

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>In re:</b>	)	<b>Chapter 11</b>
	)	<b>Case No. 18-05665</b>
<b>Curae Health, Inc., et al.<sup>1</sup></b>	)	
	)	
<b>1721 Midpark Road, Suite B200</b>	)	<b>Judge Walker</b>
<b>Knoxville, TN 37921</b>	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>

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**DRAYER PHYSICAL THERAPY INSTITUTE, LLC'S LIMITED OBJECTION TO  
REJECTION OF LEASE, NOTICE OF ELECTION TO RETAIN ITS RIGHTS UNDER  
THE LEASE PURSUANT TO 11 U.S.C. §365(h)(1)(A)(ii) AND OFFSET ANY DAMAGES  
FOR NONPERFORMANCE OF ANY OBLIGATIONS UNDER THE LEASE  
PURSUANT TO 11 U.S.C. §365(h)(1)(B)**

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**COMES NOW**, Drayer Physical Therapy Institute, LLC d/b/a Elite Physical Therapy ("Drayer"), by and through the undersigned counsel, and hereby files this *Limited Objection to Rejection of Lease, Notice of Election to Retain its Rights Under the Lease Pursuant to 11 U.S.C. §365(h)(1)(A)(ii) and Offset any Damages for Nonperformance of any Obligations Under the Lease Pursuant to 11 U.S.C. §365(h)(1)(B)* (the "Objection"). As grounds therefore, Drayer states as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Objection under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Objection in this district is proper under 28 U.S.C. §§ 1408 and 1409.

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<sup>1</sup>The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Curae Health, Inc. (5638); Amory Regional Medical Center, Inc. (2640); Batesville Regional Medical Center, Inc. (7929); and Clarksdale Regional Medical Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); Clarksdale Regional Physicians, LLC (5311).

2. The statutory predicates for the relief requested herein are sections 105(a) and 365(h) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") and Rules 6006(f) and 9014 of the Federal Rules of Bankruptcy Procedure.

## **BACKGROUND**

### **The Lease**

3. On or about May 1, 2018, the debtor, Amory Regional Medical Center, Inc. d/b/a Gilmore Medical Hospital ("Gilmore"), as landlord, and Drayer, as tenant, entered into that certain Medical Office Building Lease (the "Lease") for the lease of Suite A, on a full-time basis, and the Therapy Pool, on a part-time basis, containing 5,684 rentable square feet and 306 rentable square feet (collectively, the "Premises") located in the Sports and Fitness Pavilion and Physical Therapy at 1111 Earl Frye Boulevard, Amory, Mississippi. A copy of the Lease is attached hereto as **Exhibit A** and incorporated by reference.

4. The term of the Lease commenced on May 1, 2018, and terminates on April 30, 2021 (the "Expiration Date") (Exh. A, § 2).

5. The monthly rental payments under the Lease is \$8,488.15 (the "Rent") (*Id.*, § 4).

6. Section 32 of the Lease requires that all notices be given to Drayer at the following addresses:

Drayer Physical Therapy Institute, LLC  
8205 Presidents Drive  
2nd Floor  
Hummelstown, PA 17306  
Attention: President

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

(*Id.*, § 32).

7. At all times prior to and since the Petition Date, Drayer has continued to use and occupy the Premises in accordance with the terms of the Lease.

### **The Bankruptcy Case**

8. On August 24, 2018 (the "Petition Date"), each of the Debtors filed a voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases").

9. On August 31, 2018, the Debtors filed their *Motion for Entry of an Order (I) Authorizing and Approving Bidding Procedures for the Sale of Gilmore Medical Center, (II) Authorizing the Sale of Gilmore Medical Center Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (III) Approving Stalking Horse Purchaser, Break-up Fee, and Overbid Protections, (IV) Establishing Certain Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (V) Scheduling an Auction, (VI) Scheduling a Hearing and Objection Deadlines with Respect to the Sale of Gilmore Medical Center, (VII) Approving the Form and Manner of Notice thereof and (VIII) Circuiting Related Relief* [Doc. No. 79] (the "Sale Motion"), pursuant to which the Debtors sought to sell the Debtors' Assets located in Amory, Mississippi.

