

**Fill in this information to identify the case:**

Debtor 1 Amory Regional Medical Center, Inc.

Debtor 2 \_\_\_\_\_  
(Spouse, if filing)

United States Bankruptcy Court for the: Middle District of Tennessee

Case number 3:18-bk-05675

## Official Form 410

## Proof of Claim

04/16

**Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.**

**Filers must leave out or redact** information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

**Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.**

**Part 1:** Identify the Claim

1. <b>Who is the current creditor?</b>	<u>Drayer Physical Therapy Institute, LLC, d/b/a Elite Physical Therapy</u> Name of the current creditor (the person or entity to be paid for this claim)		
	Other names the creditor used with the debtor _____		
2. <b>Has this claim been acquired from someone else?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____		
3. <b>Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>  <u>Justin Sveadas, Esq.</u> Name <u>633 Chestnut St., Ste. 1900</u> Number Street <u>Chattanooga</u> <u>TN</u> <u>37450</u> City State ZIP Code  Contact phone <u>(423) 209-4184</u> Contact email <u>jsveadas@bakerdonelson.com</u>	<b>Where should payments to the creditor be sent? (if different)</b>  <u>c/o Justin Sveadas</u> Name <u>633 Chestnut St., Ste. 1900</u> Number Street <u>Chattanooga</u> <u>TN</u> <u>37450</u> City State ZIP Code  Contact phone <u>(423) 209-4184</u> Contact email <u>jsveadas@bakerdonelson.com</u>	
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. <b>Does this claim amend one already filed?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY		
5. <b>Do you know if anyone else has filed a proof of claim for this claim?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____		

**Part 2:** Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☒ No  
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_

7. How much is the claim? \$ unliquidated - to be determined. Does this amount include interest or other charges?  
☒ No  
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
Damages for Debtor's breach of lease of property

9. Is all or part of the claim secured? ☒ No  
☐ Yes. The claim is secured by a lien on property.
- Nature of property:**  
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
☐ Motor vehicle  
☐ Other. Describe: \_\_\_\_\_
- Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
- Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amounts should match the amount in line 7.)
- Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_
- Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
☐ Fixed  
☐ Variable

10. Is this claim based on a lease? ☐ No  
☒ Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff? ☒ No  
☐ Yes. Identify the property: \_\_\_\_\_

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check one:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ \_\_\_\_\_

☐ Up to \$2,850\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ \_\_\_\_\_

☐ Wages, salaries, or commissions (up to \$12,850\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ \_\_\_\_\_

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ \_\_\_\_\_

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ \_\_\_\_\_

☐ Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 01/18/2019  
MM / DD / YYYY

/s/ Justin Sveadas

Signature

Print the name of the person who is completing and signing this claim:

Name Justin Sveadas  
First name Middle name Last name

Title Attorney for Creditor Drayer Physical Therapy Institute, LLC

Company \_\_\_\_\_  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 633 Chestnut St., Suite 1900  
Number Street  
Chattanooga TN 37450  
City State ZIP Code

Contact phone (423) 209-4184 Email jsveadas@bakerdonelson.com

# EXHIBIT

**Exhibit to Proof of Claim Filed by  
Drayer Physical Therapy Institute, LLC, d/b/a Elite Physical Therapy  
Debtor: Amory Regional Medical Center, Inc.  
Case No.: 3:18-bk-05675**

1. Medical Office Building Lease dated May 1, 2018, between Amory Regional Medical Center, Inc. as Landlord and Drayer Physical Therapy Institute, LLC, d/b/a Elite Physical Therapy as Tenant

1

### **MEDICAL OFFICE BUILDING LEASE**

(Part-time and full-time lease)

THIS MEDICAL OFFICE BUILDING LEASE (this "Lease") is made and entered into as of this 1<sup>st</sup> day of May, 2018, between AMORY REGIONAL MEDICAL CENTER, INC., a Tennessee nonprofit corporation doing business as GILMORE MEMORIAL HOSPITAL ("Landlord"), and DRAYER PHYSICAL THERAPY INSTITUTE, LLC, a Pennsylvania limited liability company doing business as ELITE PHYSICAL THERAPY ("Tenant"). This Lease replaces and supersedes all previous agreements between the parties (or their predecessors in interest) for the lease of the Premises as hereinafter described and the parties agree such previous agreements are hereby terminated.

**1. Premises.** Landlord does hereby rent and lease unto Tenant, and Tenant does hereby accept from Landlord Suite A (the "Exclusive Use Premises"), on a full-time basis, and the Therapy Pool, on a part-time basis, containing approximately 5,684 rentable square feet and 306 rentable square feet, respectively, (collectively, the "Premises") and located in the Sports and Fitness Pavilion and Physical Therapy (the "Building") located at 1111 Earl Frye Boulevard, Amory, MS 38821, as shown on Exhibit A, attached hereto.

**2. Term.** The term of this Lease shall commence on May 1, 2018 (the "Commencement Date") and shall terminate on April 30, 2021 (the "Expiration Date") (the "Initial Term"). This Lease shall automatically renew for additional and consecutive periods of thirty-six (36) months each following the Initial Term (each, a "Renewal Term") upon the same terms and conditions as contained herein; provided, however, that during any Renewal Term, either party may terminate this Agreement at any time upon one-hundred eighty (180) days' prior written notice to the other party. As used herein, "Term" shall mean the Initial Term and any Renewal Term. If this Lease is terminated during the first twelve months of the Initial Term for any reason, the parties shall not enter into any similar arrangement for the remainder of such initial twelve-month period.

**3. Occupancy Period.** During the Term, Tenant may use and occupy the Exclusive Use Premises exclusively on a full-time basis, and Tenant may use and occupy the Therapy Pool, exclusively, every Monday, Wednesday, and Friday from 8:00 a.m. to 12:00 p.m.

