



## State of Tennessee

### Health Services and Development Agency

Andrew Jackson, 9<sup>th</sup> Floor, 502 Deaderick Street, Nashville, TN 37243

[www.tn.gov/hsda](http://www.tn.gov/hsda) Phone: 615-741-2364 Fax: 615-741-9884

October 1, 2020

Jerry Taylor  
Thompson Burton, PLLC  
One Franklin Park  
6100 Tower Circle, Suite 200  
Franklin, TN 37067

RE: Certificate of Need Application – Encore Surgical Institute - CN2009-030

For the establishment of a single-specialty ambulatory surgical treatment center limited to the provision of pain management related services, located at 8132 Country Village Drive, Suite 102, Cordova (Shelby County), TN 38016. Encore Surgical Institute, LLC is wholly owned by Dr. Jeffrey F. Hall, M.D, PLLC. The estimated project cost is \$1,606,310.

Dear Mr. Taylor:

This is to acknowledge the receipt of supplemental information to your application for a Certificate of Need. Please be advised that your application is now considered to be complete by this office.

Your application is being forwarded to Trent Sansing at the Tennessee Department of Health, Division of Policy, Planning, and Assessment for Certificate of Need review. You may be contacted by Mr. Sansing or someone from his office for additional clarification while the application is under review by the Department. Mr. Sansing's contact information is [Trent.Sansing@tn.gov](mailto:Trent.Sansing@tn.gov) or 615-253-4702.

In accordance with Tennessee Code Annotated, §68-11-1607, et seq., as amended by Public Chapter 780, the 60-day review cycle for this project began on October 1, 2020. The first 60 days of the cycle are assigned to the Department of Health, during which time a public hearing may be held on your application. You will be contacted by a representative from this Agency to establish the date, time and place of the hearing should one be requested. At the end of the 60-day period, a written report from the Department of Health or its representative will be forwarded to this office for Agency review. You will receive a copy of their findings. The Health Services and Development Agency will review your application on December 16, 2020.

Mr. Taylor  
Page 2

Any communication regarding projects under consideration by the Health Services and Development Agency shall be in accordance with T.C.A. § 68-11-1607(d):

1. No communications are permitted with the members of the agency once the Letter of Intent initiating the application process is filed with the agency. Communications between agency members and agency staff shall not be prohibited. Any communication received by an agency member from a person unrelated to the applicant or party opposing the application shall be reported to the Executive Director and a written summary of such communication shall be made part of the certificate of need file.
2. All communications between the contact person or legal counsel for the applicant and the Executive Director or agency staff after an application is deemed complete and placed in the review cycle are prohibited unless submitted in writing or confirmed in writing and made part of the certificate of need application file. Communications for the purposes of clarification of facts and issues that may arise after an application has been deemed complete and initiated by the Executive Director or agency staff are not prohibited.

Should you have questions or require additional information, please contact me.

Sincerely,

Logan G. Grant  
Executive Director

cc: Trent Sansing, TDH/Health Statistics, PPA



**State of Tennessee**

**Health Services and Development Agency**

Andrew Jackson, 9<sup>th</sup> Floor, 502 Deaderick Street, Nashville, TN 37243

[www.tn.gov/hsda](http://www.tn.gov/hsda) Phone: 615-741-2364 Fax: 615-741-9884

MEMORANDUM

TO: Trent Sansing, CON Director  
Office of Policy, Planning and Assessment  
Division of Health Statistics  
Andrew Johnson Tower, 2nd Floor  
710 James Robertson Parkway  
Nashville, Tennessee 37243

FROM: Logan G. Grant  
Executive Director

DATE: October 1, 2020

RE: Certificate of Need Application  
Encore Surgical Institute - CN2009-030

Please find enclosed an application for a Certificate of Need for the above-referenced project.

This application has undergone initial review by this office and has been deemed complete. It is being forwarded to your agency for a sixty (60) day review period to begin on October 1, 2020 and end on December 1, 2020.

Should there be any questions regarding this application or the review cycle, please contact this office.

Enclosure

cc: Jerry Taylor

**LETTER OF INTENT**

The Publication of Intent is to be published in the Commercial Appeal which is a newspaper of general circulation in Shelby County, Tennessee, on or before September 10, 2020 for one day.

This is to provide official notice to the Health Services and Development Agency and all interested parties, in accordance with TCA § 68-11-1601 *et seq.* and the Rules of the Health Services and Development Agency that Encore Surgical Institute, owned by Encore Surgical Institute, LLC, a Tennessee limited liability company and to be managed by Engineous Consulting, LLC, a Tennessee limited liability company intends to file an application for a Certificate of Need for the establishment of an ambulatory surgical treatment center (ASTC) for the performance of pain management related procedures. The proposed facility will have two procedure rooms and no operating rooms. It will be located at 8132 Country Village Drive, Suite 102, Cordova, Tennessee. The ASTC will be licensed as such by the Tennessee Board for Licensing Health Care Facilities. The total estimated project cost is \$1,606,310.00.

The anticipated date of the filing of the application is September 15, 2020.

The contact person for this project is Jerry W. Taylor, Attorney, who may be reached at: Thompson Burton, PLLC, One Franklin Park, 6100 Tower Circle, Suite 200, Franklin, TN 37067, 615-716-2297, email address: [jtaylor@thompsonburton.com](mailto:jtaylor@thompsonburton.com).

  
Signature

9-10-20  
Date

**The following language appears in the Publication of Intent:**

**Pursuant to T.C.A. § 68-11-1607(c): (A) Any health care institution wishing to oppose a Certificate of Need application must file a written notice with the Health Services and Development Agency no later than fifteen (15) days before the regularly scheduled Health Services and Development Agency meeting at which the application is originally scheduled; and (B) Any other person wishing to oppose the application must file written objection with the Health Services and Development Agency at or prior to the consideration of the application by the Agency.**

CERTIFICATE OF NEED APPLICATION

FOR

ENCORE SURGICAL INSTITUTE

The Establishment of an Ambulatory  
Surgical Treatment Center for Pain  
Management Procedures

Shelby County, Tennessee

September 14, 2020

Contact Person:

Jerry W. Taylor, Esq.  
Thompson Burton, PLLC  
6100 Tower Circle, Suite 200  
Franklin, Tennessee 37067  
615-716-2297



**State of Tennessee**

**Health Services and Development Agency**

Andrew Jackson Building, 9th Floor, 502 Deaderick Street, Nashville, TN 37243

www.tn.gov/hsda Phone: 615-741-2364 Fax: 615-741-9884

**CERTIFICATE OF NEED APPLICATION**

**SECTION A: APPLICANT PROFILE**

**1. Name of Facility, Agency, or Institution**

Encore Surgical Institute of Cordova  
Name

8132 Country Village Drive, Suite 102  
Street or Route

Shelby  
County

Cordova  
City

Tennessee  
State

38016  
Zip Code

Website address: N/A

*Note: The facility's name and address **must be** the name and address of the project and **must be** consistent with the Publication of Intent.*

**2. Contact Person Available for Responses to Questions**

Jerry W. Taylor  
Name

Attorney  
Title

Thompson Burton, PLLC  
Company Name

jtaylor@thompsonburton.com  
Email address

6100 Tower Circle, Suite 200  
Street or Route

Franklin  
City

Tennessee  
State

37067  
Zip Code

Attorney  
Association with Owner

615-716-2297  
Phone Number

615-807-3048  
Fax Number

**NOTE:** *Section A* is intended to give the applicant an opportunity to describe the project. *Section B* addresses how the project relates to the criteria for a Certificate of Need by addressing: Need, Economic Feasibility, Contribution to the Orderly Development of Health Care, and the Quality Measures.

Please answer all questions on 8½" X 11" white paper, clearly typed and spaced, single or double-sided, in order and sequentially numbered. In answering, please type the question and the response. All questions must be answered. If an item does not apply, please indicate "N/A" (not applicable). Attach appropriate documentation as an Appendix at the end of the application and reference the applicable Item Number on the attachment, i.e., Attachment A.1, A.2, etc. The last page of the application should be a completed signed and notarized affidavit.

**SECTION A: EXECUTIVE SUMMARY**

**3. A. Overview**

**Please provide an overview not to exceed three pages in total explaining each numbered point.**

- 1) Description – Address the establishment of a health care institution, initiation of health services, bed complement changes, and/or how this project relates to any other outstanding but unimplemented certificates of need held by the applicant;**

The applicant, Encore Surgical Institute of Cordova, LLC proposed to establish an ambulatory surgical treatment center (ASTC) limited to pain management procedures. The ASTC will have two procedure rooms (“PR” or “PRs”) and no operating rooms (“OR” or ORs”). Initially the only physician performing procedures at the facility will be Dr. Jeffrey F. Hall, M.D. Dr. Hall plans on bringing in physicians to his practice in the future, and needs the flexibility to enable such physician(s) to utilize the ASTC.

- 2) Ownership structure;**

The applicant, Encore Surgical Institute, LLC is wholly owned by Dr. Jeffrey F. Hall, M.D., PLLC.

- 3) Service area;**

The proposed service area for the purpose of this application is Shelby County. The physician who will be performing procedures at the facility is Dr. Jeffrey F. Hall, M.D. Dr. Hall is double-board certified in both Anesthesiology and Pain Management. He practices medicine at his clinic known as Spectrum Pain Clinic located in the same building where the proposed ASTC will be located, and at several other locations in Tennessee. Over the past twelve months, approximately 71% of Dr. Hall’s patients at Spectrum Pain Clinic were residents of Shelby County. The balance of the patient base is from surrounding Tennessee counties, and a lesser number from Mississippi and Arkansas.

- 4) Existing similar service providers;**

According to the 2019 Joint Annual Reports, there are 27 ASTCS in the PSA. Of these, 11 are single-specialty and 16 are multi-specialty. Of the 27 ASTCs, only 11 (2 single-specialty and 9 multi-specialty) reported offering pain management services. Of the 11 ASTCs where pain management procedures are allowed, only two are single-specialty facilities dedicated to pain management. The applicant proposes to establish a single-specialty ASTC dedicated to pain management.

Each of these pain management dedicated ASTCs experienced utilization in 2019 which far exceeds the utilization threshold in the State Health Plan, which is 1867 procedures per room. Mays and Snapp performed an average of 2,491 pain management procedures per room, or 133% of the utilization standard. Midsouth Interventional Pain Institute performed an average of 3,103 pain management procedures per room, or 166% of the utilization standard.

- 5) Project cost;**

The total estimated project cost is \$1,606,310. Approximately one-third of the total is the cost of the 6 year lease, which will be paid through operating revenues.

**6) Funding;**

Funding will be provided through a commercial loan and operating revenues.

**7) Financial Feasibility including when the proposal will realize a positive financial margin; and**

The ASTC will have a positive net income and positive cash flow from the outset, and will be financially viable from the outset.

**8) Staffing.**

The staffing plan calls for 7 FTE patient care positions and 4 FTE non-patient care positions. These positions will be easily filled front eth local labor force. Dr. Hall will serve as the Medical Director for the ASTC.

**3. B. Rationale for Approval**

**A certificate of need can only be granted when a project is necessary to provide needed health care in the area to be served, can be economically accomplished and maintained, will provide health care that meets appropriate quality standards, and will contribute to the orderly development of adequate and effective health care in the service area.**

**Provide a brief description of how the project meets the criteria necessary for granting a CON using the data and information points provided in Section B of the application.**

**1) Need;**

The physician who will be performing procedures at the facility is Dr. Jeffrey F. Hall, M.D. Dr. Hall is double-board certified in both Anesthesiology and Pain Management. He has been practicing medicine in pain management and related fields in Shelby County and the surrounding area for many years. He has operated a pain management clinic known as Spectrum Pain Clinic in the same building as will house the proposed ASTC since 2018.

Dr. Hall describes the need for this single specialty ASTC as follows: “As an interventionalist, the main goals in serving my patients are safety, efficacy with a high standard of care, comfort, and patient satisfaction. While I believe we provide these in an office setting, an ASTC with procedure rooms will allow me to provide my patients with additional options for increasing patient comfort and assuring best optimal outcomes in several ways:

1. These use of anesthesia for monitored anesthesia care. This allows for safer and more comfortable patient treatment. Many of the procedures are moderately painful and conscious sedation is preferred by most patients. The administration of anesthesia also brings more eyes into the procedure room for patient monitoring under sedation as well as the great benefit of rapid titration of sedation. Many procedures go smoother when the patient is relaxed to a greater degree, decreasing the likelihood of patient movement and contributing to the most accurate needle placement.
2. Dedicated recovery rooms. The monitored recovery of patients is more efficient in an ASTC with dedicated recovery rooms. In multi-use clinical space it is difficult to find space where the

recovering patient is not competing with “clinic space.” In addition, workflow does not have to be adjusted for days the physician does invasive procedures vs normal clinic duties. It allows a dedicated area for the variability of recovery times which is more difficult to accomplish in a clinic setting.

3. Simple proximity to an entrance and exit which is a safety addition for patients who may be affected by post procedure side effects or lingering sedation, and may be ambulating with assistance and/or in a wheelchair.
4. The ability to broaden continuity of care to perform nerve stimulation trials (not involving open procedure implants) which can more effectively be performed are not typically done in an ASTC setting.
5. Improved cost containment. The ability to perform a larger spectrum of procedures in an ASTC setting helps decrease emergency room visits by acute and/or chronic pain patients. We would still support our local hospitals with referrals and ancillary services when appropriate, but it would decrease the burden on the hospital ERs.”

The Agency should not lose sight of the importance of and need for the interventional pain management procedures to be performed in the facility as an alternative to opioids treatment for acute and/or chronic pain. The COVID-19 pandemic has understandably been the focus of the health care industry in recent months, but there is still a very significant and costly opioid addiction epidemic across Tennessee and the nation. In fact, this crisis has gotten worse during the pandemic.

As a board-certified pain management physician Dr. Hall recognizes there is a need for opioid treatment of some patients in limited cases and under very close medical supervision, but the procedures which will be performed in the ASTC are effective and safer alternatives to opioid treatment for acute and/or chronic pain patients.

## **2) Economic Feasibility;**

This is a relatively low cost project. It will be located in leased space immediately adjacent to Dr. Hall’s clinic. The other project costs are reasonable, and funding is available through a bank loan and through operating revenues. The ASTC will have a positive net income and positive cash flow from the outset, and will be financially viable from the outset.

## **3) Quality Standards;**

The ASTC will be licensed by the Tennessee Department of Health. It will be accredited by the accreditation Association for Ambulatory Health Care (AAAHC). The facility will maintain its license in good standing and will meet or exceed all licensure and accreditation standards. Dr. Jeffrey F. Hall is double board certified, an anesthesiologist and pain management. Dr. Hall will serve as the Medical Director.

## **4) Orderly Development to adequate and effective health care.**

The ASTC will allow Dr. Hall and his future colleagues to perform pain management procedures in a setting that is the most comfortable for the patients, and which maximizes best outcomes for the patients. This facilitates and improves the management of acute and/or chronic pain in patients, a malady which terribly impacts the quality of life for the patients. This facility will allow Dr. Hall to continually manage the pain of patients before the patient find it necessary to seek treatment in a hospital emergency room, thereby helping to contain health care costs. Pain management treatment

and procedure are often an alternative to the prescribing of opioids and other pharmaceutical pain killers, which can be effective for pain relief, but carry with them a high risk of addiction.

There should be no negative impact from this project. All of the projected cases are coming directly from Dr. Hall's clinic, and no other ASTC should be affected.

**C. Consent Calendar Justification**

**If Consent Calendar is requested, please provide the rationale for an expedited review.**

N/A

**A request for Consent Calendar must be in the form of a written communication to the Agency's Executive Director at the time the application is filed.**

N/A

**SECTION A: PROJECT DETAILS**

**4. A. Owner of the Facility, Agency or Institution**

Encore Surgical Institute, LLC		912-536-2779
Name		Phone Number
Suite 300, PMB 12		Williamson
Street or Route		County
Franklin.	TN	37067
City	State	Zip Code

**4. B. Type of Ownership of Control (Check One)**

1) Sole Proprietorship		6) Government (State of TN or Political Subdivision)	
2) Partnership		7) Joint Venture	
3) Limited Partnership		8) Limited Liability Company	X
4) Corporation (For Profit)		9) Other (Specify below)	
5) Corporation (Not-for-Profit)			

A copy of the organizational documents for the applicant, and an ownership chart are attached as Attachment Section A, Project Details, 4, B.

**5. Name of Management/Operating Entity (If Applicable)**

Engineous Consulting, LLC		
Name		
129 Bluebell Way		Williamson
Street or Route		County
Franklin	TN	37064
City	State	Zip Code
Website address: N/A		

*For new facilities or existing facilities without a current management agreement, attach a copy of a draft management agreement that at least includes the anticipated scope of management services to be provided, the anticipated term of the agreement, and the anticipated management fee payment methodology and schedule. For facilities with existing management agreements, attach a copy of the fully executed final contract. Attachment Section A-5.*

A copy of a draft Management Services Agreement is attached as Attachment Section A, Project Details, 5.

**6 A. Legal Interest in the Site**

*(Check appropriate line and submit the following documentation)*

*The legal interest described below must be valid on the date of the Agency consideration of the certificate of need application.*

- Ownership** (Applicant or applicant's parent company/owner)  
Submit a copy of the title/deed.
- Lease** (Applicant or applicant's parent company/owner)  
Attach a fully executed lease that includes the terms of the lease and the actual lease expense.
- Option to Purchase**  
Attach a fully executed Option that includes the anticipated purchase price
- Option to Lease**  
Attach a fully executed Option that included the anticipated terms of the Option and anticipated lease expense
- Other** (Specify)

*Check the appropriate line above: For applicants or applicant's parent company/owner that currently own the building/land for the project location, attach a copy of the title/deed. For applicants or applicant's parent company/owner that currently lease the building/land for the project location, attach a copy of the fully executed lease agreement. For projects where the location of the project has not been secured, attach a fully executed document including Option to Purchase Agreement, Option to Lease Agreement, or other appropriate documentation. Option to Purchase Agreements must include anticipated purchase price. Lease/Option to Lease Agreements must include the actual/anticipated term of the agreement and actual/anticipated lease expense. The legal interests described herein must be valid on the date of the Agency's consideration of the certificate of need application.*

The applicant has a current lease for the space in effect through December. If the CON is granted, the applicant has an option to lease the space for an additional 6 years. Copies of documents establishing site control are attached as Attachment Section A, Project Details, 6 A.

**6B. Briefly describe the following and attach the requested documentation on an 8 1/2" by 11" sheet of white paper, legibly labeling all requested information.**

- 1) **Plot Plan must include:**
  - a) **Size of site (*in acres*);**
  - b) **Location of structure on the site;**
  - c) **Location of the proposed construction/renovation; and**
  - d) **Names of streets, roads or highway that cross or border the site.**

A plot plan is attached as Attachment Section A, Project Details, 6, B, 1.

- 2) **Floor Plan – If the facility has multiple floors, submit one page per floor. If more than one page is needed, label each page.**

- a) **Patient care rooms (private or semi-private)**
- b) **Ancillary areas**
- c) **Equipment areas**
- d) **Other (specify)**

A floor plan is attached as Attachment Section A, Project Details, 6, B, 2.

- 3) **Public Transportation Route – Describe the relationship of the site to public transportation routes, if any, and to any highway or major road developments in the area. Describe the accessibility of the proposed site to patients/clients.**

The site is within easy walking distance to North Germantown Parkway, which is on a regular route of MATA, the public bus service for Memphis.

7. **Type of Institution** *(Check as appropriate--more than one response may apply)*

<b>A.</b>	<b>Hospital (Specify)</b>		<b>H.</b>	<b>Nursing Home</b>	
<b>B.</b>	<b>Ambulatory Surgical Treatment Center (ASTC), Multi-Specialty</b>		<b>I.</b>	<b>Outpatient Diagnostic Center</b>	
<b>C.</b>	<b>ASTC, Single Specialty</b>	X	<b>J.</b>	<b>Rehabilitation Facility</b>	
<b>D.</b>	<b>Home Health Agency</b>		<b>K.</b>	<b>Residential Hospice</b>	
<b>E.</b>	<b>Hospice</b>		<b>L.</b>	<b>Nonresidential Substitution-Based Treatment Center for Opiate Addiction</b>	
<b>F.</b>	<b>Mental Health Hospital</b>		<b>M.</b>	<b>Other (Specify below)</b>	
<b>G.</b>	<b>Intellectual Disability Institutional Habilitation Facility ICF/IID</b>				

**8 Purpose of Review** (Check appropriate -- more than one response may apply)

<b>A.</b>	<b>Establish New Health Care Institution</b>	<input checked="" type="checkbox"/>	<b>G.</b>	<b>MRI Unit Increase</b>	
<b>B.</b>	<b>Change in Bed Complement</b>		<b>H.</b>	<b>Satellite Emergency Department</b>	
<b>C.</b>	<b>Initiation of Health Care Services as Defined in TCA 68-11-1607(4) (Specify)</b>		<b>I.</b>	<b>Addition of ASTC Specialty</b>	
<b>D.</b>	<b>Relocation and/or Replacement</b>		<b>J.</b>	<b>Initiation of Therapeutic Catheterization</b>	
<b>E.</b>	<b>Initiation of MRI</b>		<b>K.</b>	<b>Other (Specify below)</b>	
<b>F.</b>	<b>Initiation of Pediatric MRI</b>				

**9. Medicaid/TennCare, Medicare Participation**

**MCO Contracts** [Check all that apply]

N/A (Proposed new facility)

AmeriGroup  United Healthcare Community Plan  BlueCare  TennCare Select

**Medicare Provider Number** \_\_\_\_\_ To be applied for \_\_\_\_\_

**Medicaid Provider Number** \_\_\_\_\_ To be applied for \_\_\_\_\_

**Certification Type** \_\_\_\_\_

**If a new facility, will certification be sought for Medicare and/or Medicaid/TennCare?**

Medicare  Yes  No  N/A Medicaid/TennCare  Yes  No  N/A

**10. Bed Complement Data**

N/A

**Please indicate current and proposed distribution and certification of facility beds.**

	<i>Current Licensed</i>	<i>Beds Staffed</i>	<i>Beds Proposed</i>	<i>*Beds Approved</i>	<i>**Beds Exempted</i>	<i><u>TOTAL Beds at Completion</u></i>
1) Medical	_____	_____	_____	_____	_____	_____
2) Surgical	_____	_____	_____	_____	_____	_____
3) ICU/CCU	_____	_____	_____	_____	_____	_____
4) Obstetrical	_____	_____	_____	_____	_____	_____
5) NICU	_____	_____	_____	_____	_____	_____
6) Pediatric	_____	_____	_____	_____	_____	_____
7) Adult Psychiatric	_____	_____	_____	_____	_____	_____
8) Geriatric Psychiatric	_____	_____	_____	_____	_____	_____
9) Child/Adolescent Psychiatric	_____	_____	_____	_____	_____	_____
10) Rehabilitation	_____	_____	_____	_____	_____	_____
11) Adult Chemical Dependency	_____	_____	_____	_____	_____	_____
12) Child/Adolescent Chemical Dependency	_____	_____	_____	_____	_____	_____
13) Long-Term Care Hospital	_____	_____	_____	_____	_____	_____
14) Swing Beds	_____	_____	_____	_____	_____	_____
15) Nursing Home – SNF (Medicare only)	_____	_____	_____	_____	_____	_____
16) Nursing Home – NF (Medicaid only)	_____	_____	_____	_____	_____	_____
17) Nursing Home – SNF/NF (dually certified Medicare/Medicaid)	_____	_____	_____	_____	_____	_____
18) Nursing Home – Licensed (non- certified)	_____	_____	_____	_____	_____	_____
19) ICF/IID	_____	_____	_____	_____	_____	_____
20) Residential Hospice	_____	_____	_____	_____	_____	_____
<b>TOTAL</b>	_____	_____	_____	_____	_____	_____

*\*Beds approved but not yet in service*

*\*\*Beds exempted under 10% per 3 year provision*

**B. Describe the reasons for change in bed allocations and describe the impact the bed change will have on the applicant facility’s existing services. Attachment Section A-10.**

N/A

**C. Please identify all the applicant’s outstanding Certificate of Need projects that have a licensed bed change component. If applicable, complete chart below.**

N/A

**11. Home Health Care Organizations – Home Health Agency, Hospice Agency (excluding Residential Hospice), identify the following by checking all that apply: N/A**

	Existing Licensed County	Parent Office County	Proposed Licensed County		Existing Licensed County	Parent Office County	Proposed Licensed County
Anderson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lauderdale	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bedford	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lawrence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Benton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lewis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bledsoe	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lincoln	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blount	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Loudon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bradley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	McMinn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Campbell	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	McNairy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cannon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Macon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carroll	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Madison	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Marion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cheatham	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Marshall	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chester	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Maury	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Claiborne	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Meigs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clay	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Monroe	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cocke	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Montgomery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Coffee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Moore	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Crockett	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Morgan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cumberland	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Obion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Davidson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Overton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decatur	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Perry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DeKalb	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Pickett	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dickson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Polk	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dyer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Putnam	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fayette	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Rhea	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fentress	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Roane	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Franklin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Robertson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gibson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Rutherford	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Giles	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Scott	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grainger	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sequatchie	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Greene	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sevier	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grundy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Shelby	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hamblen	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Smith	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hamilton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Stewart	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hancock	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sullivan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hardeman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sumner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hardin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Tipton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hawkins	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Trousdale	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Haywood	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Unicoi	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henderson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Van Buren	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hickman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Warren	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Houston	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Washington	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Humphreys	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Wayne	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jackson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Weakley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jefferson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	White	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Johnson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Williamson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Knox	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Wilson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lake	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

### 12. Square Footage and Cost Per Square Footage Chart

Unit/Department	Existing Location	Existing SF	Temporary Location	Proposed Final Location	Proposed Final Square Footage		
					Renovated	New	Total
Encore Surgical Institute, LLC	4969 (currently empty space)				4969	0	4969
Unit/Department GSF Sub-Total							
Other GSF Total							
Total GSF					4969		4969
*Total Cost					\$621,125		\$621,125
**Cost Per Square Foot					\$125		\$125
Cost per Square Foot Is Within Which Range (For quartile ranges, please refer to the Applicant's Toolbox on <a href="http://www.tn.gov/hsda">www.tn.gov/hsda</a> )  *The Total Construction Cost should equal the Construction Cost reported on line A5 of the Project Cost Chart.  ** Cost per Square Foot is the construction cost divided by the square feet. Please do not include contingency costs.					<input type="checkbox"/> Below 1 <sup>st</sup> Quartile  <input checked="" type="checkbox"/> Between 1 <sup>st</sup> and 2 <sup>nd</sup> Quartile  <input type="checkbox"/> Between 2 <sup>nd</sup> and 3 <sup>rd</sup> Quartile  <input type="checkbox"/> Above 3 <sup>rd</sup> Quartile	<input type="checkbox"/> Below 1 <sup>st</sup> Quartile  <input type="checkbox"/> Between 1 <sup>st</sup> and 2 <sup>nd</sup> Quartile  <input type="checkbox"/> Between 2 <sup>nd</sup> and 3 <sup>rd</sup> Quartile  <input type="checkbox"/> Above 3 <sup>rd</sup> Quartile	<input checked="" type="checkbox"/> Below 1 <sup>st</sup> Quartile  <input type="checkbox"/> Between 1 <sup>st</sup> and 2 <sup>nd</sup> Quartile  <input type="checkbox"/> Between 2 <sup>nd</sup> and 3 <sup>rd</sup> Quartile  <input type="checkbox"/> Above 3 <sup>rd</sup> Quartile

**A. Describe the construction and renovation associated with the proposed project. If applicable, provide a description of the existing building, including age of the building and the use of space vacated due to the proposed project.**

Dr. Hall operates his pain management clinic in approximately 1/2 of the space of a medical office building in which he is the sole tenant. The ASTC is proposed to occupy the other approximately 1/2 of the one-story building. The space is empty now, which should facilitate the easy build-out of the space for the ASTC.

**13. MRI, PET, and/or Linear Accelerator**

The response to this Question 13, including sub-parts A-F, is "N/A."

- 1. Describe the acquisition of any Magnetic Resonance Imaging (MRI) scanner that is adding a MRI scanner in counties with population less than 250,000 or initiation of pediatric MRI in counties with population greater than 250,000 and/or**
- 2. Describe the acquisition of any Positron Emission Tomographer (PET) or Linear Accelerator if initiating the service by responding to the following:**

**A. Complete the chart below for acquired equipment.**

<input type="checkbox"/> Linear Accelerator	Mev _____	Types:	<input type="checkbox"/> SRS <input type="checkbox"/> IMRT <input type="checkbox"/> IGRT <input type="checkbox"/> Other _____	
	Total Cost*:		<input type="checkbox"/> By Purchase <input type="checkbox"/> By Lease      Expected Useful Life (yrs) _____	
	<input type="checkbox"/> New	<input type="checkbox"/> Refurbished	<input type="checkbox"/> If not new, how old? (yrs) _____	
<input type="checkbox"/> MRI	Tesla: _____	Magnet:	<input type="checkbox"/> Breast <input type="checkbox"/> Extremity <input type="checkbox"/> Open <input type="checkbox"/> Short Bore <input type="checkbox"/> Other _____	
	Total Cost*:		<input type="checkbox"/> By Purchase <input type="checkbox"/> By Lease      Expected Useful Life (yrs) _____	
	<input type="checkbox"/> New	<input type="checkbox"/> Refurbished	<input type="checkbox"/> If not new, how old? (yrs) _____	
<input type="checkbox"/> PET	<input type="checkbox"/> PET only	<input type="checkbox"/> PET/CT	<input type="checkbox"/> PET/MRI	
	Total Cost*:		<input type="checkbox"/> By Purchase <input type="checkbox"/> By Lease      Expected Useful Life (yrs) _____	
	<input type="checkbox"/> New	<input type="checkbox"/> Refurbished	<input type="checkbox"/> If not new, how old? (yrs) _____	

\* As defined by Agency Rule 0720-9-.01(13)

- B. In the case of equipment purchase, include a quote and/or proposal from an equipment vendor. In the case of equipment lease, provide a draft lease or contract that at least includes the term of the lease and the anticipated lease payments along with the fair market value of the equipment.**
- C. Compare lease cost of the equipment to its fair market value. Note: Per Agency Rule, the higher cost must be identified in the project cost chart.**
- D. Schedule of Operations:**

Location	Days of Operation (Sunday through Saturday)	Hours of Operation (example: 8 am – 3 pm)
Fixed Site (Applicant)	_____	_____
Mobile Locations (Applicant)	_____	_____

**E. Identify the clinical applications to be provided that apply to the project.**

**F. If the equipment has been approved by the FDA within the last five years provide documentation of the same.**

## **SECTION B: GENERAL CRITERIA FOR CERTIFICATE OF NEED**

In accordance with T.C.A. § 68-11-1609(b), “no Certificate of Need shall be granted unless the action proposed in the application for such Certificate is necessary to provide needed health care in the area to be served, can be economically accomplished and maintained, will provide health care that meets appropriate quality standards, and will contribute to the orderly development of health care.” In making determination, the Agency uses as guidelines the goals, objectives, criteria, and standards provided in the State Health Plan. Additional criteria for review are prescribed in Chapter 11 of the Agency’s Rules, Tennessee Rules and Regulations 01730-11.