10. On September 28, 2018, the Court entered the *Order (I) Authorizing and Approving Bidding Procedures for the Sale of Gilmore Medical Center, (II) Authorizing the Sale of Gilmore Medical Center Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (III) Approving Stalking Horse Purchaser, Break-up Fee, and Overbid Protections, (IV) Establishing Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (V) Scheduling an Auction, (VI) Scheduling a Hearing and Objection*

*Deadlines with Respect to the Sale of Gilmore Medical Center, (VII) Approving the Form and Manner of Notice Thereof and (VIII) Granting Related Relief* [Doc. No. 260] (the "Bid Procedures Order").

11. In accordance with the Bid Procedures Order, on October 29, 2018, the Debtors filed and served the *Notice of (I) Debtors' intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property; and (II) Cure Amounts Related to the Foregoing* (the "Assumption and Assignment Notice") [Doc. No. 371], pursuant to which the Debtors identified certain executory contracts and unexpired leases on **Exhibit 1** thereto that the Debtors may assume and assign in connection with the sale of the Debtors' Assets. The Lease was included on **Exhibit 1** as an unexpired lease that the Debtors may assume or assign.

12. On November 30, 2018, the Court entered the *Order (I) Authorizing, Approving, and Directing the Sale of Substantially All of the Assets of Gilmore Medical Center to North Mississippi Health Services, Inc. Free and Clear of All Liens, Claims, and Encumbrances, and Other Interests; (II) Authorizing and Approving the Gilmore APA; (III) Approving the Debtors' Marketing and Sale Process; and (IV) Granting Related Relief* [Doc. No. 506] (the "Sale Order"), pursuant to which the Court approved the sale (the "Sale") of the Debtors' Assets to North Mississippi Health Services, Inc. (the "Buyer"). The Sale Order does not contain any provisions relating to the rejection of executory contracts and unexpired leases.

13. On December 26, 2018, the Buyer delivered written notice to Drayer at 2429 N. 5th Street, Columbus, Mississippi 39705 and 1111 Earl Frye Blvd., Amory, Mississippi 38821 that it will not assume the Lease and that pursuant to bankruptcy law, the Lease is rejected and not assumed by the Buyer's new entity, Monroe Health Services, Inc. ("MHSI") (the "Notice").

Despite the fact that a copy of the Lease was attached to the Notice, the Notice was not provided to Drayer at the addresses and to the attention of persons required in Section 32 of the Lease. A copy of the Notice is attached hereto as **Exhibit B** and incorporated by reference.

14. The Notice further provided that MHSI would allow Drayer to continue to lease the space for an additional thirty (30) days at the rate agreed upon in the Lease. (Exh. B).

15. On December 31, 2018, *via* written correspondence, Drayer advised the Buyer that the Notice was not delivered to Drayer as required by Section 32 of the Lease and that the Notice was the first notice that Drayer had received regarding the Bankruptcy Cases and/or any action related to the Lease. Drayer further informed the Buyer of its objection to the termination of the Lease and its tenancy prior to the Expiration Date. A copy of the December 31, 2018, correspondence is attached here to as **Exhibit C** and is incorporated by reference.

16. On December 31, 2018, the Buyer filed its *Notice of Stalking Horse Purchaser's Removal of Certain Executory Contracts and Unexpired Leases* [Doc. No. 606] (the "Notice of Removal"), identifying certain executory contracts and unexpired leases that would not be assumed and assigned to Buyer in connection with the Sale. The Lease is not listed on the Notice of Removal.