**4. Rent.** The rental payments ("Rent") for the Premises shall be payable in advance without notice, demand, setoff, or deduction, except as otherwise expressly set forth elsewhere herein, during the Initial Term. Annual Rent shall be One Hundred One Thousand Eight Hundred Fifty-Seven and 80/100 Dollars (\$101,857.80), payable in equal monthly installments of Eight Thousand Four Hundred Eighty-Eight and 15/100 Dollars (\$8,488.15) each during the Initial Term of the Lease. The allocation of Rent between Suite A and the Therapy Pool of the Premises is outlined on Exhibit B, attached hereto and incorporated herein by this reference. The first installment of Rent shall be due on the Commencement Date, and thereafter, such monthly installments of Rent shall be due on or before the first day of each month. All Rent payments shall be paid to Landlord or its designee at such address as Landlord may designate from time to time. If Tenant occupies the Premises for a fraction of a month during the Term, Rent shall be prorated.

Upon the commencement of each Renewal Term hereof, for the purpose of ensuring Rent paid by Tenant hereunder reflects fair market value, Landlord may increase the Rent due during such Renewal Term to an amount in proportion to the increase, if any, of the 12-month percent change of the Consumer Price Index for All Urban Consumers, South Region (CPI) as published for the last full calendar year immediately preceding the commencement of the Renewal Term. In such event, Landlord shall notify Tenant in writing of the increased Rent at least sixty (60) days prior to the commencement of a Renewal Term. Such increase shall be binding on Tenant, provided, however, Tenant shall still be entitled to exercise its right to terminate

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the Lease during a Renewal Term, as contained in Section 2 hereof. The parties shall execute an amendment to this Lease memorializing each Renewal Term and the Rent to be paid during such period.

**5. Late Charges.** If any Rent or other sum due from Tenant is not received by Landlord within ten (10) days after its due date (the "**Late Payment Date**"), then Tenant shall, upon demand, pay to Landlord a late charge equal to interest on the unpaid balance of the amount due at the rate of ten percent (10%) per annum, computed from the Late Payment Date through the date Tenant makes payment of such overdue amount. In any event, the interest rate charged shall not exceed the maximum rate allowed by law. In addition, Tenant shall pay a one-time late charge of \$50.00 for each such overdue payment. Tenant acknowledges that such late charges are reasonable and calculated to compensate Landlord for additional expenses incurred by Landlord by reason of Tenant's failure to timely pay all amounts due under this Agreement. Acceptance of such late charges by Landlord shall in no event constitute a waiver of any default or breach with respect to such overdue amount, nor prevent the exercise of any other rights and remedies granted to Landlord hereunder or provided at law.

**6. Use.**

(a) The Premises hereunder shall be used and occupied by Tenant for the purpose of engaging in the provision of outpatient rehabilitation services, including, but not limited to, physical therapy, occupational therapy, vestibular therapy, and speech therapy and other related activities incidental thereto allowed under the law. Tenant's use of the Premises shall at all times be in compliance with all laws, ordinances, orders, regulations, and zoning classifications of any lawful governmental authority, agency, or other public regulatory authority with jurisdiction; provided, however, Landlord hereby represents and warrants that Tenant's permitted use of the Premises does not violate any prohibition or restriction on use applicable to the Premises as may be found in the lease or occupancy agreement of any other tenant or occupant of the Building or as may be found in any declaration or easement agreement or other similar-type agreement or document applicable to the Building or the Premises. Landlord's management and use of the Premises and Building shall at all times be in compliance with all laws, ordinances, orders, regulations, and zoning classifications of any lawful governmental authority, agency, or other public regulatory authority with jurisdiction.

(b) Tenant agrees to comply with all applicable laws and regulations. Landlord agrees to comply with all applicable laws and regulations. Notwithstanding the foregoing, the provision or operation of the services identified in Exhibit C shall not be permitted on the Premises (collectively, the "**Prohibited Uses**"), and Tenant shall not use the Premises or permit the Premises to be used for any Prohibited Use.

**7. Hazardous Materials.** As used herein, "**Hazardous Materials**" means any hazardous or toxic substance, material or waste, regulated or listed pursuant to any law that applies to the Building and/or the land on which the Building is located, and any other toxic material and medical waste. Tenant shall not cause or permit by its employees, agents, or contractors, or patients the use, generation, storage, treatment, or disposal in, on or about the Premises of any Hazardous Material. Notwithstanding the foregoing, Tenant may keep or use the types of Hazardous Materials on the Premises typically used in medical offices of providers in the same medical specialty practice if Tenant keeps or uses similar quantities of such Hazardous Materials and such Hazardous Materials are kept and used in compliance with all applicable laws. In the event Tenant does cause or permit by its employees, agents, or contractors, or patients the use, generation, storage, treatment or disposal in, on, or about the Premises of Hazardous Substances, Tenant agrees to indemnify and save harmless Landlord from any loss, damage, and expense of any type or nature, including reasonable attorney fees of Landlord, in relation to any environmental non-compliance by Tenant. Tenant further agrees to comply with all local, state, and federal laws, rules, and regulations concerning medical waste and all other environmental matters. Landlord agrees to comply with all local, state, and federal laws,

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rules, and regulations concerning medical waste and all other environmental matters.

**8. Telephone and Internet Access.** Landlord shall provide standard telephone services and Internet access. The cost of such services is included in the Rent.

**9. Utilities and Janitorial Services.** Landlord shall provide customary utilities for Tenant's use of the Premises, such as electricity, water, sewage, and HVAC service. Landlord shall also provide janitorial services at the Premises and standard pool chemical management services at the Therapy Pool. The cost of the foregoing utility and janitorial services is included in Rent. Landlord shall not be responsible for any interruption or cessation of utilities to the Premises or for any damage to Tenant's business, equipment, personal property, or Premises caused by any such interruption or cessation, except as expressly provided hereafter in this Section 9. All such services shall be provided in a manner that is consistent with those services provided in comparable medical office buildings of similar size and age located within the local community. In the event Tenant requires or utilizes more water or electricity than is considered commercially reasonable, Landlord may require Tenant to pay as additional rent, the cost incurred as a result of such additional usage ("Surcharge"). Landlord reserves the privilege of stopping any or all utility services in case of accident or breakdown or for the purposes of making alterations, repairs, and improvements, provided such stoppage is temporary and Landlord makes commercially reasonable efforts to minimize disruptions to Tenant's operations in the Premises. Other than failure to make payment when due if it is Landlord's obligation, Landlord shall not be responsible or liable in any way whatsoever for any damage or injury caused by the quality, quantity, impairment, interruption, stoppage, or other interference with any utility service.

