

CORPORATION OF THE TOWNSHIP OF WHITEWATER REGION

BY-LAW # 10-03-423

Being a By-Law to authorize the Mayor and CAO to execute a Offer to Lease Agreement with the Lanark Health and Community Services.


WHEREAS pursuant to the Municipal Act, R.S.O. 1990 Chapter M.45, as amended, a Council may enter into agreements;


AND FURTHER that the Municipal Council for the Township of Whitewater Region along with the Whitewater Medical Centre Board deem it necessary to enter into an agreement with the Lanark Health and Community Services regarding the execution of an Offer to Lease Agreement.

THEREFORE the Council of the Corporation of the Township of Whitewater Region enacts that:

1. The Head of Council and the CAO are hereby authorized to execute this Offer to Lease Agreement between the Lanark Health and Community Services and the Township of Whitewater Region along with the Whitewater Medical Centre Board as in Schedule A attached hereto.

READ a First, Second and finally passed on the Third Reading this 17th day of March, 2010


MAYOR


CAO/CLERK

Offer to Lease

Lanark Health and Community Services (LHCS) (the "Tenant") hereby offers to lease from **The Whitewater Medical Centre Board (WMCB) and the Municipality of Whitewater Region (MWR)** (the "Landlord") the premises known as **The Whitewater Medical Centre**, at 20 Robertson Drive, Beachburg Ontario that comprises a two storey medical building (the "Building") of approximately 2,000 sq. ft. on each floor (the "Leased Premises"), and the surrounding grounds and parking lot, based on the following terms and conditions:

1. Leased Premises: The exact measurement of the Leased Premises may be determined by the Tenant's architect (at the Tenant's cost) in accordance with the current BOMA Industry standard method for measuring floor area in office buildings in accordance with ANSI/BOMA Z65.1 – 1996 standards.

The floor plans of the Leased Premises are attached as plan01 and plan02 in Schedule "A" of this Offer to Lease.

2. Term: The Term of the Lease shall be Five (5) years commencing on the 1st day of January 2010 ("the "Commencement Date") and expiring on the 31st day of December 2015 (the "Expiry Date") unless delayed in accordance with the provisions of this Offer.

3. Possession: The Tenant shall be entitled to exclusive possession of the Leased Premises commencing January 1, 2010, with the Tenant responsible for arrangements to be made with the Executive Director of Lanark Health and Community Services.

4. Rent: The Rent for the Leased Premises shall be Two Thousand Two Hundred Dollars (\$2,200.00) per month, plus HST effective July 1, 2010 the entire five (5) year term. Additional rent to cover any substantial increases in expenses is to be negotiated annually based on actual operating costs.

5. Taxes and Utilities: The Landlord shall pay all property taxes and related taxes assessed against the Leased Premises. Any rebate for taxes for non-profit organisations to be used for the Landlord's tax account. For clarity, the Tenant shall not be required to pay any of the Landlord's taxes including capital taxes and income taxes.

Landlord shall pay charges for heating and electricity of the Leased Premises and to pay for water and sewage reasonably used by the Tenant. The tenant shall pay all telephone charges.

6. Maintenance: From and after the date that the Tenant is required to commence paying rent, the Landlord shall pay costs incurred in maintaining and operating the exterior areas of the Leased Premises and the Building, including maintenance of the parking areas and sidewalks, and shall pay insurance premiums to cover building structure and utility services.

7. Option to Renew: The Tenant shall have the right to renew the Lease with respect to the Leased Premises and any additional space leased for one (1) additional term of Five (5) years on the same terms and conditions resulting from this Offer, save only for the Rent. The Rent during the renewal period shall be the then fair market Rent for comparable premises while taking into consideration such tenant inducements as Free Rent, Landlord Improvement Allowances and other incentives offered by landlords at that time agreed between the parties, and failing such agreement as to such fair market rent, as determined by arbitration pursuant to the *Arbitration Act of Ontario*. To exercise this right, the Tenant shall give written notice to the Landlord no later than sixty (60) days prior to the date of expiry of the Term, otherwise this Option to Renew shall be deemed waived.

