUNTY COUNCIL



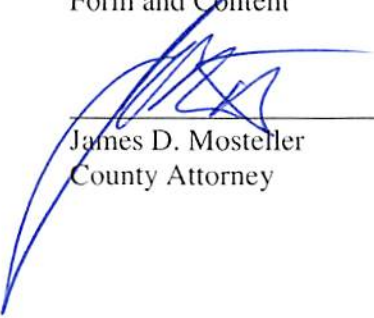
David Kenner, Chairman

Attest:



Clerk To Council

Approved As To
Form and Content



James D. Mosteller
County Attorney



LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is entered into this 1st day of January, 2016 (the "Effective Date"), by and between Barnwell County, a ("Lessor"), and Capital Care Resources of South Carolina, LLC, a Georgia limited liability corporation ("Lessee").

Recitals:

Lessor owns the Leased Premises (as defined below) and Lessee wishes to lease the Leased Premises in order to operate the administrative office of its home home agency licensed in the State of South Carolina to provide home health and related services in Barnwell County, South Carolina (the "Office"). Lessor desires to lease the Leased Premises to Lessee pursuant to the terms and conditions of this Lease.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, it is agreed:

Agreement:

1. **Lease of Premises.** Lessor, in consideration of the covenants and agreements to be performed by Lessee, and upon the terms and conditions hereinafter stated, does hereby rent and lease unto Lessee certain premises comprised of approximately 1,418 rentable square feet of space known as Suites: 160, 163, 164, 165, 166, 167, and 168 and as depicted on the floor plan attached hereto as **Exhibit A** (the "Space") located at 11015 Elleton St. Highway 278, Barnwell, South Carolina (the "Property"). In consideration of the Rent (as defined below) to be paid by Lessee to Lessor, and agreements set forth herein, Lessor hereby leases to Lessee the Space, together with all structures, facilities, and other improvements now or to be erected thereon by Lessor, rights of access, and easements thereto, including ingress and egress over and across the Property and together with any and all of the common areas serving the building of which the space is a part jointly with all other tenants of such building (collectively, the "Leased Premises").

2. **Term; Termination.**

(a) term of this Lease shall commence on January 1, 2016 and end on December 31, 2016, unless sooner terminated in accordance with the terms of this Lease (the "Term").

(b) **Termination.** This Lease may be terminated at any time during the Term, (i) by the mutual written consent of Lessor and Lessee, or (ii) by Lessee at any time upon at least thirty (30) days prior written notice to Lessor, or (iii) by Lessee in accordance with Section 11, or (iv) by Lessor in accordance with Subsection 10(b); provided, however, that Lessor may not exercise this option until after such time as Lessee is lawfully permitted to relocate the Office. This Lease may also be extended by mutual written consent of Lessor and Lessee.

3. **Rent.** In consideration of the leasing of the Leased Premises, Lessee agrees to pay Lessor rent in an amount equal to \$1,900.00 per month (the "Rent"), which Rent shall be due and payable on or before the fifth (5th) day of each calendar month during the Term.

4. **Taxes.** Lessee shall be solely responsible for the payment of any taxes, fees, and assessments imposed or assessed upon Lessee's income, business operations, equipment, fixtures, and other personal property or assets.

5. **Possession and Use of the Leased Premises.** Lessee shall be entitled to possession on the Effective Date and shall yield possession back to Lessor at the time and date of the expiration or termination of this Lease. Lessee agrees during the Term of this Lease to use the Leased Premises solely for purposes of operating the Office. Lessee's use and occupancy of the Leased Premises shall at all times comply with applicable laws, ordinances, rules, and regulations of governmental authorities.

6. **Alterations.** Lessee shall make no alterations, additions, or improvements (collectively, "Alterations") to the Leased Premises without the prior written consent of Lessor, not to be unreasonably withheld, conditioned or delayed. All Alterations made by, for, or at the direction of Lessee shall, when made become the property of Lessor and shall remain upon and be surrendered with the Leased Premises at the expiration or termination of this Lease. Notwithstanding anything contained herein to the contrary, Lessee is permitted to install IT data infrastructure provided that same is reasonably consistent with the operation of the Office and does not materially negatively affect the structure of the Leased Premises, and Tenant shall have the right, but not the obligation, to remove same at the expiration or earlier termination of the Term.