**10. Access.** Landlord and its agents and representatives shall have the right to enter the Premises (i) upon reasonable notice for the purpose of making repairs in accord with Landlord's obligation under this Lease or exhibiting the Premises to prospective purchasers, lenders, or tenants, and (ii) without prior notice in the event of an emergency.

**11. As-Is.** By taking possession of the Premises, Tenant shall be deemed to have accepted the Premises in its as-is condition.

**12. Repairs by Landlord.** Landlord shall not be required, after possession of the Premises has been delivered to Tenant, to make any repairs or improvements to the Premises except as provided herein. Landlord shall be responsible for repairs and customary maintenance of the common areas of the Building and parking lot, the Therapy Pool and its improvements and appurtenances (including without limitation proper pool chemical management and pool deck janitorial services), and the HVAC system, wiring, plumbing, roof, exterior walls and other structural and mechanical repairs to the Building, including, without limitation, those portions exclusively serving the Exclusive Use Premises, provided such repairs are not occasioned by Tenant, Tenant's patients, or anyone in the employ or control of Tenant.

**13. Repairs by Tenant.** Tenant shall, at its own cost and expense, maintain the Premises in a neat and clean, first class condition, including all necessary repairs and replacements other than those required of Landlord herein. Tenant shall further, at its own cost and expense, promptly, and in a good and workmanlike manner, repair or restore any damage or injury to all or any part of the Premises caused by Tenant or Tenant's agents, employees, patients, contractors, or anyone else in the employ or control of Tenant, including but not limited to any repairs or replacements necessitated by (i) the construction or installation of improvements to the Premises by or at the direction of Tenant, (ii) the installation, use, or operation of Tenant's equipment and personal property upon the Premises, (iii) any breach of this Lease by Tenant to maintain the Premises, (iv) any misuse of the Premises or Building or any part thereof on the part of Tenant or Tenant's agents, employees, patients, contractors, or anyone else in the employ or control of Tenant, (v) any willful or negligent act or omission of Tenant or Tenant's employee, agent, patient, contractor, or anyone else in the employ or control of Tenant, or (vi) the moving of any property into or out of the

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Premises by Tenant or Tenant's employee, agent, patient, contractor, or anyone else in the employ or control of Tenant. If Tenant fails to make such repairs or replacements, and the Landlord makes the necessary repairs or replacements, the costs of such repairs or replacements shall be charged to Tenant and shall become due and payable by Tenant with the monthly installment of Rent next due hereunder.

**14. Alterations.** Any alterations, additions, or improvements shall be made at the sole expense of Tenant after prior written consent by Landlord, which such approval shall not be unreasonably withheld, conditioned, or delayed. All such alterations, additions, or improvements which may be made upon the Premises by Landlord or Tenant (except unattached trade fixtures and office furniture and equipment owned by Tenant) shall remain upon and be surrendered with the Premises as a part thereof at the expiration or earlier termination of this Lease. Landlord, however, reserves the right to require Tenant to remove any and all such alterations, additions, or improvements made by or at the direction of Tenant and restore the Premises to their original condition by giving notice of such election to the Tenant within ten (10) days after Tenant surrenders possession of the Premises.

**15. Insurance.** Tenant shall provide and keep in force at its sole cost and expense on or before the commencement date of this Lease and shall keep in force during the Term the insurance specified below:

(a) Insurance covering loss or damage to Tenant's personal property in the Premises and all other equipment or leasehold improvements to the extent made by Tenant in or on the Premises against all perils and risks including fire and extended coverage, vandalism, and malicious mischief in an amount equal to the full replacement costs of such property and same shall name Landlord as an additional insured as its interests may appear under the applicable policy; and

(b) Comprehensive general liability insurance, naming Landlord as additional insured, relating to the Premises and its appurtenances and improvements on an occurrence basis with minimum levels of One Hundred Thousand Dollars (\$100,000.00) for property damage claims and One Million Dollars (\$1,000,000.00) per occurrence for personal injury or death.

Tenant shall deliver to Landlord, on the Commencement Date of this Lease, and thereafter at least fifteen (15) days prior to the expiration of any such policy, a certificate of all such policies procured by Tenant in compliance with its obligations hereunder. All of the aforesaid insurance shall be issued in the name of Tenant and Landlord (as hereinabove described) and shall be written by one or more responsible insurance companies licensed to do business in the State of Mississippi; all such insurance shall contain endorsements that: (1) such insurance may not be cancelled or amended except upon thirty (30) days' written notice by registered mail to Landlord (and its designee(s)) by the insurance company; and (2) Tenant shall be solely responsible for the payments of premiums and that Landlord shall not be required to pay any premiums for such insurance.

Landlord shall provide and keep in force at its sole cost and expense on or before the commencement date of this Lease and shall keep in force during the Term insurance as follows: (i) Insurance covering loss or damage to the Building against all perils and risks including fire and extended coverage, vandalism, and malicious mischief in an amount equal to the full replacement costs of such property; and (ii) Comprehensive general liability insurance with respect to the Building in the amounts of \$100,000.00 for property damage per occurrence, and \$1,000,000.00 per occurrence for personal injury or death.