The following questions are listed according to the four criteria: (1) Need, (2) Economic Feasibility, (3) Quality Standards, and (4) Contribution to the Orderly Development of Health Care. Please respond to each question and provide underlying assumptions, data sources, and methodologies when appropriate.

### **QUESTIONS**

#### **NEED**

The responses to this section of the application will help determine whether the project will Provide needed health care facilities or services in the area to be served.

1. Provide a response to the applicable criteria and standards for the type of institution or service requested. <http://www.tn.gov/hsda/hsda-criteria-and-standards.html>.

#### **CON Standards and Criteria for Ambulatory Surgical Treatment Centers**

1. **Need.** The minimum numbers of 884 Cases per Operating Room and 1867 Cases per Procedure Room are to be considered as baseline numbers for purposes of determining Need.<sup>2</sup> An applicant should demonstrate the ability to perform a minimum of 884 Cases per Operating Room and/or 1867 Cases per Procedure Room per year, except that an applicant may provide information on its projected case types and its assumptions of estimated average time and clean up and preparation time per Case if this information differs significantly from the above-stated assumptions. It is recognized that an ASTC may provide a variety of services/Cases and that as a result the estimated average time and clean up and preparation time for such services/Cases may not meet the minimum numbers set forth herein. It is also recognized that an applicant applying for an ASTC Operating Room(s) may apply for a Procedure Room, although the anticipated utilization of that Procedure Room may not meet the base guidelines contained here. Specific reasoning and explanation for the inclusion in a CON application of such a Procedure Room must be provided. An applicant that desires to limit its Cases to a specific type or types should apply for a Specialty ASTC.

The proposed ASTC will have 2 procedure rooms and will have no operating rooms. The pain management procedures to be performed do not require the costly resources of a fully equipped and built-out operating room.

The applicant does not project sufficient volume to fully utilize the 2 procedure rooms at the rate of 1,867 procedures per room. Dr. Hall plans to initially operate the ASTC 2 days per week. The other days he rotates to other clinical sites. If this CON is approved, the ASTC will have capacity of 2/5, or 40%, of a normal PR operating 5 days per week. Based on the assumption in the Standards and Criteria, the annual utilization threshold for each procedure room is 747 procedures.

The applicant projects 2,120 procedures in Year 1. Based on operating two days per week, that is 283% of one pro-rated procedure room. The projected Year 1 volume is 114% of one full-time procedure room. Although the applicant proposes to have two PRs, the two rooms will not be operated at the same time. Instead, Dr. Hall will alternate between the two rooms, a practice sometimes called “flipping” the rooms. While a procedure is being performed in one room, the other room and a patient are being prepared simultaneously, so when Dr. Hall finishes one procedure, he can walk right into the other PR and being immediately. This is a much more efficient use of the rooms. This means that from a capacity and utilization standpoint, it is the functional equivalent of having one PR.

So whether assessing the utilization based on the initial contemplated schedule of two days per week or based on a full-time procedure room available 5 days per week, the projected utilization justifies two procedure rooms.

2. **Need and Economic Efficiencies.** An applicant must estimate the projected surgical hours to be utilized per year for two years based on the types of surgeries to be performed, including the preparation time between surgeries. Detailed support for estimates must be provided.

The applicant accepts the assumptions in the Criteria and Standards of an average of 30 minutes per procedure for treatment time, and 15 minutes per procedure for clean-up and preparation time.

Based on those assumptions, the projected surgical hours are as follows:

Year 1:

2120 cases at 30 minutes treatment time = 63,600 minutes per year = 1060 hours per year

2120 cases at 15 minutes clean-up time = 31,800 minutes per year = 530 hours per year

Total surgical hours: 1590 hours Year 1.

Year 2:

2332 cases at 30 minutes treatment time = 69,960 minutes per year = 1166 hours per year

2332 cases at 15 minutes clean-up time = 34,980 minutes per year = 583 hours per year

Total surgical hours: 1749 hours Year 2.

3. **Need; Economic Efficiencies; Access.** To determine current utilization and need, an applicant should take into account both the availability and utilization of either: a) all existing outpatient Operating Rooms and Procedure Rooms in a Service Area, including physician office based surgery rooms (when those data are officially reported and available<sup>3</sup>) OR b) all existing comparable outpatient Operating Rooms and Procedure Rooms based on the type of Cases to be performed. Additionally, applications should provide similar information on the availability of nearby out-of-state existing outpatient Operating Rooms and Procedure Rooms, if that data are available, and provide the source of that data. Unstaffed dedicated outpatient Operating Rooms and unstaffed dedicated outpatient Procedure Rooms are considered available for ambulatory surgery and are to be included in the inventory and in the measure of capacity.

A table reflecting comprehensive utilization data for all ASTCs in the PSA from the most recent 3 years of Joint Annual Reports (2017-2019) is attached as Attachment Section C, Need, SHP Standards, 3.

According to the 2019 Joint Annual Reports, there are 27 ASTCS in the PSA. Of these, 11 are single-specialty and 16 are multi-specialty. Of the 27 ASTCs, only 11 (2 single-specialty and 9 multi-specialty) reported offering pain management services. Of the 11 ASTCs where pain management procedures are allowed, only two are single-specialty facilities dedicated to pain management.

The applicant proposes to establish a single-specialty ASTC dedicated to pain management. The most relevant “existing comparable outpatient Operating Rooms and Procedure Rooms based on the type of cases to be performed” in the service area are the two existing single-specialty, pain management dedicated ASTCs: Mays and Snapp Pain Clinic and Rehabilitation Center and Midsouth Interventional Pain Institute.

Each of these pain management dedicated ASTCs experienced utilization in 2019 which far exceeded the utilization threshold in the State Health Plan, which is 1867 procedures per room. Mays and Snapp performed an average of 2,491 pain management procedures per room, or 133% of the utilization standard. Midsouth Interventional Pain Institute performed an average of 3,103 pain management procedures per room, or 166% of the utilization standard.

The two pain management ASTCs experienced average two-year growth in pain management cases of 22%. All of the multi-specialty ASTCs collectively experienced average two year growth in pain management cases of only 1.8%. This reflects a clear physician preference to perform these procedures in single-specialty pain management ASTCs instead of multi-specialty ASTCs. This further verifies the need for an additional pain management-only ASTCs in the service area for Dr. Hall’s patients.

Taking into account all facilities and all cases performed in the PSA in 2019 - which is not the most relevant metric for determining the need for this proposed facility - there was an average of 734 cases per OR, and 1551 cases per PR.

- 4. Need and Economic Efficiencies. An applicant must document the potential impact that the proposed new ASTC would have upon the existing service providers and their referral patterns. A CON application to establish an ASTC or to expand existing services of an ASTC should not be approved unless the existing ambulatory surgical services that provide comparable services regarding the types of Cases performed, if those services are known and relevant, within the applicant’s proposed Service Area or within the applicant’s facility are demonstrated to be currently utilized at 70% or above.**

This will have no impact on existing providers. All of the cases which will be performed in the proposed ASTC will be Dr. Hall’s patients and will be re-directed from Dr. Hall’s clinic.

There are only 2 single specialty ASTCs dedicated to pain management in Shelby County. They are both operating well above 70% of capacity. Mays and Snapp Pain Clinic & Rehabilitation Center performed 2,491 cases per room in 2019, which is 93% of full capacity. Midsouth Interventional Pain Institute performed 3,103 cases per room in 2019, which is 116% of full capacity.

There are 11 multi-specialty ASTCs in Shelby County. Collectively, those facilities averaged 71% occupancy on a total of 12 Procedure Rooms in 2019.

Only 2 hospitals in Shelby County reported any pain management procedures being performed in those facilities. The pain management procedures accounted for only 0.5% of all outpatient procedures performed in hospitals in 2018.

- 5. Need and Economic Efficiencies. An application for a Specialty ASTC should present its projections for the total number of cases based on its own calculations for the projected length of time per type of case, and shall provide any local, regional, or national data in support of its methodology. An applicant for a Specialty ASTC should provide its own definitions of the surgeries and/or procedures that will be performed and whether the Surgical Cases will be performed in an Operating Room or a Procedure Room. An applicant for a Specialty ASTC must document the potential impact that the proposed new ASTC would have upon the existing service providers and their referral patterns. A CON proposal to establish a Specialty ASTC or to expand existing services of a Specialty ASTC shall not be approved unless the existing ambulatory surgical services that provide comparable services regarding the types of Cases performed within the applicant's proposed Service Area or within the applicant's facility are demonstrated to be currently utilized at 70% or above. An applicant that is granted a CON for a Specialty ASTC shall have the specialty or limitation placed on the CON.**

The applicant projects 2,120 cases in Year 1 and 2,332 cases in Year 2. The applicant accepts as reasonable the assumptions for the average time per case and clean-up time per case in the State Health Plan: 30 minutes treatment time per case and 15 minutes clean-up time per case. The type of procedures to be performed are pain-management related procedures. All of these procedures will be performed in the two requested procedure rooms. The proposed ASTC will have no operating rooms.

This project will not impact existing providers. All of the projected volume will come from the patient base of Dr. Jeff Hall, who has operated a clinical pain management practice in the area for several years. Performing the qualifying cases in an ASTC will allow the use of sedation which greatly improves the experience for the patients, and decreases risks which can arise from a patient who inadvertently moves while the procedure is being performed. Performing the procedures in an ASTC is less painful and safer for the patient than doing so in a physician's office.

According to the 2019 Joint Annual Reports, there are 27 ASTCs in the PSA. Of these, 11 are single-specialty and 16 are multi-specialty. Of the 27 ASTCs, only 11 reported offering pain management services. Of the 11 ASTCs where pain management procedures are allowed, only two are single specialty facilities dedicated to pain management.

The applicant proposes to establish a single-specialty ASTC dedicated to pain management. The most relevant "comparable services regarding the types of cases performed" in the service area are the two existing single-specialty, pain management dedicated ASTCs: Mays and Snapp Pain Clinic and Rehabilitation Center and Midsouth Interventional Pain Institute.

Each of these pain management ASTCs experienced utilization which far exceeded the utilization threshold in the State Health Plan, which is 1867 procedures per room. Mays and Snapp performed an average of 2,491 pain management procedures per room, or 133% of the utilization standard. Midsouth Interventional Pain Institute performed an average of 3,103 pain management procedures per room, or 166% of the utilization standard.

- 6. Access to ASTCs. The majority of the population in a Service Area should reside within 60 minutes average driving time to the facility.**

This is a somewhat impractical standard to apply with any degree of certainty. The applicant believes this standard is met in light of the following considerations: The distance to the Shelby County line from the site is less than 20 miles at the furthest point (West). Other directional distances to the county line are: North, 15.4 miles; East, 6.7 miles; and South, 12.7 miles. Cordova is in one of the areas of highest population density in the county with a projected 2020 density of 2.75 persons per acre. Areas to the South and Southeast (Germantown, Collierville), are not as high density but still relatively high at 2.19 persons per acre. The demographic data indicates that the highest residential densities will occur in the east central, southern and southeastern portions of the County, in the general quadrant of Shelby County where the ASTC will be located. (Source: <https://shelbycountyttn.gov/DocumentView.aspx?DID=662>). While drive time will vary with the time of day and other traffic and weather conditions, it is believed that at least a majority of the service area population resides within a 60 minute drive time of the facility.

**7. Access to ASTCs. An applicant should provide information regarding the relationship of an existing or proposed ASTC site to public transportation routes if that information is available.**

The site is within easy walking distance to North Germantown Parkway, which is on a regular route of MATA, the public bus service for Memphis.

**8. Access to ASTCs. An application to establish an ambulatory surgical treatment center or to expand existing services of an ambulatory surgical treatment center must project the origin of potential patients by percentage and county of residence and, if such data are readily available, by zip code, and must note where they are currently being served. Demographics of the Service Area should be included, including the anticipated provision of services to out-of-state patients, as well as the identity of other service providers both in and out of state and the source of out-of-state data. Applicants shall document all other provider alternatives available in the Service Area. All assumptions, including the specific methodology by which utilization is projected, must be clearly stated.**

The projected patient origin was based on Dr. Hall’s new patients base over the past five months. Approximately 77% of those patients were residents of Shelby County. Approximately 14% were residents of other Tennessee counties, and 9% were residents of Mississippi and Arkansas. The patient base of 312 patients used for this calculation does not include an addition 26 patients from zip codes accountable for no more than 1 patient each. Applying those same percentages to the projected cases results in the following projected patient base by county of residence.

Service Area Counties	Projected Utilization-County Residents - Year 1	% of Total Patients
Shelby	1632	77%
Other Tennessee counties	297	14%
Other states	191	9%
<b>Total</b>	<b>2120</b>	<b>100%</b>

Please see the response to Question 3 of this section for a discussion of existing alternative providers and resources.

**9. Access and Economic Efficiencies. An application to establish an ambulatory surgical treatment center or to expand existing services of an ambulatory surgical treatment center must project patient utilization for each of the first eight quarters following completion of the**

**project. All assumptions, including the specific methodology by which utilization is projected, must be clearly stated.**

Since the cases to be performed in the ASTC will come from Dr. Hall's existing patient base, no ramp-up time is required after the ASTC opens. Historically, there is no significant seasonal fluctuations in the pain management cases. For these reasons, it is reasonable to forecast a stable proportion of cases being performed each quarter.

Qtr. 1: 518  
Qtr. 2: 526  
Qtr. 3: 536  
Qtr. 4: 540  
Qtr. 5: 569  
Qtr. 6: 579  
Qtr. 7: 590  
Qtr. 8: 594

**10. Patient Safety and Quality of Care; Health Care Workforce.**

- a. An applicant should be or agree to become accredited by any accrediting organization approved by the Centers for Medicare and Medicaid Services, such as the Joint Commission, the Accreditation Association of Ambulatory Health Care, the American Association for Accreditation of Ambulatory Surgical Facilities, or other nationally recognized accrediting organization.**

The applicant will seek and expects to receive accreditation from the Accreditation Association for Ambulatory Health Care.

- b. An applicant should estimate the number of physicians by specialty that are expected to utilize the facility and the criteria to be used by the facility in extending surgical and anesthesia privileges to medical personnel. An applicant should provide documentation on the availability of appropriate and qualified staff that will provide ancillary support services, whether on- or off-site.**

Dr. Jeffrey F. Hall is the only physician who would perform services in the facility, at least initially. Dr. Hall expects to recruit one or two physicians to join the practice in the coming years, and those physicians would also perform procedures in the ASTC.

**11. Access to ASTCs. In light of Rule 0720-11.01, which lists the factors concerning need on which an application may be evaluated, and Principle No. 2 in the State Health Plan, "Every citizen should have reasonable access to health care," the HSDA may decide to give special consideration to an applicant:**

- a. Who is offering the service in a medically underserved area as designated by the United States Health Resources and Services Administration;**

N/A

- b. **Who is a “safety net hospital” or a “children’s hospital” as defined by the Bureau of TennCare Essential Access Hospital payment program;**

N/A

- c. **Who provides a written commitment of intention to contract with at least one TennCare MCO and, if providing adult services, to participate in the Medicare program; or**

The facility will contract with at least one TennCare MCOS, and it will participate in Medicare.

- d. **Who is proposing to use the ASTC for patients that typically require longer preparation and scanning times. The applicant shall provide in its application information supporting the additional time required per Case and the impact on the need standard.**

N/A

**[END OF RESPONSES TO CRITERIA AND STANDARDS IN THE STATE HEALTH PLAN]**

2. Describe how this project relates to existing facilities or services operated by the applicant including previously approved Certificate of Need projects and future long-range development plans.

N/A. The applicant does not operate any other licensed facilities and does not hold any unimplemented CONs.

3. Identify the proposed service area and justify the reasonableness. Submit a county level map for the Tennessee portion of the service area using the map on the following page, clearly marked and shaded to reflect the service area as it relates to meeting the requirements for CON criteria and standards that may apply to the project. Please include a discussion of the inclusion of counties in the border states if applicable. Attachment Section B - Need-3.

The proposed service area for the purpose of this application is Shelby County. The physician who will be performing procedures at the facility is Dr. Jeffrey F. Hall, M.D. Dr. Hall is double-board certified in both Anesthesiology and Pain Management. He has been practicing medicine in pain management and related fields in Shelby County and the surrounding area for many years. He has operated a pain management clinic known as Spectrum Pain Clinic in the same building as will house the proposed ASTC since 2018.

Over the past five month look-back period, approximately 77% of Dr. Hall’s patients were residents of Shelby County. The balance of the patient base is from surrounding Tennessee counties, and a lesser number of patients were from Mississippi and Arkansas.

A map of the proposed service area is on the following page.

Complete the following utilization tables for each county in the service area, if applicable:

Service Area Counties	Historical Utilization-County Residents - Most Recent 12 months	% of Total Patients
Shelby	239	77%
Other Tennessee counties	44	14%
Other states	29	9%
<b>Total</b>	<b>312*</b>	<b>100%</b>

Service Area Counties	Projected Utilization-County Residents - Cases Year 1	% of Total Cases
Shelby	1632	77%
Other Tennessee counties	297	14%
Other states	191	9%
<b>Total</b>	<b>2120</b>	<b>100%</b>

\*The historical patient base of 312 patients used for this calculation does not include an addition 26 patients from zip codes accounting for no more than 1 patient each.



Describe the demographics of the population to be served by the proposal.

**2) Provide the following data for each county in the service area using current and projected population data from the Department of Health:**

The requested data is in the table below. The Target Population is Ages 18 years and older. The projected year is 2024, based on a four year planning horizon.

Demographic Variable/ Geographic Area	Department of Health/Health Statistics			Bureau of the Census			TennCare						
	Total Population-Current Year (2020)	Total Population-Projected Year (2024)	Total Population-% Change	*Target Population-(18+) Current Year	*Target Population-(18+) Project Year	*Target Population-(18+)% Change	Target Population (18+) Projected Year as % of Total	Median Age	Household Income (2014-2018)	Person Below Poverty Level**	Person Below Poverty Level as % of Total	TennCare Enrollees	TennCare Enrollees as % of Total
Shelby County	950,325	964,902	1.53%	712,659	724,654	1.68%	75%	N/A	\$49,782	206,221	21.7%	256,378	27.0%
Primary Service Area Total	950,325	964,902	1.53%	712,659	724,654	1.68%	75%	N/A	\$49,782	206,221	21.7%	256,378	27.0%
State of TN Total	6,983,347	7,097,353	3.11%	5,348,605	5,530,389	3.40%	78%	N/A	\$50,972	1,053,152	15.3%	1,464,616	21.3%

\*\* The Census Bureau website does not provide the number of persons below poverty level. The totals in this column are calculated by percentages of individuals below poverty level divided by the total current population.  
Sources: <http://www.tn.gov/health/articles-and-statistics-population>; <http://www.tn.gov/service/topic/care-and-costs>; <http://health.tn.gov/facilities>; <http://www.census.gov/ipeds/data/hhs/2014/tables/s001001a.xls>

*\* Target Population is population that project will primarily serve. For example, nursing home, home health agency, hospice agency projects typically primarily serve the Age 65+ population; projects for child and adolescent psychiatric services will serve the Population Ages 0-17. Projected Year is defined in select service-specific criteria and standards. If Projected Year is not defined, default should be four years from current year, e.g., if Current Year is 2019, then default Projected Year is 2023.*

***Be sure to identify the target population, e.g., Age 65+, the current year and projected year being used.***

**B. Describe the special needs of the service area population, including health disparities, the accessibility to consumers, particularly the elderly, women, racial and ethnic minorities, TennCare or Medicaid recipients, and low-income groups. Document how the business plans of the facility will take into consideration the special needs of the service area population.**

There are two notable differences in the demographics between the PSA and the state as a whole: (1) The projected population growth in the PSA is less than that of the state as a whole, as to both the total population and the target population. (2) The poverty rate and TennCare enrollment are higher in the PSA than in the state as a whole.

Dr. Hall and the ASTC will serve all patients needing and qualifying for offered services without regard to any non-clinical considerations. The ASTC will participate in TennCare.

- Describe the existing and approved but unimplemented services of similar healthcare providers in the service area. Include utilization and/or occupancy trends for each of the most recent three years of data available for this type of project. List each provider and its utilization and/or occupancy individually. Inpatient bed projects must include the following data: Admissions or discharges, patient days, average length of stay, and occupancy. Other projects should use the most appropriate measures, e.g., cases, procedures, visits, admissions, etc. This doesn't apply to projects that are solely relocating a service.

A table reflecting comprehensive utilization data for all ASTCs in the PSA from the most recent 3 years of Joint Annual Reports (2017-2019) is attached as Attachment Section C, Need, SHP Standards, 3.

According to the 2019 Joint Annual Reports, there are 27 ASTCs in the PSA. Of these, 11 are single-specialty and 16 are multi-specialty. Of the 27 ASTCs, only 11 (2 single-specialty and 9 multi-specialty) reported offering pain management services. Of the 11 ASTCs where pain management procedures are allowed, only 2 are single-specialty facilities dedicated to pain management.

The applicant proposes to establish a single-specialty ASTC dedicated to pain management. The most relevant “similar healthcare providers” in the service area are two existing single-specialty, pain management dedicated ASTCs: Mays and Snapp Pain Clinic and Rehabilitation Center, and Midsouth Interventional Pain Institute.

Each of these facilities experienced utilization which far exceeded the utilization threshold in the State Health Plan, which is 1867 procedures per room. Mays and Snapp performed an average of 2,491 pain management procedures per room, or 133% of the utilization standard. Midsouth Interventional Pain Institute performed an average of 3,103 pain management procedures per room, or 166% of the utilization standard.

The two pain management-only ASTCs experienced average two year growth in pain management cases of 22%. All of the multi-specialty ASTCs collectively experienced average two year growth in pain management cases of only 1.8%. This reflects a clear physician preference to perform these procedures in single-specialty pain management ASTCs instead of multi-specialty ASTCs. This further verifies the need for an additional pain management-only ASTCs in the service area for Dr. Hall’s patients.

Taking into account all facilities and all cases performed in the PSA in 2019 - which is not the most relevant metric for determining the need for this proposed facility - there was an average of 734 cases per OR, and 1551 cases per PR.

6. **Provide applicable utilization and/or occupancy statistics for your institution for each of the past three years and the projected annual utilization for each of the two years following completion of the project. Additionally, provide the details regarding the methodology used to project utilization. The methodology must include detailed calculations or documentation from referral sources, and identification of all assumptions.**

This is a proposed new facility, so there is no historical utilization data. The projected utilization of the ASTC for the first two years is as follows.

Year 1:	2,120
Year 2:	2,332

The projected number of cases is the number of Dr. Hall’s patients/cases which would more appropriately be performed in an ASTC. This is a conservative estimate, because there is a number of patients who Dr. Hall is treating in his Jackson, Madison County clinic and who would gladly travel to Cordova to have the procedure performed in Dr. Hall’s surgery center. The exact number of these patients is unknown, and therefore they are not included in the projections.

## ECONOMIC FEASIBILITY

The responses to this section of the application will help determine whether the project can be economically accomplished and maintained.

### 1. Project Cost Instructions

- A. All projects should have a project cost of at least \$15,000 (the minimum CON Filing Fee)
- B. The cost of any lease (building, land, and/or equipment) should be based on fair market value or the total amount of the lease payments over the initial term of the lease, whichever is greater. Note: This applies to all equipment leases including by procedure or "per click" arrangements. The methodology used to determine the total lease cost for a "per click" arrangement must include, at a minimum, the projected procedures, the "per click" rate and the term of the lease.

The ASTC space will be leased from an unrelated party. The cost of the lease over the initial term and the portion of the build-out which is the responsibility of the applicant, are reflected on the Project Cost Chart.

- C. The cost for fixed and moveable equipment includes, but is not necessarily limited to, maintenance agreements covering the expected useful life of the equipment; federal, state, and local taxes and other government assessments; and installation charges, excluding capital expenditures for physical plant renovation or in-wall shielding, which should be included under construction costs or incorporated in a facility lease.

Some equipment will be purchased and some will be leased. The estimated costs are included on the Project Costs Chart.

- D. The Total Construction Cost reported on line 5 should equal the Total Cost reported on the Square Footage Chart.

The two numbers match.

- E. For projects that include new construction, modification, and/or renovation—documentation must be provided from a licensed architect or construction professional that support the estimated construction costs. Provide a letter that includes the following:

- 1) A general description of the project;
- 2) An estimate of the cost to construct the project;
- 3) A description of the status of the site's suitability for the proposed project; and
- 4) Attesting the physical environment will conform to applicable federal standards, manufacturer's specifications and licensing agencies' requirements including the AIA Guidelines for Design and Construction of Hospital and Health Care Facilities or comparable document in current use by the licensing authority.

A letter from the project architect is attached as Attachment Section B, Economic Feasibility, 1, E.

**PROJECT COST CHART**

A.	Construction and equipment acquired by purchase:	
	1. Architectural and Engineering Fees	\$ 43,750.00
	2. Legal, Administrative, Consultant Fees	\$ 80,000.00
	3. Acquisition of Site	\$ -
	4. Preparation of Site	\$ -
	5. Total Construction Costs	\$ 621,125.00
	6. Contingency Fund	\$ 50,000.00
	7. Fixed Equipment (Not included in Construction Contract)	\$ 15,000.00
	8. Moveable Equipment (List all-New C arm, pain table equipment over \$50,000.00)	\$ 80,000.00
	9. Other (Specify) _____	_____
B.	Acquisition by gift donation, or lease:	
	1. Facility (Inclusive of building and land)	\$ 571,435.00
	2. Building Only	_____
	3. Land Only	_____
	4. Equipment (Specify) <u>Refurbished OEC C Arm, Pain Table, RF Generator</u>	\$ 60,000.00
	5. Other (Specify) _____	_____
C.	Financing Costs and Fees:	
	1. Interim Financing	\$ 20,000.00
	2. Underwriting Costs	_____
	3. Reserve for One Year's Debt Service	\$ 50,000.00
	4. Other (Specify) _____	_____
D.	Estimated Project Cost (A+B+C)	\$ 1,591,310.00
E.	CON Filing Fee	\$ 15,000.00
F.	Total Estimated Project Cost (D + E)	\$ 1,606,310.00
	<b>TOTAL</b>	\$ 1,606,310.00

2. Identify the funding sources for this project.

Check the applicable item(s) below and briefly summarize how the project will be financed.  
*(Documentation for the type of funding MUST be inserted at the end of the application, in the correct alpha/numeric order and identified as Attachment Section B-Economic Feasibility-2.)*

- A. Commercial loan – Letter from lending institution or guarantor stating favorable initial contact, proposed loan amount, expected interest rates, anticipated term of the loan, and any restrictions or conditions;
- B. Tax-exempt bonds – Copy of preliminary resolution or a letter from the issuing authority stating favorable initial contact and a conditional agreement from an underwriter or investment banker to proceed with the issuance;
- C. General obligation bonds – Copy of resolution from issuing authority or minutes from the appropriate meeting;
- D. Grants – Notification of intent form for grant application or notice of grant award;
- E. Cash Reserves – Appropriate documentation from Chief Financial Officer of the organization providing the funding for the project and audited financial statements of the organization; and/or
- F. Other – Identify and document funding from all other sources.

The lease payments will be made from operating revenue.

3. Complete Historical Data Charts on the following two pages—Do not modify the Charts provided or submit Chart substitutions!

Historical Data Chart(s) represents revenue and expense information for the last *three (3)* years for which complete data is available. The “Project Only Chart” provides information for the services being presented in the proposed project while the “Total Facility Chart” provides information for the entire facility. Complete both, if applicable.

*Note that “Management Fees to Affiliates” should include management fees paid by agreement to the parent company, another subsidiary of the parent company, or a third party with common ownership as the applicant entity. “Management Fees to Non-Affiliates” should include any management fees paid by agreement to third party entities not having common ownership with the applicant.*

N/A. This is a proposed new facility, so there is no historical data to report.

4. **Complete Projected Data Charts on the following two pages – Do not modify the Charts provided or submit Chart substitutions!**

**Projected Data Chart(s)** Provide information for the two years following the completion of the project. The “Project Only Chart” should reflect revenue and expense projects for the project (i.e., if the application is for additional beds, include anticipated revenue from the proposed beds only, not from all beds in the facility). The “Total Facility Chart” should reflect information for the total facility. Complete both, if applicable.

*Note that “Management Fees to Affiliates” should include management fees paid by agreement to the parent company, another subsidiary of the parent company, or a third party with common ownership as the applicant entity. “Management Fees to Non-Affiliates” should include any management fees paid by agreement to third party entities not having common ownership with the applicant.*

A completed Projected Data Chart is attached following this page.