7. **Utilities, Janitorial Expenses.** Lessor shall be responsible for the payment of all utilities at the Leased Premises and the provision and/or payment of all janitorial services and supplies provided to the Leased Premises.

8. **Care and Maintenance of the Leased Premises.** Except as set forth below in this Section 8 or elsewhere, Lessor shall be responsible for making all necessary renovations, improvements, and repairs to the Leased Premises in order that Lessee may operate the Office at the Leased Premises. As a condition precedent to Lessor's obligations hereunder, Lessee shall provide notice to Lessor of any repairs that are necessary and shall allow Lessor and its representatives reasonable access, both during and outside of regular business hours, to the Leased Premises. All such renovations, repairs, and improvements that are or become affixed to the Leased Premises shall be the property of Lessor. Lessor shall keep the roof, structural parts of the floor, walls, and other structural parts of the Leased Premises, and the Space in good repair. Lessor shall maintain and make necessary repairs to the sanitary sewer system, plumbing, water pipes, and electrical wiring as well as the heating, ventilating, and air conditioning equipment. Lessee shall not knowingly permit or allow the Leased Premises to be damaged or depreciated in value by any act or negligence of Lessee, its agents, employees, invitees, or guests.

9. **Insurance.** Lessor shall maintain in effect at all times during the Term fire and extended coverage insurance insuring the Leased Premises in an amount equal to the full replacement value of the Leased Premises. Lessor shall have no obligation to insure any property or equipment of Lessee and Lessee shall procure and maintain at its expense throughout the Term a policy or policies of commercial property insurance, issued on an "all risks" basis, and insuring the full replacement cost of its furniture, equipment, supplies, and other property owned, leased, held, or possessed by it and contained in the Leased Premises. Lessee also shall procure and maintain at its expense throughout the Term a policy or policies of commercial general liability insurance, insuring Lessee against any and all liability for injury to or death of a person or persons and for damage to property occasioned by or arising out of the condition, use, or occupancy of the Leased Premises, or arising out of the activities of Lessee, its agents, contractors, employees, or guests in the Leased Premises. Lessee agrees to list Lessor as an additional insured under its commercial general liability policy. Lessor and Lessee each shall have included in all policies of property insurance respectively obtained by them a waiver by the insurer of all rights of subrogation against the other in connection with any loss or damage thereby insured against. To the full extent permitted by law, each of Lessor and Lessee waives all right of recovery against the other for, and agrees to release the other from liability for, loss or damage to the extent that such loss or damage is covered by valid and collectible

insurance in effect at the time of such loss or damage, and the proceeds of such insurance are actually collected.

10. Lessee's Default.

(a) The following events shall be deemed to be events of default by Lessee under this Lease: (i) Lessee shall fail to pay any installment of Rent or any other charge or assessment against Lessee pursuant to the terms hereof within five (5) days after the due date thereof; (ii) Lessee shall fail to comply with any term, provision, covenant, or warranty made under this Lease by Lessee other than the payment of the Rent or any other charge or assessment payable by Lessee, and does not cure such failure within a reasonable time not to exceed thirty (30) days after written notice thereof to Lessee; (iii) Lessee or any guarantor of this Lease shall file a petition under any Section or Chapter of the federal Bankruptcy Code, as amended, or under similar law or statute of the United States or any state thereof, or there shall be filed against Lessee or any guarantor of this Lease a petition of bankruptcy or insolvency or a similar proceeding, or Lessee or any guarantor shall be adjudged bankrupt or insolvent in proceedings filed against Lessee or any such guarantor; or (iv) Lessee shall do or permit to be done anything which creates a lien upon the Leased Premises that is not released or bonded off within thirty (30) days after Lessee receives notice thereof.

(b) In the event of the occurrence of an Event of Default as defined in subsection 10(a), above, Lessor shall provide written notice to Lessee, and Lessee shall have thirty (30) days in which to cure the default; provided, however, in the event of default by non-payment, Lessee shall cure such default within five (5) days of Lessor's notice of same. Upon Lessee's failure to cure, Lessor shall have the right, in its sole discretion, to pursue any remedy at law or in equity, including but not limited to one or more of the following: (i) terminate this Lease, in which event Lessee shall immediately surrender the Leased Premises to Lessor; (ii) terminate Lessee's right of possession without terminating this Lease, and retake and relet the Leased Premises; and/or (iii) accelerate and demand payment of all Rent and other charges due and payable, and such Rent and other charges which represent Lessor's reasonable determination of what would be due and payable over the remainder of the Term of this Lease.