**16. Casualty and Condemnation.** In the event that the Premises shall be damaged or destroyed by fire or other casualty and (a) the Premises are thereby rendered wholly unsuitable for its intended use, or (b) Landlord determines not to rebuild or repair due to the cost of repair or restoration as estimated by Landlord's contractor or consultant, or any other reason, then in either such event, Landlord or Tenant may terminate this Lease with written notice of termination within thirty (30) days of the occurrence of such damage, and upon

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giving notice, this Lease shall terminate as of the date of the occurrence and prepaid Rent shall be refunded to Tenant.

**17. Acceptance and Waiver.** Landlord and Tenant on behalf of themselves and all others claiming under them, including any insurer, waive all claims against each other, including all rights of subrogation, for loss or damage to their respective property (including, but not limited to, the Premises and the Building) arising from fire, smoke damage, windstorm, hail, vandalism, theft, malicious mischief, and any of the other perils normally insured against in an "all risk" of physical loss policy, regardless of whether insurance against those perils is in effect with respect to such party's property and regardless of the negligence of either party. Upon its actual knowledge thereof, Tenant shall give prompt notice to Landlord in case of fire or accidents in the Premises or in the Building or of defects therein or in fixtures or equipment. Tenant hereby acknowledges that Landlord shall not be liable for any interruption to Tenant's business for any cause whatsoever, except as may be expressly provided for in Section 9 hereof, and that Tenant shall obtain business interruption insurance coverage should Tenant desire to provide coverage for such risk.

Landlord shall not be liable to the Tenant, its agents, employees, guests or invitees (and, if Tenant is a corporation, its officers, agents, employees, guests or invitees) for any damage caused to any of them due to the Building or any part or appurtenances thereof being improperly constructed or being or becoming out of repair, or arising from the leaking of gas, water, sewer or steam pipes, or from electricity. Tenant, by moving into the Exclusive Use Premises and occupying the Therapy Pool during the Term and taking possession thereof, shall be held to have accepted the Premises as suitable for the purposes for which the same are leased, and shall be held to have accepted the Building and every appurtenance thereof, and Tenant by said act waives any and all defects therein. However, the waivers in this paragraph shall not apply to any damages or injury caused by or resulting from the gross negligence or willful misconduct of Landlord or its agents, contractors, or employees, nor shall the foregoing obviate Landlord's repair, maintenance, and restoration obligations hereunder.

**18. Default.** In the event that Tenant shall not pay the Rent within five (5) days after same becomes due, or shall violate or fail to perform any of the covenants, agreements, or conditions of this Lease, or shall abandon the Exclusive Use Premises, or change its permitted use of the Premises from the purpose provided herein, or shall violate (or fail to comply with) any laws, ordinances, or regulations applicable to the use and occupancy of the Premises, Landlord may provide written notice of the failure or violation. After receipt of the notice, Tenant shall have five (5) days to cure a default in Rent and thirty (30) days, or a reasonable time (not to exceed ninety (90) days), to cure such other default(s) under the Lease. If Tenant fails to cure such default(s) within the time allowed, Landlord may, at its option, immediately terminate this Lease as though the term thereof had expired, by delivering or mailing a written notice addressed to Tenant at the Premises, which shall be immediately binding upon Tenant; and Landlord, by itself or its agents, may re-enter said Premises by summary proceedings, take possession thereof, and remove all persons and property therefrom, and Tenant shall not thereby be released from liability for all Rent due hereunder prior to such termination or from the payment of damages for the breach of this Lease by Tenant, which damages shall include Landlord's costs in reletting the Premises, including without limitation, brokers' commissions, expenses of remodeling the Premises required by reletting, and reasonable attorneys' fees incurred in connection with recovering possession of the Premises, recovering Rent, or otherwise enforcing its rights hereunder.

**19. Abandoned Property.** Upon termination of this Lease for any reason, if Tenant leaves any of its property on the Premises ("Abandoned Property") and fails to remove the Abandoned Property after thirty (30) days' written notice from Landlord, Tenant shall be deemed to have abandoned the Abandoned Property, and Landlord shall have the right to sell the same at a public or private sale or to otherwise dispose of the Abandoned Property, without incurring any liability to Tenant to account for the proceeds thereof.

**20. Compliance with Rules and Regulations.** Tenant shall comply with the Rules and Regulations set

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forth in Exhibit D, attached hereto, and such other reasonable, non-discriminatory rules and regulations as Landlord may from time to time establish as amended. Landlord shall not be liable to Tenant for violation of any such Rules and Regulations, or for the breach of any covenant or condition in any lease by any other tenant in the Building.

**21. Surrender of Premises.** Whenever under the terms hereof Landlord is entitled to possession of the Premises, Tenant at once shall surrender the Premises and the keys thereto to Landlord in the same condition as at the commencement of the Term hereof, natural wear and tear and damage by taking, casualty excepted, and Tenant shall leave the Premises broom-clean, provided, however, the foregoing surrender obligations being subject to any maintenance, repair, and restoration obligations of Landlord contained elsewhere herein. If Tenant is not then in default, Tenant shall have the right prior to said termination to remove any equipment, furniture, trade fixtures, or other personal property placed in the Premises by Tenant, provided that Tenant promptly repairs any damage to the Premises caused by such removal. Landlord may forthwith re-enter the Premises and remove all persons and effects therefrom, using such force as may be necessary without being guilty of forcible entry, detainer, trespass or other tort. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the Term of this Lease.

**22. Partial Payment.** No payment by Tenant or acceptance by Landlord of an amount less than the Rent herein stipulated shall be deemed a waiver of any other Rent due. No partial payment or endorsement on any check or any letter accompanying such payment of Rent shall be deemed an accord and satisfaction, but Landlord may accept such payment without prejudice to Landlord's right to collect the balance of any Rent due under the terms of this Lease or any late charge assessed against Tenant hereunder.