8. Repairs: Repairs to the parking lot, sidewalks, the exterior of the leased premises, the heating and cooling units, the plumbing and electrical panels, the exterior walls, roof and structural portions of the Leased Premises and Building that require repairs or replacement of a capital nature shall be the sole responsibility of the Landlord. The

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Tenant shall maintain the interior of the Leased Premises except for reasonable wear and tear and damage by fire, lightning, tempest and other casualty.

9. Alterations: After the Tenant takes possession of the Leased Premises, the Tenant at its sole cost and expense may make such alterations and improvements that the Tenant deems necessary for the conduct of its business in the Leased Premises, including the partitioning thereof, provided that no alterations shall be made to the structural portions of the Leased Premises without the consent of the Landlord, which consent shall not be unreasonably withheld. The Tenant shall obtain any permits and licenses required for any alterations.

10. Signs: The Tenant shall be entitled the exclusive right to place its name and logo on the exterior of the Building and on the surrounding grounds and parking lot of the Leased Premises and the Building throughout the Term of the Lease and any renewal period thereof and the Tenant shall have the exclusive use of the premises to display their signage and/or logo. The colour, size, style and exact location of the identification shall be mutually agreed to by both the Tenant and the Landlord, but the Landlord's approval shall not be unreasonably withheld or delayed and also all signage shall be subject to all applicable municipal by-laws and regulations for the Municipality of Whitewater Region with respect to such exterior Building identification. For clarity, neither other tenants nor any other organizations/companies shall be permitted to have any exterior signage or identity on the Building.

The costs for the design and installation including both materials and labour of the identification shall be at the sole risk and responsibility of the Tenant and there shall be no rent payable for the entire Term of the Lease for this identification.

11. Use: The Leased Premises shall be used for medical services, such as primary health care and health promotion services for adults, children or groups or any other related use as desired by the Tenant.

12. Lease: This Offer to Lease, upon unconditional acceptance by both the Tenant and the Landlord shall survive and act as the sole Lease Agreement between the Tenant and the Landlord. Hence, after unconditional acceptance of this Offer to Lease by both parties hereto, any further reference to a Lease between the parties shall be in reference to this document.

13. Title: The Landlord shall have good and marketable title and ownership of the Building and the Leased Premises therein and the right and authority to enter into a Lease with the Tenant.

14. Parking: The Landlord shall maintain grade level parking facilities within the grounds for at least 30 cars. All parking shall be free of charge to the Tenant during the entire Term of the Lease and any exercised option to renew periods thereof.

15. Assignment: The Tenant will have the right to sublet and assign the Leased Premises in whole or in part provided that the Tenant obtains the written consent of the Landlord.

The Landlord, however, grants the Tenant the right to assign part or all of the Leased Premises to an affiliated Ministry of Health organization without the Landlord's consent, provided the Landlord is provided with written notice from the Tenant.

16. Condition: This Offer is contingent on the Leased Premises complying with the zoning requirements for the required uses defined herein, failing which the Tenant at its option, may terminate this Offer by notice in writing to the Landlord, and upon such termination the this Offer shall be null and void and neither party shall be responsible to the other for any loss, costs, claims or expense.

17. Landlords Covenants:

- (a) Landlord covenants with the Tenant for quiet enjoyment
- (b) Landlord shall make available and maintain throughout the entire Lease Term, the existing access for patients and clients of the Tenant to the Leased Premises.

- (c) Landlord shall maintain the Building and premises, in good condition.
- (d) In the event of damage by catastrophe, including but not limited to fire, lightning, tempest, flood or explosion, all Rent and associated GST payments shall cease until the Leased Premises are rebuilt.

18. Liability: The Landlord is not liable for any injury, to the Tenant or its employees, clients or visitors while making use of the Leased Premises.

19. Termination: The Landlord may terminate this Offer to Lease/Lease and re-enter the Leased Premises if:

- (a) any instalment of Rent or any part thereof is in arrears by the Tenant for 60 days or more whether formally demanded or not, or
- (b) if the Tenant materially departs from the agreed use outlined in Clause 12 of this Offer to Lease.

20. Authorization: The Landlord and Tenant covenant that each of them has all the requisite power and possesses all licences, permits, consents and other rights necessary to enable each of them to enter into this Offer. Each party shall obtain all necessary building and other permits and licenses required for all work to be performed by it. All work performed by either party shall comply with the requirements of all municipal, provincial, federal and other governmental authorities.