**PROJECTED DATA CHART**

Total Facility  
 Project Only

Give information for the last two (2) years for which complete data are available for the facility or agency. The fiscal year begins in January (Month)

	2022	2023
A. Utilization/Occupancy Data (Specify unit of measure, e.g., 1,000 patient days, 500 visits)	2120	2332
B. Revenue from Services to Patients		
1. Inpatient Services	\$5,094,466.00	\$5,603,913.00
2. Outpatient Services		
3. Emergency Services		
4. Other Operating Revenue		
Specify: _____		
	<u>Gross Operating Revenue</u>	<u>\$5,094,466.00</u>
C. Deductions from Operating Revenue		
1. Contract Deductions	\$3,644,224.00	\$4,008,647.00
2. Provision for Charity Care	\$50,945.00	\$56,039.00
3. Provision for Bad Debt	\$76,417.00	\$84,059.00
	<u>Total Deductions</u>	<u>\$4,148,745.00</u>
	<u>NET OPERATING REVENUE</u>	<u>\$1,322,880.00</u>
D. Operating Expenses		
1. Salaries and Wages		
a. Direct Patient Care	\$387,878.00	\$426,663.00
b. Non-Patient Care	\$220,480.00	\$242,528.00
2. Physicians' Salaries and Wages	N/A	N/A
3. Supplies	\$190,800.00	\$209,880.00
4. Rent	\$114,287.00	\$114,287.00
a. Paid to Affiliates		
b. Paid to Non-Affiliates		
5. Management Fees:		
a. Fees to Affiliates	\$66,144.00	\$72,758.00
b. Fees to Non-Affiliates		
6. Other Operating Expenses-D6	\$64,000.00	\$67,500.00
	<u>Total Operating Expenses</u>	<u>\$1,133,616.00</u>
E. Earnings Before Interest, Taxes, and Depreciation	\$279,291.00	\$321,552.00
F. Non-Operating Expenses		
1. Taxes	\$22,000.00	\$22,500.00
2. Depreciation	\$26,000.00	\$26,400.00
3. Interest	\$29,322.00	\$29,186.00
4. Other Non-Operating Expenses		
	<u>Total Non-Operating Expenses</u>	<u>\$78,086.00</u>
	<u>NET INCOME (LOSS)</u>	<u>\$243,466.00</u>
G. Other Deductions		
1. Estimated Annual Principal Debt Repayment	\$10,000.00	\$10,000.00
2. Annual Capital Expenditure	\$10,000.00	\$10,000.00
	<u>Other Total Deductions</u>	<u>\$10,000.00</u>
	<u>NET BALANCE</u>	<u>\$233,466.00</u>
	<u>DEPRECIATION</u>	<u>\$26,400.00</u>
	<u>FREE CASH FLOW (Net Balance + Depreciation)</u>	<u>\$259,866.00</u>

---

**PROJECTED DATA CHART -- OTHER EXPENSES D6**

Total Facility  
 Project Only

**OTHER EXPENSE CATEGORY**

**Ye:      2022                      2023**

1. Professional Services Contracts	\$18,000.00	\$18,500.00
2. Contract Labor	\$0.00	\$0.00
3. Utilities	\$17,000.00	\$18,000.00
4. Dues and Licenses	\$6,500.00	\$7,000.00
5. Building and Equipment Maintenance	\$22,500.00	\$24,000.00

**TOTAL OTHER EXPENSES                      \$64,000.00                      \$67,500.00**

5. A. Please identify the project’s average gross charge, average deduction from operating revenue, and average net charge using information from the Projected Data Chart for Year 1 and Year 2 of the proposed project. Please complete the following table.

**Project Only / Total Facility Chart**

	Previous Year to Most Recent Year Year ____	Most Recent Year Year ____	Year One Year 2021	Year Two Year 2022	% Change (Current Year to Year 2)
<b>Gross Charge</b> ( <i>Gross Operating Revenue/Utilization Data</i> )	N/A	N/A	\$2,403.05	\$2,403.05	0%
<b>Deduction from Revenue</b> ( <i>Total Deductions/Utilization Data</i> )	N/A	N/A	\$1,779.05	\$1,779.05	0%
<b>Average Net Charge</b> ( <i>Net Operating Revenue/Utilization Data</i> )	N/A	N/A	\$624.00	\$624.00	0 %

- B. Provide the proposed charges for the project and discuss any adjustment to current charges that will result from the implementation of the proposal. Additionally, describe the anticipated revenue from the project and the impact on existing patient charges.

The average gross charge and average net charge for Year 1 are reflected above. This is a proposed new facility, so there are no current charges.

- C. Compare the proposed charges to those of similar facilities in the service area/adjoining service areas, or to proposed charges of recently approved Certificates of Need. If applicable, compare the proposed charges of the project to the current Medicare allowable fee schedule by common procedure terminology (CPT) code(s).

<u>Facility</u>	<u>Avg. Net Charge</u>	<u>Year</u>
Encore Surgical Institute Cordova (this project)	\$624	2021 & 2022 (Projected)
Mays and Snapp Pain Clinic & Rehab Ctr.	\$717	2019
Midsouth Interventional Pain Institute	\$168	2019

Source: 2019 Joint Annual Reports

6. A. Discuss how projected utilization rates will be sufficient to support the financial performance.

- 1) Noting when the project’s financial breakeven is expected, and

The ASTC will have a positive net income and positive cash flow from the outset.

- 2) Demonstrating the availability of sufficient cash flow until financial viability is achieved.

N/A. The ASTC will be financially viable from the outset.

Provide copies of the balance sheet and income statement from the most recent reporting period of the institution and the most recent audited financial statements with accompanying notes, if applicable. For all projects, provide financial information for the corporation, partnership, or principal parties that will be a source of funding for the project. Copies must be inserted at the end of the application, in the correct alpha-numeric order and labeled as Attachment Section B-Economic Feasibility-6A.

N/A. The applicant is a newly formed entity and has no financial information to report. The funding for the project is being provided by a commercial lender.

- B. Net Operating Margin Ratio: The Net Operating Margin Ratio demonstrates how much revenue is left over after all the variable or operating costs have been paid. The formula for this ratio is: (Earnings before interest, Taxes, and Depreciation/Net Operating Revenue).**

Utilizing information from the Historical and Projected Data Charts please report the net operating margin ratio trends in the following tables. Complete Project Only Chart and Total Facility Chart, if applicable.

**Project Only / Total Facility Chart**

Year	2nd Previous Year to Most Recent Year	1st Previous Year to Most Recent Year	Most Recent Year	Projected Year 1 Year 2021	Projected Year 2 Year 2022
Net Operating Margin Ratio	N/A	N/A	N/A	21%	22%

- C. Capitalization Ratio: The Long-term debt to capitalization ratio measure the proportion of debt financing in a business’s permanent (long-term) financing mix. This ratio best measures a business’s true capital structure because it is not affected by short-term financing decisions. The formula for this ratio is: ((Long-Term Debt)/ + Long Term Debt + Total Equity {Net Assets}) x 100**

For self or parent company funded projects, provide the capitalization using the most recent year available from the funding entity’s audited balance sheet, if applicable. Capitalization Ratios are not expected from outside the company lenders that provide funding. This question is applicable to all applications regardless of whether or not the project is being or totally funded by debt financing.

N/A. The applicant is a newly formed entity and has no financial information to report. The funding for the project is being provided by a commercial lender.

- 7. Discuss the project’s participation in state and federal revenue programs including a description of the extent to which Medicare, TennCare/Medicaid and medically indigent patients will be served by the project. Additionally, report the estimated gross operating revenue dollar amount and percentage of projected gross operating revenue anticipated by payor classification for the first year of the project by completing the table below. Complete Project Only Chart and Total Facility Chart, if applicable.**

**Applicant’s Projected Payor Mix, Year 1  
Project Only / Total Facility Chart**

Payor Source	Projected Gross Operating Revenue	As a % of total
Medicare/Medicare Managed Care	\$2,852,901	56%
TennCare/Medicaid	\$458,502	9%
Commercial/Other Managed Care	\$1,528,339	30%
Self-Pay	\$50,945	1%
Other (Specify) <u>Worker's Comp</u>	\$152,834	3%
Charity Care	\$50,945	1%
<b>Total</b>	<b>\$5,094,466</b>	<b>100%</b>

8. Provide the projected staffing for the project in Year 1 and compare to the current staffing for the most recent 12-month period, as appropriate. This can be reported using full-time equivalent (FTEs) positions for these positions. Identify projected salary amounts by position classifications and compare the clinical staff salaries to prevailing wage patterns in the proposed service area as published by the Department of Labor & Workforce Development and/or other documented sources, such as the US Department of Labor. Wage data pertaining to healthcare professions can be found at the following link: [https://www.bls.gov/oes/current/oes\\_tn.htm](https://www.bls.gov/oes/current/oes_tn.htm)

Position Classification	Existing FTEs (enter year)	Projected FTEs Year 1	Average Wage (Contractual Rate)	Area Wide/Statewide Average Wage
<b>A. Direct Patient Care Positions</b>				
<i>RN/LPN</i>	N/A	3.0	30.00	28.41*
<i>Scrub Techs</i>	N/A	1.5	23.00	22.66*
<i>First Assistant</i>	N/A	0	26.00	26.18*
<i>Radiology Tech</i>	N/A	1.5	24.00	24.05*
<i>Patient Care/Pre-testing</i>	N/A	1	26.00	28.47*
<b>Total Direct Patient Care Positions</b>	N/A	<b>7</b>	<b>26.64</b>	<b>25.95</b>

<b>B. Non-Patient Care Positions</b>				
<i>Director</i>	N/A	0	49.00	48.87*
<i>Business Office Mngr.</i>	N/A	1	29.00	30.45**
<i>Clinical Director</i>	N/A	1	42.00	43.51**
<i>Material Mgr/CSP Tech</i>	N/A	1	19.00	17.68*
<i>Desk/Reception/Sched</i>	N/A	1	16.00	12.37***
<i>CSP Techs</i>	N/A	0	20.00	17.68*
<i>Biller</i>	N/A	0	19.00	21.50***
<b>Total Non-Patient Care Positions</b>	N/A	<b>4</b>	<b>26.50</b>	<b>28.77</b>
<b>Total Employees (A+B)</b>	N/A	<b>11</b>	<b>25.59</b>	<b>27.36</b>
<b>C. Contractual Staff</b>	N/A			
<b>Total Staff</b>	N/A	<b>11</b>	<b>25.59</b>	<b>27.36</b>

(A+B+C)				
---------	--	--	--	--

**9. What alternatives to this project were considered? Discuss the advantages and disadvantages of each, including but not limited to:**

- A. The availability of less costly, more effective and/or more efficient alternative methods of providing the benefits intended by the proposal. If development of such alternatives is not practicable, justify why not, including reasons as to why they were rejected.**

The alternative of maintaining the status quo, i.e., Dr. Hall continuing to perform pain management procedures in his office without anesthesia does not achieve his goals of maximizing patient comfort while achieving the best possible outcomes. Dr. Hall describes his goals for the proposed ASTC as follows: “As an interventionalist, the main goals in serving my patients are safety, efficacy with a high standard of care, comfort, and patient satisfaction. While I believe we provide these in an office setting, an ASTC with procedure rooms will allow me to provide my patients with additional options, including appropriate anesthesia, for increasing patient comfort and assuring best optimal outcomes.”

- B. Document that consideration has been given to alternatives to new construction, e.g., modernization or sharing arrangements.**

No new construction is involved, but some tenant (applicant) build-out of the space will be done.

## QUALITY STANDARDS

1. PC 1043, Acts of 2016, any receiving a CON after July 1, 2016 must report annually using forms prescribed by the Agency concerning continued need and appropriate quality measures. Please verify that annual reporting will occur.

Yes, the applicant will comply with all such reporting requirements.

2. **Quality-The the proposal shall provide health care that meets appropriate quality standards. Please address each of the following questions:**

**A. Does the applicant commit to the following?**

- 1) **Maintaining the staffing comparable to the staffing chart presented in its CON application;**

Yes

- 2) **Obtaining and maintaining all applicable state licenses in good standing;**

Yes

- 3) **Obtain and maintaining TennCare and Medicare certification(s), if participation in such programs was indicated in the application.**

Yes

- 4) **For an existing healthcare institution applying for a CON -- Has it maintained substantial compliance with applicable federal and state regulation for the three years prior to the CON application? In the event of non-compliance, the nature of non-compliance and corrective action should be discussed to include any of the following: suspension of admissions, civil monetary penalties, notice of 23-day or 90-day termination proceedings from Medicare/Medicaid/TennCare, revocation/denial of accreditation, or other similar actions and what measures the applicable has or will put into place to avoid similar findings in the future.**

N/A. This is a proposed new facility.

- 5) **For an existing healthcare institution applying for a CON – Has the entity been decertified within the prior three years? If yes, please explain in detail. (This provision shall not apply if a new, unrelated owner applies for a CON related to a preciously decertified facility)**

N/A. This is a proposed new facility.

- B. Respond to all of the following and for such occurrences, identify, explain and provide documentation:**

- 1) **Has any of the following:**

- a. **Any person(s) or entity with more than 5% ownership (direct or indirect) in the applicant (to include any entity in the chain of ownership for applicant);**

- b. Any entity in which any person(s) or entity with more than 5% ownership (direct or indirect) in the applicant (to include any entity in the chain of ownership for applicant) has an ownership interest**
- c. Any physician or other provider of health care, or administrator employed by any entity in which any person(s) or entity with more than 5% ownership in the applicant (to include any entity in the chain of ownership for applicant) has an ownership interest of more than 5%.**

**2) Been subjected to any of the following:**

- a. Final Order or Judgment in a state licensure action;**

No

- b. Criminal; fines in cases involving a Federal or State health care offense**

No

- c. Civil monetary penalties in cases involving a Federal or State health care offense;**

No

- d. Administrative monetary penalties in cases involving a Federal or State health care offense;**

No

- e. Agreement to pay civil or administrative monetary penalties to the federal government or any state in case involving claims related to the provision of health care items and services; and/or**

No

- f. Suspension or termination of participation in Medicare or Medicaid/TennCare programs.**

No

- g. Is presently subject of/to an investigation, regulatory action, or party in any civil or criminal action of which you are aware.**

No

- h. Is presently subject to a corporate integrity agreement.**

No

- C. Does the applicant plan, within 2 years of implementation of the project, to participate in self-assessment and external assessment against nationally available benchmark data to accurately**

**assess its level of performance in relation to established standards and to implement ways to continuously improve?**

Yes. The ASTC will be accredited by the AAAHC. All quality assessment and quality improvement recommendation of the AAAHC will be followed and implemented.

**NOTE: Existing licensed, accredited and/or certified providers are encouraged to describe their process for same.**

**Please complete the chart below on accreditation, certification, and licensure plans.**

- 1) If the applicant does not plan to participate in these type of assessments, explain why since quality healthcare must be demonstrated.**

<b>Credential</b>	<b>Agency</b>	<b>Status (Active or Will Apply)</b>
<b>Licensure</b>	<input checked="" type="checkbox"/> <b>Health</b> <input type="checkbox"/> <b>Intellectual and Developmental Disabilities</b> <input type="checkbox"/> <b>Mental Health and Substance Abuse Services</b>	Will Apply
<b>Certification</b>	<input checked="" type="checkbox"/> <b>Medicare</b> <input checked="" type="checkbox"/> <b>Medicaid/TennCare</b> <input type="checkbox"/> <b>Other _____</b>	Will apply for both Medicare and TennCare
<b>Accreditation</b>	<b>Accreditation Association for Ambulatory Health Care</b>	Will apply

- 2) Based upon what was checked/completed in above table, will the applicant accept a condition placed on the certificate of need relating to obtaining/maintaining license, certification, and/or accreditation?**

The applicant does not believe such a condition would be necessary or helpful but will accept such if the Agency so desires.

- D. The following list of quality measures are service specific. Please indicate which standards you will be addressing in the annual Continuing Need and Quality Measure report if the project is approved.**

**X For Ambulatory Surgical Treatment Center projects: Estimating the number of physicians by specialty expected to utilize the facility, developing criteria to be used by the facility in extending surgical and anesthesia privileges to medical personnel, and documenting the availability of appropriate and qualified staff that will provide ancillary support services, whether on-or off-site?**

The only physician who will be providing services at the ASTC, at least initially, is Dr. Jeffrey F. Hall, M.D. Credentialing criteria will be developed at the appropriate time if and after the CON is approved. The on-site ancillary support staffing need is relatively minimal, and the applicant anticipates no trouble in meeting it.

## CONTRIBUTION TO THE ORDERLY DEVELOPMENT OF HEALTH CARE

The responses to this section of the application helps determine whether the project will contribute to the orderly development of healthcare within the service area.

- 1. List all existing health care providers (i.e., hospitals, nursing homes, home care organizations, etc.), managed care organizations, alliances, and/or networks with which the applicant currently has or plans to have contractual and/or working relationships, that may directly or indirectly apply to the project, such as, transfer agreements, contractual agreements for health services.**

The only such arrangement the applicant is aware of is a Transfer Agreement that will entered into with one or more local hospitals. Located in the general vicinity are Baptist Memorial Hospital Collierville and Methodist Germantown. These hospitals will be consulted with regarding transfer agreements if and after the CON ais approved.

- 2. Describe the effects of competition and/or duplication of the proposal on the health care system, including the impact to consumers and existing providers in the service area. Discuss any instances of competition and/or duplication arising from your proposal including a description of the effect the proposal will have on the utilization rates of existing providers in the service area of the project.**

### **A) Positive Effects**

The ASTC will allow Dr. Hall and his future colleagues to perform pain management procedures in a setting that tis the most comfortable for the patients, and which maximizes best outcomes for the patients. This facilitates and improves the management of acute and/or chronic pain in patients, a malady which terribly impacts the quality of life for the patients. This facility will allow Dr. Hall to continually manage the pain of patients before the patient find it necessary to seek treatment in a hospital emergency room, thereby helping to contain health care costs. Pain management treatment and procedure are often an alternative to the prescribing of opioids and other pharmaceutical pain killers, which can be effective for pain relief, but carry with them a high risk of addition.

### **B) Negative Effects**

There should be no negative impact from this project. All of the projected cases are coming directly from Dr. Hall's clinic, and no other ASTC should be affected.

- 3. A. Discuss the availability of and accessibility to human resources required by the proposal, including clinical leadership and adequate professional staff, as per the State of Tennessee licensing requirements, CMS, and/or requirements of accrediting agencies, such as the Joint Commission and Commission on Accreditation of Rehabilitation Facilities.**

The staffing plan calls for 7 FTE patient care positions and 4 FTE non-patient care positions. These positions will be easily filled through the local labor force. Dr. Hall will serve as the Medical Director for the ASTC. The facility will be licensed by the Tennessee Department of Health and will be accredited by the AAAHC. The facility will maintain compliance with all requirements of the organizations regarding staffing.

**B. Document the category of license/certification that is applicable to the project and why. These include, without limitation, regulations concerning clinical leadership, physician supervision, quality assurance policies and programs, utilization review policies and programs, record keeping, clinical staffing requirements, and staff education.**

The facility will be licensed by the Tennessee Department of Health and will be accredited by the AAAHC. The facility will maintain compliance with all requirements of the organizations regarding quality of care and operations.

**C. Discuss the applicant’s participation in the training of students in the areas of medicine, nursing, social work, etc. (e.g., internships, residencies, etc.).**

No such programs are planned initially, but Dr. Hall will be open to the possibility of such in the future.

**4. Outstanding Projects:**

The response to this question 4 and sub-parts A and B is “N/A.”

**A. Complete the following chart by entering information for each applicable outstanding CON by applicant or share common ownership; and**

**B. Describe the current progress, and status of each applicable outstanding CON.**

**5. Equipment Registry – For the applicant and all entities in common ownership with the applicant.**

The response to this Question 5 and sub-parts A - C is “N/A.”

**A Do you own, lease, operate, and/or contract with a mobile vendor for a Computed Tomography scanner (CT), Linear Accelerator, Magnetic Resonance Imaging (MRI), and/or Positron Emission Tomographer (PET)? \_\_\_\_\_**

**B. If yes, have you submitted their registration to HSDA? If you have, what was the date of submission? \_\_\_\_\_**

**C. If yes, have you submitted your utilization to Health Services and Development Agency? If you have, what was the date of submission? \_\_\_\_\_**

**SECTION C: STATE HEALTH PLAN QUESTIONS**

T.C.A. §68-11-1625 requires the Tennessee Department of Health’s Division of Health Planning to develop and annually update the State Health Plan (found at <http://www.tn.gov/health/health-programareas/health-planning/state-health-plan.html>). The State Health Plan guides the State in the development of health care programs and policies and in the allocation of health care resources in the State, including the Certificate of Need program. The 5 Principles for Achieving Better Health are from the State Health Plan’s framework and inform the Certificate of Need program and its standards and criteria.

**Discuss how the proposed project will relate to the 5 Principles for Achieving Better Health found in the State Health Plan.**

**1. The purpose of the State Health Plan is to improve the health of Tennesseans.**

The approval of this CON and the establishment of this ASTC will further this goal. Acute and/or chronic pain is a serious health malady. It significantly and negatively affects patients’ happiness, quality of life, and ability to fully function in society, and it often leads to other physical and mental maladies. Treating and relieving pain in the most effective and efficient clinical setting will help improve the health of those receiving pain management services.

**2. Every citizen should have reasonable access to health care.**

The approval of this CON and the establishment of this ASTC will improve and enhance access to health care. There are only 2 ASTCs dedicated to pain management procedures in Shelby County, and both of those are operating well in excess of the utilization threshold for procedures in ASTCs.

**3. The state's health care resources should be developed to address the needs of Tennesseans while encouraging competitive markets, economic efficiencies and the continued development of the state's health care system.**

The applicant has demonstrated in the CON application that the project meets the requirements for a CON. The goals of the SHP as stated in this Principle 3 are consistent with those of the certificate of need program.

**4. Every citizen should have confidence that the quality of health care is continually monitored, and standards are adhered to by health care providers.**

The proposed ASTC will be subject to on-going quality oversight and assurance through its licensure by the Board for Licensing Health Care Facilities, and through accreditation by the AAAHC.

**5. The state should support the development, recruitment, and retention of a sufficient and quality health workforce.**

This project involves minimal staffing needs and the applicant does not anticipate any problem in hiring qualified individuals to meet these staffing needs.

## PROOF OF PUBLICATION

Attach the full page of the newspaper in which the notice of intent appeared with the mast and dateline intact or submit a publication affidavit from the newspaper that includes a copy of the publication as proof of the publication of the letter of intent.

Date LOI was Submitted : September 10, 2020

Date LOI was Published: September 10, 2020

A Publisher's Affidavit has been requested from the Commercial Appeal and will be timely submitted.

## NOTIFICATION REQUIREMENTS

1. T.C.A. §68-11-1607(c)(9)(A) states that "...Within ten (10) days of the filing of an application for a nonresidential substitution-based treatment center for opiate addiction with the agency, the applicant shall send a notice to the county mayor of the county in which the facility is proposed to be located, the state representative and senator representing the house district and senate district in which the facility is proposed to be located, and to the mayor of the municipality, if the facility is proposed to be located within the corporate boundaries of a municipality, by certified mail, return receipt requested, informing such officials that an application for a nonresidential substitution-based treatment center for opiate addiction has been filed with the agency by the applicant."
2. T.C.A. §68-11-1607(c)(9)(B) states that " ...If an application involves a healthcare facility in which a county or municipality is the lessor of the facility or real property on which it sits, then within ten (10) days of filing the application, the applicant shall notify the chief executive officer of the county or municipality of the filing, by certified mail, return receipt requested.

Failure to provide the notifications described above within the required statutory timeframe will result in the voiding of the CON application.

Please provide documentation of these notifications. N/A

## DEVELOPMENT SCHEDULE

T.C.A. §68-11-1609(c) provides that a Certificate of Need is valid for a period not to exceed three (3) years (for hospital projects) or two (2) years (for all other projects) from the date of its issuance and after such time shall expire; provided, that the Agency may, in granting the Certificate of Need, allow longer periods of validity for Certificates of Need for good cause shown. Subsequent to granting the Certificate of Need, the Agency may extend a Certificate of Need for a period upon application and good cause shown, accompanied by a non-refundable reasonable filing fee, as prescribed by rule. A Certificate of Need which has been extended shall expire at the end of the extended time period. The decision whether to grant such an extension is within the sole discretion of the Agency, and is not subject to review, reconsideration, or appeal.

1. Complete the Project Completion Forecast Chart on the next page. If the project will be completed in multiple phases, please identify the anticipated completion date for each phase.
2. If the CON is granted and the project cannot be completed within the standard completion time period (3 years for hospital projects and 2 years for all others), please document why an extended period should be approved and document the "good cause" for such an extension.

N/A. An extended period of validity is not requested.

## PROJECT COMPLETION FORECAST CHART

Assuming the Certificate of Need (CON) approval becomes the final HSDA action on the date listed in Item 1. below, indicate the number of days from the HSDA decision date to each phase of the completion forecast.

<b>Phase</b>	<b><u>Days Required</u></b>	<b><u>Anticipated Date [Month/Year]</u></b>
1. Initial HSDA decision date		<u>12/2020</u>
2. Architectural and engineering contract signed	<u>30</u>	<u>02/2021</u>
3. Construction documents approved by the Tennessee Department of Health	<u>60</u>	<u>03/2021</u>
4. Construction contract signed	<u>90</u>	<u>04/2021</u>
5. Building permit secured	<u>120</u>	<u>05/2021</u>
6. Site preparation completed	<u>N/A</u>	
7. Building construction commenced	<u>120</u>	<u>05/2021</u>
8. Construction 40% complete	<u>140</u>	<u>06/2021</u>
9. Construction 80% complete	<u>160</u>	<u>07/2021</u>
10. Construction 100% complete (approved for occupancy)	<u>180</u>	<u>07/2021</u>
11. *Issuance of License	<u>210</u>	<u>08/2021</u>
12. *Issuance of Service	<u>240</u>	<u>09/2021</u>
13. Final Architectural Certification of Payment	<u>255</u>	<u>10/2021</u>
14. Final Project Report Form submitted (Form HR0055)	<u>270</u>	<u>10/2021</u>

\*For projects that ***DO NOT*** involve construction or renovation, complete Items 11 & 12 only.

**NOTE: If litigation occurs, the completion forecast will be adjusted at the time of the final determination to reflect the actual issue date**

**ENCORE SURGICAL INSITITUTE**

**CERTIFICATE OF NEED APPLICATION**

**PART 2**

## **LIST OF ATTACHMENTS**

### **Encore Surgical Institute**

Articles of Organization and ownership chart.	<u>Attachment Section A, Project Details, 4, B</u>
Management Services Agreement	<u>Attachment Section A, Project Details, 5</u>
Site control documents	<u>Attachment Section A, Project Details, 6 A</u>
Plot plan	<u>Attachment Section A, Project Details, 6, B, 1</u>
Floor plan	<u>Attachment Section A, Project Details, 6, B, 2</u>
Utilization data for ASTCs in PSA	<u>Attachment Section C, Need, SHP Standards, 3</u>
Letter from the project architect	<u>Attachment Section B, Economic Feasibility, 1, E</u>
Financing letter	<u>Attachment Section B, Economic Feasibility, 2, A</u>

## LIST OF ATTACHMENTS

Articles of Organization and ownership chart.	<u>Attachment Section A, Project Details, 4, B</u>
Management Services Agreement	<u>Attachment Section A, Project Details, 5</u>
Site control documents	<u>Attachment Section A, Project Details, 6 A</u>
Plot plan	<u>Attachment Section A, Project Details, 6, B, 1</u>
Floor plan	<u>Attachment Section A, Project Details, 6, B, 2</u>
Utilization data for ASTCs in PSA	<u>Attachment Section C, Need, SHP Standards, 3</u>
Letter from the project architect	<u>Attachment Section B, Economic Feasibility, 1, E</u>
Financing letter	<u>Attachment Section B, Economic Feasibility, 2, A</u>



**Tre Hargett**  
Secretary of State

**Division of Business Services**  
**Department of State**  
State of Tennessee  
312 Rosa L. Parks AVE, 6th FL  
Nashville, TN 37243-1102

Encore Surgical Institute, LLC  
STE 300 PMB 12  
1550 W MCEWEN DR  
FRANKLIN, TN 37067-1770

August 11, 2020

### Filing Acknowledgment

Please review the filing information below and notify our office immediately of any discrepancies.

SOS Control # :	001119857	Formation Locale:	TENNESSEE
Filing Type:	Limited Liability Company - Domestic	Date Formed:	08/11/2020
Filing Date:	08/11/2020 4:13 PM	Fiscal Year Close:	12
Status:	Active	Annual Report Due:	04/01/2021
Duration Term:	Perpetual	Image # :	B0908-2017
Managed By:	Member Managed		
Business County:	WILLIAMSON COUNTY		

#### Document Receipt

Receipt # : 005715941	Filing Fee:	\$300.00
Payment-Credit Card - State Payment Center - CC #: 3787184968		\$300.00

Registered Agent Address:  
WAYMOND BOYER  
STE 300 PMB 12  
1550 W MCEWEN DR  
FRANKLIN, TN 37067-1770

Principal Address:  
STE 300 PMB 12  
1550 W MCEWEN DR  
FRANKLIN, TN 37067-1770

Congratulations on the successful filing of your Articles of Organization for Encore Surgical Institute, LLC in the State of Tennessee which is effective on the date shown above. You must also file this document in the office of the Register of Deeds in the county where the entity has its principal office if such principal office is in Tennessee. Please visit the Tennessee Department of Revenue website ([www.tn.gov/revenue](http://www.tn.gov/revenue)) to determine your online tax registration requirements. If you need to obtain a Certificate of Existence for this entity, you can request, pay for, and receive it from our website.

You must file an Annual Report with this office on or before the Annual Report Due Date noted above and maintain a Registered Office and Registered Agent. Failure to do so will subject the business to Administrative Dissolution/Revocation.

Tre Hargett  
Secretary of State



001119857

**ARTICLES OF ORGANIZATION  
LIMITED LIABILITY COMPANY**

SS-4270



**Tre Hargett**  
Secretary of State

**Division of Business Services  
Department of State  
State of Tennessee**  
312 Rosa L. Parks AVE, 6th FL  
Nashville, TN 37243-1102  
(615) 741-2286

Filing Fee: \$50.00 per member  
(minimum fee = \$300.00, maximum fee = \$3,000.00)

*For Office Use Only*

**-FILED-**

Control # 001119857

**The Articles of Organization presented herein are adopted in accordance with the provisions of the Tennessee Revised Limited Liability Company Act.**

**1. The name of the Limited Liability Company is:** Encore Surgical Institute, LLC

(Note: Pursuant to the provisions of T.C.A. §48-249-106, each Limited Liability Company name must contain the words "Limited Liability Company" or the abbreviation "LLC" or "L.L.C.")

**2. Name Consent: (Written Consent for Use of Indistinguishable Name)**

This entity name already exists in Tennessee and has received name consent from the existing entity.

**3. This company has the additional designation of:** None

**4. The name and complete address of the Limited Liability Company's initial registered agent and office located in the state of Tennessee is:**

WAYMOND BOYER  
STE 300 PMB 12  
1550 W MCEWEN DR  
FRANKLIN, TN 37067-1770  
WILLIAMSON COUNTY

**5. Fiscal Year Close Month:** December

**6. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date and time is:**  
(none) (Not to exceed 90 days)

**7. The Limited Liability Company will be:**

Member Managed  Manager Managed  Director Managed

**8. Number of Members at the date of filing:** 2

**9. Period of Duration:** Perpetual

**10. The complete address of the Limited Liability Company's principal executive office is:**

STE 300 PMB 12  
1550 W MCEWEN DR  
FRANKLIN, TN 37067-1770  
WILLIAMSON COUNTY

B0908-2017 08/11/2020 4:13 PM Received by Tennessee Secretary of State Tre Hargett



B0908-2018 08/11/2020 4:13 PM Received by Tennessee Secretary of State Tre Hargett

**ARTICLES OF ORGANIZATION  
LIMITED LIABILITY COMPANY**

SS-4270



**Tre Hargett**  
Secretary of State

**Division of Business Services  
Department of State  
State of Tennessee**  
312 Rosa L. Parks AVE, 6th FL  
Nashville, TN 37243-1102  
(615) 741-2286

Filing Fee: \$50.00 per member  
(minimum fee = \$300.00, maximum fee = \$3,000.00)

*For Office Use Only*

**-FILED-**

Control # 001119857

**The name of the Limited Liability Company is:** Encore Surgical Institute, LLC

**11. The complete mailing address of the entity (if different from the principal office) is:**

STE 300 PMB 12  
1550 W MCEWEN DR  
FRANKLIN, TN 37067-1770

**12. Non-Profit LLC (required only if the Additional Designation of "Non-Profit LLC" is entered in section 3.)**

I certify that this entity is a Non-Profit LLC whose sole member is a nonprofit corporation, foreign or domestic, incorporated under or subject to the provisions of the Tennessee Nonprofit Corporation Act and who is exempt from franchise and excise tax as not-for-profit as defined in T.C.A. §67-4-2004. The business is disregarded as an entity for federal income tax purposes.