**23. Indemnity.** Tenant shall indemnify and hold Landlord and its officers, directors, agents, and employees, as applicable, harmless from and against any and all claims, actions, liabilities, and expenses (including costs of judgments, settlements, court costs and attorneys' fees regardless of the outcome of such claim or action) arising from or related to (a) any matter arising out of events that occur in the Exclusive Use Premises, regardless of the cause, unless covered by Landlord's indemnity contained herein this Section 23; (b) any willful or negligent act or omission of Tenant, or of Tenant's agents, employees, contractors, or patients; (c) any breach or default by Tenant in the performance of its obligations under this Lease; and/or (d) the use, storage, generation, treatment, abatement, removal or disposal of any Hazardous Materials (including medical wastes) by Tenant on the Premises, except to the extent such claims, actions, liabilities, or expenses were caused by the negligence or willful misconduct of Landlord, its agents, employees, or contractors. In the event any action or proceeding shall be brought against Landlord by reason of any such indemnified claim, Tenant shall defend the same at Tenant's expense, by counsel reasonably satisfactory to Landlord. Landlord shall indemnify and hold Tenant and its officers, directors, agents, and employees, as applicable, harmless from and against any and all claims, actions, liabilities, and expenses (including costs of judgments, settlements, court costs and attorneys' fees regardless of the outcome of such claim or action) arising from or related to (a) any willful or negligent act or omission of Landlord, or of Landlord's agents, employees, or contractors; (b) any breach or default by Landlord in the performance of its obligations under this Lease; and/or (c) the use, storage, generation, treatment, abatement, removal or disposal of any Hazardous Materials (including medical wastes) by Landlord on the Premises and Building, except to the extent such claims, actions, liabilities, or expenses were caused by the negligence or willful misconduct of Tenant, its agents, employees, contractors, or invitees (but only to the extent such invitees are reasonably within Tenant's control). In the event any action or proceeding shall be brought against Tenant by reason of any such indemnified claim, Landlord shall defend the same at Landlord's expense, by counsel reasonably satisfactory to Tenant.

**24. Signs.** No signs or advertisements in or upon any part of the Premises will be permitted, unless approved by Landlord.

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25. **Quiet Enjoyment.** Tenant, upon payment in full of the required Rent and full performance of the terms, conditions, covenants and agreements contained in this Lease, shall peaceably and quietly have, hold, and enjoy the Premises during the Term hereof. Landlord represents and warrants that (i) as of the date hereof it has the right to lease the Building and Premises to Tenant; and (ii) it has obtained all consents necessary for it to enter into this Lease.

26. **Estoppel Certificate.** Within ten (10) days following receipt of Landlord's written request, Tenant shall deliver, executed in recordable form, a declaration to any person designated by Landlord, (a) ratifying this Lease; (b) stating the Commencement Date and Expiration Date; and (c) certifying (i) that this Lease is in full force and effect and has not been assigned or modified (except as shall be stated); (ii) that Landlord is not in default hereunder (stating exceptions, if any); (iii) that no defenses, credits, or offsets against the enforcement of this Lease by Landlord exist (or stating those claimed); (iv) the sum of advance Rent, if any, paid by Tenant and the date to which Rent has been paid; and (v) such other information as Landlord reasonably requires. Persons receiving such statements of Tenant shall be entitled to rely upon them.

27. **Subordination.** Tenant's rights under this Lease are, and will remain, subordinate to the operation and effect of (a) any mortgage or Deed of Trust now or hereafter placed upon any part of the Premises or any renewal, modification, consolidation, replacement, or extension of any mortgage or Deed of Trust, unless the mortgagee elects otherwise; (b) any collateral assignment by Landlord to any third party of any of Landlord's rights under this Lease as security for any liability or indebtedness of Landlord; and (c) any ground or underlying lease which may now or hereafter be in effect regarding the Building or any component thereof; provided, however, upon foreclosure of such mortgage or Deed of Trust, secured interest, or ground or underlying Lease, to the extent within Landlord's control or otherwise provided for in a separate agreement between Tenant and such third party, Tenant's possession of the Premises shall not be disturbed so long as Tenant is not in default hereunder beyond any applicable notice and cure period. Upon request, Tenant shall execute a Certificate, reasonably acceptable to Tenant, confirming this subordination.

28. **Access.** Tenant shall permit Landlord and its agents to enter the Premises at all reasonable times, for the purpose of inspecting same, showing the Premises to prospective Tenants, or exercising its rights under this Lease; provided Landlord provides Tenant reasonable notice prior to entering the Exclusive Use Premises. Notwithstanding anything to the contrary contained elsewhere herein, Landlord shall have absolutely no right to access, use or disclose any protected health information ("PHI") or electronic protected health information ("ePHI") about any patient of Tenant. In the event any medical records or documents containing PHI or ePHI are within view of the Landlord or its agents, employees, or contractors, such Landlord party shall not review, access, attempt to access or look at such documents and PHI or ePHI under any circumstances.

29. **Damage or Theft of Personal Property.** All personal property brought into the Premises shall be at the risk of the Tenant only, and Landlord shall not be liable for theft thereof or any damage thereto occasioned by any acts of co-tenants, or other occupants of the Building, or any other person, except, with respect to damage to the Premises, as may be occasioned by the gross negligence or willful act of the Landlord, its employees, and agents.

30. **Assignment.** This Lease may not be assigned by Tenant or the Premises sublet without the prior written consent of Landlord. The consent by Landlord to any assignment or subletting shall not be construed as relieving Tenant from obtaining the express written consent of Landlord to any further assignment or subletting or as releasing Tenant from any liability or obligation hereunder whether or not then accrued; provided, however, except in the event of a Transfer as of Right, original Tenant shall be released from any and all liability and obligations of tenant accruing after the expiration of the then-current term during which an assignment by Tenant of its interest in this Lease occurs. Notwithstanding anything to the contrary, Tenant may, without the necessity of obtaining Landlord's consent, (i) assign the lease or sublet the Premises to its

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affiliates, and (ii) assign this Lease or sublease any portion of the Premises in connection with a merger, consolidation, sale of assets, or change of control of membership interests in Tenant (all of the foregoing being hereafter referred to collectively as a "Transfer as of Right"); provided in such event Tenant shall not be released from its obligations and liabilities accruing either prior to or subsequent to such Transfer as of Right. Tenant shall give Landlord prior written notice before any such Transfer as of Right, except on account of a change in control of the membership interests in which event no notice shall be required.