17. On January 3, 2019, the Debtors filed their *First Omnibus Motion for Entry of an Order (I) Authorizing the Debtors to Reject Certain Executory Contracts and Unexpired Leases and (II) Granting Related Relief* [Doc. No. 620] (the "Rejection Motion"). The deadline to object to the Rejection Motion is January 24, 2019. If a timely response is filed, a hearing will be held on the Motion on February 5, 2019. The Lease is not identified on Exhibit 1 to the Rejection Motion as an unexpired lease that the Debtors seek to reject.

18. Drayer asserts that, to date, the Lease has not been rejected. However, to the extent that the Debtors and Buyer maintain that the Lease has been rejected by the Sale Order or operation of law,<sup>2</sup> Drayer avers that it received insufficient notice of the alleged rejection.

19. Drayer files this limited Objection to protect its rights under the Lease and the Bankruptcy Code including, without limitation, its rights pursuant to section 365(h)(1)(A)(ii) to the continued possession of the Premises until the Expiration Date, and in accordance with section 365(h)(1)(B) to offset any damages caused by the Debtors' or Buyer's nonperformance of any obligation under the Lease against the Rent.

### **BASIS FOR RELIEF**

**A. Pursuant to Bankruptcy Code Section 365(h)(1)(A)(ii), Drayer is Entitled to Retain its Rights under the Lease - including its right to continued possession - until the Expiration Date.**

Bankruptcy Code section 365(h)(1)(A) makes special provision for rejected leases under which the debtor is the lessor. This subsection provides:

(i) if the rejection by the trustee amounts to such a breach as would entitle the lessee to treat such lease as terminated by virtue of its terms, applicable nonbankruptcy law, or any agreement made by the lessee, then the lessee under such lease may treat such lease as terminated by the rejection; or

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<sup>2</sup>Bankruptcy Code section 365(d)(4)(A), which provides that an unexpired lease of nonresidential real property under which the debtor is the **lessee** shall be deemed rejected ... the earlier of the date that is 120 days after the petition date or the order confirming a plan, is not applicable to the instant case because Gilmore is the lessor, under the Lease, not the lessee. See also *John Hilsman Inv., LLC v. Quality Prop., LLC*, 505 B.R. 105 (N.D. Ala. 2013), *aff'd* 572 Fed. App'x 768 (11th Cir. 2014)("[a]fter conducting a study of the meaning of 'lessee' as used in § 365(d)(4), the court agrees with Quality that § 365(d)(4) does not apply to Supermarkets' relationship to the Lease. By its terms § 365(d)(4) applies only to an 'unexpired lease of nonresidential real property *under which the debtor is the lessee*.' (emphasis added). If Supermarkets were not 'the lessee' under the Lease at the time it rejected the Lease, § 365(d)(4) would not apply"); *In re Dumas*, 392 B.R. 204 (Bankr. D.S.C. 2008)(The language [in section 365(d)(4)(A)] "an unexpired lease of nonresidential real property under which the *debtor is the lessee* " is determinative to this issue. Debtor is not the lessee and he may not assume or reject the lease at issue); *In re BCE W, L.P.*, 264 B.R. 578 (9th Cir. 2001)(applying similar analysis to section 365(d)((3) and stating"[b]ankruptcy statute requiring trustee or debtor-in-possession to timely perform debtor's obligations under any unexpired, nonresidential lease was limited in its application to debtor's obligations as lessee, and did not apply to Chapter 11 debtor's obligation, as sublessor ....").

(ii) if the term of such lease has commenced, the lessee may retain its rights under such lease (including rights such as those relating to the amount and timing of payment of rent and other amounts payable by the lessee and any right of use, possession, quiet enjoyment, subletting, assignment, or hypothecation) that are in or appurtenant to the real property for the balance of the term of such lease and for any renewal or extension of such rights to the extent that such rights are enforceable under applicable nonbankruptcy law.