**13. Professional LLC (required only if the Additional Designation of "Professional LLC" is entered in section 3.)**

I certify that this PLLC has one or more qualified persons as members and no disqualified persons as members or holders.

**Licensed Profession:**

**14. Series LLC (optional)**

I certify that this entity meets the requirements of T.C.A. §48-249-309(a) & (b)

**15. Obligated Member Entity (list of obligated members and signatures must be attached)**

This entity will be registered as an Obligated Member Entity (OME) Effective Date: (none)  
 I understand that by statute: THE EXECUTION AND FILING OF THIS DOCUMENT WILL CAUSE THE MEMBER(S) TO BE PERSONALLY LIABLE FOR THE DEBTS, OBLIGATIONS AND LIABILITIES OF THE LIMITED LIABILITY COMPANY TO THE SAME EXTENT AS A GENERAL PARTNER OF A GENERAL PARTNERSHIP. CONSULT YOUR ATTORNEY.

**16. This entity is prohibited from doing business in Tennessee:**

This entity, while being formed under Tennessee law, is prohibited from engaging in business in Tennessee.

**17. Other Provisions:**

Electronic

Signature

Charles C Exum as authorized representative for Waymond Boyer

Printed Name

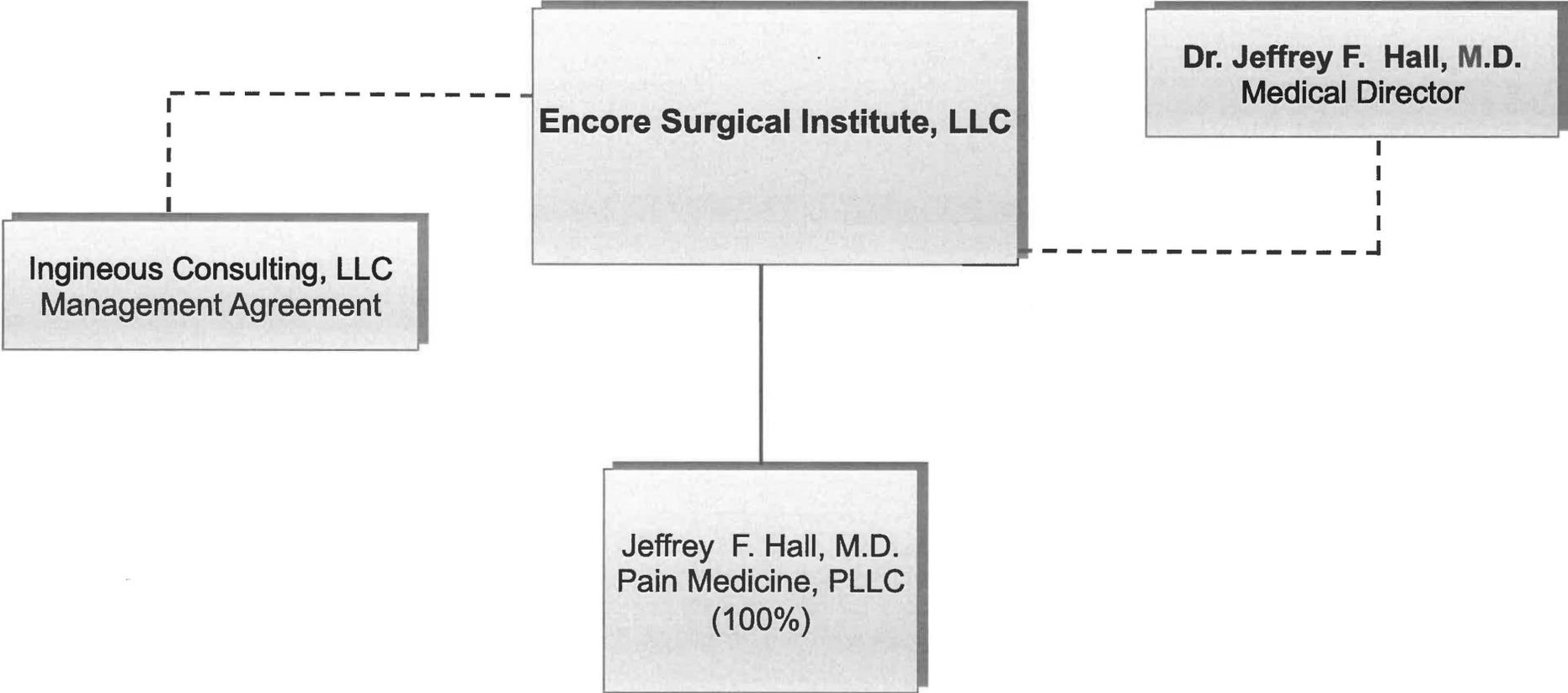
Attorney

Title/Signer's Capacity

Aug 11, 2020 4:13PM

Date

# ENCORE SURGICAL INSTITUTE, LLC Ownership Chart



## MANAGEMENT SERVICES AGREEMENT

THIS MANAGEMENT SERVICES AGREEMENT (the “Agreement”) is made and entered into as of August 1, 2020 (“Effective Date”), by and between Engineous Consulting, LLC (“EC”), and Encore Surgical Institute, LLC (the “Company”).

### BACKGROUND

WHEREAS, the Company intends to operate an ambulatory surgery center located at 8132 Country Village Drive, Ste 102, Cordova, TN 38106. (the “Center”);

WHEREAS, the Company desires to obtain the services of EC to manage the Center and EC desires to manage the Center.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained in this Agreement, the Company and EC agree as follows:

### AGREEMENT

#### 1. GENERAL.

**1.1 Appointment of EC.** The Company hereby retains EC for the purpose of providing management, administration and purchasing services and support to the Center. Subject to the ultimate authority of the Company to operate the Center, EC shall have authority and responsibility to conduct, supervise and manage the day-to-day operations of the Center.

**1.2 Limits on EC Authority.** Notwithstanding any other provision of this Agreement, EC shall not have the authority to undertake any of the following actions without first securing the consent of the Company’s Board of Managers (“Board”):

- 1.2.1** Any action inconsistent with this Agreement or the Company’s Operating Agreement as amended from time to time;
- 1.2.2** Operate the Company in a fashion inconsistent with the budgets and the written policies, procedures and directives of the Board;
- 1.2.3** Incur indebtedness by the Company other than trade payables incurred in the ordinary course of business and borrowings in the ordinary course under credit facilities previously approved by the Board, or grant or permit any security interest, mortgage or other lien in any asset of the Company other than under approved credit facilities;
- 1.2.4** Adopt an annual operating budget or an annual capital budget;
- 1.2.5** Approve a commitment for any single unbudgeted operating expenditure or several related operating expenditures or substitute any budgeted operating expenditure for any other budgeted expenditure in excess of Twenty Thousand Dollars (\$20,000) individually or in the aggregate when combined with Sections 1.2.6 and 1.2.7 during any Fiscal Year (amounts under each

such threshold being subject only to the approval of EC); provided that if the number of the Center's cases exceeds the number projected in the Company's current operating budget, then EC may increase the budget for each variable cost line item that is directly related to the number of cases by an amount that is proportionate to the increase in the number of cases and may make commitments based on the budget as so revised, which shall then constitute an approved budget;

- 1.2.6 Make any single unbudgeted capital expenditure or several related capital expenditures or substitute any budgeted capital expenditure for any other budgeted expenditure in excess of Twenty Thousand Dollars (\$20,000) individually or in the aggregate when combined with Sections 1.2.5 and 1.2.7 during any Fiscal Year (amounts under such threshold being subject only to the approval of EC);
- 1.2.7 Enter into any contract or transaction or series of related contracts or transactions which requires payments by the Company of more than Twenty Thousand Dollars (\$20,000) individually or in the aggregate when combined with Sections 1.2.5 and 1.2.6 during any Fiscal Year (amounts under such thresholds being subject only to the approval of EC) or which imposes restrictive covenants on the Company's business (such as contracts containing non-competition provisions); or
- 1.2.8 Authorize the settlement of any claim or litigation, whether insured or otherwise (excluding, however, reimbursement adjustments made in the ordinary course of business with third-party payers), for any amount greater than Five Thousand Dollars (\$5,000) or any claim or litigation, regardless of amount, alleging professional malpractice or claims involving damages other than monetary damages or non-monetary obligations of the Company.

**1.3 Power of Attorney.** Subject to the limitations in Section 1.2 and in the Company's Operating Agreement, as amended from time to time (the "Operating Agreement"), the Company hereby appoints EC its attorney-in-fact with full power on its behalf and in its name, or in the name of the Company, (a) to prosecute or defend any litigation or proceeding before any governmental agency arising out of the operation of the Center, after consulting with the Company and after receiving the Company's approval of the position to be taken in any adversarial situation affecting the Center, and (b) to enter into contracts relating to the affairs of the Center.

**1.4 Duty of the Company.** The Company covenants and agrees to cooperate with and provide EC with all information and documents, subject to applicable law, reasonably requested by EC including but not limited to medical, technical or equipment procedure problems or incidents related to the Center.

## **2. MANAGEMENT SERVICES.**

**2.1 General.** EC will provide ongoing management of the operations of the Center as designated by the Board and consistent with this Agreement. Day-to-day oversight of the Company's operations will be provided by Onsite Managers who are located at the Center and will be employees of the Center or leased by a third party to the Center ("Onsite Managers"). The Onsite Managers will receive direction from EC.

**2.2 Management Staff.** EC will recruit, hire on behalf of the Company and train Onsite Managers; including the hiring of the Onsite Manager who is responsible for supervising and managing the business office (the "Administrator"). EC will place appropriate advertisements and screen potential candidates for the Onsite Manager positions. EC will from time to time make available to the Onsite Managers ongoing educational opportunities as approved by the Board. EC has the right to hire and terminate the employment of all Onsite Managers and Administrators.

**2.3 Human Resources.** The Onsite Managers will provide day-to-day supervision of employees at the Center and will be responsible for implementing the human resource policies and procedures. AC shall retain outside human resource legal counsel (at the Company's expense) and an outside human resource firm for questions that cannot be resolved at the Center level or that present a high level of risk to the Center as determined by EC.

**2.4 Financial Operations.** EC will oversee the financial operations at the Center and will provide systematic reporting to the Board on a regular basis no less frequently than monthly. EC will also provide the Company business office support to assist with accurate reporting of financial information and a system for cash management. EC will act as liaison with bankers and other financial support services to the Company. EC will train and work with Onsite Managers to implement business office functions and financial reporting. In furtherance thereof, EC will:

- 2.4.1** Provide financial reporting package to the Board on a monthly basis to include balance sheet, profit and loss statement and cash flow statement; report budget variances to the Board, and provide analysis for the Board on financial trends, including, but not limited to, advising the Board as to any changes in operation or circumstances which may cause a significant variation of the approved budgets;
- 2.4.2** Monitor and manage weekly and monthly cash flows, billing, collections, deposits, transfers and loan payments;
- 2.4.3** Prepare an annual operating and capital budget for the review and approval of the Board;
- 2.4.4** Assist in relating to banking or other third-party vendors working with the Center;
- 2.4.5** Coordinate auditing activities as necessary;
- 2.4.6** Coordinate and oversee the Company federal, state and local tax filings and reporting to the Company; and
- 2.4.7** Administrate the Company distributions in accordance with the Board's policies.

**2.5 Payor Contracting.** EC will share its expertise regarding payor contracting and recommend to the Board contracting strategies. EC will use internal resources to evaluate acceptable and unacceptable rates and provide that information to Onsite Managers and Board. At the Board's option, EC will assist with engaging an outside resource to evaluate payor contracting rates at the Company's expense.

**2.6 Clinical Support.** EC will provide support for the clinical operations of the Center to ensure quality of care and compliance with applicable regulations. EC will work with the Onsite Managers to coordinate necessary meetings.

**2.7 Administrative Support.** EC will provide support for administrative operations to comply with laws and regulations that affect the industry. EC will provide oversight of the timely payment of taxes, maintenance agreements and insurance coverage.

**2.8 Information System.** EC will work with Onsite Managers and management information system third-party contractors ("MIS") to implement and monitor technology necessary to oversee and grow the Center's business.

**2.9 Business Office Support Services.** EC will recruit and train the Administrator. EC shall provide ongoing support and supervision to the Administrator and will periodically audit the business functions of the Center to ensure services are being performed in an accurate manner.

**2.10 Tax Matters.** At the Company's expense, EC shall arrange for the preparation of any tax returns or tax reports required of the Company. The Company shall cooperate with EC in providing documents and information reasonably requested by EC for such purposes.

**2.11 Devotion of Time.** Notwithstanding anything to the contrary, EC is not obligated to devote all of EC's time or business efforts to the affairs of the Company. However, EC shall devote the time, effort and skill as is reasonably appropriate for the provision of services hereunder in a manner consistent with the management of other ambulatory surgery centers by EC.

**2.12 Manner of Providing Services.** EC shall perform its duties under this Agreement in good faith, in a manner reasonably believed to be in the best interests of the Company, and with at least such care as an ordinarily prudent person in a like position with like experience and qualifications would use under similar circumstances. In this regard, EC shall cause the Company to conduct its business and operations separate and apart from that of EC or any Affiliate of EC.

**2.13 Licensing and Regulatory Compliance.** EC shall assist the Company in maintaining on behalf of and in the name of the Company, all local, state and federal licenses, permits, certifications and approvals required in connection with the management and operation of the Center, including a Medicare provider number. EC shall supervise the preparation and submission on behalf of the Company of all necessary reports and filings, including cost and utilization reports, supporting data and other material required in connection with applicable federal and state reimbursement programs and other third-party payment contracts and programs in which the Company may from time to time participate. In addition, EC shall use commercially reasonable efforts consistent with the operation of the other ambulatory surgery centers managed by EC and its Affiliates to cause the Company to be in compliance with all local, state and federal laws and regulations of agencies having jurisdiction over the operations of the Center, and in order to comply

with requirements of payors, if the failure to comply with such laws would have a material adverse effect on the Center.

**2.14 Clinical Matters.** EC shall not be responsible for or have any authority with respect to the provision of medical or surgical care to patients of the Center. The Medical Director, pursuant to a Medical Director Agreement with the Company, and the physicians practicing at the Center shall be solely responsible for the provision of patient care to patients. Matters having both clinical significance and material non-clinical implications shall be decided by the Company's Board.

**2.15 LIABILITY OF EC.** EC SHALL NOT BE LIABLE TO THE COMPANY OR TO ANY MEMBER FOR ANY LOSS OR DAMAGE SUSTAINED BY THE COMPANY OR ANY MEMBER, UNLESS THE LOSS OR DAMAGE SHALL HAVE BEEN THE RESULT OF EC'S WILLFUL BREACH OF THIS AGREEMENT, OR EC'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT. IN PERFORMING EC'S DUTIES, EC MAY RELY ON INFORMATION OBTAINED FROM AGENTS OR CONSULTANTS RETAINED BY THE COMPANY IF EC REASONABLY AND IN GOOD FAITH BELIEVES SUCH PERSONS TO BE RELIABLE AND COMPETENT AS TO SUCH MATTER. OTHER THAN FOR INTENTIONAL MISCONDUCT, UNDER NO CIRCUMSTANCES SHALL EC'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED THE FEES ACTUALLY PAID BY THE COMPANY TO EC IN THE IMMEDIATELY PRECEDING TWELVE (12)-MONTH PERIOD UNDER THIS AGREEMENT. The parties acknowledge that EC has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein.

**2.16 Indemnification.** Subject to Section 2.15, EC agrees to indemnify and hold Company harmless from and against any and all expenses, including reasonable attorneys' fees and costs of defense of any actions arising directly or indirectly out of or in connection with EC's gross negligence or intentional misconduct, or EC's breach of a material provision of this Agreement (other than with respect to any liability, claim, action, damage, expense or cost which was incurred by reason of the Company's or any of its employees' negligent act or negligent omission or willful misconduct). Company agrees to indemnify and hold EC harmless from and against any and all expenses, including reasonable attorneys' fees and costs of defense of any actions arising directly or indirectly out of or in connection with the operation of the Center or the Company's or Member's breach of a material provision of this Agreement (other than with respect to liability, claim, action, damage, expense or cost which was incurred by reason of EC's or any of its agents' or employees' gross negligence or willful misconduct).

### **3. BILLING AND COLLECTION.**

**3.1 Billing.** The Company shall bill patients and collect the Center's facility fees for services rendered by the Company at the Company's expense. All billings for facility fees provided by the Company shall be in the name of and under the provider number of the Company. EC shall supervise the Onsite Managers appointed to oversee the Company's billing operations.

**3.2 Operating Account.** The Company agrees to establish and maintain a bank account, which shall be referred to as the Company's Operating Account, for the purpose of (a) depositing the proceeds of the funds collected under Section 3.1; and (b) paying (1) the salaries and benefits of the Company's employees and rent for the Company's facility, (2) the Management Fees and reimbursement owed pursuant to this Agreement, (3) other expenses that are the obligation of the

Company, and (4) distributions to the members of the Company and distributions from the Company's Operating Account shall be made in that order of payment. The Company shall designate persons as signatories on the Company's Operating Account as determined by the Board.

#### **4. EMPLOYEES.**

**4.1 Center Employees.** The Onsite Managers and other individuals who provide services primarily at the Center shall be employees of the Center. The Company retains the right to exercise direction and control over all personnel in the performance of their services for the Center. Subject to the ultimate authority of the Board and EC's right to supervise, the Onsite Managers shall be responsible for hiring, discharging, supervising payroll and other administrative functions usually performed by an employer. Subject to the authority of the Board, EC and the Onsite Managers shall consult with each other regarding establishing a schedule for holidays, vacations and sick leave policies.

**4.2 EC Employees.** EC's executive and personnel located at EC's offices shall be employees of EC, and EC shall be responsible for the payroll costs of such employees. EC retains the right to exercise direction and control over EC's employees, including the right to reassign or terminate all such personnel.

#### **5. COMPENSATION AND REIMBURSEMENT.**

**5.1 Management Fee.** For each calendar year, EC shall receive a Management Fee in an amount equal to five percent (5%). "Net Collections" means actual cash receipts in a calendar year from operations less refunds paid in such calendar year. The Management Fee shall be paid in monthly installments based on the prior month's collections by the twentieth (20th) calendar day following each respective month's end. Any unpaid Management Fee shall be accrued, and the Company shall not make any distributions to the members of the Company until the Company's payment of the Management Fee for the current month and the payment of any accrued, but unpaid, Management Fees for prior months.

**5.2 Reimbursement.** The parties intend that the Management Fee will reimburse EC for the cost of providing those routine management services to the Company provided by individuals whose normal responsibilities are dispersed among the Company, EC and other entities that EC manage. The Company is responsible for reimbursing EC for other ordinary and necessary Company expenses initially paid by EC, including (a) reasonable travel and lodging expenses for EC-affiliated employees while providing services to the Company, and (b) compensation costs for any Center personnel positions covered by EC employees. Board approval is deemed to have been obtained to the extent the expenses are included in a budget that is approved by the Board.

#### **6. OWNERSHIP OF INFORMATION; CONFIDENTIALITY; COMPETITION.**

**6.1 Ownership of Systems.** EC and the Company anticipate that most software used by the Company shall be third-party software purchased at the Company's expense. Except with the Company's prior written consent, all third party software will be licensed to the Company. EC retains all ownership and other rights in all EC created proprietary (or such created by third parties specifically for EC) manuals, computer software created by or on behalf of EC, financial information (including information relating to the valuation of EC and other managed entities and EC Affiliates) and other information marked "confidential" or "proprietary" where EC has taken reasonable steps to

maintain the confidentiality of such information (collectively referred to as the “EC Proprietary Systems”). Nothing contained in this Agreement shall be construed as a transfer of such EC Proprietary Systems or any portion thereof, either during the term of this Agreement or thereafter. Upon the termination or expiration of this Agreement, EC shall retain ownership of all of the EC Proprietary Systems and EC shall have no duty to update EC Proprietary Systems; provided, however, that the Company shall have the right to continue to use such EC Proprietary Systems in the same manner, and at the same cost, if any, as used before termination, and the right to modify such EC Proprietary Systems for its own internal use. EC shall have no duty to provide updates to EC Proprietary Systems after termination of this Agreement except as otherwise agreed in writing by the parties. In lieu of allowing the Company to continue to use any EC Proprietary Systems, EC shall have the right to provide the Company with substitute systems that are functionally equivalent or superior, at no additional cost to the Company. EC represents and warrants that such continued use shall not violate the intellectual property rights of any third parties; except that the Company may be required to pay license fees for the use of components of the EC Proprietary Systems that are licensed by EC from third parties on commercially reasonable terms.

**6.2 Confidentiality of EC Proprietary Systems.** The Company acknowledges that EC has invested a significant amount of its resources in developing and maintaining the EC Proprietary Systems and that the value to EC of the EC Proprietary Systems may be diminished or destroyed if the Company discloses the EC Proprietary Systems or any portion thereof to a third party. Accordingly, the Company shall maintain the confidentiality of the EC Proprietary Systems. The Company shall not duplicate or permit the duplication of any portion of the EC Proprietary Systems and shall not permit access to the EC Proprietary Systems by the Company’s personnel or any third party other than on a strict “need-to-know” basis and in the ordinary course of business. The Company shall take at least those steps that it would take to protect its own confidential information. The provisions of this Article 6 shall survive any termination or expiration of this Agreement.

**6.3 Remedy.** The Company agrees that the remedy at law for any breach of covenants contained in this section may be inadequate and would be difficult to ascertain and therefore upon an event of a breach or threatened breach of such covenants, EC, in addition to any other remedies, shall have the right to enjoin the Company from any threatened or actual activity in violation hereof. The Company hereby consents and agrees that a temporary or permanent injunction may be granted in any proceeding without the necessity of providing actual damages or posting a bond.

**6.4 Access to Center; Confidentiality of Records.** The Company shall own all of the Company’s business and medical records, including books of account, administrative records, patient records and other patient data, and copies of such records shall be maintained or available at the Company’s offices. EC shall, during the term hereof, be given access to the Company’s records to the extent necessary to carry out its obligations hereunder, subject to requirements for maintaining the confidentiality of patient medical records as established by law, and as more specifically set forth in **Exhibit A**, attached hereto and made a part hereof (the “HIPAA Business Associate Addendum”). EC shall maintain the confidentiality of all files and records, including patient records, of the Company, disclosing the same only as directed by law or by the Company in any particular instance; provided EC may provide financial and business records to third parties under a duty of confidentiality for purposes of evaluating EC (such as lenders or investors).

## **7. TERM AND TERMINATION.**

**7.1 Term.** This Agreement shall commence upon date of first cases performed and shall continue in full force and effect until the fifth (5<sup>th</sup>) anniversary of the Effective Date unless sooner terminated in accordance with this Article 7.

**7.2 Termination for Breach.** Notwithstanding Section 7.1, a party shall have the right to terminate this Agreement upon the occurrence of any of the following events by delivering to the other party written notice of its intent to terminate this Agreement:

**7.2.1** the other party has been sanctioned by, barred or excluded from a government health program; or

**7.2.2** a finding by an arbitrator under Section 9.2 of this Agreement, that a party has engaged in repeated or continuing gross negligence, willful misconduct or material breach of this Agreement or the Company's Operating Agreement; provided that the actions of the Company's employees shall not be imputed to EC.

Notwithstanding Section 7.2.2, in the event termination is for an alleged breach by EC, then before initiating the procedures under Section 9.2, the Board shall send EC notice describing in detail the basis upon which the Board believes such termination is justified. Upon receipt of such notice, EC shall have sixty (60) days during which to attempt to cure any alleged default under this Agreement or Company's Operating Agreement, and upon such cure being effectuated, the Company's rights to terminate shall cease and this Agreement will continue in full force and effect. Furthermore, if EC has diligently attempted to effect such a cure within such sixty (60)-day period but cannot complete such cure within such period, then EC shall have a reasonable time beyond such sixty (60)-day period not to exceed one hundred twenty (120) days to complete its cure of the alleged basis for the Company's election to terminate, provided EC diligently continues to attempt to cure; only after such cure period may the Board initiate procedures under Section 9.2 to have a determination of a breach of this Agreement.

**7.3 Insolvency.** A party may terminate this Agreement if the other party shall appoint or consent to the appointment of a receiver, trustee or liquidator of such party or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangements with creditors or to take advantage of any insolvency law, or if an order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating such party bankrupt or insolvent, and such order, judgment or decree shall continue un-stayed and in effect for any period of sixty (60) days. In addition, EC may terminate this Agreement if Company fails to pay Management Fees or Net Income Share or reimburse EC's expenses for a period of sixty (60) days.

## **8. NOTICE.**

**8.1 Notices.** All notices, demands, requests and other communications or documents required or permitted to be provided under this Agreement shall be in writing by any means described in Section 8.2, and shall be given to the applicable party at its address or facsimile number set forth below or such other address or facsimile number as the party may later specify for that purpose by notice to the other party:

***If to EC:*** Engineous Consulting, LLC  
1550 West McEwen Drive  
Ste 300; PMB # 12  
Franklin, TN 37067  
Phone: (912) 536-2779

***If to the Company:*** Encore Surgical Institute, LLC  
8132 Country Village Drive  
Ste 102  
Cordova, TN 38106

**8.2 Effective Date.** Each notice shall be deemed given and received: (a) if given by facsimile, when the facsimile is transmitted to the party's facsimile number specified above and confirmation of complete receipt is received by the transmitting party during normal business hours on any business day or on the next business day if not confirmed during normal business hours; (b) if by hand, when delivered; (c) if given by nationally recognized and reputable overnight delivery service, the business day on which the notice is actually received by the party; or (d) if given by certified mail, return receipt requested, postage prepaid, two (2) business days after posted with the United States Postal Service.

## **9. MISCELLANEOUS.**

**9.1 Maintenance of Records.** Upon the written request of the Secretary of Health and Human Services or the Comptroller General or any of their duly authorized representatives, EC and any of its Affiliates providing services with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12)-month period shall make available to the Secretary the contract, books, documents and records that are necessary to verify the nature and extent of the cost of providing such services. Such inspection shall be available up to four (4) years after the rendering of such services. The parties agree that any applicable attorney-client, accountant-client or other legal privilege shall not be deemed waived by virtue of this Agreement. To the extent that EC subcontracts any of its duties hereunder where the value or cost of the service component is Ten Thousand Dollars (\$10,000) or more within a twelve (12)-month period, EC will require a similar access clause in its written subcontracts.

### **9.2 Dispute Resolution.**

**9.2.1 Meet and Confer.** The parties agree to meet and confer on any issue that is the subject of a dispute under this Agreement ("Meet and Confer") if initiated by another party to this Agreement. The party seeking to initiate the Meet and Confer procedures ("Initiating Party") shall give written notice to the other parties, describing in general terms the nature of the dispute, the initiating party's position and a summary of the evidence and arguments supporting its position, and identifying one (1) or more individuals with authority to settle the dispute on such party's behalf. (The individuals so designated by a party shall be known as the "Authorized Individuals.")

The party receiving such notice (the "Responding Party") shall have twenty (20) days within which to respond. The response shall include the

Responding Party's position and a summary of the evidence and arguments supporting its position and shall also identify one (1) or more Authorized Individuals with authority to settle the dispute on such party's behalf. The Authorized Individuals for the parties shall meet at a mutually acceptable time and place within ten (10) business days of the date of receipt of the Responding Party's response and thereafter as often as they deem reasonably necessary to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within twenty (20) days after the last date on which the meeting could take place in compliance with this section, then either party may initiate arbitration. All deadlines specified in this meet and confer provision may be extended by mutual agreement of the affected parties. The parties recognize that the authority of the Authorized Individuals, and any agreement that may be reached during the Meet and Confer process, may be subject to the approval of the respective member's governing board.

**9.2.2 Binding Arbitration.** If within thirty (30) days of the first meeting of the Authorized Individuals in Section 9.2.1, there is not a settlement, then the dispute will be finally resolved by arbitration administered by submitting a request to the Alternative Dispute Resolution Service (the "Service") of the American Health Lawyers' Association ("ECLA"), requesting that the Service select/appoint an arbitrator using Rules of Procedure developed by ECLA for selection of dispute resolvers, including the use of the ranking list, naming five (5) neutrals with relevant expertise. In filing the special request, a party shall complete the ECLA Request for Dispute Resolver List, accessed at [www.healthlawyers.org/adr](http://www.healthlawyers.org/adr) and identify the qualifications required in paragraph 9 of the Request as: a Neutral associated with a nationally recognized health care practice, with experience representing organizations that manage ambulatory surgical centers who does not currently perform a material amount of work for the Company or any member of the Company or their Affiliate.

**9.2.3 Arbitration Terms.** The fees for the special request shall be paid by the requesting party at the time of the request. The arbitration award will be final and binding on the parties, will not be subject to judicial appeal, will not include any punitive damages and will deal with the allocation of costs of arbitration, including legal fees and all related matters. Any monetary award will stipulate a rate of interest, deemed appropriate by the arbitrators, which will run from the date notice of the dispute was given under Section 9.2.1 until the date when the award is fully satisfied. The arbitration award will be promptly satisfied by the party against whom it is granted. Any cost or fee incident to enforcing the award will, to the maximum extent permitted by law, be charged against the party resisting enforcement. Judgment upon the award rendered may be entered in any court having jurisdiction, or application may be made to that court for a judicial recognition of the award or an order of enforcement thereof, as applicable. Either party may bring an action to enforce any award granted under this Section 9.2.

**9.3 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall together constitute one agreement.

**9.4 Enforceability.** Should any part of this Agreement be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity and enforceability of the remaining portions.

**9.5 Due Authorization.** Each individual signing this Agreement warrants that such execution has been duly authorized by the party for which he is signing. The execution and performance of this Agreement by each party has been duly authorized by all applicable laws and regulations and all necessary corporate action, and this Agreement constitutes the valid and enforceable obligation of each party in accordance with its terms.