11. Lessor's Default. If Lessor fails to perform any of Lessor's obligations under this Lease, Lessee gives Lessor written notice setting forth in reasonable detail the nature of the default, and such default continues for either (a) five (5) days after the giving of the notice in the case of a default that materially negatively affects Lessee's use and enjoyment of the Leased Premises, or (b) thirty (30) days after the giving of the notice in all other cases, Lessee, without thereby waiving the default, and in addition to any other right or remedy of Lessee, shall have the right (but shall not be obligated) to terminate this Lease upon providing written notice to Lessor.

12. Quiet Enjoyment. Lessor warrants that it has full right and authority to enter into this Lease and perform its obligations hereunder, and Lessor covenants that during the Term of this Lease Lessor shall not cause or suffer anything to be done which will impair Lessee's leasehold interest and rights hereunder. Lessor shall defend Lessee in the enjoyment and peaceful possession of the Leased Premises during the Term.

13. Destruction.

(a) Partial Destruction of the Leased Premises. If the Leased Premises shall be partially destroyed by fire, or other casualty, whereby the Leased Premises shall be rendered unusable only in part, Lessor shall cause the damage to be repaired, and this Lease shall remain in full force and effect.

(b) **Total Destruction of the Leased Premises.** If by reason of fire or other casualty the Leased Premises shall be rendered wholly unusable, or if the damage results from a cause not covered by fire and extended coverage insurance that Lessor is required to maintain pursuant to the terms of this Lease, Lessee shall have the option to terminate this Lease by providing Lessor with Notice thereof within thirty (30) days after the casualty, in which event this Lease shall cease as of the date of said damage or destruction.

14. Hazardous Materials. Lessee shall not bring onto the Leased Premises any Hazardous Materials (as defined below) except in compliance with all requirements of any constituted public authority and all federal, state, and local codes, statutes, ordinances, rules and regulations, and laws, whether now in force or hereafter adopted relating to Lessee's use of the Leased Premises, or relating to the storage, use, disposal, processing, distribution, shipping or sales of any hazardous, flammable, toxic, or dangerous materials, waste or substance, the presence of which is regulated by a federal, state, or local law, ruling, rule or regulation (hereafter collectively referred to as "**Hazardous Materials**"). Lessee covenants that it shall refrain from unlawfully disposing of or allowing the disposal of any Hazardous Materials upon, within, about or under the Leased Premises and Lessee shall remove all Hazardous Materials from the Leased Premises which were placed or stored there by Lessee, either after their use by Lessee or upon the expiration or earlier termination of this Lease, in compliance with all applicable laws.

15. Lessor's Right of Entry. Lessor and its agents, employees, and independent contractors shall have the right to enter the Leased Premises at reasonable hours to inspect and examine same, and to make repairs, additions, alterations, and improvements; provided, however, that Lessor shall, except in case of emergency, afford Lessee such prior notification of an entry into the Leased Premises as shall be reasonably practicable under the circumstances, and, to the extent possible, undertake not to disrupt Lessee's business on the Leased Premises during normal business hours. Notwithstanding anything to the contrary in this Lease, Lessor acknowledges that the information, records and data maintained within the Leased Premises are confidential. Accordingly, to the extent that Lessor or its employees and agents, through entry to the Leased Premises or otherwise, will need to gain access to such information, records or data, Lessor and its employees and agents shall execute a Business Associate Agreement with Lessee in a form meeting the requirements of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91) and the regulations issued in connection therewith (collectively, "**HIPAA**") in advance of obtaining such access and shall maintain the confidentiality of same in accordance with applicable law, including the HIPAA. Lessor's obligations under this **Section 15** shall survive the expiration or earlier termination of this Lease.

16. Surrender of Premises. Upon the expiration or other termination of this Lease, Lessee shall quit and surrender to Lessor the Leased Premises, broom clean in the same condition as at the Effective Date, reasonable wear and tear, and repairs and maintenance required to be made by Lessor under this Lease only excepted, and Lessee shall remove all of its personalty, equipment, and fixtures from the Leased Premises. Lessee's obligation to observe or perform this covenant shall survive the expiration or other termination of this Lease.

17. Signs. Lessee shall have the right to install signage on or about the Leased Premises or at the Property, provided that such signage, and Lessee's installation thereof, shall comply with all applicable local codes and ordinances.