**31. Liens.** Tenant shall not cause any liens to be placed on the Premises, the Building, or the land on which the Building is located as a result of a failure by Tenant or anyone claiming under Tenant to perform an obligation or as a result of alterations, repairs, or improvements performed by or at the direction of Tenant or anyone claiming under Tenant.

**32. Notice.** All notices hereunder shall be in writing and may be given by: (1) hand delivery and shall be deemed given on the date of delivery; (2) registered or certified mail and shall be deemed given the third day following the date of mailing; or (3) overnight delivery by Federal Express and shall be deemed given the following day. All notices shall be addressed to the parties as set forth below or at such other address as any party shall subsequently designate in writing:

**If to Landlord:**

1105 Earl Frye Boulevard  
Amory, Mississippi 38821  
Attention: CEO

**With a copy to:**

Egerton, McAfee, Armistead & Davis, P.C.  
900 South Gay Street, Suite 1400  
Post Office Box 2047  
Knoxville, Tennessee 37901  
Attention: Stephen A. McSween

**If to Tenant:**

Drayer Physical Therapy Institute, LLC  
8205 Presidents Drive  
2nd Floor  
Hummelstown, PA 17036  
Attention: President.

**With a copy to:**

Upstream Rehabilitation Inc.  
1200 Corporate Drive, Suite 400  
Birmingham, AL 35242  
Attention: Brian G. Wilson, Esq.

**33. Governing Law.** This Lease shall be governed by the applicable laws of Mississippi.

**34. Regulatory Provisions.** The parties agree that (i) the aggregate rental charge under this Lease is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties; (ii) the aggregate rental charge is, to the best of their knowledge, consistent with fair market value in arms-length transactions; (iii) the aggregate space rented does not exceed that which is reasonably necessary to accomplish the commercially reasonable and legitimate business purpose of the

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rental; (iv) this Lease would be commercially reasonable even if no referrals were made between the parties; (v) each party retains and reserves the right to refer a patient to any other entity or person deemed appropriate for that patient's care; and (vi) they are entering into this Lease with the intent of implementing the agreements contained herein in full compliance with applicable federal, state, and local laws, including without limitation the Medicare/Medicaid Anti-Kickback statute and the Stark Law.

**35. Entire Agreement.** This Lease constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations, proposals, and course of dealing between the parties. This Lease may not be amended or modified, except in a writing signed by each of the parties.

**36. Counterparts.** This Lease may be executed in counterparts, each of which will be deemed original, but all of which together shall constitute one and the same Lease. The execution of this Lease or any amendment thereto by any of the parties may be by means of a facsimile copy and/or electronic transmission of such party's signature, and the same shall be deemed to constitute the original signature of such party.

**37. Paragraph Titles; Severability.** The paragraph titles used herein are not to be considered a substantive part of this Lease, but merely descriptive aids to identify the paragraph to which they refer. Use of the masculine gender includes the feminine and neuter, and vice versa, where necessary to impart contextual continuity. If any paragraph or provision herein is held invalid by a court of competent jurisdiction, all other paragraphs or severable provisions of this Lease shall not be affected thereby, but shall remain in full force and effect.

**38. No Waiver.** No failure of Landlord or Tenant to exercise or delay in exercising any power given such party hereunder, or to insist upon strict compliance by the other of its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of the party's right to demand exact compliance with the terms hereof.

**39. Amendment.** This Lease may be amended only in writing signed by both parties.

**40. Binding Effect.** This Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, and successors of the parties.

**41. Patriot Act Compliance.** Each party represents and warrants to the other party that: (i) it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation, named by any Executive Order or the United States Treasury Department as a "terrorist", "Specially Designated National and Blocked Person" or other banned or blocked person, group or nation (collectively, "Banned Persons") pursuant to any anti-terrorism law; (ii) it is not engaged in this Lease transaction, or instigating or facilitating this Lease, directly or indirectly on behalf of any Banned Person; (iii) it currently does not appear, and throughout the Lease Term, neither the representing party, nor any officer, director, shareholder, partner, member or other owner of such party shall appear, on any list of Banned Persons; (iv) no anti-terrorism law prohibits the representing party from doing business with the other party; (v) the representing party, its officers, directors, or principal shareholders, partner, member, or other owner of the representing party, shall not, during the Lease Term, violate any anti-terrorism laws; and (vi) the representing party, its officers, directors, principal shareholders, partners or members shall not, during the Lease Term, do business with any party, individual or entity that has violated or will violate any anti-terrorism laws. For purposes of this Lease, "anti-terrorism laws" shall mean Executive Order 13224 and related regulations promulgated and enforced by the Office of Foreign Assets Control, the Money Laundering Control Act, the United States Patriot Act, or any similar law, order, rule or regulation enacted in the future. Each party hereby agrees to defend, indemnify, protect, and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities, fines, penalties, expenses (including attorneys' fees) and costs arising from or related to a breach of the foregoing representations and warranties. In the event of any violation of the representations and warranties set forth in

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this Section during the Term of the Lease, the same shall be considered an event of default which shall entitle the non-defaulting party the right to exercise any and all rights and/or remedies available pursuant to applicable law and/or under this Lease for a default which specifically for said default shall include the right to terminate this Lease upon notice to the other party. The foregoing indemnity obligations shall survive the termination or expiration of this Lease.

**41. WAIVER OF JURY TRIAL. LANDLORD AND TENANT HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM OF ANY KIND OR NATURE RELATED DIRECTLY OR INDIRECTLY TO (A) THIS LEASE, (B) THE TRANSACTIONS AND OBLIGATIONS RELATED TO THIS LEASE, OR (C) ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (ORAL OR WRITTEN), OR ACTIONS OF LANDLORD OR TENANT RELATING TO THIS LEASE. THE WAIVER MADE HEREUNDER IS MADE KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND FOR SUBSTANTIAL CONSIDERATION, AND AS AN INDUCEMENT FOR LANDLORD AND TENANT TO ENTER INTO THIS LEASE.**

[Signature page follows.]