**9.6 Amendment; Entire Agreement.** This Agreement may not be modified or amended except in writing executed by both parties. This Agreement constitutes the entire agreement of the parties hereto and supersedes all prior agreements and representations with respect to the subject matter hereof.

**9.7 Assignment.** The Company may not assign its rights or obligations under this Agreement without the written consent of EC. Except in the event of the merger or consolidation of EC, or the sale by EC of substantially all of its assets, EC shall not assign its rights or obligations under this Agreement, other than to a subsidiary corporation or other entity controlled by or under common control of EC (“Affiliate”), without the written consent of the Company, which consent shall not be unreasonably withheld. The terms, covenants, conditions, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns as permitted by this Agreement. The parties acknowledge that many of the services to be provided by EC hereunder may be delegated to Engineous Consulting, LLC and other EC Affiliates.

**9.8 Further Acts.** The parties do hereby covenant and agree that they and their successors and assigns will execute any and all instruments, releases, assignments and consents which may reasonably be required of them in order to carry out the provisions of this Agreement. Notwithstanding expiration or termination of this Agreement, each party hereto shall take such further actions as are necessary to fulfill its existing obligations, which by their terms require performance after expiration or termination of this Agreement.

**9.9 Waiver.** The waiver of either party of a breach or violation of any provision of this Agreement shall not operate or be construed to be a waiver of any subsequent breach thereof.

**9.10 Independent Contractor.** EC and the Company affirmatively state that the relationship created under this Agreement is that of an independent contractor.

**9.11 Force Majeure.** Either party shall be excused for failures and delays in performance of its respective obligations under this Agreement due to any cause beyond the control and without the fault of such party, including without limitation, any act of God, war, terrorism, riot or insurrection, law or regulation, strike, flood, fire, explosion or inability due to any of the aforementioned causes to obtain necessary labor, materials or facilities, for so long as such event continues, and for a reasonable period of time thereafter, other than nonpayment under Article 5. This provision shall not, however, release such party from using its best efforts to avoid or remove such cause and such party shall continue performance hereunder with the utmost dispatch whenever

such causes are removed. Upon claiming any such excuse or delay for non-performance, such party shall give prompt written notice thereof to the other party, provided that failure to give such notice shall not in any way limit the operation of this provision.

**9.12 Interpretation.** This Agreement and the provisions contained herein shall not be construed or interpreted for or against any party hereto because said party drafted or caused the party's legal representative to draft any of its provisions, but shall be construed as if both parties had prepared this Agreement.

**9.13 Attorneys' Fees.** If legal action is commenced by either party to enforce or defend its rights under this Agreement, the prevailing party in such action shall be entitled to recover its costs and reasonable attorneys' fees in addition to any other relief granted.

**9.14 Applicable Law.** This Agreement shall be construed and governed in accordance with the laws of the state where the Center is located without reference to its conflicts of laws provisions.

**9.15 Third-Party Beneficiaries.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of the terms and provisions of this Agreement on any person other than the parties to it, nor is anything in this Agreement intended to relieve or discharge the obligation or the liability of any third person to any party to this Agreement, nor shall any provision of this Agreement give any third persons any right of subrogation or action over or against any party to this Agreement.

**9.16 Insurance.** EC, at its sole cost and expense, shall provide, keep and maintain throughout the term of this Agreement, general casualty and liability insurance coverage in the minimum amount of One Million Dollars (\$1,000,000) for bodily injury and One Million Dollars (\$1,000,000) for property damage. EC also shall maintain policies of insurance against worker's compensation, unemployment compensation and disability insurance coverage for its employees as required by law.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

**EC:**

**COMPANY:**

Engineous Consulting, LLC

ENCORE SURGICAL INSTITUTE, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**

**Business Associate Agreement**

# COMMUNITY HEALTHCARE TRUST

September 8, 2020

Bo Boyer  
CEO  
Encore Surgical Institute, LLC  
8132 Country Village Dr, Suite 101  
Cordova, TN 38016

RE: Lease Proposal for Encore Surgical Institute, LLC  
8132 Country Village Drive, Cordova, TN

Dear Mr. Boyer:

We are pleased to present the following lease proposal to the Encore Surgical Institute, LLC for space at the 8132 Country Village Drive, Cordova, TN (the "Building").

The Building is owned by CHCT TENNESSEE, LLC, a wholly owned subsidiary of Community Healthcare Trust Incorporated (NYSE: CHCT). CHCT and its management team are dedicated to providing our tenants with the opportunity to increase their efficiency and ability to increase their EBITDA. Our goal is to provide the lowest cost, most productive environment possible that aligns with your operational needs and strategy.

We are pleased to have the opportunity to submit for your review this proposal, which provides for the Encore Surgical Institute, LLC to lease up to a total of 4,969 rentable square feet ("RSF") at 8132 Country Village Drive, Cordova, TN pursuant to the following terms.

**Tenant:** Encore Surgical Institute, LLC

**Building:** 8132 Country Village Drive

**Premises:** With approximately 4,969 RSF as shown on attached Exhibit A.

**Base Rental Rate:** \$23.00 per RSF NNN for initial lease year.

**Initial Term:** Six (6) years

**Commencement Date:** Upon lease execution.

**Rent Commencement Date:** Upon substantial completion of the tenant improvements by Tenant

Suite 150 | 3326 Aspen Grove Drive | Franklin | TN | 37067

Attachment Section  
A, Project Details, 6  
A

# COMMUNITY HEALTHCARE TRUST

but in no event later than April 1, 2021.

- Renewal Options:** Tenant shall have two (2) six (6) year options to renew the lease with one-hundred eighty (180) days prior written notice.
- Operating Expenses:** Maintenance, insurance, property taxes, etc.
- Annual Increases:** The Base Rental Rate shall increase by 2.5% per year.
- Contingency:** This lease proposal is contingent upon Tenant receiving a Certificate of Need ("CON") on or prior to January 1, 2021, to operate an outpatient surgery center in the Premises.

We hope this proposal provides the Encore Surgical Institute with terms and conditions in enough detail for the Encore Surgical Institute to be able to develop a long-term strategy and successful operational presence at 8132 Country Village Drive. Please note that this proposal shall remain in effect only until September 11, 2020 and is subject to entering into an acceptable lease agreement and related documents prior to October 9, 2020.

This proposal is not contractually binding on the parties and is only an expression of the basic terms and conditions to be incorporated in a formal agreement, along with the other terms to be negotiated by the parties, all of which are subject to their approval. The parties shall not be contractually bound unless and until a formal agreement is fully executed and delivered by all parties.

We would look forward to developing a mutually beneficial and long-term relationship with the Encore Surgical Institute at the 8132 Country Village Drive. Please feel free to contact me to discuss this proposal in further detail.

Very truly yours,

**CHCT TENNESSEE, LLC**

By: Community Healthcare Trust Services, Inc.  
Its: Manager

By: 

Name: Timothy L. Meyer

Title: SVP – Asset Management

COMMUNITY  
HEALTHCARE  
TRUST

**Accepted by:**

**Encore Surgical Institute**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2020

# COMMUNITY HEALTHCARE TRUST

## LEASE AGREEMENT

This Lease Agreement (the "Lease"), is made and entered into as of September \_\_, 2020 (the "Effective Date"), by and between CHCT TENNESSEE, LLC, a Delaware limited liability company ("Landlord"), whose address is 3326 Aspen Grove, Suite 150, Franklin, Tennessee, 37067 Attention: Asset Management ("Landlord Address") and Encore Health Group, LLC, a Tennessee limited liability company ("Tenant") whose address is 2020 Fieldstone Pkwy #900-226, Franklin, Tennessee 37069-4337 Attention: Bo Boyer- CEO ("Tenant Address")

1	"Premises"	Suite 102
2	"Building"	8132 Country Village Dr, Cordova, TN 38016
3	Square Footage of Premises:	4,969
4	Square Footage of Building:	11,669
5	"Tenant's Proportionate Share"	42.58%
6	"Lease Term"	Four (4) Months (estimated)
7	"Lease Term Commencement Date"	September 1, 2020
8	"Lease Term Expiration Date"	Upon the decision of a Certificate of Need ("CON")
9	"New Long Term Lease Contingency and Termination Option"	Tenant's long-term occupancy and lease of the Premises shall be contingent on Tenant receiving a CON to operate a surgery center in the Premises. Upon receipt of a CON, Landlord and Tenant will enter into a new long-term lease for the Premises upon mutually acceptable terms, which shall replace this Lease. Should the Tenant not receive its CON on or before January 1, 2021, either Landlord and Tenant may terminate this Lease with thirty (30) days prior written notice.
10	"Operating Expenses"	As defined in Exhibit B. Estimated Operating Expenses are \$3,997.00 per month.
11	"Security Deposit"	\$0.00
12	"Base Rent"	

Lease Year			Monthly Base Rent
9/1/2020	through	Lease Term Expiration	\$413.92

**COMMUNITY**  
**HEALTHCARE**  
— TRUST —

**LEASE**

1. **PREMISES.** In consideration of the rents, mutual covenants and agreements set forth herein, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord the Premises located in the Building, and more particularly shown on the floor plan attached hereto as Exhibit "A".

2. **TERM.** The term of this Lease shall commence on the Lease Term Commencement Date and shall continue for the Lease Term plus any additional days as may be required for the Lease Term to expire on the Lease Term Expiration Date.

3. **BASE RENT.** Tenant shall pay to Landlord the Base Rent, without notice, demand, abatement, deduction or setoff, except as elsewhere provided herein. Base Rent shall be paid in advance in equal monthly installments on the first day of each and every calendar month during the Lease Term; provided, however, that in the event the Lease Term commences on a day other than the first day of a calendar month, then upon the Lease Term Commencement Date Tenant shall pay to Landlord a pro rata portion of Base Rent for that portion of the calendar month remaining from the Lease Term Commencement Date to the first day of the next following calendar month.

Each twelve (12) month period commencing on the Lease Term Commencement Date or any anniversary thereof is referred to herein as a "Lease Year." For each Lease Year, the amount of Base Rent shall be as provided in the preamble to this Lease.

4. **ADDITIONAL RENTAL.** In addition to the Base Rent as specified in this Lease, Tenant agrees to pay to Landlord as additional rent ("Additional Rent") Tenant's Proportionate Share of the Operating Expenses (as hereinafter defined).

For the purposes of determining Additional Rent, "Operating Expenses" shall mean all of Landlord's direct or indirect costs and expenses of every kind and nature, paid or incurred in owning, operating, maintaining, repairing, replacing and protecting the Building and the property upon which the Building is located (including any payments made by Landlord pursuant to any ground lease and/or access easements and/or parking easements or leases relating to such property) (collectively "Property") as determined by Landlord for a particular calendar year or portion thereof. Tenant, at its expense, shall have the right no more frequently than once per calendar year following thirty (30) days prior written notice to Landlord, to audit Landlord's books and records relating to Operating Expenses at Landlord's office during Landlord's normal office hours.

Itemized categories of Operating Expenses are more particularly described in Exhibit "B" attached hereto and incorporated herein.

Tenant's proportionate share of Operating Expenses for the remainder of the calendar year after the Lease Term Commencement Date and for each subsequent calendar year shall be estimated by Landlord, and written notice thereof shall be given to Tenant. Tenant agrees to pay Landlord each month, at the same time the Base Rent is due, an amount equal to one-twelfth (1/12) of the estimated annual Additional Rent due.

If real estate taxes, or any portion of Operating Expenses including utility, janitorial or other services increase during a calendar year, Landlord may revise the estimated Additional Rent during such year by giving Tenant written notice to that effect, and thereafter Tenant agrees to pay Landlord, in each of the remaining months of such year, an additional amount equal to the amount of such annual increase in the estimated Additional Rent divided by the number of months remaining in such year.

After the end of each calendar year, Landlord shall prepare and deliver to Tenant a statement showing Tenant's total amount of Additional Rent. Within thirty (30) days after receipt of the aforementioned statement, Tenant agrees to pay Landlord, or if Tenant has overpaid, Landlord shall credit against the next Additional Rent payment or payments due from Tenant, as the case may be, the difference between Tenant's actual Additional Rent due for the preceding calendar year and the estimated Additional

Rent paid by Tenant during such year. Landlord and Tenant agree that in the calendar year in which this Lease expires or is terminated, Landlord will not deliver the aforementioned statement for such year until the following calendar year. Landlord and Tenant acknowledge and agree that Tenant's obligation to pay Landlord (or, if Tenant has overpaid, Landlord's obligation to refund to Tenant) the difference between Tenant's actual Additional Rent due for such calendar year and the estimated Additional Rent paid by Tenant during such year shall survive the expiration or termination of this Lease.

Upon the termination of this Lease, Tenant shall pay Tenant's Proportionate Share of Operating Expenses, including, without limitation, real estate taxes, to Landlord for the period of time in which Tenant occupied the Premises. In the event the bill for any Operating Expense is not available as of the termination of this Lease, Tenant shall pay to Landlord any expenses and fees provided hereunder within thirty (30) days of the submission of a statement for the same from Landlord. The obligations of payment provided hereunder shall survive the termination of this Lease.

**5. RENT PAYMENT.** The Base Rent, Additional Rent and all payments under this Lease to be made by Tenant to Landlord (collectively "Rent") shall be made payable to, and mailed or personally delivered to Landlord at the address designated in writing by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the entire payment due under this Lease shall be considered anything other than a payment on account of the earliest Rent due.

If any Rent or other payment under this Lease is not paid when due, any unpaid amount shall be subject to a five percent (5%) late service charge if not paid on or before the tenth (10th) day of each month. However, this provision shall not relieve Tenant from any default.

If Tenant shall breach this Lease by failing to pay Rent, or other sums due hereunder, two (2) times during the Lease Term, Tenant shall deliver to Landlord a complete Authorization Agreement - Pre-Arranged Payments, in the form supplied by Landlord to Tenant upon such second breach, together with a voided check for account verification, establishing arrangements whereby payments of Rent are transferred by Automated Clearing House Debit initiated by Landlord from an account established by Tenant at a United States bank or other financial institution to such account as Landlord may designate. Tenant shall continue to pay all Rent by Automated Clearing House Debit until otherwise directed by Landlord.

If applicable, Tenant shall pay and be liable for all rental, sales and use taxes or other similar taxes, if any, levied or imposed on Rent payments by any city, county, state or other governmental body having authority, such payments to be in addition to all other payments required to be paid to Landlord by Tenant under the terms of this Lease. Any such payment shall be paid concurrently with the payment of the Rent upon which such tax is based.

**6. DELIVERY OF PREMISES.** Tenant agrees that no representations, statements or warranties expressed or implied have been made by or on behalf of Landlord in respect to the Premises except as contained in this Lease. Tenant agrees that Landlord shall not be obligated to make any improvements or alterations to the Premises prior to the Lease Term Commencement Date. Upon the Lease Term Commencement Date, Tenant shall accept the Premises in its existing condition and state of repair.

If a casualty occurs to the Premises and/or the Building prior to the Lease Term Commencement Date, Landlord may, at Landlord's option, either cancel this Lease, in which event this Lease shall become void and of no effect, or rebuild as soon as possible, in which event this Lease shall remain in full force and effect. However, under no circumstances shall Tenant have any interest in any insurance proceeds attributable to said casualty. In the event of a casualty, if Landlord cannot obtain all utilities, permits and authorizations necessary to reconstruct the Building and/or the interior improvements in accordance with the plans and specifications therefor or complete reconstruction of the Building within a reasonable time, Landlord may terminate this Lease by delivering written notice thereof to Tenant, in which event Landlord shall return the Security Deposit, if any, to Tenant and Landlord and Tenant shall have no further obligations or liabilities under this Lease.

7. **SECURITY DEPOSIT.** Landlord hereby acknowledges receipt of the Security Deposit, if any. Said Security Deposit shall be held as security for the performance of Tenant's obligations under the Lease by Tenant. Tenant shall not be entitled to interest thereon. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the security deposit shall be returned to Tenant within thirty (30) days of the expiration of this Lease, if Tenant shall actually vacate the Premises by such date. The Security Deposit shall be held by Landlord as security for the performance by Tenant of Tenant's covenants and obligations under the Lease. The Security Deposit shall not be considered an advance payment of rent; however, Landlord may commingle the Security Deposit in Landlord's general funds. Tenant shall have no rights in the Security Deposit until the Lease is terminated without an existing event of default. Landlord may, from time to time, without prejudice to any other remedy, apply the Security Deposit and use the proceeds thereof to make good any arrearages of rent, to satisfy any other covenant or obligation of Tenant hereunder or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of any default by Tenant. Following any such application against the Security Deposit, Tenant shall deliver to Landlord on demand such additional funds as a Security Deposit in an amount necessary to return the original amount of the Security Deposit to Landlord. If Tenant is not in default at the termination of the Lease and has complied with all of the provisions of this Lease to be performed by Tenant, including surrender of the Premises in accordance with the provisions hereof, the Security Deposit shall be returned by Landlord to Tenant, subject to any amounts previously applied by Landlord. Tenant will not assign or encumber Tenant's interest in the Security Deposit, and neither Landlord nor Landlord's successors or assigns will be bound by any such attempted assignment or encumbrance of the Security Deposit. Tenant specifically agrees and acknowledges that any application of the Security Deposit by Landlord shall be a recoupment under this instrument to reduce the amount due and owing by Tenant to Landlord under this instrument arising out of a single integrated and unitary transaction and that it would be inequitable for the Tenant to enjoy the benefits of this instrument without also meeting its obligations. In addition, Landlord shall be entitled to draw upon the Security Deposit upon the occurrence of any of the following: (a) an event of default under this Lease, including without limitation the filing of a Bankruptcy by Tenant or any Affiliate of Tenant (including, without limitation, any Guarantor), (b) Tenant or any Affiliate of Tenant (including, without limitation, any Guarantor) shall commit any event of default under any Lease Document, or (c) an event or circumstance has occurred which with notice or the passage of time, or both, would constitute an event of default under this Lease.

8. **USE OF PREMISES.** Tenant, unless otherwise approved by Landlord, shall use and occupy the Premises throughout the Lease Term solely for the purpose of operating and maintaining a physician's office for examining and treating patients, and for no other purpose whatsoever. Tenant will not use the Premises or any part thereof for any use not permitted in **Exhibit "E"** attached hereto without Landlord's approval. Tenant recognizes that these restrictions on the use of the Premises are a material consideration for Landlord to enter into this Lease.

Tenant shall comply with all laws, ordinances, rules and regulations pertaining to the use and occupation of the Premises. Tenant shall also comply with any use restrictions or declarations of restrictive covenants affecting the Premises which are of record in the real estate records in the county in which the Premises are located. No use shall be made or permitted to be made of the Premises, nor acts done, which will increase the existing rate of insurance upon the Building in which said Premises may be located or cause a cancellation of any insurance policy covering said Building. Tenant shall not commit, or suffer to be committed, any waste upon said Premises or any public or private nuisance, or other act or thing which may disturb the quiet enjoyment of any other tenant in the Building in which the Premises may be located.

9. **ENVIRONMENTAL COMPLIANCE.** Tenant warrants that it shall not cause or permit any Hazardous Materials (as hereinafter defined) to be brought, kept or used in or about Premises by Tenant, its subtenants, agents, employees, contractors, or invitees except in commercial quantities similar to those quantities usually kept on similar premises by others in the same business or profession. Tenant shall cause all such materials to be stored, used and disposed of in compliance with all applicable federal, state and local laws, including, without limitation, laws governing Hazardous Materials. If the presence of any

Hazardous Materials on, in or under the Premises caused or permitted by Tenant, its subtenants, agents, employees, contractors or invitees results in any contamination of the Premises, Tenant shall promptly take all actions, at its sole expense, as are necessary to return the affected area to the condition existing prior to the introduction of any such Hazardous Materials, including, without limitation, any investigation or monitoring of site conditions or any clean up, remediation, response, removal, encapsulation, containment or restoration work required because of the presence of any such Hazardous Materials on, in or under the Premises or any release or suspected release or threat of release of any such Hazardous Materials in the air, soil, surface water or ground water.

"Hazardous Materials" as such term is used in this Lease means any hazardous or toxic substances, material or waste, regulated or listed pursuant to any federal, state or local environmental law, including without limitation, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, Rodenticide Act, the Safe Drinking Water Act and the Occupational Safety and Health Act as such Acts have been or are hereafter amended from time to time.

Tenant shall indemnify Landlord against any and all claims, demands, liabilities, losses and expenses, including consultant fees, court costs and reasonable attorneys' fees, arising out of any breach of the foregoing warranty. Further, Tenant agrees to indemnify Landlord against any and all claims, demands, liabilities, losses and expenses, including consultant fees, court costs and reasonable attorneys' fees, arising from or caused in whole or in part, directly or indirectly, by (i) any release of Hazardous Materials by Tenant or Tenant's agents on the Premises or the Building during the Lease Term; or (ii) Tenant's failure to comply with any hazardous materials laws with respect to the Premises. For purposes of the indemnity provisions hereof, any acts or omissions of Tenant, or by Tenant's representatives, contractors, assigns, invitees or any other occupant of the Premises (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Tenant Tenant's obligations pursuant to the foregoing warranty and indemnity shall survive the expiration or earlier termination of this Lease.

Notwithstanding anything to the contrary herein, Tenant shall have no obligation to indemnify Landlord for any claims, liabilities, losses and expenses arising out of any Hazardous Materials placed, stored or used in the Building by Landlord or its agents, employees or contractors.

**10. UTILITIES, MAINTENANCE AND SERVICES.** As a part of the Operating Expenses, during Normal Hours of Operation, while Tenant is not in default under any of the provisions of this Lease, and subject to the regulations of the Building, Landlord shall (i) maintain and repair the plumbing lines serving the Premises to the point of entry into the Premises except where a repair to same is needed as a result of Tenant's, its employees' or invitees' negligence or misuse in which case Tenant shall be responsible to make such repairs; (ii) maintain and repair heating and air conditioning systems, lighting, and mechanical systems solely serving the public common areas of the Building; (iii) be responsible for the removal of trash placed in containers located within the public common areas of the Building; (iv) furnish elevator services, if the Building has an elevator; (v) maintain in good order and repair and in a clean and orderly condition the roof, exterior walls and public areas in the Building, together with any parking area owned or leased by Landlord which is adjacent to the Building; (vi) supply toilet paper, paper towels and soap to all public restrooms in public common areas in the Building; (vii) provide general janitorial services to the public common areas of the Building (Monday through Friday, exclusive of the normal observed business holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day) between 5:00 PM and 3:00 AM.

Unless separately metered to or provided by the Tenant, Landlord shall furnish the Premises, as a part of the Operating Expenses, heat and air conditioning, water and normal electric current for lighting, ordinary medical equipment and business appliances. Landlord may impose a reasonable charge for any utilities and services, including without limitation, air conditioning, electrical current, and water, provided by Landlord by reason of any substantial use of the Premises at any time other than the hours set forth above or for any use beyond that which Landlord agrees herein to furnish such services and utilities or because of

special electrical, cooling and ventilating needs created by Tenant's telephone equipment, computers and other equipment or uses.

Landlord shall not be liable under any circumstances for failure to furnish, or the stoppage or interruption of any services described in this section when such failure, or stoppage or interruption of services is caused by conditions beyond the control of Landlord, or by accidents, repairs or strikes; nor shall such failure, or stoppage or interruption of such services constitute an eviction of Tenant; nor work an abatement of Rent.

For purposes of this Lease, the term "Normal Hours of Operation for the Building" shall mean 7:00 a.m. to 6:00 p.m. Mondays through Fridays, and 7:00 a.m. to 1:00 p.m. on Saturdays, exclusive of the normal observed business holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

Tenant shall (i) maintain and repair any plumbing lines (including water heaters) which are physically located within the Premises and such maintenance and repair services must be performed by a vendor approved in writing by Landlord (ii) except as otherwise provided in this section, maintain and repair heating and air conditioning systems, lighting, and mechanical systems solely serving the Premises and/or in public common areas of the Building; (iii) be responsible for the removal of Tenant's trash (including red bag service and the removal of medical waste or hazardous materials), Tenant shall place trash in containers located within the Premises; (iv) provide general janitorial services to the Premises (Monday through Friday, exclusive of the normal observed business holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day) between 5:00 PM and 3:00 AM

If Tenant installs or causes (a) a special lighting system or component to be installed in the Premises, Tenant shall be responsible to maintain and/or replace such lighting system or component at Tenant's sole cost, and/or (b) special heating or air conditioning system to be installed in the Premises for the purpose of maintaining a temperature controlled environment for computer systems and/or medical equipment, Tenant shall be responsible to maintain and/or replace such special heating or air conditioning system at Tenant's sole cost. In the event Landlord gives Tenant written consent to install imaging or other specialized equipment in the Premises, Tenant shall be responsible to maintain and keep clear of debris all drains or other aspects of such equipment.

Notwithstanding any other provision of this Lease, Tenant shall be responsible for the lawful removal and cost of removing medical, special or infectious wastes from the Premises.

With respect to lighting and ceiling tiles in the Premises, Tenant at Tenant's sole cost shall replace all light bulbs and be responsible for upkeep and maintenance of all ceiling tiles. With respect to paper and soap products in the Premises, Tenant shall be responsible to provide or supply any toiletry items, paper products, examination table paper, soap or other hygiene materials for Tenant's use in the Premises.

In no event shall Tenant use or install any wireless telecommunications equipment (other than wireless telephones and secured wireless networks) or associated cabling and conduit in the Premises, the Building or on the roof or facade of the Building except through the Building's central telecommunications cabling distribution system (if such a central telecommunications cabling system has been provided by Landlord) without the prior written approval of Landlord.

If Tenant installs or causes to be installed any electronic cabling, telecommunication (including telephone and data transmission lines) cabling or computer cabling (collectively referred to hereinafter as "Cabling") within the Premises, Tenant shall remove all Cabling, at Tenant's sole cost and expense, at the expiration or earlier termination of this Lease, unless Landlord gives Tenant written consent stating that removal of Cabling is not required. In the event Landlord consents to Tenant's non-removal of Cabling, all Cabling shall become the property of Landlord. Upon the expiration or earlier termination of this Lease, Landlord shall have the right to remove any Cabling that Tenant was obligated to remove and failed to remove from the Premises without Landlord's written consent. Tenant shall reimburse Landlord for the

costs of removing such Cabling within fifteen (15) days after receipt of Landlord's invoice for such costs and said obligation to reimburse Landlord shall survive the expiration or earlier termination of this Lease.

Landlord may, at its option and at the sole cost and expense of Tenant or from proceeds of Tenant's insurance, repair or replace any damage or injury done to the Building or any part thereof, caused by Tenant, Tenant's agents, employees, licensees, invitees or visitors; Tenant shall pay the cost thereof plus a twenty percent (20%) administrative fee to Landlord on demand. Tenant further agrees to maintain and keep the interior of the Premises in good repair and condition at Tenant's expense. Tenant agrees at the termination of this Lease, by lapse of time or otherwise, to deliver up the Premises to Landlord in as good condition as it existed on the date of possession by Tenant, ordinary wear and tear alone excepted, and Landlord shall have the right to re-enter and resume possession of the Premises whether or not the Premises are vacated by Tenant.

**11. ALTERATION OF PREMISES.** Tenant shall maintain the Premises in good condition and shall not alter, repair or change the Premises without the prior written consent of the Landlord, which consent shall not be unreasonably withheld. In the event Landlord consents to any alterations or improvements to the Premises, such alterations or improvements shall remain in the Premises and shall be surrendered to Landlord with the Premises at the expiration or earlier termination of this Lease unless Landlord directs, in writing at least thirty (30) days prior to the termination of the Lease, that Tenant restore the Premises to its original condition, normal wear and tear excepted.

**12. INSURANCE.** Landlord agrees, as an Operating Expense, to maintain in full force and effect throughout the entire Lease Term general fire and extended coverage insurance including vandalism and commercial general liability insurance. To the extent Landlord also maintains any insurance in any way connected with the Premises, Landlord's insurance shall be excess coverage and Tenant's insurance shall be primary coverage.

Tenant agrees to maintain and keep in force during the Lease Term, without expense to Landlord, with an insurance company with a general policy rating of not less than A and a financial rating of not less than Class X as rated in the most current Best's Insurance Reports and qualified to do business in the state in which the Premises are located or other company acceptable to Landlord, the following policies, all of which shall provide that they shall not be canceled nor coverage reduced by the insurer without first giving at least thirty (30) days' prior written notice to Landlord:

(a) Commercial general liability insurance, in the name of Tenant and naming Landlord, Landlord's property manager and Landlord's mortgagee, if any, as additional insureds, against any liability for injury to or death of persons resulting from any occurrence in or about the Premises and for damage to property in such amounts as may from time to time be customary with respect to similar properties in the same area, but in any event not less than \$1,000,000 for each occurrence and, in case of property damage, not less than \$500,000 for any one occurrence; and

(b) Professional liability insurance applicable to Tenant, any physician or healthcare professional associated with or utilized by Tenant, and services provided by Tenant, in the minimum amount of \$1,000,000 per occurrence/\$3,000,000 annual aggregate per physician/healthcare professional; and

(c) ISO Special Form Property Insurance covering Tenant's trade fixtures, furniture, inventory and equipment used in the Premises, providing protection to the extent of the full replacement cost of such property, such policy to also include business interruption coverage in an amount sufficient to assure that Landlord shall recover the loss of any rental income due and owing to Landlord from Tenant under the terms of this Lease for a period of not less than twelve (12) consecutive months, and

(d) Worker's Compensation insurance sufficient to satisfy the laws of the state where the Premises is located (provided, however, if no worker's compensation insurance is statutorily required, Tenant shall carry worker's compensation insurance in an amount of at least \$500,000 per occurrence.

To the extent of any and all insurance maintained by either Landlord or Tenant in any way connected with the Premises, Landlord and Tenant hereby waive on behalf of their respective insurance carrier any right of subrogation that may exist or arise as against the other party to this Lease. Tenant shall deliver to Landlord copies of policies of liability insurance required in this Section 12 or certificates evidencing the existence and amounts of such insurance at the following times: (a) prior to occupancy of the Premises, (b) prior to the expiration of any policies previously furnished to Landlord, and (c) upon the reasonable request of Landlord.