18. Notices. Any notice required under this Agreement shall be in writing, and delivered by registered or certified mail to the other party at the last known business address of such party unless such party gives notice in writing to the other party of another address to which such notice shall be sent. Hand delivery to such address shall also suffice if signed for by a representative of the party receiving the notice.

19. **Assignment; Subletting.** Lessee shall not, without the prior consent of Lessor, which consent may be withheld in Lessor's sole discretion, assign this Lease or any interest herein in whole or in part, or sublet all or any portion of the Leased Premises, or mortgage, pledge, encumber, hypothecate, or otherwise transfer the Leased Premises or any part thereof, or permit the use of the Leased Premises by any party other than Lessee, its employees, and independent contractors engaged in the operation of the Office, provided, however, that Lessee may assign this Lease or sublet the Premises or a portion thereof to an affiliate of Lessee without Lessor's consent.

20. **Miscellaneous.** This Lease contains the entire agreement of the parties and no representations, inducements, promises, or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect.

21. **Governing Law.** This Lease shall be governed by the laws of the State of South Carolina.

22. **Relationship.** This Lease does not constitute an agreement of partnership or joint venture, and does not create a relationship of principal and agent. Neither party shall have the authority to act as agent of the other for any purpose. The parties are, and shall remain, independent actors responsible for all their respective obligations and responsibilities.

23. **Waiver.** No waiver of any of the provisions of this Lease or of any breach or violation of any provision of this Lease shall be valid unless in writing and signed by the party against whom such waiver is asserted. The waiver by any party of a breach or violation of any provision of this Lease shall not operate or be construed to be a waiver of any subsequent breach hereof.

24. **Parking.** Lessor represents, warrants, and covenants that at all times during the Term, it will provide parking to Lessee adequate to comply with all applicable zoning requirements, located either directly adjacent to Property or otherwise in reasonable proximity thereto, for Lessee and Lessee's agents and employees. There will be no additional charges for parking.

25. **Holding Over.** If Lessee should remain in possession of the Leased Premises after the expiration of the Term, without the execution by Lessor and Lessee of a new lease or an extension of this Lease, then Lessee shall be deemed to be holding over the Premises and shall remain subject to all of the covenants and obligations of the Lease, and Lessee shall continue to pay the then-current monthly rate, so long as Lessee does not hold over for a period of longer than 30 days, after which Lessee shall pay a monthly rental rate of 125% of the then-current rental rate. The inclusion of the preceding sentence shall not be construed as Lessor's consent for Lessee to hold over. To the extent that Lessee holds over for a period of time that is shorter than one month, the rent shall be prorated according to the number of days held over.

26. **Property Tax.** Lessor shall pay, prior to delinquency, all general real estate taxes and installments of special assessments coming due during the Term on the Property of which the Leased Premises are a part, and all personal property taxes with respect to Lessor's personal property, if any, on the Leased Premises. Lessee shall be responsible for taxes or assessments with regard to Lessee's personal property, if any, on the Leased Premises.

27. **Indemnification.** Lessee shall indemnify Lessor against any expenses, loss, cost, damage, claim, action or liability paid, suffered or incurred as a result of any breach by Lessee, Lessee's agents, servants, employees, visitors or licensees of any covenant or condition of this Lease, or as a result of

activities occurring within the Leased Premises, unless caused by the gross negligence or willful misconduct of Lessor, its agents, servants, employees, customers, visitors or licensees.

Lessor shall indemnify Lessee against any expenses, loss, cost, damage, claim, action, or liability paid, suffered or incurred as a result of any breach by Lessor, Lessor's agents, servants, employees, customers, visitors or licensees of any representation, warranty, covenant or condition of this Lease or as a result of activities occurring in the Property or the common areas, unless caused by the gross negligence or willful misconduct of Lessee, its agents, servants, employees, customers, visitors or licensees.

28. Common Area Maintenance. Lessor shall be responsible for expenses incurred in connection with maintenance of the common areas of the Property. Such expenses shall include water supplied to the Property, cleaning services, waste collection services, sewer, burglar alarm and monitoring services, lawn services, elevator services and other supplies or services which Lessee receives the benefit of.