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*[Signature Page to Medical Office Building Lease]*

IN WITNESS WHEREOF, Tenant and Landlord have duly executed this Lease as of the date first above written, and each hereby certifies that:

1. Same has reviewed this Lease;
2. The Lease payments set forth in the Lease represent fair market value, and the Lease terms are commercially reasonable; and
3. There are no agreements or understandings, whether written or oral, that condition the terms of the Lease or the volume or value of any referrals or other business generated between the parties.

**TENANT:**

Drayer Physical Therapy Institute, LLC d/b/a  
Elite Physical Therapy

By: 

Name: Storm A. McPherson

Title: CEO

**LANDLORD:**

Amory Regional Medical Center, Inc. d/b/a  
Gilmore Memorial Hospital

By: 

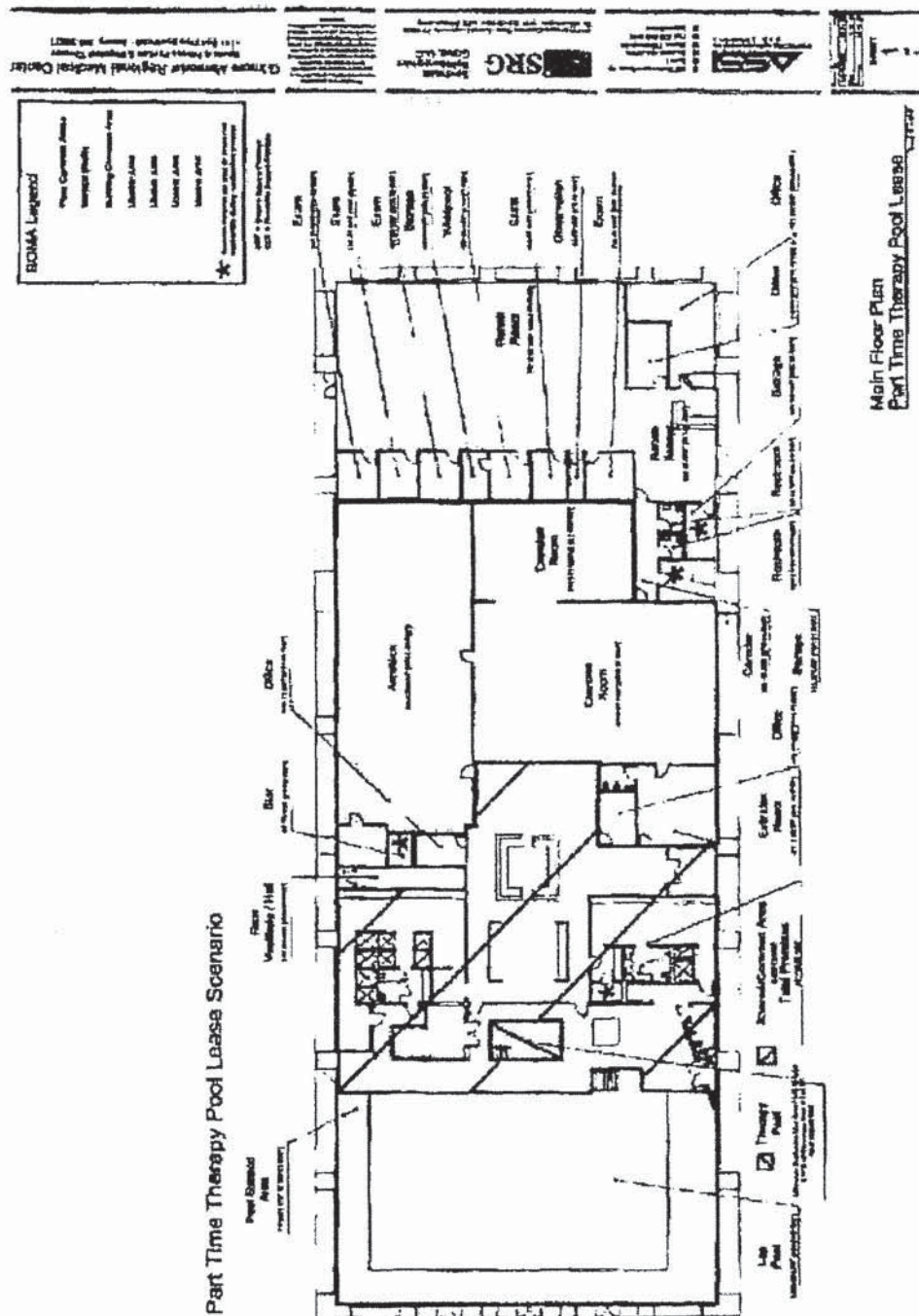
Name: J. Allen

Title: CEO

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### Suite A





**EXHIBIT B**

**RENT ALLOCATION**

<b>Suite A Rent Allocation</b>	<b>\$7,318.15/month</b>
<b>Therapy Pool Rent Allocation</b>	\$90.00 per half day *3 half days per week annualized <b>\$1,170.00/month</b>
<b>Total Rent Per Month</b>	<b>\$8,488.15</b>
<b>Total Rent Per Year</b>	<b>\$101,857.80</b>

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## **EXHIBIT C**

### **PROHIBITED USES**

- i. Any form of testing for diagnostic or therapeutic purposes;
- ii. Dispensing of drugs or medicines to persons in the Premises;
- iii. provision or operation of a laboratory (including, without limitation, a pathology laboratory or a clinical laboratory);
- iv. any form of diagnostic imaging services (which include, without limitation, the following testing facilities: fluoroscopy, x-ray, plane film radiography, computerized tomography ("CT"), ultrasound, mammography, and breast diagnostics, nuclear medicine testing, and magnetic resonance imaging);
- v. radiation therapy;
- vi. respiratory therapy service;
- vii. outpatient or inpatient surgery;
- viii. outpatient or inpatient birthing services;
- ix. home health services;
- x. a health maintenance organization or similar direct care provider;
- xi. inhalation therapy;
- xii. the provision of any medical or related service to or for any person that is in addition to the examination and diagnosis of patients performed directly by a physician or by other health care professionals under the direct supervision of a physician, or a facility operated for the provision of any such service, except for outpatient rehabilitation services such as physical therapy, occupational therapy, vestibular therapy, and speech therapy.