**13. INDEMNIFICATION OF LANDLORD.** Notwithstanding the existence of any insurance or self-insurance provided for in the Lease, if any, and without regard to the policy limits of any such insurance or self-insurance, Tenant will protect, indemnify, save harmless and defend Landlord from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses), to the extent permitted by law, imposed upon or incurred by or asserted against Landlord by reason of: (a) any accident, injury to or death of persons or loss of percentage to property occurring on or about the Premises or adjoining sidewalks, including without limitation any claims of malpractice, (b) any use, misuse, no use, condition, maintenance or repair by Tenant of the Premises, (c) any impositions (which are the obligations of Tenant to pay pursuant to the applicable provisions of this Lease), (d) any failure on the part of Tenant to perform or comply with any of the terms of this Lease, (e) any and all lawful action that may be taken by Landlord in connection with the enforcement of the provisions of this Lease, whether or not suit is filed in connection with same, or in connection with Tenant or a Guarantor and/or any partner, joint venture, member or shareholder thereof becoming a party to a voluntary or involuntary Federal or State Bankruptcy, insolvency or similar proceeding, and (f) the non-performance of any of the terms and provisions of any and all existing and future subleases of the Premises to be performed by the landlord (Tenant) thereunder. Any amounts which become payable by Tenant under this Section shall be paid within ten (10) days after liability therefor on the part of Landlord is determined by litigation or otherwise and, if not timely paid, shall bear a late charge (to the extent permitted by law) at the Overdue Rate from the date of such determination to the date of payment. Tenant, at its expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against Landlord or may compromise or otherwise dispose of the same as Tenant sees fit. Nothing herein shall be construed as indemnifying Landlord against its own negligent acts or omissions or willful misconduct. Tenant's liability for a breach of the provisions of this Section 13 shall survive any termination of this Lease.

**14. MECHANIC'S LIENS.** Tenant shall not suffer or permit any mechanic's liens or materialman's liens to be filed against the real property of which the Premises form a part nor against the Tenant's leasehold interest in the Premises.

**15. ABANDONMENT OF PREMISES.** Tenant shall not vacate or abandon the Premises for a period greater than sixty (60) days at any time during the Lease Term and if Tenant shall abandon, vacate or surrender the Premises, or be dispossessed by process of law, or otherwise, any personal property belonging to the Tenant and left on the Premises shall be deemed abandoned, at the option of the Landlord.

**16. LANDLORD'S RIGHT OF ENTRY.** Landlord or its agents shall have the right to enter the Premises at reasonable times in order to examine it, to show it to prospective tenants, lenders, ground lessors, and purchasers, or to make such decorations, repairs, alterations, improvements or additions as Landlord shall deem necessary or desirable. Landlord will give Tenant reasonable notice of its requirements and will be responsible for conducting such work so as not to impair Tenant's use and enjoyment of the Premises.

**17. DESTRUCTION OF PREMISES, EMINENT DOMAIN.** (a) In the event of a complete or partial destruction of the Premises during the Lease Term from any cause, Landlord shall forthwith repair the same, provided such repair can be made within sixty (60) days under laws and regulations, and in such event Rent will be abated until the damage is repaired, in proportion to the part of the Premises which is so rendered untenable, unless such damage was a result, in whole or in part, of the negligence or willful

misconduct of Tenant. If such repairs cannot be made within sixty (60) days, Landlord shall have the right to terminate this Lease. In addition to the above, in the event that the Building is destroyed to the extent of not less than thirty-three and one-third percent (33-1/3%) of the replacement cost thereof, Landlord may elect to terminate this Lease, whether or not the Premises are insured, by written notice to Tenant. A total destruction of the Building in which the said Premises are situated shall automatically terminate this Lease. If any portion of the Premises or the Building shall be damaged by fire or other casualty resulting from the fault or negligence of Tenant, or the agents, employees, licensees or invitees of Tenant, such damage shall be repaired by and at the expense of Tenant under the direction and supervision of Landlord, and Rent shall continue without abatement.

(b) If any action or proceeding is commenced for the condemnation of the Building or any portion thereof, or if Landlord is advised in writing by any government (federal, state or local) agency or department or bureau thereof, or any entity or body having the right or power of condemnation, of its intention to condemn all or any portion of the Building at the time thereof, Landlord may, without any obligation or liability to Tenant, and without affecting the validity and existence of this Lease other than as hereafter expressly provided, agree to sell and/or convey to the condemner. Tenant shall have no claim against Landlord nor be entitled to any part or portion of the amount that may be paid or awarded as a result of the sale, for the reasons as aforesaid, or condemnation of the Building or any part or portion thereof. Tenant shall be entitled to seek to recover as against the condemner, and Landlord shall have no claim for or thereto, for Tenant's trade fixtures and any removable structures and improvements erected and made by Tenant to or upon the Premises that Tenant is entitled to remove at the expiration of this Lease. (ii) If only a part of the Building is condemned and taken and the Premises or the remaining portion thereof is not suitable for purposes for which Tenant has leased said Premises, either Landlord or Tenant shall have the option to terminate this Lease at the time of such taking. If by such condemnation and taking only a part of the Building is taken, and the Premises or the remaining part thereof is suitable for the purposes for which Tenant has leased said Premises, this Lease shall continue, but the rental shall be reduced in an amount proportionate to the percentage that the floor area of that portion of the Premises taken by eminent domain, if any, bears to the floor area of the entire Premises.

**18. BANKRUPTCY.** If a general assignment is made by Tenant or any guarantor of this Lease for the benefit of creditors, or if any action is taken by or against Tenant or any guarantor of this Lease under any insolvency or bankruptcy act, or if a receiver is appointed to take possession of all or substantially all of the assets of Tenant or any guarantor of this Lease (and Tenant or such guarantor fails to terminate such receivership within sixty (60) days after such appointment), or if Tenant or any guarantor of this Lease is adjudicated bankrupt, or if Tenant or any guarantor of this Lease admits in writing that it cannot meet its obligations as they become due, or if Tenant or any guarantor of this Lease is declared insolvent according to any law, or the interest of Tenant under this Lease is levied on under execution or other legal process, or if any petition is filed by or against Tenant to delay, reduce or modify Tenant's capital structure if Tenant is a corporation or other entity, then Tenant shall be in default under this Lease and Landlord shall be entitled to all remedies available under Section 19.

**19. DEFAULT BY TENANT.** If Tenant fails to (i) perform or observe any covenant (other than the covenant to pay Rent or any other sums due hereunder) to be performed by Tenant under this Lease and continues to fail to perform or observe same for a period of fifteen (15) days after receipt of written notice from Landlord pertaining thereto (or a reasonable period of time, using due diligence, if such default cannot be cured within said fifteen (15) day period); (ii) pay any Rent or other sum due hereunder at the time such payment is due; or (iii) if Tenant or any Guarantor shall: (1) admit in writing its inability to pay its debts generally as they become due, (2) file a petition in bankruptcy (a "Bankruptcy") or a petition to take advantage of any insolvency act, including without limitation Chapter 11 of the United States Code, 11 U.S.C. §101, et seq. (the "Bankruptcy Code"), (3) make an assignment for the benefit of its creditors, (4) consent to the appointment of a receiver of itself or of the whole or any substantial part of its property, (5) file a petition or answer seeking reorganization or arrangement under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof, or (6) if the Tenant

or any Guarantor shall, after a petition in Bankruptcy is filed against it, be adjudicated a bankrupt or if a court of competent jurisdiction shall enter an order or decree appointing, without the consent of Tenant, as the case may be, a receiver of Tenant or of the whole or substantially all of its property or of any Guarantor, or approving a petition filed against it seeking reorganization or arrangement of Tenant or any Guarantor under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof, and such judgment, order or decree shall not be vacated or set aside or stayed within ninety (90) days from the date of the entry thereof, then Tenant shall be deemed to have breached this Lease and Landlord, at its option, may have any one or more of the following remedies, in addition to other rights or remedies it may have at law or in equity:

(a) Landlord may terminate this Lease and without further notice repossess the Premises, and be entitled to recover as damages a sum of money equal to the total of (i) the cost of recovering the Premises, (ii) the unpaid Rent earned at the time of termination, plus interest thereon, (iii) the balance of the Rent for the remainder of the Lease Term, (iv) costs of reletting and refurbishing, and (v) any other sum of money and damages owed by Tenant to Landlord; or

(b) Landlord may immediately terminate Tenant's right of possession of the Premises, but not terminate this Lease, and without notice or demand enter upon the Premises or any part thereof and take absolute possession of the same, and, at Landlord's sole option, may relet the Premises or any part thereof for such terms and such rents as Landlord may reasonably elect. Reletting of the Premises shall not be construed as an election on the part of Landlord to terminate this Lease and, notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for default; or

(c) In lieu of, or in addition to, bringing an action for any or all of the recoveries described in paragraphs (a) or (b) above, Landlord may bring an action to recover and regain possession of the Premises in the manner provided by the laws of unlawful detainer then in effect in the state in which the Premises are located.

Notwithstanding the foregoing, if Tenant shall breach this Lease by failing to perform any covenant (other than the covenant to pay Rent or other sums due hereunder) two (2) or more times in any twelve (12) month period, then notwithstanding that each such breach has been cured by Tenant any further similar breach shall be deemed an event of default without the ability to cure.

**20. DEFAULT BY LANDLORD.** Except as otherwise provided in this Lease, Landlord shall be in default under this Lease if Landlord fails to perform any of its obligations hereunder and said failure continues for a period of thirty (30) days after receipt of written notice thereof from Tenant to Landlord (unless such failure cannot reasonably be cured within thirty (30) days and Landlord shall have commenced to cure said failure within said thirty (30) days and continues diligently to pursue the curing of the same). If Landlord shall be in default under this Lease and, as a consequence of such default Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the right, title and interest of Landlord in the Building as the same may then be encumbered and Landlord shall not be liable for any deficiency. In no event shall Tenant have the right to levy execution against any property of Landlord other than its interest in the Building. Tenant agrees that no other remedy, including without limitation, incidental or consequential damages for lost profits, injury to person or property, or any other incidental or consequential loss shall be available to Tenant.

**21. RULES AND REGULATIONS.** The Tenant shall comply with all reasonable rules and regulations now or hereinafter adopted by the Landlord during the existence of this Lease. Current rules and regulations governing Tenant's conduct in the Building are attached hereto as **Exhibit "F"**.

**22. NOTICE.** All notices or consents required or permitted under this Lease shall be given in writing and delivered (i) in person, (ii) by United States mail, by certified or registered mail, return receipt requested, or (iii) by recognized overnight courier service (e.g., UPS Next Day or FedEx). If sent by certified or registered mail, such notice shall be deemed delivered two (2) days after deposit in the U.S. mail. If sent by hand delivery or overnight courier service, such notice shall be deemed delivered on the

date the notice is received. Notice to the Landlord shall be delivered or sent to the Landlord Address and notice to the Tenant shall be delivered or sent to the Tenant Address.

Notwithstanding the foregoing, Landlord shall be permitted to deliver all invoices related to Rent or other payments due under this Lease to Tenant via facsimile or electronic mail.

**23. ASSIGNMENT AND SUBLETTING.** Tenant shall not assign this Lease or sublease all or any part of the Premises, by operation of law or otherwise, except with the prior written consent of Landlord. If the Tenant is a corporation, the happening of any of the following events shall be considered an assignment hereunder: (i) the merger or consolidation of such corporation into or with another; or (ii) the sale, exchange, or other disposition of the majority of the outstanding stock of such corporation resulting in the loss of control thereof by such person who is the majority shareholder upon the date of the execution hereof. If the Tenant is a professional association, partnership, limited liability company or other limited liability entity, the happening of any of the following events shall be considered an assignment hereunder: (i) the merger or consolidation of such professional association, partnership, limited liability company or other limited liability entity into or with another; or (ii) the sale, exchange, or other disposition of a beneficial ownership interest in such professional association, partnership, limited liability company or other limited liability entity resulting in the loss of control thereof by such person who is the holder of the majority beneficial ownership interest upon the date of the execution hereof.

**24. RELOCATION.** Landlord shall have the right, upon not less than ninety (90) days prior written notice to Tenant, to relocate Tenant to other space designated by Landlord within the Building provided that: (a) Landlord shall pay all reasonable costs of such relocation, including, without limitation, moving costs, installation of telecommunication and computer lines, and printing costs for new stationary, (b) such relocation shall be performed on a weekend so as to minimize any interruption to Tenant's business, (c) the floor area of such relocation space shall be not less than the floor area of the Premises, and (d) the finishes in such relocation space shall be comparable to the finishes in the Premises prior to such relocation. Upon any such relocation, this Lease shall be deemed to be amended so as to change the location of the Premises to the relocation space and upon request by Landlord, Tenant shall execute an amendment to this Lease acknowledging such relocation.

**25. ATTORNEY'S FEES.** In the event of any legal or equitable action arising out of this Lease, the prevailing party shall be entitled to recover all fees, costs and expenses, together with reasonable attorneys' fees incurred in connection with such action.

**26. GOVERNING LAW.** This Lease shall be governed by the laws of the state in which the Premises are located.

**27. BROKERS.** Tenant represents and warrants to Landlord that Tenant has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, and that Tenant knows of no other real estate broker or agent who is or might be entitled to a commission in connection with this Lease. Tenant hereby agrees to indemnify the Landlord for any breach of the warranty given by Tenant in this Section.

**28. SUBORDINATION AND ATTORNMENT.** This Lease is subject and subordinate to any lease wherein Landlord is lessee and to any mortgages or deeds of trust which may now or hereafter be placed upon or affect the property or Building of which the Premises are a part (individually referred to as a "Mortgage"), and to all renewals, modifications, consolidations, replacements and extensions hereof. In furtherance of such subordination, Tenant shall execute any document that Landlord or Landlord's lender or ground lessor, if any, may reasonably request.

In the event of the sale or assignment of Landlord's interest in the Premises, Tenant shall attorn to and recognize such purchaser or assignee as Landlord under this Lease. In furtherance of such attornment, Tenant shall execute any document that Landlord or such purchaser or assignee may reasonably request.

Tenant agrees that, notwithstanding any provision hereof to the contrary, the terms of any Mortgage or security instrument shall govern with respect to the disposition of any insurance proceeds or eminent

domain awards, and any obligations of Landlord to restore the Building in which the Premises are situated, insofar as they may apply to such mortgagee, shall be limited to insurance proceeds or eminent domain awards received by such mortgagee after the deduction of all costs and expenses incurred in obtaining such proceeds or awards.

Upon notification by Landlord of the name and address of any such mortgagee, Tenant hereby agrees to give to such mortgagee copies of all notices of Landlord default(s) under this Lease in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord, and no such notice of default shall be deemed given to Landlord unless and until a copy of such notice shall have been so delivered to such mortgagee. The mortgagee shall have the right to remedy any Landlord default under this Lease, or to cause any default of Landlord under this Lease to be remedied, and for such purpose Tenant hereby grants the mortgagee such additional period of time as may be reasonable to enable mortgagee to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default. Tenant shall accept performance by the mortgagee of any term, covenant, condition or agreement to be performed by Landlord under this Lease with the same force and effect as though performed by Landlord. No Landlord default under this Lease shall exist or shall be deemed to exist (i) as long as such mortgagee, in good faith, shall have commenced to cure such default within the above-referenced time period and shall be prosecuting the same to completion with reasonable diligence, subject to force majeure, or (ii) if possession of the Premises is required in order to cure such default, or if such default is not susceptible of being cured by such mortgagee, as long as such mortgagee, in good faith, shall have notified Tenant that it intends to institute proceedings under its Mortgage or security documents, and, thereafter, as long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence. In the event of the termination of this Lease by reason of any default thereunder by Landlord, upon the mortgagee's written request, given within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to such mortgagee or its designee or nominee a new lease of the Premises for the remainder of the Lease Term upon all of the terms, covenants and conditions of this Lease.

**29. ESTOPPEL CERTIFICATES.** Tenant shall, upon not less than ten (10) days prior request by Landlord or any first mortgagee of Landlord, execute, acknowledge and deliver to Landlord or such mortgagee, as the case may be, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); that Landlord is not in default and has fully performed its obligations hereunder; and the dates to which the rent and any other charges have been paid in advance. Further, without limiting the foregoing and without the necessity of any additional documentation (unless Landlord or any mortgagee requests reaffirmation of the following by separate agreement which Tenant agrees to execute), for the benefit of each such mortgagee, Tenant agrees that, in the event that any such mortgagee succeeds to the interest of Landlord under this Lease, such mortgagee shall not: (A) be liable for any act or omission of Landlord or any prior landlord under this Lease; or (B) be subject to any defense, set-offs, counter-claims or offsets which Tenant may have against any prior landlord (including Landlord); or (C) be bound by any payment of Rent, which Tenant may have paid for more than one (1) month in advance of the due date hereunder to any prior landlord hereunder (including Landlord); or (D) be bound by any obligation to make any payment to Tenant which was required to be made prior to the time such mortgagee succeeds to Landlord's interest; or (E) be accountable for any monies deposited with any prior landlord (including Landlord) (including security deposits), except to the extent same are actually received by said mortgagee; or (F) be bound by any surrender, termination, amendment, restatement or modification of this Lease made without the consent of said mortgagee; or (G) otherwise have any liability, duty or obligation whatsoever under this Lease, or under any extension or renewal hereof, either by virtue of any assignment of leases or rents granted by Landlord to said mortgagee or the subsequent collection of rents thereunder, until said mortgagee, or its designee or nominee becomes the fee owner of the Property, and then only for such periods during which such mortgagee or its designee or nominee actually owns the Property.

**30. QUIET ENJOYMENT.** Landlord warrants that Tenant shall have quiet enjoyment of the Premises free from any eviction or interference by Landlord if Tenant pays the Rent and other charges provided herein, and otherwise fully and punctually performs the terms and conditions imposed on Tenant.

**31. SIGNS.** No signs of any kind or nature, symbol or identifying mark shall be put in or on the Building or the property on which the Building is located, without prior written approval of Landlord. All signs and lettering shall conform in all respects to the sign and/or lettering standards established by Landlord. Landlord shall provide and install, at Tenant's cost, all letters, numerals or Tenant suite plaques at doors to the Premises. Landlord shall also include Tenant's name on the Building directory. Any changes requested by Tenant to suite plaque or the Building directory shall be at Tenant's cost.

**32. HOLDING OVER.** In the event Tenant, or any party claiming under Tenant, retains possession of the Premises after the expiration or earlier termination of this Lease, such possession shall be an unlawful detainer, and no tenancy or interest shall result from such possession. Such occupants shall be subject to immediate eviction and removal, and Landlord, in addition to all other remedies available to it hereunder shall have the right to receive as liquidated damages for all the time Tenant shall so retain possession of the Premises or any part thereof, an amount equal to twice the Base Rent specified in this Lease, as applied to such period, together with all other payments required hereunder as Additional Rent, provided that Tenant shall nonetheless be a tenant at sufferance.

**33. LANDLORD'S EXPENSES.** In addition to other provisions herein, Tenant agrees and shall pay and/or reimburse Landlord's reasonable costs and expenses, including legal fees, incurred or resulting from and relating to: (a) requests by Tenant for approval or consent under this Lease; or (b) any circumstances or developments which give rise to Landlord's right of consent or approval; or (c) circumstances resulting from any action or inaction by Tenant contrary to the Lease provisions; or (d) a request for changes including, but not limited to: (i) the permitted use of the Premises, (ii) alterations and improvements to the Premises, (iii) subletting or assignment, or (iv) any other changes in the terms, conditions or provisions of this Lease. Such expenses and fees shall be paid by Tenant within thirty (30) days of the submission of a statement for the same.

**34. FINANCIAL STATEMENTS.** Within one hundred twenty (120) days after the end of each of Tenant's fiscal years during the Lease Term, or any extension thereof, Tenant will furnish to Landlord a certified copy of its consolidated financial statements, and those of any person or entity guarantying Tenant's obligations under the Lease, for the preceding fiscal year. As used in the preceding sentence, the term "consolidated financial statements" shall mean for any fiscal year or other accounting period for Tenant and its consolidated subsidiaries, if any, statements of earnings and retained earnings and of changes in financial position for such period and for the period from the beginning of the respective fiscal year to the end of such period and the related balance sheet as at the end of such period, together with the notes thereto, all in reasonable detail and setting forth in comparative form the corresponding figures for the corresponding period in the preceding fiscal year, and prepared in accordance with generally accepted accounting principles. Within forty-five (45) days after the end of each quarter of Tenant's fiscal year during the Lease Term, or any extension thereof, Tenant will furnish to Landlord copies of its balance sheet and income statement depicting in reasonable detail Tenant's financial performance for such fiscal quarter. In addition to the foregoing financial statements, Tenant will furnish to Landlord, with reasonable promptness, such other information respecting the financial condition and affairs of Tenant as Landlord may reasonably request from time to time.

**35. GENERAL PROVISIONS.** (i) The waiver by Landlord of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein. The acceptance of Rent hereunder shall not be construed to be a waiver of any breach by Tenant of any term, condition or covenant of this Lease; (ii) It is understood and agreed that the remedies herein given to Landlord shall be cumulative, and the exercise of any one remedy of Landlord shall not be to the exclusion of any other remedy; (iii) Subject to the provisions as to assignment, the covenants and conditions herein contained shall apply to and bind the

heirs, successors, executors, administrators and assigns of all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder; (iv) Time is of the essence of this Lease; (v) Landlord has made no representations or promises whatsoever with respect to the Premises, except those contained herein, and no other person, firm or corporation has at any time had any authority from Landlord to make any representations or promises on behalf of Landlord; (vi) the captions of paragraphs of this Lease are for convenience only, and do not in any way limit or amplify the terms and provisions of this Lease; (vii) If any term, covenant, condition or provision of this Lease is held by a court competent of jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated; and (viii) Landlord and Tenant represent and warrant to each other that the officer or person signing this Lease on its behalf is an authorized signatory and is authorized to legally bind such party to this Lease.

**36. WAIVER OF TRIAL BY JURY. LANDLORD AND TENANT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE OR THE OBLIGATIONS EVIDENCED HEREBY, OR ANY OTHER DOCUMENT OR INSTRUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF LANDLORD AND TENANT IN ENTERING INTO THIS LEASE.**

**37. INTENTIONALLY OMITTED**

**38. SURRENDER OF PREMISES.** Tenant shall, upon the expiration or earlier termination of the Lease Term, surrender all keys to the Premises to Landlord's property management office, inform Landlord of all combinations on locks, safes, and vaults, if any, in the Premises, and surrender the Premises to Landlord in as good condition as the Premises were in as of the Lease Term Commencement Date, ordinary wear and tear excepted. All alterations, additions, and improvements made to or fixtures or improvements placed in or upon the Premises by either party (excepting only moveable partitions, office furniture, trade fixtures, office equipment and personal property of Tenant) shall be deemed a part of the Building and the property of Landlord at the time they are placed in the Premises and, except as provided in the next grammatical sentence, such alterations, additions, improvements or fixtures shall remain in the Premises and be surrendered with the Premises to Landlord upon the expiration or earlier termination of this Lease. Upon Landlord's written request prior to the expiration or earlier termination of the Lease Term, Tenant shall remove alterations or additions that have been constructed and installed in the Premises at Tenant's request or for Tenant's benefit and return the Premises to its original condition as of the Effective Date, ordinary wear and tear excepted.

**39. CONFIDENTIALITY.** Landlord and Tenant, and each of its respective principals, agents, employees and attorneys, agree to use commercially reasonable efforts to keep the financial terms of this Lease strictly confidential, and shall not disclose, directly or indirectly, those terms to any other person or entity without first obtaining the prior written consent of the other party; provided, however, that consent shall not be required for any disclosure: (i) to a Party's officers, directors, employees, lenders, accountants, attorneys or current or potential investors in or purchasers of a Party's business; or (ii) compelled by applicable laws, regulations or court orders. This confidentiality provision shall apply to the receipt of any confidential financial information or business records either Party may receive from the other.

**40. RADON GAS.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time.

**41. REPRESENTATION OF ANTI-TERRORISM COMPLIANCE.** Tenant hereby represents and warrants to Landlord that Tenant is not: (1) in violation of any Anti-Terrorism Law; (2) conducting any business or engaging in any transaction or dealing with any prohibited Person, including

the making or receiving or any contribution of funds, goods or services to or for the benefit of any Prohibited Person; (3) dealing in, or otherwise engaging in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13221; (4) engaging in or conspiring to engage in any transaction that evades or avoids, or had the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in any Anti-Terrorism Law; or (5) a Prohibited Person, nor are any of its partners, members, managers, officers or directors a Prohibited Person. As used herein, "Antiterrorism Law" is defined as any law relating to terrorism, anti-terrorism, money laundering or anti-money laundering activities, including Executive Order No. 13224 and Title 3 of the USA Patriot Act. As used herein, "Executive Order No. 13224" is defined as Executive Order No. 13224 on Terrorist Financing effective September 24, 2001 and relating to "Blocking Property and Prohibiting Transactions With Persons Who Commit, or Support Terrorism." "Prohibited Person" is defined as (i) a person or entity that is listed in the Annex to Executive Order 13224; (ii) a person or entity with whom Tenant or Landlord is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, or (iii) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office Of Foreign Assets Control as its official website, <https://www.treasury.gov/ofac/downloads/sdnlist.pdf> or at any replacement website or other official publication of such list. "USA Patriot Act" is defined as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" (Public Law 107-56).

#### **42. INTENTIONALLY OMITTED**

**43. COUNTERPARTS.** This Lease may be executed in multiple counterparts, each of which shall be an original copy, but which shall constitute one instrument. Furthermore, the parties agree that (i) this Lease may be transmitted between them by facsimile machine or email, (ii) that this Lease may be executed by facsimile or e-mail signatures, (iii) that facsimile or e-mail signatures shall have the effect of original signatures, and (iv) that a faxed or e-mailed Lease containing the signatures (original, faxed, or e-mailed) of all the parties hereto shall be binding on a party when the signature page of such party is transmitted to the other party hereto accompanied by instructions to insert same into a complete original of this Lease.

#### **44. BANKRUPTCY WAIVERS.**

(a) The parties agree that for the purposes of any assumption, rejection or assignment of this Lease under 11 U.S.C. Section 365 or any amendment or successor section thereof, this is one indivisible and non-severable lease dealing with and covering one legal and economic unit which must be assumed, rejected or assigned as a whole with respect to all (and only all) the Premises covered hereby.

(b) Tenant acknowledges and agrees that in the event any Tenant or any Premises relating to any Facility shall become the subject of any bankruptcy or insolvency estate, then (i) Tenant shall not oppose any request by Landlord to obtain an order from the court granting relief from the automatic stay pursuant to Section 362 of the Bankruptcy Code so as to permit the exercise of all rights and remedies pursuant to this Lease, and (ii) the occurrence or existence of any Event of Default under this Lease shall, in and of itself, constitute "cause" for relief from the automatic stay pursuant to the provisions of Section 362(d)(1) of the Bankruptcy Code, based on the fact that the non-existence of a bankruptcy proceeding was a material inducement for the entry by Landlord into this Lease.

(c) Tenant hereby waives the stay imposed by 11 U.S.C. Section 362(a) as to actions by the Landlord against each Facility. Tenant acknowledges and agrees that in the event of the filing of any voluntary or involuntary petition in bankruptcy by or against Tenant, it shall not assert or request that any other party assert that the automatic stay provided by Section 362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Landlord to enforce any rights or remedies held by virtue of the Lease or applicable law.

(d) Tenant hereby agrees (i) to use its best efforts to contest the necessity of the appointment of a Patient Care Ombudsman for such Facility as that term is defined in 11 U.S.C. Section 333, and/or (ii)

to join with Landlord in requesting a waiver of or contesting the appointment of such a Patient Care Ombudsman.

**45. TRUE OPERATING LEASE.** Landlord and Tenant agree that this Lease is intended as and shall for all purposes constitute a true operating lease and not a capital lease or financing and nothing herein shall be construed as conveying to Tenant any right, title or interest in or to the Premises or to any remainder or reversionary estates in the Premises held by any Person, except, in each instance, as a Tenant. Under no circumstances shall this Lease be regarded as an assignment of all of Landlord's interest in and to the Premises; instead, Landlord and Tenant shall have the relationship between them of Landlord and Tenant, pursuant to the terms and provisions of this Lease. In no event shall Tenant claim depreciation, amortization or interest deductions as owner of any portion of the Premises for United States federal, state or local income tax purposes (except as to capital additions not funded by Landlord). It is an integral condition of this Lease, and a material inducement to Landlord's agreement to enter into this Lease, that Tenant agrees this Lease is an operating lease and not a capital lease or financing. Neither Landlord nor Tenant shall assert, and each hereby waives, any right to demand, request or plead for the re-characterization of this Lease, whether or not in a proceeding related to any bankruptcy or insolvency of Landlord or Tenant.

**46. ADDITIONAL EXPENSES.** It is further agreed that, in addition to payments required under this Lease, Tenant shall compensate Landlord for (a) all costs and expenses incurred by Landlord and its affiliates in enforcing the provisions of this Lease and in repossessing the Premises or any portion thereof (including among other costs and expenses, any increase in insurance premiums caused by the vacancy of all or any portion of the Premises); (b) all costs and expenses incurred by Landlord and its affiliates in reletting (including among other expenses, repairs, remodeling, replacements, advertisements and brokerage fees); (c) all concessions granted to a new Tenant or Tenants upon reletting (including among other concessions, renewal options); (d) Landlord's and its Affiliates' reasonable attorneys' fees and expenses arising from or related to an Event of Default; (e) all costs and expenses, including, without limitation reasonable attorneys' fees and expenses, arising from or related to any Bankruptcy petition filed by any Tenant or any Guarantor; (f) all losses incurred by Landlord and its affiliates as a direct or indirect result of such event of default (including, among other losses, any adverse action by Facility Mortgagee(s)); and (g) a reasonable allowance for Landlord's administrative efforts, salaries, and overhead attributable directly or indirectly to such event of default and Landlord's pursuing the rights and remedies provided under this Lease and under applicable law

**THE PARTIES HERETO** have executed this Lease in duplicate as of the day and year written below such parties' signatures.

**LANDLORD:**

CHCT TENNESSEE, LLC

By: Community Healthcare Trust Services, Inc.