21. No Relocation: The Landlord shall not have any right to relocate the Tenant from the Leased Premises prior to the expiry of the Lease Term or any exercised option to renew period.

22. Building and Leased Premises Access: The Tenant will be permitted access into the Building and Leased Premises twenty-four (24) hours a day, seven (7) days a week throughout the entire Lease Term and any renewal period that is exercised.

23. Non-Disturbance Agreement: Upon receiving written notice from the Tenant, the Landlord shall obtain from any existing holder of a mortgage, charge or hypothec, a non-disturbance agreement on the Mortgagee's standard form in favour of the Tenant whereby the Tenant's possession of the Leased Premises will not be interfered with throughout the entire Term of the Lease and any exercised renewal periods by any such holder, as long as the Tenant remains in good standing under the Lease.

24. No Removal and Restoration: The Leasehold Improvements shall immediately upon installation become the property of Landlord without compensation to Tenant. Furthermore, for clarity:

.1 Tenant shall not be required, at the end of the Term or exercised renewal period or earlier termination of the Lease, to remove all or part of the Leasehold Improvements nor restore the Leased Premises to the base building standard. For clarity, the Tenant shall be permitted to leave the Leased Premises and Leasehold Improvements in an "as is - where is" condition when they vacate the Leased Premises.

.2 Tenant shall repair and make good any damage to the Leased Premises or to the Building caused in the installation of Leasehold Improvements and Trade Fixtures.

25. Environmental Warranty – Landlord: The Landlord represents and warrants, to the best of its knowledge and belief, that the real property and the Building comply in all material respects with all applicable federal, provincial or local environmental, health and safety statutes and regulations, and that neither the real property nor the Building are subject to any judicial or administrative proceedings alleging the violation of any federal, provincial or local environmental or health and safety statutes or regulation. The Landlord has no knowledge of the existence, or the release into the environment, of any hazardous or toxic waste, substance and no other tenant, to the best of the Landlord's knowledge and belief, generates, transports, treats or disposes of hazardous waste or any Canadian federal, provincial or local equivalent. The Landlord is not aware of the existence of any hazardous waste or substance in or on the ground of the real property

and is not aware of the existence of any PCB's, urea formaldehyde, or asbestos in the Building.

26. Time of the Essence: Time is of the essence of this agreement with respect to the covenants contained herein.

27. Facsimile Acceptance: Acceptance of this Offer may be communicated by facsimile transmission of an accepted Offer or by delivery of such a facsimile without limiting other methods of communicating acceptance available to the parties.

28. Tenant Condition: This Offer to Lease shall be subject to the approval of the Executive Director of Lanark Health and Community Services.

29. Notices: All notices, demands and payments required or permitted to be given hereunder shall be in writing and may be delivered personally, sent by facsimile or may be forwarded by first class prepaid registered mail to the addresses set forth below. Any notice delivered or sent by courier or facsimile shall be deemed to have been given and received at the time of delivery. Any notice mailed as aforesaid shall be deemed to have been given and received on the expiration of four (4) business days after it is posted, addressed as follows:

to the Tenant at:

Lanark Health and Community Services
207 Robertson Drive
Lanark, ON K0G 1L0

Attention: Mr. John Jordan
Executive Director

Telephone: (613) 259-2182
Facsimile: (613) 259-5235

- and -

to the Landlord at:

The Whitewater Medical Centre Board and the Municipality of White Water Region

Attention: Mr. Ronald Lowe
P.O. Box 40
44 Main Street,
Cobden, Ont, K0J1K0

Telephone: (H) (613) 582 - 3676 (W) 613-646-2282
Fax: (613) 646-2283

30. Janitorial Services, Snow Plowing, Landscaping & Grass-Cutting: The Tenant shall be responsible for Janitorial Services in the Leased Premises. The Landlord at its own risk and expense, shall be solely responsible for all snow plowing, grass-cutting and landscaping at the Building for the entire Term of the Lease.