29. Waiver of Lessor's Lien. Notwithstanding anything to the contrary contained in this Lease, Lessor shall have no lien (whether contractual, statutory, or otherwise) on, or security interest in, any of Lessee's personal property (including furniture, trade fixtures, and equipment) located in, on or about the Leased Premises or the Property, and Lessor hereby expressly waives and releases any such lien or security interest it may have in any of Lessee's property.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

LESSOR:

By: _____
Name: Pickens Williams, Jr. ^{for} BARNWELL County
Title: County Administrator

LESSEE: CAPITAL CARE RESOURCES OF SOUTH CAROLINA, LLC

By: _____
Name: _____
Title: _____

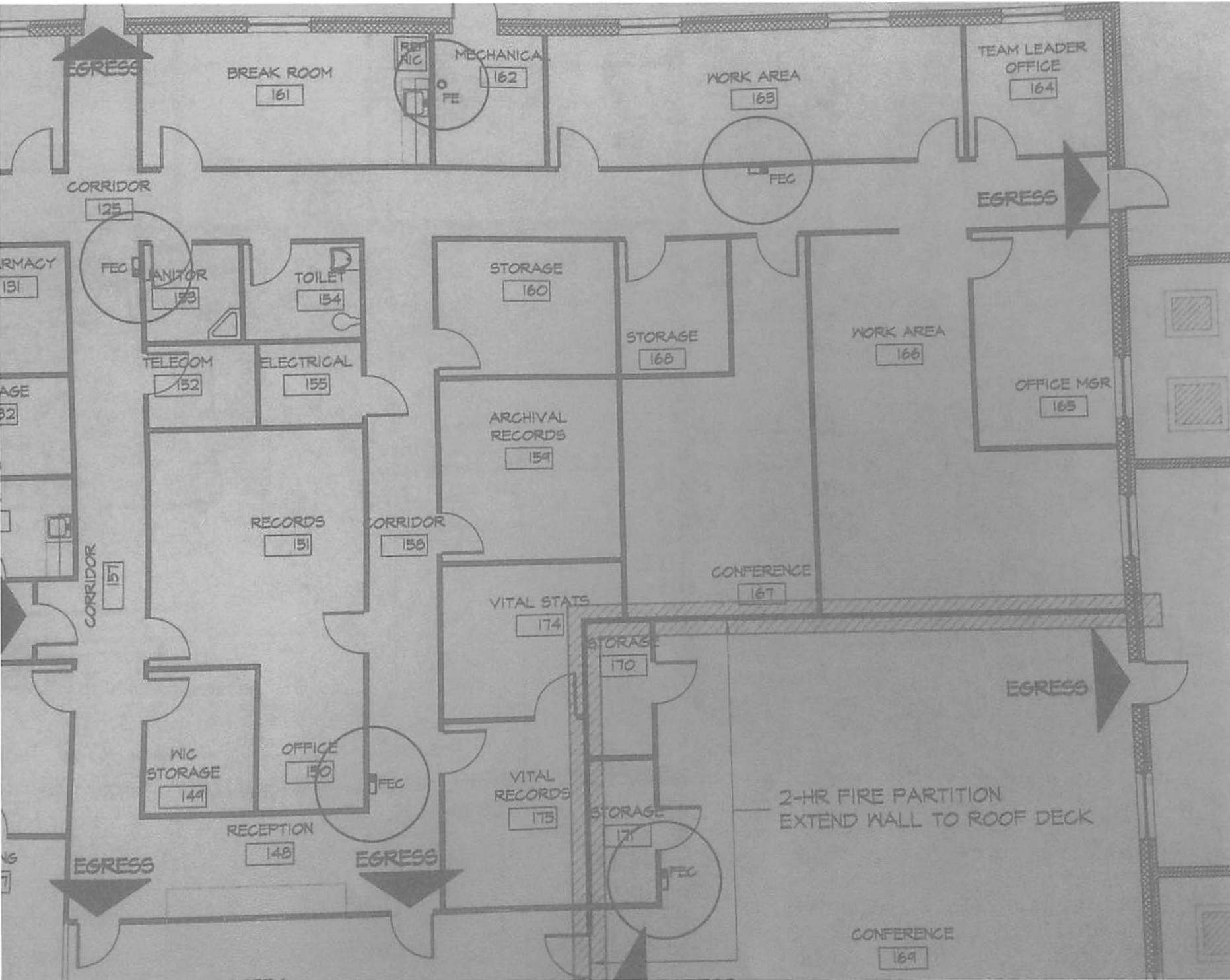


Exhibit A

Floor Plan of Leased Premises

(Needs to be attached)