11 U.S.C. § 365(h)(1)(A).

The crux of Bankruptcy Code section 365(h)(A)(1) is that the rejection of an unexpired lease leaves a non-debtor lessee with two options: (1) treat the lease as terminated (and make a claim against the estate for any breach) (section 365(h)(1)(A)(i)), or (2) retain any rights—including a right of continued possession—to the extent those rights are enforceable outside of bankruptcy (section 365(h)(1)(A)(ii)). In accordance with Bankruptcy Code section 365(h)(1)(A)(ii), Drayer elects to retain its rights under the Lease - including its right to continued possession - until the Expiration Date.

**B. Drayer's Rights Under Bankruptcy Code Section 365(h)(1)(A)(ii) Were Not Extinguished in the Sale.**

Drayer's rights under Bankruptcy Code section 365(h)(1)(A)(ii) were not terminated by the Sale. The majority of bankruptcy courts have held that a lessee's rights under a rejected lease cannot be extinguished by a sale free and clear. *See In re Zota Petroleums, LLC*, 482 B.R. 154 (Bankr. E.D. Va. 2012)(concluding that the rights of a lessee may not be extinguished by a § 363 sale); *In re Haskell LP*, 321 B.R. 1 (Bankr. D. Mass. 2005)(holding that debtor-landlord could not sell its real estate free and clear of tenant's leasehold interest); *In re Churchill Props. III, Ltd. P'ship*, 197 B.R. 283 (Bankr. N.D. Ill. 1996); *In re Taylor*, 198 B.R. 142, 165 (Bankr. D.S.C. 1996); *In re Samaritan Alliance, LLC*, No. 07-50735, 2007 WL 4162918 (Bankr. E.D. Ky. Nov. 21, 2007)(holding that sublessee was entitled to the protections of section 365(h) after a section 363 sale was ordered); *In re Revel AC Inc.*, 802 F.3d 558, 575 (3rd Cir. 2015) (“tenant who

makes an election under [§ 365(h)] is ‘entitled to remain under the same rental terms as set forth in the lease.’”).<sup>3</sup>

Two courts within the Sixth Circuit have addressed the applicability of section 365(h)(1)(A)(ii) and held that upon rejection a non-debtor lessee could elect to retain its rights under the lease. In the case *In re Samaritan Alliance, LLC*, No. 07-50735, 2007 WL 4162918 (Bankr. E.D. Ky. Nov. 21, 2007), the Bankruptcy Court for the Eastern District of Kentucky ruled that the lessee's rights to stay *via* section 365(h) trump the debtor's rights to sell the property free and clear. The purchaser, among other things, maintained that the sale caused the leasehold interest of the debtor to pass to it free and clear of the sublease. The court adopted the majority approach and found that the § 365(h) rights of the sublessee survived the § 363 sale. Specifically, the *Samaritan* court held:

The court finds the reasoning in *Haskell* instructive, and agrees with its conclusion that section 365(h) is applicable in the context of a section 363(f) sale. Cardinal Hill's possessory interest in the Hospital property and the rights appurtenant thereto, as embodied in the SNF Lease, are preserved by section 365(h). The court will therefore grant Cardinal Hill's request that it enter an order finding that Cardinal Hill has full section 365(h) rights to continue in possession of the leased premises and to operate the SNF Unit through the full term of the SNF Lease.

*Samaritan*, 2007 WL 4162918, at \*4.

More recently, in another Eastern District of Kentucky bankruptcy case, *Parr v. The Lamar Co., LLC*, No. 13-50721, AP No. 14-5011 (Bankr. E.D. Ky. Sept. 8, 2014), the court addressed the issue of whether a lease to erect and maintain a billboard on commercial property was a real property lease entitled to the protections of Bankruptcy Code section 365(h)(1)(A)(ii). In this case, the trustee sought an order authorizing it to sell property pursuant to section 363(f)

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<sup>3</sup>But see *In Precision Indus., Inc. v. Qualitech Steel SBQ, LLC (In re Qualitech Steel Corp. & Qualitech Steel Holdings Corp.)*, 327 F.3d 537 (7th Cir. 2003); *Pinnacle Rest. at Big Sky, LLC v. CH SP Acquisitions, LLC (In the Matter of Spanish Peaks Holdings II, LLC)*, 872 F.3d 892 (9th Cir. 2017); *Dischi & Sons v. Bay Condos LLC*, 510 B.R. 696 (S.D.N.Y. 2014).