31. Easements: Tenant acknowledges that Landlord and any persons authorized by Landlord may install, maintain and repair pipes, wires and other conduits or facilities through the Leased Premises of the Building. Any such installing, maintaining and repairing shall be done as quickly as possible and in a professional manner that will minimize inconvenience to Tenant to the extent reasonably possible in the circumstances.

32. Overholding: If Tenant remains in possession of the Leased Premises following termination of the Lease by expiration of the Term or operation of the terms hereof, with or without objection by Landlord, and without any written agreement otherwise providing, Tenant shall be deemed to be a monthly tenant upon the same terms and

which shall be equal to One Hundred and Twenty-Five percent (125%) of the Rent payable for the lease year of the previous Term.

33. Insurance:

1.1 **Tenant's Insurance:** Tenant shall, at its sole cost and expense, take out and maintain in full force and effect at all times throughout the Term the following insurance:

.1 "All Risks" insurance upon property of every description and kind owned by Tenant, or for which Tenant is legally liable, or which is installed by or on behalf of Tenant, within the Leased Premises or on the Lands or Building, including, without limitation, stock in trade, furniture, equipment, partitions, Trade Fixtures and Leasehold Improvements, in an amount not less than the full replacement cost thereof from time to time;

.2 Commercial general liability and property damage insurance, including personal liability, contractual liability, tenants' legal liability, non-owned automobile liability and owners' and contractors' protective insurance coverage with respect to the Leased Premises and the Common Areas, which coverage shall include the business operations conducted by Tenant and any other person on the Leased Premises. Such policies shall be written on a comprehensive basis with coverage for any one occurrence or claim of not less than \$5,000,000.00 or such higher limits as Landlord or the Mortgagee may require from time to time;

.3 Business interruption insurance;

.4 Any form of insurance as Tenant, Landlord or the Mortgagee may reasonably require from time to time in amounts and for insurance risks against which a prudent tenant would protect itself.

1.2 **Policy Requirements:** Each policy of insurance taken out by Tenant in accordance with the Lease shall be taken out with insurers, and shall be in such form and on such terms as are satisfactory to Landlord, and each such policy shall name Landlord, any Mortgagee and the Manager and any others designated by Landlord as additional named insureds, as their respective interests may appear, and each of such policies shall contain, in form satisfactory to Landlord:

.1 the standard mortgage clause as required by the Mortgagee;

.2 a waiver by the insurer of any rights of subrogation or indemnity or any other claim over, to which such insurer might otherwise be entitled against Landlord, the Manager and their respective officers, directors, agents, employees or those for whom it is in law responsible;

.3 a severability of interests clause and a cross-liability clause, where applicable.

1.3 **Proof of Insurance:** Tenant shall provide to Landlord and the Mortgagee at the time of execution of the Lease and thereafter on demand, and from time to time, satisfactory evidence that the policies of insurance required to be maintained by Tenant in accordance with the Lease are in fact being maintained, which evidence shall be in the form of certificates of insurance, or if required by Landlord or the Mortgagee, certified copies of each such insurance policy.

1.4 **Damage to Leasehold Improvements:** In case of damage to the Leasehold Improvements, or any material part thereof, the proceeds of insurance in respect thereto shall be payable to Landlord, and such proceeds shall be released to Tenant (provided that Tenant is not in default hereunder) upon Tenant's written request for progress payments, at stages determined by a certificate of the Architect stating that repairs to each such stage have been satisfactorily completed free of liens by Tenant or by Tenant's contractors.

1.5 **Landlord's Insurance:** Landlord agrees to insure the Building and the machinery, boilers and equipment therein owned by Landlord against "All Risks"

of loss in such reasonable amounts as would be carried by a prudent owner of a comparable building in the Province of Ontario. Landlord shall also carry public liability and property damage insurance with respect to the operation of the Building, rental insurance and environmental insurance and any other forms of insurance as it or the Mortgagee may reasonably determine to be advisable.