Its: Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

**TENANT:**

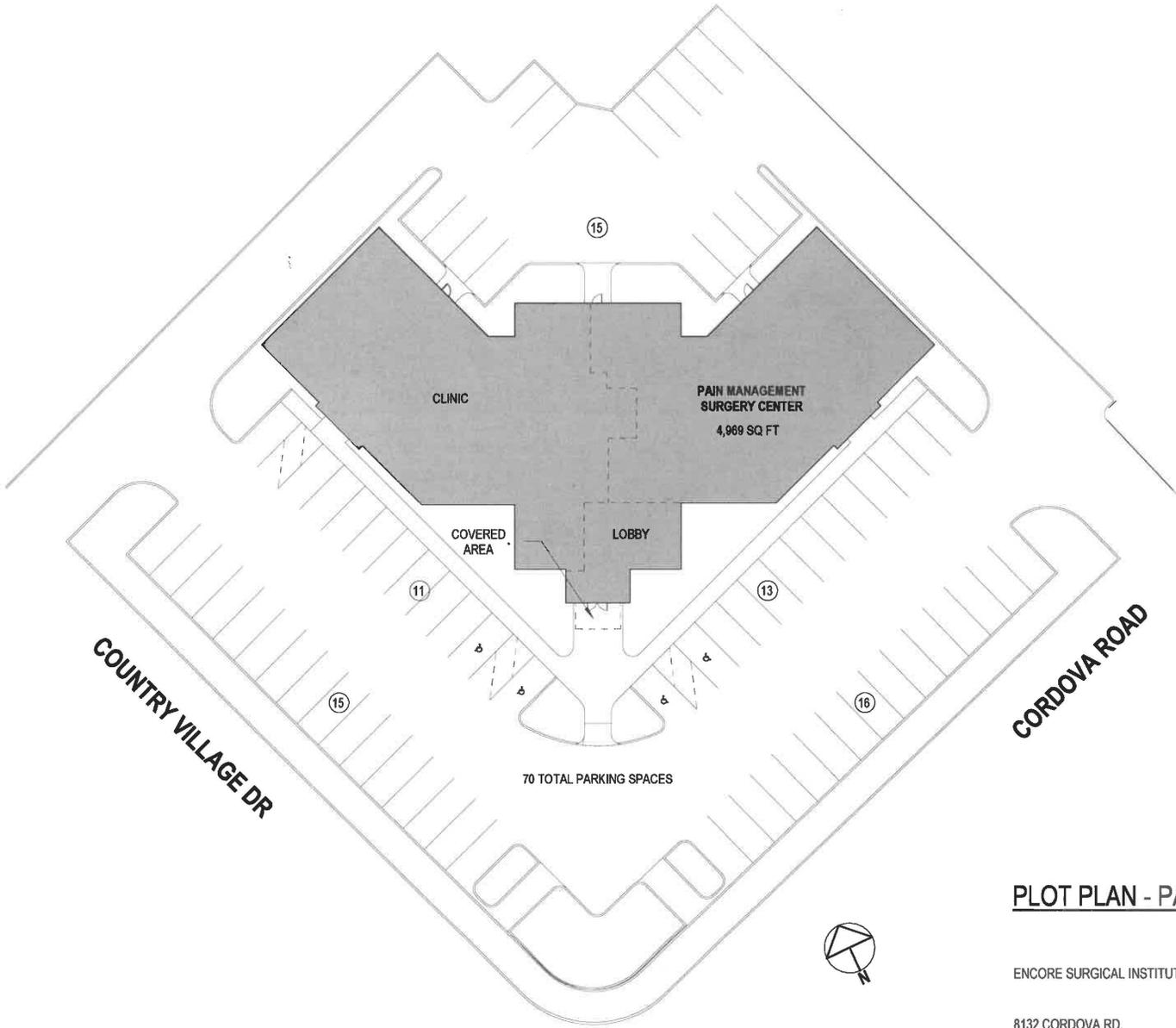
Encore Health Group, LLC.

By: Waymond S. Boyer

Name: Waymond S. Boyer

Title: CEO

Date of Signature: 9/02/2020



*1.575 Acres*

**PLOT PLAN - PAIN MANAGEMENT SURGERY CENTER**

8132 COUNTRY VILLAGE DRIVE, CORDOVA, TN - 38106  
SUITE 102

ENCORE SURGICAL INSTITUTE

BUILDING GROSS AREA:  
11,669 SQ FT

8132 CORDOVA RD,  
CORDOVA, TN - 38106

SURGERY CENTER AREA:  
4,969 SQ FT

PLOT PLAN



Attachment Section  
A. Project Details, 6.  
B.1



Year: 2019		Classification	Rooms		All Cases							Pain Management Cases				Patient Revenue			
Facility Name	County	Single or Multi-specialty	# OR	# PR	OR Cases	PR Cases	Total Cases	Cases per OR	Cases per PR	% Diff in Total Cases '17-'19	Yes/No	OR Cases (PM)	PR Cases (PM)	Total PM Cases	% Diff in PM Cases '17-'19	Gross Patient Charges	Adjustment to revenue	Net Patient Revenue	Avg. Net Charge
Memphis Center for Reproductive Health	Shelby	Single Specialty	0	2	0	1615	1615	N/A	808	-15.7%	No	0	0	0	N/A	\$2,839,044	\$543,174	\$2,295,870	\$1,422
Memphis Eye and Cataract Ambulatory Surgery Center	Shelby	Single Specialty	3	1	1498	358	1856	499	358	17.3%	No	0	0	0	N/A	\$4,592,290	\$1,894,528	\$2,697,762	\$1,454
Planned Parenthood of TN and North Mississippi	Shelby	Single Specialty	0	2	0	2098	2098	N/A	1049	-4.1%	No	0	0	0	N/A	\$2,772,832	\$155,178	\$2,617,654	\$1,248
Memphis Surgery Center	Shelby	Multi Specialty	4	1	3157	81	3238	789	81	7.9%	Yes	0	5	5	-80.8%	\$32,399,124	\$26,480,684	\$5,918,240	\$1,828
Shea Clinic	Shelby	Multi Specialty	2	0	1104	0	1104	552	N/A	-53.5%	No	0	0	0	N/A	\$6,222,072	\$4,640,401	\$1,581,671	\$1,433
Ridge Lake Ambulatory Surgery Center	Shelby	Single Specialty	4	2	4519	396	4915	1130	158	-34.3%	No	0	0	0	N/A	\$18,742,394	\$10,341,481	\$8,400,913	\$1,709
La Bonheur East Surgery Center, II	Shelby	Multi Specialty	4	0	3371	0	3371	843	N/A	29.6%	No	0	0	0	N/A	\$14,172,439	\$7,234,894	\$6,937,545	\$2,058
GI Diagnostic and Therapeutic Center	Shelby	Single Specialty	0	6	0	14561	14561	N/A	2427	6.9%	No	0	0	0	N/A	\$25,568,527	\$16,746,092	\$8,822,435	\$906
East Memphis Surgery Center	Shelby	Multi Specialty	6	3	3611	676	4287	602	225	-18.4%	Yes	0	234	234	-58.9%	\$28,577,664	\$22,177,253	\$6,400,411	\$1,493
Germentown Ambulatory Surgical Center	Shelby	Single Specialty	1	0	154	0	154	154	N/A	20.3%	No	0	0	0	N/A	\$238,564	\$2,192	\$237,372	\$1,541
Mays and Snapp Pain Clinic and Rehabilitation Center	Shelby	Single Specialty	2	0	4981	0	4981	2491	N/A	-39.7%	Yes	4981	0	4981	-39.7%	\$15,871,309	\$12,298,821	\$3,572,488	\$717
RadioSurgical Center of Memphis	Shelby	Single Specialty	0	1	0	105	105	N/A	105	-16.7%	No	0	0	0	N/A	\$4,747,000	\$3,639,636	\$1,107,364	\$10,546
G. I. Diagnostic and Therapeutic Center	Shelby	Single Specialty	0	6	0	12430	12430	N/A	2072	5.6%	No	0	0	0	N/A	\$22,865,425	\$15,021,934	\$7,843,491	\$831
Campbell Clinic Surgery Center Midown	Shelby	Multi Specialty	4	0	3509	0	3509	877	N/A	17.0%	Yes	1401	0	1401	17.2%	\$40,269,761	\$27,544,938	\$12,724,823	\$3,626
Methodist Surgery Center Germantown	Shelby	Multi Specialty	4	1	4275	754	5029	1059	754	-4.2%	Yes	0	754	754	-43.6%	\$29,295,707	\$19,108,791	\$10,186,916	\$2,026
Bowden Gastro Associates, LLC (formerly Mid-South Gastro)	Shelby	Single Specialty	1	1	6	6550	6556	6	6550	-11.5%	No	0	0	0	N/A	\$6,294,663	\$2,397,812	\$3,896,851	\$594
North Surgery Center	Shelby	Multi Specialty	4	1	959	217	1176	290	217	-66.0%	Yes	0	217	217	-80.7%	\$6,526,615	\$4,369,602	\$2,157,013	\$1,834
Urocenter	Shelby	Single Specialty	3	0	3297	0	3297	1099	N/A	-20.0%	No	0	0	0	N/A	\$18,293,509	\$12,947,343	\$5,346,166	\$1,622
Baptist Germentown Surgery Center	Shelby	Multi Specialty	6	1	2822	2467	5289	470	2467	77.4%	Yes	0	2467	2467	234.7%	\$34,055,149	\$24,599,409	\$9,456,731	\$1,788
Campbell Clinic Surgery Center	Shelby	Multi Specialty	4	1	3330	3183	6513	833	3183	-4.0%	Yes	0	3183	3183	-1.3%	\$61,196,758	\$46,355,244	\$14,841,514	\$2,279
Wolf River Surgery Center	Shelby	Single Specialty	4	2	2428	1838	4266	607	919	-25.7%	No	0	0	0	N/A	\$27,690,480	\$20,284,353	\$7,406,127	\$1,736
Semmes-Murphy Clinic	Shelby	Multi Specialty	3	2	1486	6745	8231	485	3373	24.7%	Yes	0	6745	6745	30.1%	\$42,235,282	\$23,035,455	\$19,199,827	\$2,333
Surgery Center at Saint Francis	Shelby	Multi Specialty	4	2	2498	1876	4374	625	938	-32.5%	Yes	0	655	655	-68.4%	\$38,265,419	\$28,337,709	\$9,927,710	\$2,270
Eye Care Surgery Center of Memphis	Shelby	Single Specialty	2	1	114	1110	1224	57	1110	-16.1%	No	0	0	0	N/A	\$1,472,325	\$888,626	\$582,699	\$476
Hamilton Eye Institute Surgery Center	Shelby	Single Specialty	3	2	3275	319	3594	1092	160	-3.2%	No	0	0	0	N/A	\$13,292,025	\$8,376,413	\$4,915,612	\$1,368
Midsouth Interventional Pain Institute	Shelby	Single Specialty	0	2	0	6205	6205	N/A	3103	83.8%	Yes	0	6205	6205	83.8%	\$10,293,656	\$8,251,644	\$1,042,012	\$168
UCH Vascular Access ASC	Shelby	Single Specialty	1	1	255	0	255	255	0	N/A	No	0	0	0	N/A	\$1,680,736	\$1,350,952	\$29,784	\$2,078
<b>Total/Avg.</b>		<b>11 MS; 16 SS</b>	<b>69</b>	<b>41</b>	<b>50649</b>	<b>63584</b>	<b>114233</b>	<b>734</b>	<b>1551</b>	<b>-5.3%</b>	<b>11 "yes"</b>	<b>6382</b>	<b>20465</b>	<b>26847</b>	<b>-0.99%</b>	<b>\$510,672,835</b>	<b>\$350,025,759</b>	<b>\$160,647,076</b>	<b>\$1,406</b>

Year: 2018		Classification	Rooms		All Cases							Pain Management Cases				Patient Revenue			
Facility Name	County	Single or Multi-specialty	# OR	# PR	OR Cases	PR Cases	Total Cases	Cases per OR	Cases per PR	% Diff in Total Cases '17-'19	Yes/No	OR Cases (PM)	PR Cases (PM)	Total PM Cases	% Diff in PM Cases '17-'19	Gross Patient Charges	Adjustment to revenue	Net Patient Revenue	Avg. Net Charge
Memphis Center for Reproductive Health	Shelby	Single Specialty	0	2	0	1394	1394	N/A	697		No	0	0	0		\$1,371,322	\$429,785	\$941,537	\$675
Memphis Eye and Cataract Ambulatory Surgery Center	Shelby	Single Specialty	3	1	1174	322	1496	391	322		No	0	0	0		\$4,433,747	\$2,789,173	\$1,644,574	\$1,089
Planned Parenthood Greater Memphis Region, Inc.	Shelby	Single Specialty	0	2	0	2283	2283	N/A	1142		No	0	0	0		\$6,007,562	\$4,716,608	\$1,290,954	\$955
Memphis Surgery Center	Shelby	Multi Specialty	4	1	3352	18	3370	838	18		Yes	0	18	18		\$26,960,015	\$20,876,714	\$6,083,301	\$1,805
Shea Clinic	Shelby	Single Specialty	2	0	2101	0	2101	1051	N/A		No	0	0	0		\$5,334,870	\$3,918,621	\$1,416,249	\$674
Ridge Lake Ambulatory Surgery Center	Shelby	Single Specialty	4	2	8261	1267	9528	2065	634		No	0	0	0		\$20,839,072	\$11,497,094	\$9,341,978	\$980
La Bonheur East Surgery Center, II	Shelby	Multi Specialty	4	0	2907	0	2907	727	N/A		No	0	0	0		\$12,236,689	\$6,873,811	\$5,362,878	\$1,843
GI Diagnostic and Therapeutic Center, LLC	Shelby	Single Specialty	0	6	0	14384	14384	N/A	2397		No	0	0	0		24,778,416	\$15,783,792	8,987,624	\$625
East Memphis Surgery Center	Shelby	Multi Specialty	6	3	3191	632	4023	532	277		Yes	0	348	348		\$24,089,578	\$18,475,189	\$5,614,389	\$1,396
Germentown Ambulatory Surgical Center	Shelby	Multi Specialty	1	0	131	0	131	131	N/A		No	0	0	0		\$184,682	\$0	\$184,682	\$1,410
Mays and Snapp Pain Clinic and Rehabilitation Center	Shelby	Single Specialty	2	0	4478	0	4478	2239	N/A		Yes	4478	0	4478		14,385,231	\$10,771,115	\$3,614,116	\$807
RadioSurgical Center of Memphis	Shelby	Single Specialty	0	1	0	126	126	N/A	126		No	0	0	0		\$5,454,000	\$4,033,813	\$1,420,187	\$11,271
GI Diagnostic and Therapeutic Center	Shelby	Single Specialty	0	6	0	12267	12267	N/A	2045		No	0	0	0		22,190,560	\$14,459,072	\$7,731,488	\$830
Campbell Clinic Surgery Center Midown	Shelby	Multi Specialty	4	0	3084	0	3084	771	N/A		Yes	1075	0	1075		35,688,385	\$25,757,071	\$10,131,314	\$3,295
Methodist Surgery Center Germantown	Shelby	Multi Specialty	4	1	4019	1156	5175	1005	1156		Yes	0	1156	1156		29,490,494	\$19,162,476	\$10,328,018	\$1,996
Mid-South Gastroenterology Group	Shelby	Single Specialty	1	2	0	6720	6720	0	3360		No	0	0	0		\$7,282,024	\$3,102,025	\$4,180,000	\$624
North Surgery Center	Shelby	Multi Specialty	4	1	2133	956	3089	533	956		Yes	0	956	956		\$15,637,613	\$11,076,928	\$4,560,685	\$1,476
Urocenter	Shelby	Single Specialty	3	0	3656	0	3656	1319	N/A		No	0	0	0		\$18,540,431	\$12,974,813	\$5,565,618	\$1,407
Baptist Germentown Surgery Center	Shelby	Multi Specialty	5	0	3477	0	3477	695	N/A		Yes	294	0	294		\$16,182,041	\$12,009,635	\$4,172,406	\$1,200
Campbell Clinic Surgery Center	Shelby	Multi Specialty	4	1	3377	3254	6631	844	3254		Yes	0	3254	3254		\$58,641,407	\$45,293,550	\$13,347,857	\$2,013
Wolf River Surgery Center	Shelby	Single Specialty	4	2	3236	2602	5838	809	1301		No	0	0	0		\$26,190,249	\$18,903,411	\$7,286,838	\$1,248
Semmes-Murphy Clinic	Shelby	Multi Specialty	3	2	1365	6648	8014	452	3324		Yes	0	6648	6648		\$38,521,579	\$20,623,624	\$17,897,955	\$2,236
Surgery Center at Saint Francis	Shelby	Multi Specialty	4	2	3159	3121	6280	790	1561		Yes	0	1899	1899		\$44,669,795	\$32,483,959	\$12,170,836	\$1,938
Eye Care Surgery Center of Memphis	Shelby	Single Specialty	2	1	108	1076	1184	54	1076		No	0	0	0		\$1,114,460	\$882,719	\$431,741	\$365
Hamilton Eye Institute Surgery Center	Shelby	Single Specialty	3	2	3199	445	3644	1066	223		No	0	0	0		\$13,505,453	\$8,667,905	\$4,837,548	\$1,328
Midsouth Interventional Pain Institute	Shelby	Single Specialty	0	2	0	4497	4497	N/A	2249		Yes	0	4497	4497		\$23,736,280	\$18,572,786	\$5,163,494	\$1,148
<b>Total/Avg.</b>		<b>11 MS; 15 SS</b>	<b>67</b>	<b>40</b>	<b>56699</b>	<b>63368</b>	<b>120067</b>	<b>846</b>	<b>1584</b>		<b>11 "yes"</b>	<b>5837</b>	<b>18776</b>	<b>24613</b>		<b>\$497,658,155</b>	<b>\$343,945,689</b>	<b>\$153,712,466</b>	<b>\$1,280</b>

Year: 2017

Facility Name	County	Classification Single or Multi- specialty	Rooms		All Cases					Pain Management Cases					Patient Revenue				
			# OR	#PR	OR Cases	PR Cases	Total Cases	Cases per OR	Cases per PR	% Diff in Total Cases '17-'19	Yes/No	OR Cases (PM)	PR Cases (PM)	Total PM Cases	% Diff in PM Cases '17- '19	Gross Patient Charges	Adjustment to revenue	Net Patient Revenue	Avg. Net Charge
Memphis Center for Reproductive Health	Shelby	Single Specialty	0	2	0	1916	1916	N/A	958		No	0	0	0		\$1,311,855	\$0	\$1,311,855	\$685
Memphis Eye and Cataract Ambulatory Surgery Center	Shelby	Single Specialty	3	1	1279	303	1582	426	303		No	0	0	0		\$4,883,411	\$1,854,366	\$3,029,045	\$1,915
Planned Parenthood Greater Memphis Region, Inc.	Shelby	Single Specialty	0	2	0	2187	2187	N/A	1094		No	0	0	0		\$3,770,809	\$683,679	\$3,087,130	\$1,409
Memphis Surgery Center	Shelby	Multi Specialty	4	1	2976	26	3002	744	26		Yes	0	26	26		\$23,908,741	\$18,839,528	\$4,969,213	\$1,655
Shos Clinic	Shelby	Single Specialty	2	0	2372	0	2372	1186	N/A		No	0	0	0		\$6,260,970	\$4,615,228	\$1,645,742	\$694
Ridge Lake Ambulatory Surgery Center	Shelby	Single Specialty	4	2	5659	1822	7481	1415	911		No	0	0	0		\$18,382,925	\$10,427,073	\$7,955,852	\$1,055
Le Bonheur East Surgery Center, II	Shelby	Multi Specialty	4	0	2601	0	2601	650	N/A		No	0	0	0		\$11,384,265	\$4,423,709	\$6,960,556	\$2,676
GI Diagnostic and Therapeutic Center	Shelby	Single Specialty	0	6	0	13616	13616	N/A	2269		No	0	0	0		\$24,302,974	\$16,270,170	\$8,032,804	\$960
East Memphis Surgery Center	Shelby	Multi Specialty	6	3	4033	1219	5252	672	406		Yes	0	570	570		\$27,063,105	\$20,470,027	\$6,593,078	\$1,255
Germantown Ambulatory Surgical Center	Shelby	Single Specialty	1	0	128	0	128	128	N/A		No	0	0	0		\$181,582	\$0	\$181,582	\$1,419
Mays and Snapp Pain Clinic and Rehabilitation Center	Shelby	Single Specialty	2	0	8265	0	8265	4133	N/A		Yes	8265	0	8265		\$15,982,357	\$11,956,990	\$4,025,367	\$487
RadioSurgical Center of Memphis	Shelby	Single Specialty	0	1	0	126	126	N/A	126		No	0	0	0		\$6,030,449	\$4,645,264	\$1,385,185	\$10,094
G.I. Diagnostic and Therapeutic Center, LLC	Shelby	Single Specialty	0	6	0	11775	11775	N/A	1963		No	0	0	0		\$20,960,312	\$13,750,567	\$7,209,745	\$612
Campbell Clinic Surgery Center Midown	Shelby	Multi Specialty	4	0	2999	0	2999	750	N/A		Yes	1195	0	1195		\$32,885,422	\$23,341,743	\$9,543,679	\$3,182
Methodist Surgery Center Germantown	Shelby	Multi Specialty	4	1	3912	1336	5248	978	1336		Yes	0	1336	1336		\$28,138,744	\$18,109,171	\$10,029,573	\$1,911
Mid-South Gastroenterology Group	Shelby	Single Specialty	1	3	0	7411	7411	0	2470		No	0	0	0		\$7,904,670	\$4,570,949	\$3,333,721	\$450
North Surgery Center	Shelby	Multi Specialty	4	1	2334	1126	3460	584	1126		Yes	0	1126	1126		\$17,463,866	\$12,200,031	\$5,263,835	\$1,521
Urocenter	Shelby	Single Specialty	3	0	4119	0	4119	1373	N/A		No	0	0	0		\$18,080,741	\$12,506,428	\$5,574,313	\$1,353
Baptist Germantown Surgery Center	Shelby	Multi Specialty	5	0	2981	0	2981	586	N/A		Yes	737	0	737		\$23,409,983	\$17,609,474	\$5,800,509	\$1,946
Campbell Clinic Surgery Center	Shelby	Multi Specialty	4	1	3568	3226	6794	890	3226		Yes	0	3226	3226		\$56,086,895	\$43,018,459	\$13,067,436	\$1,926
Wolf River Surgery Center	Shelby	Single Specialty	4	2	3170	2573	5743	793	1287		No	0	0	0		\$24,675,050	\$18,206,946	\$6,668,104	\$1,161
Semmes-Murphy Clinic	Shelby	Multi Specialty	3	2	1418	5185	6603	473	2563		Yes	0	5185	5185		\$38,097,609	\$30,795,928	\$17,301,681	\$2,620
Surgery Center at Saint Francis	Shelby	Multi Specialty	4	2	3184	3293	6477	795	1647		Yes	0	2073	2073		\$52,944,292	\$38,229,643	\$13,714,649	\$2,117
Eye Care Surgery Center of Memphis	Shelby	Single Specialty	2	1	1459	0	1459	730	0		No	0	0	0		\$3,090,527	\$1,339,689	\$1,750,838	\$1,200
Hamilton Eye Institute Surgery Center	Shelby	Single Specialty	3	2	3224	480	3714	1075	245		No	0	0	0		\$14,036,364	\$9,857,942	\$5,178,422	\$1,394
MidSouth Interventional Pain Institute	Shelby	Single Specialty	0	2	0	3376	3376	N/A	1688		Yes	0	3376	3376		\$17,625,163	\$13,699,981	\$3,925,182	\$1,163
<b>Total/Avg.</b>		<b>10 MS; 16 SS</b>	<b>67</b>	<b>41</b>	<b>59671</b>	<b>61006</b>	<b>120677</b>	<b>891</b>	<b>1488</b>		<b>11 "yes"</b>	<b>10197</b>	<b>16918</b>	<b>27115</b>		<b>\$499,072,081</b>	<b>\$341,528,215</b>	<b>\$157,543,866</b>	<b>\$1,306</b>



September 3, 2020

Scott Nation  
CEO  
Ally Healthcare  
423-653-6620

**RE: Proposal for Professional Services  
CON for Ambulatory Surgical Treatment Center (ASTC)  
Encore Surgical Institute  
8132 Country Village Drive, Suite 102 Cordova TN  
Certificate of Need**

Dear Mr. Nation:

On behalf of our client, Encore Surgical Institute we are pleased to this letter is to address the submission to the state for Certificate of Need application.

**Description of the Project-**

The proposed ASTC will be a single-specialty facility limited to pain management surgery procedures and limited to patients not requiring general anesthesia. The proposed ASTC facility will be located in an existing medical office building on 8132 Country Village Drive in Cordova, TN and will include two (2) procedure rooms and ancillary supporting spaces.

**Estimate of Project Construction Cost-**

Based on preliminary design studies conducted for CON preparation, the total cost of the project is based on 4,969 square feet on the ground floor of the MOB at \$125.00 per square feet of the tenant build out. In our opinion the probable construction cost will be approximately \$621,125.00. Architect/ Engineering professional services fees will be approximately \$43,750.00.

Based on our previous experience and knowledge with the construction of medical buildings and healthcare facilities and considering the current healthcare construction cost market for similar projects, it is our professional opinion that the above estimated project construction cost and associated architect's/ engineer's fees are reasonable and appropriate and will allow the owner to create a high-quality facility.

**Attestation/ Code Compliance-**

We attest that the physical environment and all aspects of the ASTC project will conform to all applicable local, state, and federal standards, manufacturer's specifications, and licensing agencies' requirements including the AIA Guidelines for Design and the 2018 edition of the FGI Guidelines for Design and Construction of Health Care Facilities.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Bullard", with a large, stylized loop at the end.

Brian Bullard, AIA, NCARB  
Principal - UrbanArch Associates, P.C.  
TN License #101492



Fifth Third Bank  
3075 Mallory Lane  
Franklin, TN 37067

September 3, 2020

To whom it concerns,

We understand that Encore Surgical Institute LLC has applied for a CON which requires a letter from a qualified financial institution to support various borrowing needs. The owner of both Spectrum Pain Clinics Inc and Encore Surgical Institute LLC has had an excellent relationship with us. The owning entity has an 18 year running relationship with the bank and consistently keeps substantial balances on deposit. They currently have no debt with Fifth Third Bank. Their history with us would indicate a strong ability to borrow money subject to further due diligence and an approval of their pending CON application.

Should you have any further questions, please feel free to contact me directly at (615)771-4354.

Sincerely,

Todd Rutland  
Bank Manager  
NMLS # 439482

Classification: Internal Use

Attachment Section  
B. Economic  
Feasibility. 2. A

**AFFIDAVIT**

STATE OF TENNESSEE

COUNTY OF Williamson

Waymond S. Boyer, being first duly sworn, says that he/she is the applicant named in this application or his/her/its lawful agent, that this project will be completed in accordance with the application, that the applicant has read the directions to this application, the Rules of the Health Services and Development Agency, and T.C.A. §68-11-1601, *et seq.*, and that the responses to this application or any other questions deemed appropriate by the Health Services and Development Agency are true and complete.

Waymond S. Boyer CEO  
SIGNATURE/TITLE

Sworn to and subscribed before me this 14 day of Sept., 2020 a Notary  
(Month) (Year)

Public in and for the County/State of Williamson, TN.



[Signature]  
NOTARY PUBLIC

My commission expires 3-8, 2021.  
(Month/Day) (Year)

**SUPPLEMENTAL RESPONSES**

**CERTIFICATE OF NEED APPLICATION**

**FOR**

**ENCORE SURGICAL INSTITUTE**

**The Establishment of an Ambulatory  
Surgical Treatment Center for Pain  
Management Procedures**

**Shelby County, Tennessee**

**September 24, 2020**

**Contact Person:**

**Jerry W. Taylor, Esq.  
Thompson Burton, PLLC  
6100 Tower Circle, Suite 200  
Franklin, Tennessee 37067  
615-716-2297**

**1. Section A. , Item 2, Contact Person Information**

**The letter of intent lists One Franklin Park in the street address of the project contact. Should it also be listed in the application? Please clarify.**

One Franklin Park is the name of the office building, and that name is not a part of the official postal mailing address. With limited space available on that page of the application form, it was not included.

**2. Section A, Applicant Profile, Item 6A., Legal Interest in the site**

**Please provide documentation, e.g., deed, title, etc., demonstrating CHCT Tennessee, LLC owns the building and property site of the proposed project.**

A copy of the deed is attached following this response.

**The lease proposal is noted. However, the document is not signed by Encore Surgical Institute. Please provide a fully executed lease proposal.**

An updated and revised Lease Proposal signed by both parties is attached following this response.

**The lease proposal indicates the document will remain in effect until September 11, 2020 and is subject into an acceptable lease agreement and related documents prior to October 9, 2020. If complete, the earliest this application could be heard is at the December 2020 Agency meeting. Please provide a lease proposal that secures site control valid through until the December 2020 Agency meeting.**

The attached revised Lease Proposal extends the date for agreeing to the specific terms of the lease to December 31, 2020. Please note the language providing that the proposal is in effect through September 30, 2020 means that ESI must agree to the proposal by signing it no later than September 30, 2020. ESI has already signed Lease Proposal so it is in effect by its terms though December 31, 2020.

**The four-month lease agreement between CHCT Tennessee, LLC and Encore Health Group, LLC is noted. However, the document is not signed by both parties. Please provide a fully executed lease proposal.**

A signature page bearing the signature of the landlord is attached following this response. All other terms of the submitted lease agreement remain unchanged.

**Return to:**  
Fidelity National Title Group  
6050 Poplar Ave. Suite LL37  
Memphis TN 38119  
# 598-1870-88

Prepared By: ~~and Upon Recording~~  
Return to:

Baker Donelson Bearman Caldwell & Berkowitz, P.C.  
211 Commerce, Suite 800  
Nashville, TN 37201  
Attn: John A. Gupton III

ADDRESS NEW OWNER	MAP/PARCEL	SEND TAX BILLS TO:
CHCT Tennessee, LLC 3326 Aspen Grove Dr., Suite 150 Franklin, Tennessee 37067	096900 00542	Same as New Owner

**SPECIAL WARRANTY DEED**

FOR AND IN CONSIDERATION of the sum of Ten and No/100 Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **Rock A. Wooster** ("Grantor"), has transferred, bargained, sold, granted and conveyed, and by these presents does hereby transfer, bargain, sell, grant and convey to **CHCT Tennessee, LLC**, a Delaware limited liability company ("Grantee"), Grantees successors and assigns, certain improved land in Shelby County, Tennessee, being more particularly described on **Exhibit A**, attached hereto and incorporated herein by reference (the "Property").

This conveyance of the Property, and all covenants and warranties contained herein, are made expressly subject to all matters of record and those exceptions listed on **Exhibit B**, attached hereto and incorporated herein by reference (collectively, the "Permitted Exceptions").

**TO HAVE AND TO HOLD** the Property with all the appurtenances, estate, title and interest thereunto belonging or in any wise appertaining unto the Grantee, his heirs and assigns in fee simple forever.

Except for the Permitted Exceptions, Grantor further covenants and binds himself, his heirs and assigns to warrant and forever defend title to the Property to the Grantee, Grantees successors and assigns, against the lawful claims of all persons whomsoever claiming by, through or under Grantor but no further or otherwise.

[signature page to follow]

IN WITNESS WHEREOF, the Grantor has executed this Special Warranty Deed the 28 day of September, 2016.