and requiring the lessee to remove its pole and sign. The lessee maintained that it was entitled to retain its rights sign lease under 365(h)(1)(A)(ii). The court agreed with the lessee and held that the sign lease was a lease of non-residential real property under which the debtor was the lessor; thus, upon rejection, the lessee could elect to retain its rights under the rejected sign lease under § 365(h). *Parr*, 2014 WL 4417828, at \*4.

Based upon the majority of precedent, Drayer avers that its rights under the Lease were not extinguished in the Sale and, in accordance with Bankruptcy Code section 365(h)(1)(A)(ii), it is entitled to remain in continued possession of the Premises until the Expiration Date.

**C. Pursuant to Bankruptcy Code Section 365(h)(1)(B), Drayer may Offset any Damages Caused by the Debtors' or Buyer's Nonperformance of any Obligation under the Lease Against the Rent.**

Bankruptcy Code section 365(h)(1)(B) states

If the lessee retains its rights under subparagraph (A)(ii), the lessee may offset against the rent reserved under such lease for the balance of the term after the date of the rejection of such lease and for the term of any renewal or extension of such lease, the value of any damage caused by the nonperformance after the date of such rejection, of any obligation of the debtor under such lease, but the lessee shall not have any other right against the estate or the debtor on account of any damage occurring after such date caused by such nonperformance.

11 U.S.C. § 365(h)(1)(B). In conformity with this section, Drayer may offset any damages caused by the Debtors' or Buyer's nonperformance of any obligation under the Lease against the Rent. *See Samaritan*, 2007 WL 4162918, at \*5 (finding that non-debtor lessee was entitled to offset its damages against the rent under section 365(h)(1)(B)); *L.A. Fitness Int'l v. Buttermilk Towne Ctr, LLC (In re Buttermilk Towne Ctr, LLC)*, No. 10-21162, AP No. 10-2032 (Bankr. E.D. Ky. Dec. 30, 2010) (recognizing that non-debtor lessee's rights to offset its rent payments were governed by section 365); *EPLET, LLC v. DTE Pontiac N., LLC*, No. 2:17-cv-11462, 2018 WL 1456208 (E.D. Mich. Mar. 23, 2018) (stating “[i]f the trustee rejects an unexpired lease of

real property under which the debtor is the lessor” ... then.... “[i]n essence, a non-debtor lessee is left with a choice: either 'treat the lease as terminated, vacate the premises without liability for future rent, and [ ] assert an unsecured claim for damages resulting from the lessor's breach,' or 'retain possession of the property,' ... and offset from the rent 'damage caused by the nonperformance after the ... rejection') (citations omitted).

**WHEREFORE, PREMISES CONSIDERED**, Drayer requests that this Court enter an order holding that:

A. pursuant to 11 U.S.C. § 365(h)(1)(A)(ii), Drayer retains all its rights under the Lease, including a right to continued possession, to the extent that those rights are enforceable outside of bankruptcy;

B. in accordance with 11 U.S.C. § 365(h)(1)(B), Drayer may offset against the Rent the value of any damage caused by nonperformance of any obligation of the Debtors or Buyer under the Lease after the date of rejection; and

C. granting such other and further relief as this Court deems just.

/s/ Justin M. Sveadas  
Justin M. Sveadas  
Counsel for Drayer Physical Therapy  
Institute, LLC

Baker, Donelson, Bearman, Caldwell  
& Berkowitz, P.C.  
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Telephone: (423) 209-1484  
Facsimile: (423) 752-9589  
[jsveadas@bakerdonelson.com](mailto:jsveadas@bakerdonelson.com)

## CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of January, 2019, a copy of the foregoing electronically filed pleadings was served on the parties listed below by first-class mail, postage prepaid, unless said party is a registered CM/ECF participant who has consented to electronic notice, and the Notice of Electronic Filing indicates that Notice was electronically mailed to the said party:

<p>David Gordon, Michael A. Malone Caryn E. Wang Polsinelli PC, 1201 West Peachtree Street, Suite 1100 Atlanta, GA 30309 <a href="mailto:dgordon@polsinelli.com">dgordon@polsinelli.com</a> <a href="mailto:mmalone@polsinelli.com">mmalone@polsinelli.com</a> <a href="mailto:cewang@polsinelli.com">cewang@polsinelli.com</a></p> <p>David W. Houston IV Burr &amp; Forman 222 Second Avenue South, Suite 2000, Nashville, Tennessee 37201 <a href="mailto:dhouston@burr.com">dhouston@burr.com</a></p> <p>Michael Edward Collins Robert William Miller Manier &amp; Herod, P.C. 1201 Demonbreun Street Suite 900 Nashville, Tennessee 37203 <a href="mailto:mcollins@manierherod.com">mcollins@manierherod.com</a> <a href="mailto:rmiller@manierherod.com">rmiller@manierherod.com</a></p>	<p>Egerton McAfee Armistead &amp; Davis PC 900 S Gay Street Suite 1400 Knoxville, Tennessee 37902 865-546-0500 <a href="mailto:smcsween@emlaw.com">smcsween@emlaw.com</a></p> <p>Megan Reed Seliber US Trustee's Office 701 Broadway Suite 318 Nashville, Tennessee 37293 <a href="mailto:megan.seliber@usdoj.gov">megan.seliber@usdoj.gov</a></p> <p>Boris I Mankovetskiy Andrew H. Sherman Sills Cummis &amp; Gross PC 1 Riverfront Plaza Newark, New Jersey 07102 <a href="mailto:bmankovetskiy@sillscummis.com">bmankovetskiy@sillscummis.com</a> <a href="mailto:asherman@sillscummis.com">asherman@sillscummis.com</a></p>
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/s/ Justin M. Sveadas  
OF COUNSEL