34. Damage to Leased Premises: It is understood and agreed that, notwithstanding the other provisions of the Lease, should the Leased Premises at any time be partially or wholly destroyed or damaged by any cause whatsoever or should demolition of the Leased Premises be necessitated thereby or should the Leased Premises become unfit for occupancy by Tenant:

.1 subject as hereinafter provided in this section 36.1, Landlord shall, to the extent of the insurance proceeds available for reconstruction and actually received by Landlord from its insurers following an election by the Mortgagee to apply all or any portion of such insurance proceeds against the debt owing to the Mortgagee as the case may be, reconstruct the Leased Premises. Upon substantial completion of Landlord's Work, Landlord shall notify Tenant, and Tenant shall forthwith commence and expeditiously complete reconstruction and repair of the Leased Premises, Leasehold Improvements and Trade Fixtures;

.2 Rent shall not abate unless the Leased Premises are rendered wholly or partially unfit for occupancy by such occurrence and in such event Rent, as of the date of such occurrence shall abate proportionately as to the portion of the Leased Premises rendered unfit for occupancy, but only for the period and to the extent that proceeds of rental insurance are actually received by Landlord, or if earlier, only until 30 days following receipt by Tenant of Landlord's notice given to Tenant, at which time Rent shall recommence.

35. Damage to the Building: It is understood and agreed that, notwithstanding the other provisions of the Lease, should the Building at any time be partially or wholly destroyed or damaged by any cause whatsoever, or should demolition of the Building, or any part thereof, be necessitated thereby:

.1 Subject as hereinafter provided in this section 37.1, Landlord shall, to the extent of the insurance proceeds available for reconstruction and actually received by Landlord from its insurers following any election by the Mortgagee to apply all or any portion of such insurance proceeds against the debt owing to the Mortgagee as the case may be, expeditiously reconstruct and repair the Building, and to the extent necessary, the Leased Premises;

.2 Rent shall not abate unless the Leased Premises are rendered wholly or partially unfit for occupancy by such occurrence, and in such event, Rent, as of the date of such occurrence shall abate proportionately as to the portion of the Leased Premises rendered unfit for occupancy, but only for the period and to the extent that proceeds of rental insurance are actually received by Landlord, or if earlier, only until 30 days following receipt by Tenant of Landlord's notice given to Tenant at which time Rent shall recommence.

36. Expropriation: Landlord and Tenant shall co-operate in respect of any expropriation of all or any part of the Leased Premises or the Lands and Building so that each party may receive the maximum award to which it is entitled in law. If the whole or any part of the Leased Premises or of the Lands and Building are expropriated, as between the parties hereto, their respective rights and obligations under the Lease shall continue until the day on which the expropriating authority takes possession thereof.

37. Registration: Tenant shall not register the Lease on the title to the Lands; however, may register a Notice of Lease on title to the Lands, at its sole cost, provided such Notice of Lease shall describe only the parties, the Leased Premises, the Term of the Lease, and any renewals. Such Notice of Lease shall be prepared by Tenant's solicitors, and shall be subject to the prior written approval of Landlord and its solicitors, and shall be registered at Tenant's expense. Upon expiry or termination of the Lease, Tenant shall forthwith remove or discharge from registration any such Notice of Lease.

38. Legal Description: The Legal description of the Building is as follows:

Part Lot7, Concession V EML, Municipality of Whitewater Region
Plan RP49R-6040 pt 2

39. Acceptance: The execution of this Offer by the Tenant shall constitute an Offer to the Landlord for acceptance. If the Landlord fails to agree to and execute and deliver this agreement to the Tenant on or before the ___ day of _____, 2010, this agreement shall be null and void and neither party shall be responsible to the other for any loss, costs, claims or expense.

Dated at Lanark, Ontario, this 26th day of March, 2010.