Notwithstanding the foregoing, clinical/pathological laboratory and x-ray services provided to patients of physicians occupying the Premises shall not be prohibited if (a) such patients were not referred to such physicians for the purpose of obtaining such services or procedures; (b) such services are incidental to and a necessary part of the examination or diagnosis tendered to Tenant's patients (i.e., no provision of services to third parties), so long as such clinical/pathological laboratory and radiological services are merely ancillary and incidental to such Tenant's primary medical practice and neither constitute Tenant's primary medical practice or specialty, or constitute the predominant services rendered by Tenant to Tenant's patients; and (c) prior to providing such services, Tenant shall have submitted to Landlord a detailed description of the laboratory or x-ray services Tenant desires to provide or perform and Landlord shall have consented in writing to the provision or performance of such services, which consent may be denied in Landlord's sole and absolute discretion (the provision of such services and procedures shall be strictly limited to those services and procedures to which Landlord has expressly consented in writing and the terms of this paragraph shall be strictly construed to prohibit any expansion or addition to such services or procedures without Landlord's written consent).

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## **EXHIBIT D**

### **RULES AND REGULATIONS**

1. No animals shall be kept in or about the Premises, provided the foregoing shall not prohibit therapy animals upon the Premises to the extent required by applicable law.
2. Tenant shall not use the water closets and other plumbing fixtures for any purposes other than those for which they were constructed, and shall not place any debris, rubbish, rags, or other substances therein. All damage resulting from any misuses of the fixtures shall be borne by Tenant whose servants, employees, agents, contractors, subtenants, patients and invitees, or tenants shall have caused the same.
3. Tenant shall not place any furniture, equipment, records, trash, or other objectionable material in the common areas of the Building other than in an appropriate refuse container.
4. Tenant or his employees shall not make or commit any indecent or improper acts while on the Premises or make any unseemly or disturbing noises or disturb or interfere with neighboring occupants of the Building or those having business with them, whether by use of any musical instrument, radio, loud speaker, singing, or in any other way. Tenant or his employees shall not throw anything out of the doors or windows of the Premises.
5. The Premises shall not be used for the sale of merchandise in the ordinary course of business (except the foregoing shall not prohibit the ancillary sale of merchandise in connection with Tenant's permitted use of its Premises), or for the sale at auction of merchandise, goods or property of any kind.
6. Landlord does not assume any responsibility, and shall not be held liable, for any damage or loss to any automobile or personal property in the parking lot or for any injury sustained by any person in the parking lot, except to the extent caused by the willful misconduct of Landlord or its employees, agents, or contractors.
7. The entry, corridors, and stairways shall not be obstructed by Tenant, nor used by Tenant for any purpose other than ingress or egress to and from Tenant's offices, nor shall employees of the Tenant loiter or congregate therein. The floors and windows that reflect or admit light into passageways in common areas shall not be covered or obstructed by Tenant.
8. Landlord reserves the right to make such other non-discriminatory rules and regulations as it deems reasonably necessary.
9. Tenant shall not, without the written consent of Landlord, place a load upon any floor of the Building exceeding 80 pounds per square foot. Additional air conditioning, electrical or other facilities required in connection with the installation and operation of any computers or other large business equipment of Tenant shall be made at Tenant's expense and only after obtaining Landlord's written consent. Tenant shall pay for the cost of electrical current required to operate such computers and other large business equipment and for the cost of additional air conditioning necessitated by such equipment.
10. Tenant will not place any signs, advertisement or notices upon any part of the outside of the Premises or on windows or doors or on the adjacent street, except that directory boards and Premises identification signs shall be provided by the Landlord. Signage on entry doors to the

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Premises will be provided by Landlord consistent with signage standards within the Building.

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# MIDDLE DISTRICT OF TENNESSEE

## Claims Register

[3:18-bk-05675 Amory Regional Medical Center, Inc.](#)

**Judge:** Charles M Walker

**Chapter:** 11

**Office:** Nashville

**Last Date to file claims:**

**Trustee:**

**Last Date to file (Govt):**

*Creditor:* (6824875)

**Claim No:** 57

*Status:*

Drayer Physical Therapy

*Original Filed*

*Filed by:* AT

Institute, LLC

*Date:* 01/18/2019

*Entered by:* JUSTIN MICHAEL

d/b/a Elite Physical Therapy

*Original Entered*

SVEADAS

c/o Justin Sveadas

*Date:* 01/18/2019

*Modified:*

633 Chestnut St., Ste. 1900

Chattanooga, TN 37450

Amount claimed: \$1.00

*History:*

[Details](#)   [57-1](#) 01/18/2019 Claim #57 filed by Drayer Physical Therapy Institute, LLC, Amount claimed: \$1.00 (SVEADAS, JUSTIN )

*Description:* (57-1) Unliquidated - amount to be determined

*Remarks:*

### Claims Register Summary

**Case Name:** Amory Regional Medical Center, Inc.

**Case Number:** 3:18-bk-05675

**Chapter:** 11

**Date Filed:** 08/24/2018

**Total Number Of Claims:** 1

<b>Total Amount Claimed*</b>	\$1.00
<b>Total Amount Allowed*</b>	

\*Includes general unsecured claims

**The values are reflective of the data entered. Always refer to claim documents for actual amounts.**

	Claimed	Allowed
<b>Secured</b>		
<b>Priority</b>		
<b>Administrative</b>		