# EXHIBIT A

### **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

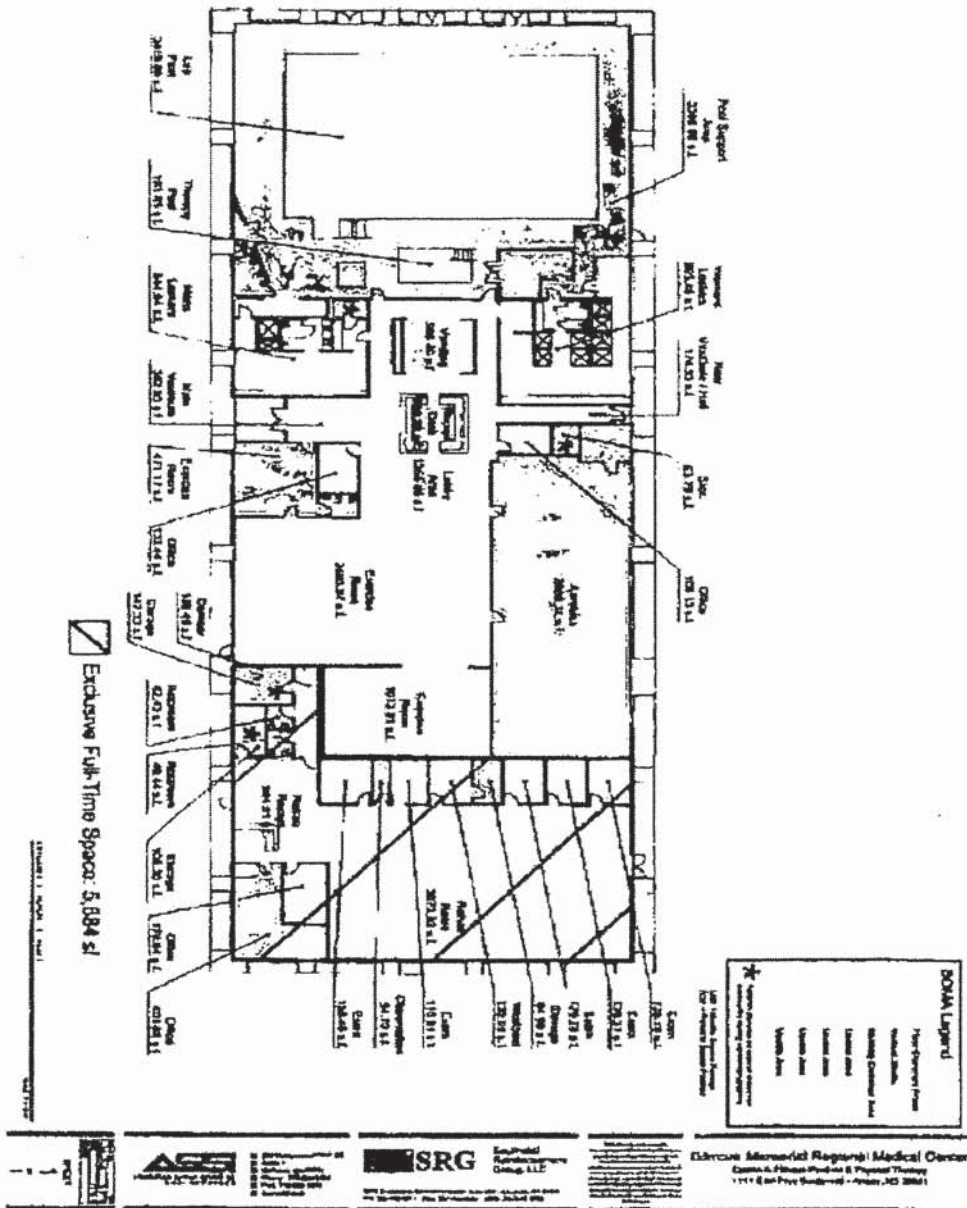
Title: CEO

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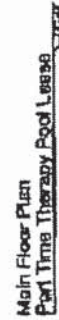
# EXHIBIT A

## FLOOR PLAN

Suite A



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**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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# **EXHIBIT B**



**NORTH MISSISSIPPI  
HEALTH SERVICES**

PERSONAL - HAND DELIVERY

December 26, 2018

Drayer Physical Therapy Institute  
dba Elite Physical Therapy  
2429 N 5<sup>th</sup> Street  
Columbus, MS 39705

Drayer Physical Therapy Institute  
dba Elite Physical Therapy  
1111 Earl Frye Blvd.  
Amory, MS 38821

**Re: Termination of Medical Office Building Lease Agreement between Amory Regional Medical Center, Inc., dba Gilmore Memorial Hospital and Drayer Physical Therapy Institute, LLC dba Elite Physical Therapy**

Dear Sirs:

Please be advised that North Mississippi Health Services, Inc. ("NMHS") has purchased the assets of Amory Regional Medical Center Inc. dba Gilmore Memorial Hospital ("Gilmore") from bankruptcy, case #18-05665, regarding Curae Health Inc., et al. (attached hereto). The purchase will occur on December 31, 2018, at 11:59:59 pm. Please be advised North Mississippi Health Services, Inc. will not assume the May 1<sup>st</sup>, 2018, Medical Office Building Lease (copy attached hereto) Gilmore and Drayer Physical Therapy Institute dba Elite Physical Therapy ("Drayer"). Thus, pursuant to bankruptcy law, the lease agreement between Drayer and Gilmore is rejected and not assumed by the new NMHS entity, Monroe Health Services, Inc.