Per: [Signature] Authorised signing officer for LHCS

Per: Mary & Libman Authorised signing officer for LHCS

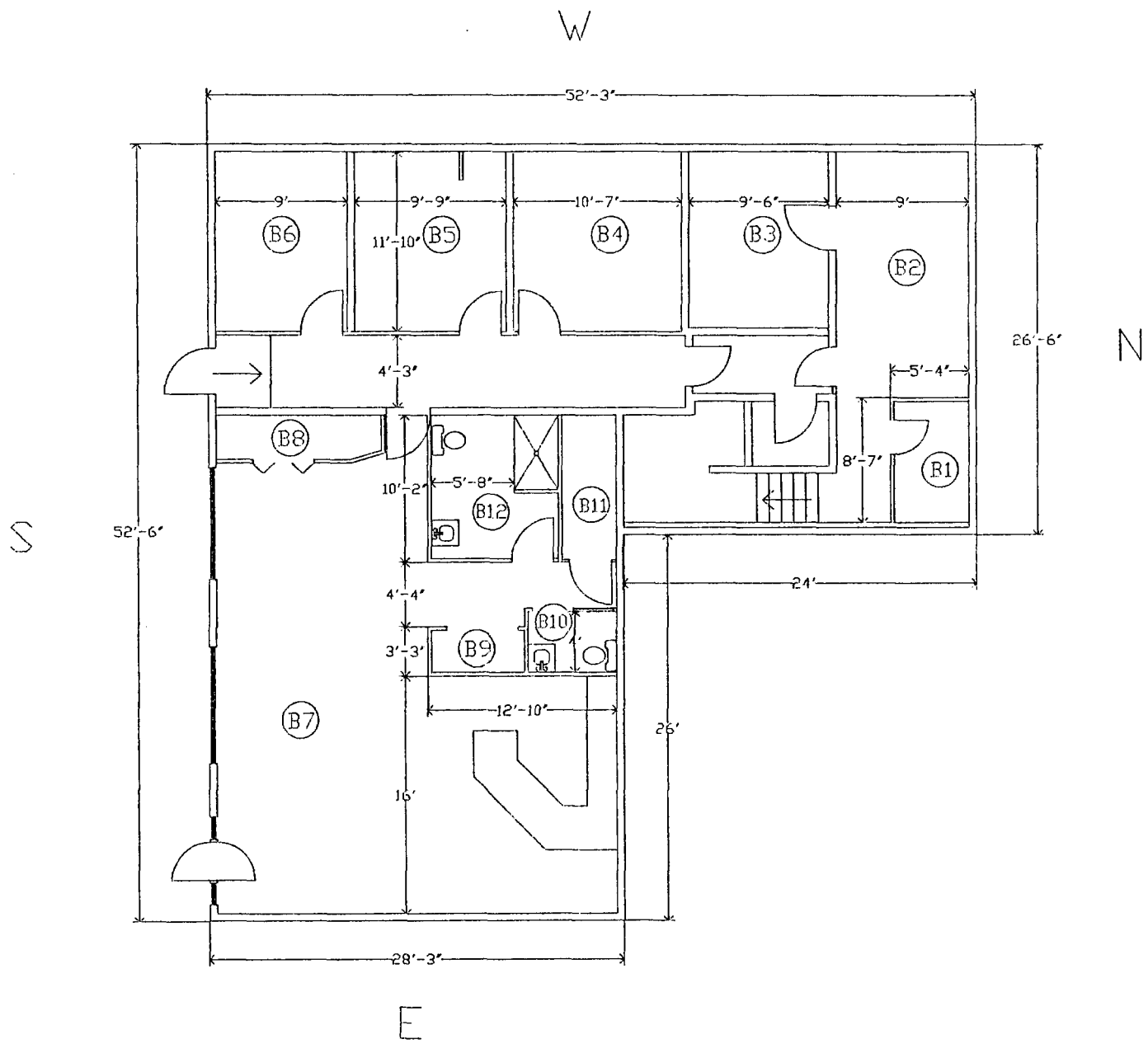
The Landlord hereby accepts the above Offer to Lease this 4 day of MARCH, 2010.