If you need additional time to move out of the space, out of accommodation, Monroe Health Services, Inc. will allow Drayer thirty (30) additional days to lease the space at the rate previously agreed upon with Gilmore Memorial Hospital. If you wish to continue an additional thirty (30) days, please forward the rent check to my attention: Bruce Toppin, Chief Legal Officer, North Mississippi Health Services, Inc., 830 S. Gloster Street, Tupelo, MS 38801.

Sincerely yours,

Bruce J. Toppin  
Chief Legal Officer  
North Mississippi Health Services, Inc.

BJT  
/nc

Attachment

DrayerPhysTherapy\Tr\TerminLeaseAmoryReg\122618.wpd

830 South Gloster Street  
Tupelo, Mississippi 38801  
(662) 377-3000

# EXHIBIT C



1200 Corporate Drive, Suite 400  
Birmingham, AL 35242  
Telephone: (205) 536-7780  
nwhitehead@urpt.com

December 31, 2018

**VIA E-MAIL ([btoppin@nhms.net](mailto:btoppin@nhms.net))**  
**WITH ORIGINAL TO FOLLOW**  
**VIA PRIORITY OVERNIGHT**  
**FEDERAL EXPRESS (662) 377-4229**

Mr. Bruce J. Toppin  
Chief Legal Officer  
North Mississippi Health Services, Inc.  
830 S. Gloster Street  
Tupelo, MS 38801

**Re: Proposed Termination of Medical Office Building Lease Agreement dated May 1, 2018 ("Lease") between Amory Regional Medical Center, Inc. dba Gilmore Memorial Hospital ("Amory") and Drayer Physical Therapy Institute, LLC dba Elite Physical Therapy ("Drayer").**

Dear Mr. Toppin:

While not delivered to the required notice addresses set forth in Section 32 of the above-referenced Lease, Drayer is in receipt of your December 26, 2018-letter regarding the proposed termination of the above-referenced Lease. To date, your letter, that was hand delivered to both our Amory, Mississippi and Columbus, Mississippi clinic locations, is the first correspondence or notice that Drayer has received regarding the bankruptcy filing of Amory and/or any actions related to the Lease. We are still reviewing the terms of your letter, but wanted to notify you of our objection to the termination of the Lease and of our intent to vigorously pursue such legal remedies as we deem appropriate or necessary to prevent the termination of the Lease and our tenancy within Gilmore Memorial Hospital prior to expiration date of the Lease, April 30, 2021.

All future correspondence/notices regarding this matter should be sent to the notice addresses set forth in the Lease:

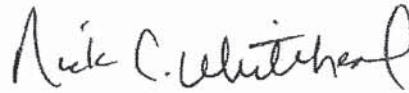
Drayer Physical Therapy Institute, LLC  
8205 Presidents Drive, 2<sup>nd</sup> Floor  
Hummelstown, PA 17036  
Attn: President

Mr. Bruce J. Toppin  
December 31, 2018  
Page 2

with a copy to:  
Upstream Rehabilitation Inc.  
1200 Corporate Drive, Suite 400  
Birmingham, AL 35242  
Attn: Brian G. Wilson, Esq.

If you have any questions or need any additional information, please do not hesitate to contact me.

Very truly yours,



Nick C. Whitehead  
Corporate Attorney

cc: Michael Malone, Esq., Polsinelli PC (via e-mail [mmalone@polsinelli.com](mailto:mmalone@polsinelli.com))  
David E. Gordon, Esq., Polsinelli PC (via e-mail [dgordon@polsinelli.com](mailto:dgordon@polsinelli.com))  
Caryn E. Wang, Esq., Polsinelli PC (via e-mail [cewang@polsinelli.com](mailto:cewang@polsinelli.com))  
Mr. Brian G. Wilson, General Counsel, Upstream Rehabilitation Inc.  
(via e-mail [bwilson@urpt.com](mailto:bwilson@urpt.com))  
Mr. Chad Barker, Regional Vice President, Drayer Physical Therapy Institute, LLC  
(via e-mail [cbarker@drayerpt.com](mailto:cbarker@drayerpt.com))