Per: [Signature] Authorised signing officer for WMCB

Per: Richard Yokala Authorised signing officer for WMCB

Per: [Signature] Authorised signing officer for MWR

Per: [Signature] Authorised signing officer for MWR



WHITEWATER MEDICAL CENTRE
BEACHBURG

M *P*

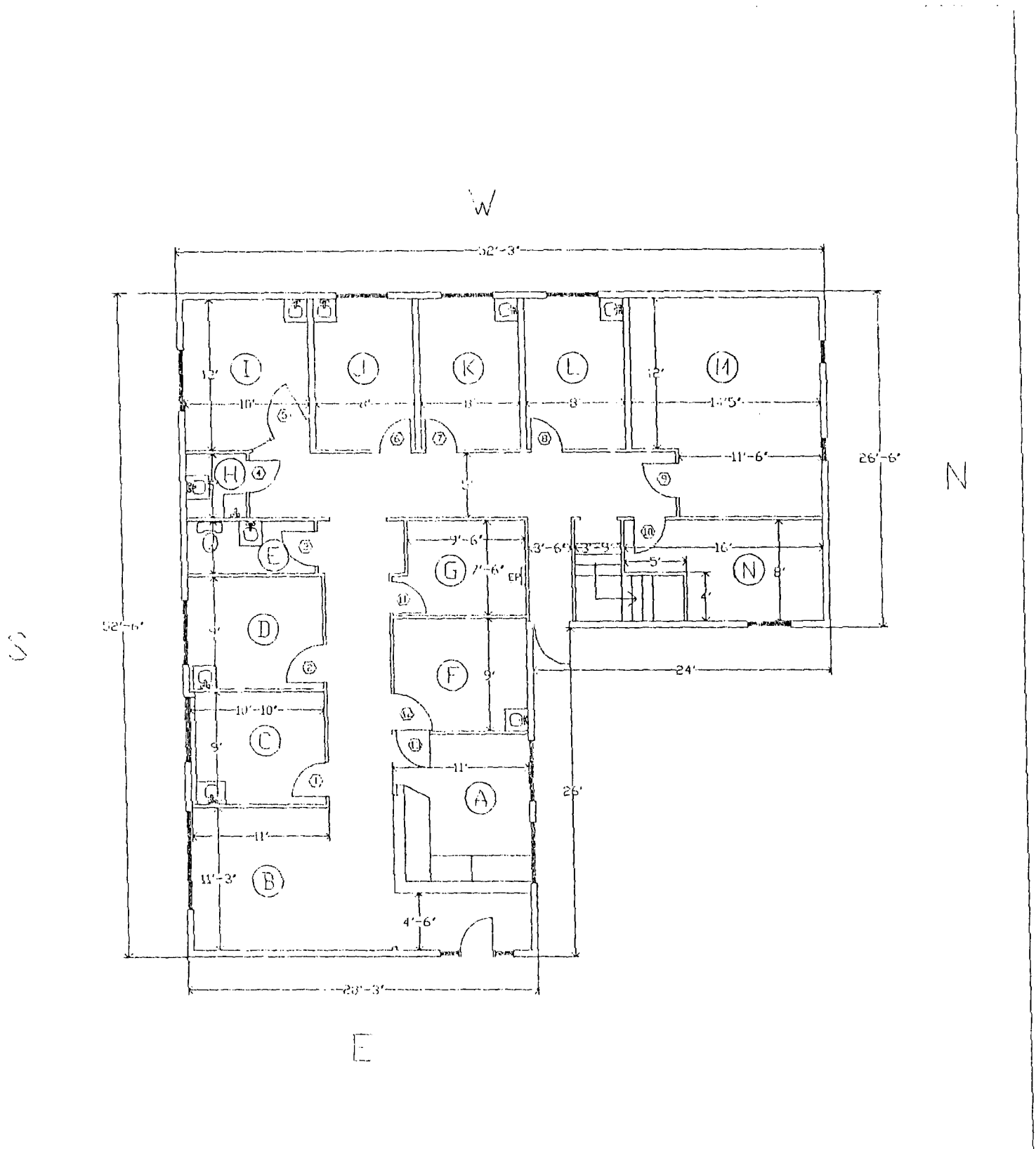
PLAN 02 - AS/IS

MIKE CARVER, P.ENG (RET'D)
MARIELLE MCLAUGHLIN, CADR, ARCHITECTURAL TECH

JANUARY 2005

Attached hereto and forming part of the Offer to Lease between **The Whitewater Medical Centre Board (WMCB) and the Municipality of Whitewater Region (MWR)** (the "Landlord") and **Lanark Health and Community Services** (the "Tenant") to be initialled by both parties for identification purposes.

SCHEDULE "A" – Floor Plans



WHITEWATER MEDICAL CENTRE
BEACHBURG

PLAN 01 – AS/IS

MIKE CARVER, P.L.M. (RET'D)
MARIELLE MCLAUGHLIN, C.A.D.D. ARCHITECTURAL TECH

JANUARY 2005