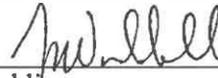
\_\_\_\_\_  
Rock A. Wooster

STATE OF TENNESSEE

COUNTY OF Shelby

Personally appeared before me, the undersigned , a Notary Public in and for said State and County, **Rock A. Wooster**, the within named bargainor(s), with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and seal at office, on this 28 day of September, 2016.



\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_



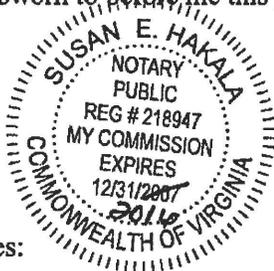
STATE OF ~~TENNESSEE~~ VIRGINIA  
COUNTY OF ~~DAVIDSON~~ HENRICO

The actual consideration for this transfer is \$2,450,000.00



AFFIANT

Subscribed and sworn to before me this 30<sup>th</sup> day of September, 2016.



NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_

## Exhibit A

A parcel of property lying in Shelby County, Tennessee, being more particularly described as follows:

Beginning a set iron pin on the east line of Country Village Drive (68' wide public right of way) 29.02 feet north of the tangent intersection of said east line with the north line of Cordova Road (54' from centerline);

Thence N 19° 11' 38" E along said east line 220.38 to a found iron pin at the southwest corner of the Laurels P.D., Phase IV, Area "A" (Plat Book 170, page 15);

Thence S 70° 48' 22" E along the south line of said Phase IV a distance of 275.98 feet to a found iron pin on the set line of Section "C", Cross Creek Subdivision (Plat Book 117, page 12);

Thence S 21° 04'37" W along said east line 255.41 feet to a set iron pin on the said north line of Cordova Road (57' from centerline);

Thence N 70° 03'14" W along said north line 150.04 feet to a set iron pin;

Thence N 68° 54'29" W along said north line 88.60 feet to a set iron pin at the beginning of a curve to the right;

Thence northwestwardly along the arc of said curve having a radius of 30.00 feet, an arc length of 46.13 feet and a chord of 41.72 feet (N 24° 51' 26" W) to the point of beginning.

Containing 68,592 square feet or 1.5746 acres more or less.

Being the same property conveyed to Rock A. Wooster and Jason Coleman, as tenants in common, by deed recorded May 12, 2006, as Instrument No. 06076342, as re-recorded March 27, 2007, as Instrument No. 07051034, Register's Office for Shelby County, Tennessee. The said Rock A. Wooster and Jason Coleman, having quitclaimed the subject property to Rock A. Wooster, Jason Coleman and Michael Holliman, as tenants in common, by Quitclaim Deed recorded June 29, 2007, as Instrument No. 07101759, in said Register's Office. The said Michael C. Holliman having conveyed his interest in subject property to Rock A. Wooster and Jason Coleman, tenants in common, by Quitclaim Deed recorded March 14, 2011, as Instrument No. 11025714, in said Register's Office. The said Rock A. Wooster and Jason Coleman, tenants in common, conveyed their interest in subject property to Rock A. Wooster, by Quitclaim Deed recorded February 11, 2013, as Instrument No. 13018315, in said Register's Office.

Property Address: 8132 Country Village Drive

EXHIBIT "B"

1. Taxes for the year 2017, a lien, not yet due and payable.
2. Subdivision restrictions, building lines and easements of record in Plat Book 231, page 11, Plat book 176, page 76, Plat Book 176, page 68, Plat Book 171, page 10, Plat Book 163, page 59, Plat Book 162, page 70, Plat Book 155, page 22, in the Register's Office of Shelby County, Tennessee.
3. Declaration of Maintenance Covenant "The Laurels P.D." of record in JP 8571, in the aforesaid Register's Office.
4. Easement of record under Instrument No. GL 6565, in the aforesaid Register's Office.

# COMMUNITY HEALTHCARE TRUST

September 22, 2020

Bo Boyer  
CEO

Encore Surgical Institute, LLC  
8132 Country Village Dr, Suite 102  
Cordova, TN 38016

(WSE)

RE: Lease Proposal for Encore Surgical Institute, LLC  
8132 Country Village Drive, Cordova, TN

Dear Mr. Boyer:

We are pleased to present the following lease proposal to the Encore Surgical Institute, LLC for space at the 8132 Country Village Drive, Cordova, TN (the "Building").

The Building is owned by CHCT TENNESSEE, LLC, a wholly owned subsidiary of Community Healthcare Trust Incorporated (NYSE: CHCT). CHCT and its management team are dedicated to providing our tenants with the opportunity to increase their efficiency and ability to increase their EBITDA. Our goal is to provide the lowest cost, most productive environment possible that aligns with your operational needs and strategy.

We are pleased to have the opportunity to submit for your review this proposal, which provides for the Encore Surgical Institute, LLC to lease Suite 102 for an outpatient surgery center with up to a total of 4,969 rentable square feet ("RSF") at 8132 Country Village Drive, Cordova, TN pursuant to the following terms.

**Tenant:** Encore Surgical Institute, LLC

**Building:** 8132 Country Village Drive

**Premises:** Suite 102 with approximately 4,969 RSF as shown on Exhibit A.

**Base Rental Rate:** \$23.00 per RSF NNN for initial lease year.

**Initial Term:** Six (6) years

**Commencement Date:** Upon lease execution.

**Rent Commencement Date:** Upon substantial completion of the tenant improvements by Tenant

# COMMUNITY HEALTHCARE TRUST

but in no event later than April 1, 2021.

- Renewal Options:** Tenant shall have two (2) six (6) year options to renew the lease with one-hundred eighty (180) days prior written notice.
- Operating Expenses:** Maintenance, insurance, property taxes, etc.
- Annual Increases:** The Base Rental Rate shall increase by 2.5% per year.
- Contingency:** This lease proposal is contingent upon Tenant receiving a Certificate of Need ("CON") on or prior to January 1, 2021, to operate an outpatient surgery center in the Premises.

We hope this proposal provides the Encore Surgical Institute with terms and conditions in enough detail for the Encore Surgical Institute to be able to develop a long-term strategy and successful operational presence at 8132 Country Village Drive. Please note that this proposal shall remain in effect only until September 30, 2020 and is subject to entering into an acceptable lease agreement and related documents prior to December 31, 2020.

This proposal is not contractually binding on the parties and is only an expression of the basic terms and conditions to be incorporated in a formal agreement, along with the other terms to be negotiated by the parties, all of which are subject to their approval. The parties shall not be contractually bound unless and until a formal agreement is fully executed and delivered by all parties.

We would look forward to developing a mutually beneficial and long-term relationship with the Encore Surgical Institute at the 8132 Country Village Drive. Please feel free to contact me to discuss this proposal in further detail.

Very truly yours,

**CHCT TENNESSEE, LLC**

By: Community Healthcare Trust Services, Inc.  
Its: Manager

By: 

Name: Timothy L. Meyer

Title: SVP – Asset Management

COMMUNITY  
HEALTHCARE  
— TRUST —

Accepted by:

Encore Surgical Institute

By: Waymond S. Boyer

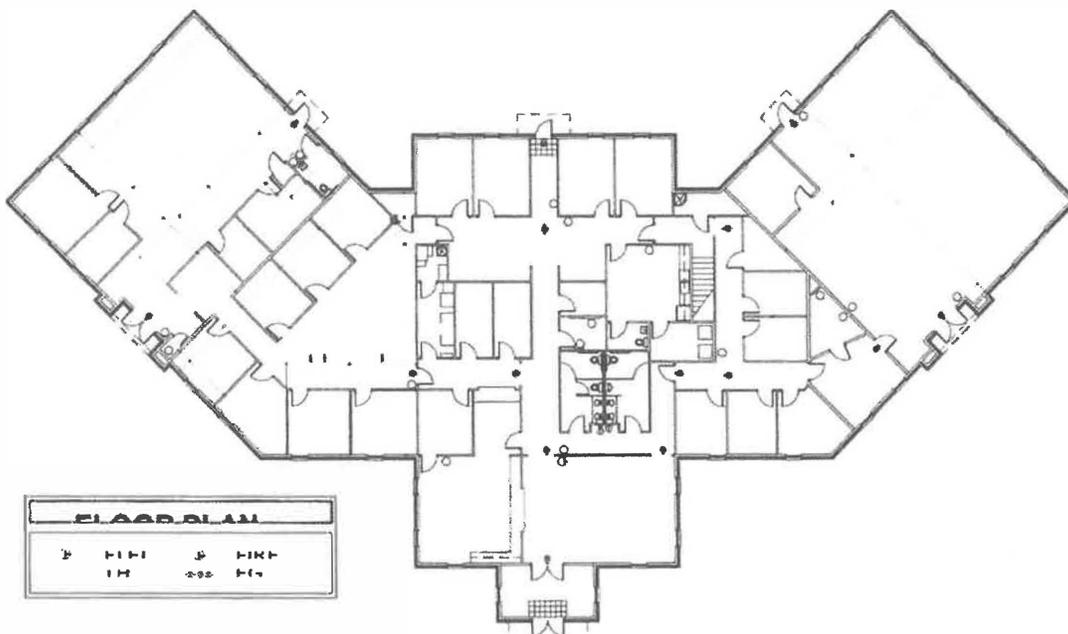
Name: Waymond S. Boyer

Title: CEO

Date: 9/22, 2020

# COMMUNITY HEALTHCARE TRUST

## EXHIBIT A



5

**THE PARTIES HERETO** have executed this Lease in duplicate as of the day and year written below such parties' signatures.

**LANDLORD:**

CHCT TENNESSEE, LLC

By: Community Healthcare Trust Services, Inc.

Its: Manager

By: 

Name: Timothy L. Meyer

Title: SVP - Asset Management

Date of Signature: September 9, 2020

**TENANT:**

Encore Health Group, LLC.

By: 

Name: Raymond S. Boyer

Title: CEO

Date of Signature: 9/2/2020

**3. Section A, Applicant Profile, Item 9. Medicaid/TennCare, Medicare Participation**

**Please indicate if the applicant expects to contract with all TennCare Managed Care Organizations that serve Shelby County.**

Yes. Dr. Hall participates in all 3 TennCare MCOs and anticipates the ASTC will do likewise.

**4. Section A, Applicant Profile, Item 12 Square Footage and Cost Per Square Footage Chart**

**What is the age of the medical office building?**

To the best of the applicant's knowledge the age of the building is approximately 21 years.

**Is the building space be designed for possible future expansion?**

No

**Please verify the cost per square foot for the proposed ASTC is below the 1<sup>st</sup> quartile for renovated and total cost as compared to similar ASTC construction cost. If so, please submit a replacement page 12.**

For "Renovated Construction" the 1<sup>st</sup> Quartile is \$70.00 psf and the "Median" (apparently a/k/a the "2<sup>nd</sup> Quartile" ) is \$165.87, so the estimated renovation cost of \$125.00 psf is between the 1<sup>st</sup> and 2<sup>nd</sup> Quartile.

For "Total Construction" the 1<sup>st</sup> Quartile is \$150.00 psf. If and to the extent renovation-only cost is also considered "Total Construction" cost, then the applicant's estimated \$125.00 psf cost is below the 1<sup>st</sup> Quartile.

A revised Square Footage and Cost Per Square Foot Chart is on Replacement Page 12, attached following this response.

**5. Section B, Need, Item 1. (Specific Criteria - ASTC). Need**

**Please indicate the projected utilization of each procedure room using 747 (1,867 x 40%) procedures as baseline numbers in determining need.**

Assuming for this purpose the cases are evenly distributed between the two procedure rooms in Year 1, the utilization rates based on the 40% scheduled room availability are as follows:

Room 1: 1,060 cases / 747 pro-rated utilization need threshold = 155% utilization

Room 2: 1,060 cases / 747 pro-rated utilization need threshold = 155% utilization

**6. Section B, Need, Item 2. (Specific Criteria - ASTC). Need and Economic Efficiencies**

**Please complete the following chart, once for Year 1 and once for Year 2.**

Year 1					
Procedure Rooms	# Cases	Minutes Used	Average Turnaround Time	Schedulable minutes*#	% of Schedulable Time Used
Procedure Room #1	1,060	31,800	15,900	48,000	99%
Procedure Room#2	1,060	31,800	15,900	48,000	99%
<b>Total Procedure Rooms</b>	2,120	63,600	31,800	96,000	99%

Year 2					
Procedure Rooms	# Cases	Minutes Used	Average Turnaround Time	Schedulable minutes*#	% of Schedulable Time Used
Procedure Room #1	1,166	34,980	17,490	48,000	109%
Procedure Room#2	1,166	34,980	17,490	48,000	109%
<b>Total Procedure Rooms</b>	2,332	69,960	34,980	96,000	109%

**\* defined as the summation of the minutes by each room available for scheduled cases Example: 7:30 AM to 4:30 PM, 5 days per week, 50 weeks/ year, equates to 9 hrs./ day X 60 min/hr. = 540 minutes/ day X 5 days/week = 2,700 minutes/ week X 50 weeks/year=135,000 schedulable minutes/room X the number of rooms=surgical suite schedulable capacity.**

**# the schedulable minutes are based on 8 hours per day, rather than 9 hours per day. In addition, since the applicant initially intends to operate the ASTC only 2 days per week, that is the number of days per week used to calculate Schedulable Minutes.**

**7. Section B, Need, Item 3. (Specific Criteria - ASTC). Need and Economic Efficiencies; Access**

**Please complete the following table for hospitals in the Shelby County that can perform outpatient pain management procedures.**

**2018 Service Area Hospital Outpatient Surgery Utilization**

Hospital (Adult, General Acute Only)	PM Outpatient Cases	Total Outpatient Cases	Total PM Surgery as a % of OP Total
Baptist Memorial Hospital	0	4,123	0%
Baptist Memorial Hospital - Collierville	0	1,716	0%
Methodist Healthcare - Germantown	0	5,976	0%
Methodist Healthcare - Memphis Hospitals	0	6,537	0%
Methodist Hospital-North	0	911	0%
Methodist South	0	782	0%
Regional One Health	0	2,329	0%
Saint Francis Hospital	134	4,834	2.8%
Saint Francis Hospital - Bartlett	23	2,483	0.9%
<b>TOTAL</b>	<b>157</b>	<b>29,691</b>	<b>0.5%</b>

*PM=Pain Management*

**Please complete the following chart of Shelby County single-specialty ASTCs that perform pain management procedures and multi-specialty ASTCs using 2019 Joint Annual Report data.**

ASTC*	# PRs	# PR Cases	# of Cases per PR	Percent of 1,867 Utilization **
<b>Single-Specialty Pain Management ASTCs</b>				
Mays and Snapp Pain Clinic & Rehab. Center	2#	4981	2491	133%
Midsouth Interventional Pain Institute	2	6205	3103	166%
<b>Single-Specialty Sub-total</b>	<b>4</b>	<b>11,186</b>	<b>2797</b>	<b>150%</b>
<b>Multi-Specialty ASTCs</b>				
Memphis Surgery Center	1	81	81	4%

Shea Clinic	0	0	N/A	N/A
Le Bonheur East Surgery Center, II	0	0	N/A	N/A
East Memphis Surgery Center	3	676	225	12%
Campbell Clinic Surgery Center Midtown	0	0	N/A	N/A
Methodist Surgery Center Germantown	1	754	754	40%
North Surgery Center	1	217	217	12%
Baptist Germantown Surgery Center	1	2467	2467	132%
Campbell Clinic Surgery Center	1	3183	3183	170%
Semmes-Murphey Clinic	2	6745	3373	181%
Surgery Center at Saint Francis	2	1876	938	50%
<b>Multi-Specialty Sub-total</b>	<b>12</b>	<b>15,999</b>	<b>1333</b>	<b>71%</b>
<b>Grand Total</b>	<b>16</b>	<b>27,185</b>	<b>1699</b>	<b>91%</b>

\*Single specialty ASTCs not dedicated to pain management are not included.

# The rooms at Mays and Snapp are reported as ORs. Since all PM cases are performed there, these rooms are shown as PRs for the purpose of this table.

**8. Section B, Need, Item 4. (Specific Criteria - ASTC). Need and Economic Efficiencies**

**The applicant did not address this criterion thereby causing the numbering of the remaining questions (4-11) to not match the project specific criteria questions. Please address criterion #4 and submit replacement pages for project criterion questions 4-11 with the correct numbering.**

The omitted criterion is addressed on Replacement Pages R-17 & R-18, attached following this response.

**9. Section B, Need, Item 8. (Specific Criteria – ASTC). Access to ASTCs**

**The applicant indicates the site is within easy walking distances to North Germantown Parkway. Please indicate if there are sidewalks accessible for pedestrians on this route.**

Yes, there are sidewalks along the entire route.

**10. Section B, Need, Item 4.A., Demographics**

**The Shelby County 2024 total population is incorrect in the demographics table located on page 23. Please submit a replacement page with the corrected information.**

A Replacement Page 23 with a corrected demographics table is attached following this response.

Supplemental Responses  
Encore Surgical Institute  
CN2009-030  
Page 7

**11. Section B, Need, Item 5**

**Please complete the following tables and include all single specialty ASTCs that perform pain management cases and all multi-specialty ASTCs in Shelby County.**

The completed tables are attached following this response.

2017 - 2019 Service Area Utilization Trends

ASTC	2017				2018				2019				2017 - 2019	
	# PRs	PM Cases	Total Cases	PM as a % Total	# PRs	PM Cases	Total Cases	PM as a % Total	# PRs	PM Cases	Total Cases	PM as a % Total	PM Cases '17-'19 % change	Total Cases '17-'19 % change
<b>Single-Specialty (PM)</b>														
Mays and Snapp Pain Clinic & Rehab. Center	2*	8265	8265	100%	2*	4478	4478	100%	2*	4981	4981	100%	-39.7%	-39.7%
Midsouth Interventional Pain Institute	2	3376	3376	100%	2	4497	4497	100%	2	6205	6205	100%	83.8%	83.8%
<b>Single Specialty Total/Average</b>	<b>4</b>	<b>11641</b>	<b>11641</b>	<b>100%</b>	<b>4</b>	<b>8975</b>	<b>8975</b>	<b>100%</b>	<b>4</b>	<b>11,186</b>	<b>11,186</b>	<b>100%</b>	<b>-3.9%</b>	<b>-3.9%</b>
<b>Multi-Specialty ASTCs</b>														
Memphis Surgery Center	1	26	3002	0.9%	1	18	3370	0.5%	1	5	3238	0.2%	-80.8%	17.0%
Shea Clinic	0	0	2372	0.0%	0	0	2101	0.0%	0	0	1104	0.0%	N/A	-4.2%
Le Bonheur East Surgery Center, II	0	0	2601	0.0%	0	0	2907	0.0%	0	0	3371	0.0%	N/A	-66.0%
East Memphis Surgery Center	3	570	5252	10.9%	3	348	4023	8.7%	3	234	4287	5.5%	-58.9%	77.4%
Campbell Clinic Surgery Center Midtown	0	1195	2999	39.8%	0	1075	3084	34.9%	0	1401	3509	39.9%	17.2%	-4.0%
Methodist Surgery Center Germantown	1	1336	5248	25.5%	1	1156	5175	22.3%	1	754	5029	15.0%	-43.6%	24.7%
North Surgery Center	1	1126	3460	32.5%	1	956	3089	30.9%	1	217	1176	18.5%	-80.7%	-32.5%
Baptist Germantown Surgery Center	0	737	2981	24.7%	0	284	3477	8.2%	1	2467	5289	46.6%	234.7%	-3.5%
Campbell Clinic Surgery Center	1	3226	6784	47.6%	1	3254	6631	49.1%	1	3183	6513	48.9%	-1.3%	-3.6%
Semmes-Murphey Clinic	2	5185	6603	78.5%	2	6648	8004	83.1%	2	6745	8231	81.9%	30.1%	24.7%
Surgery Center at Saint Francis	2	2073	6477	32.0%	2	1899	6280	30.2%	2	655	4374	15.0%	-68.4%	-32.5%
<b>Multi- Specialty Total/Average</b>	<b>11</b>	<b>15474</b>	<b>47779</b>	<b>32.4%</b>	<b>11</b>	<b>15638</b>	<b>48141</b>	<b>32.5%</b>	<b>12</b>	<b>15661</b>	<b>46121</b>	<b>34.0%</b>	<b>1.2%</b>	<b>-3.5%</b>
<b>Grand Total/Average</b>	<b>15</b>	<b>27,115</b>	<b>59,420</b>	<b>45.6%</b>	<b>15</b>	<b>24,613</b>	<b>57,116</b>	<b>43.1%</b>	<b>16</b>	<b>26,847</b>	<b>57,307</b>	<b>46.8%</b>	<b>-1.0%</b>	<b>-3.6%</b>
Source: Joint Annual Reports														
* Mays and Snapp Pain Clinic and Rehabilitation Center reported 2 Ors and 0 PRs. Since all cases performed there are pain management cases, the rooms are counted as PRs for the purpose of this table.														

**12. Section B. Economic Feasibility, Item 2.**

**The funding letter is noted. Please revise to include proposed loan amount, expected interest rates, anticipated term of the loan, and any restrictions or conditions.**

A revised funding letter including the proposed loan amount and term of the loan is attached following this response.



Fifth Third Bank  
3075 Mallory Lane  
Franklin, TN 37067

September 23, 2020

To Whom it concerns,

We understand that Encore Surgical Institute LLC has applied for a CON which requires a letter from a qualified financial institution to support various borrowing needs. We would consider Encore Surgical Institute LLC's request is for a 7 year term loan up to \$975,000 to finance tenant improvements, equipment and furnishings. The owning entity of Encore Surgical Institute LLC has had an excellent relationship with us, including an 18 year running relationship with the bank and consistently keeps substantial balances on deposit. They currently have no debt with Fifth Third Bank. Their history with us would indicate a strong ability to borrow money subject to further to due diligence and approval of their pending CON application.

Should you have any further questions, please feel free to contact me directly at (615)771-4354  
Thank you again for choosing Fifth Third Bank.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Todd Rutland', written over a blue horizontal line.

Todd Rutland  
Bank Manager  
NMLS # 439482

**13. Section B. Economic Feasibility, Item 1 (Project Cost Chart), Item 5**

**There appears to be a calculation error of the Net Balance total of \$4,134.  
Please correct and submit a replacement page 29 (labeled as 29R).**

A revised Projected Data Chart labeled as Replacement Page R-29 is attached following this response.

**14. Section B, Economic Feasibility, Item 8 Staffing**

**Please indicate what the asterisks represent in the last column of the staffing chart on page 33.**

\*Median Wage by TDOLWD website

\*\*Average Wage by Indeed.com

\*\*\*Average Wage by Salary.com

**15. Section B, Orderly Development, Item 3.A**

**There is a typo in the second sentence. Please correct and submit a replacement page 39.**

A Replacement Page 39 is attached following this response.

**16. Proof of Publication**

**Please submit a publication affidavit which is supplied by the newspaper as proof of the publication of the letter of intent.**

A Publisher's Affidavit is attached following this response.

**commercial appeal**  
PART OF THE USA TODAY NETWORK

ENCORE SUGICAL INSTITUTE LLC  
1550 WEST MCEWEN DRIVE STE 300; PMB #12  
FRANKLIN, TN 37067

This is not an invoice

**Affidavit of Publication**

**STATE OF WISCONSIN**  
**County of Brown**

Personally appeared before me, said Legal clerk of MEMPHIS PUBLISHING COMPANY, a corporation, publishers of The Commercial Appeal, morning and Sunday paper, published in Memphis, Tennessee, who makes oath in due form of law, that she is Legal Clerk of the said Memphis Publishing Company, and that the accompanying and hereto attached notice was published in the following edition of The Commercial Appeal to-wit :

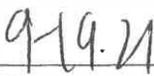
09/10/2020

ENCORE SUGICAL INSTITUTE LLC

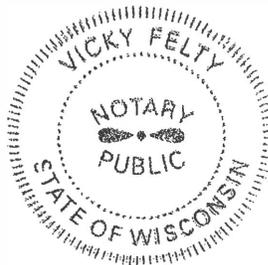


Subscribe and sworn to before me this 10th day of September, 2020

  
\_\_\_\_\_  
Notary Public

  
\_\_\_\_\_  
My commission expires

# of Affidavits 1  
Ad Number: 0004366869



Ad Number: 0004366869

Run Dates: 09/10/2020

**NOTIFICATION OF INTENT TO APPLY FOR A  
CERTIFICATE OF NEED**

This is to provide official notice to the Health Services and Development Agency and all interested parties, in accordance with TCA § 68-11-1601 et seq. and the Rules of the Health Services and Development Agency that Encore Surgical Institute, owned by Encore Surgical Institute, LLC, a Tennessee limited liability company and to be managed by Engineous Consulting, LLC, a Tennessee limited liability company intends to file an application for a Certificate of Need for the establishment of an ambulatory surgical treatment center (ASTC) for the performance of pain management related procedures. The proposed facility will have two procedure rooms and no operating rooms. It will be located at 8132 Country Village Drive, Suite 102, Cordova, Tennessee. The ASTC will be licensed as such by the Tennessee Board for Licensing Health Care Facilities. The total estimated project cost is \$1,606,310.00.

The anticipated date of the filing of the application is September 15, 2020.

The contact person for this project is Jerry W. Taylor, Attorney, who may be reached at: Thompson Burton, PLLC, One Franklin Park, 6100 Tower Circle, Suite 200, Franklin, TN 37067, 615-716-2297.

Upon written request by interested parties, a local Fact-Finding public hearing shall be conducted. Written requests for hearing should be sent to:

**Health Services and Development Agency  
Andrew Jackson Building, 9th Floor  
502 Deaderick Street  
Nashville, TN 37243**

Pursuant to T.C.A. § 68-11-1607(c): (A) Any health care institution wishing to oppose a Certificate of Need application must file a written notice with the Health Services and Development Agency no later than fifteen (15) days before the regularly scheduled Health Services and Development Agency meeting at which the application is originally scheduled; and (B) Any other person wishing to oppose the application must file written objection with the Health Services and Development Agency at or prior to the consideration of the application by the Agency.

**AFFIDAVIT**

STATE OF TENNESSEE

COUNTY OF Williamson

NAME OF FACILITY: Encore Surgical Institute

I, Waymond S. Boyce, after first being duly sworn, state under oath that I am the applicant named in this Certificate of Need application or the lawful agent thereof, that I have reviewed all of the supplemental information submitted herewith, and that it is true, accurate, and complete.

Waymond S. Boyce  
Signature/Title

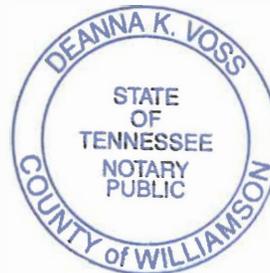
Sworn to and subscribed before me, a Notary Public, this the 23<sup>rd</sup> day of September 2020  
witness my hand at office in the County of Williamson, State of Tennessee.

Deanna K. Voss  
NOTARY PUBLIC

My commission expires May 22, 2023

HF-0043

Revised 7/02



SECOND SUPPLEMENTAL RESPONSES

CERTIFICATE OF NEED APPLICATION

FOR

ENCORE SURGICAL INSTITUTE

Project No. CN2009-030

The Establishment of an Ambulatory  
Surgical Treatment Center for Pain  
Management Procedures

Shelby County, Tennessee

September 28, 2020

Contact Person:

Jerry W. Taylor, Esq.  
Thompson Burton, PLLC  
6100 Tower Circle, Suite 200  
Franklin, Tennessee 37067  
615-716-2297

1. Section B, Need, Item 1. (Specific Criteria - ASTC). Need

**The projected utilization of each procedure room using 747 (1,867 x 40%) procedures as baseline numbers in determining need is noted. However, the calculated utilization of 155% appears incorrect. Please verify.**

The projected utilization rate in the response to your earlier question was miscalculated. The correct calculations are as follows:

Assuming for this purpose the cases are evenly distributed between the two procedure rooms in Year 1, the utilization rates based on the 40% scheduled room availability are as follows:

Room 1: 1,060 cases / 747 pro-rated utilization need threshold = 142% utilization

Room 2: 1,060 cases / 747 pro-rated utilization need threshold = 142% utilization

2. Section B, Need, Item 3. (Specific Criteria - ASTC). Need and Economic Efficiencies; Access

**The completed table for hospitals in the Shelby County that can perform outpatient pain management procedures is noted. However, the 2018 JAR total of 81 procedure room cases for Memphis Surgery Center is incorrect. Please correct.**

The reviewer clarified that what is requested is a revised table reflecting 2019 ASTC data, including a correction to the number of PR cases at Memphis Surgery Center. A revised table is below.

ASTC*	# PRs	# PR Cases	# of Cases per PR	Percent of 1,867 Utilization **
<b>Single-Specialty Pain Management ASTCs</b>				
Mays and Snapp Pain Clinic & Rehab. Center	2#	4981	2491	133%
Midsouth Interventional Pain Institute	2	6205	3103	166%
<b>Single-Specialty Sub-total</b>	<b>4</b>	<b>11,186</b>	<b>2797</b>	<b>150%</b>
<b>Multi-Specialty ASTCs</b>				
Memphis Surgery Center	1	109	109	5.8%
Shea Clinic	0	0	N/A	N/A
Le Bonheur East Surgery Center, II	0	0	N/A	N/A
East Memphis Surgery Center	3	676	225	12%
Campbell Clinic Surgery Center Midtown	0	0	N/A	N/A

Methodist Surgery Center Germantown	1	754	754	40%
North Surgery Center	1	217	217	12%
Baptist Germantown Surgery Center	1	2467	2467	132%
Campbell Clinic Surgery Center	1	3183	3183	170%
Semmes-Murphey Clinic	2	6745	3373	181%
Surgery Center at Saint Francis	2	1876	938	50%
<b>Multi-Specialty Sub-total</b>	<b>12</b>	<b>16,027</b>	<b>1336</b>	<b>72%</b>
<b>Grand Total</b>	<b>16</b>	<b>27,213</b>	<b>1701</b>	<b>91%</b>

**3. Section B, Need, Item 5**

The following completed table that includes all single specialty ASTCs that perform pain management cases and all multi-specialty ASTCs in Shelby County is noted. The requested table may not have been clear in supplemental #1 to not include operating room data. However, the intent of the table is to include only Shelby County pain management procedure room data. Please revise to only include Shelby County ASTC procedure room data.

A revised table reflecting the data without the OR cases is attached following this response.

2017 - 2019 Service Area Utilization Trends

ASTC	2017				2018				2019				2017 - 2019	
	# PRs	PM PR Cases	Total PR Cases	PM PR Cases as a % of PR Total	# PRs	PM PR Cases	Total PR Cases	PM PR Cases as a % of PR Total	# PRs	PM PR Cases	Total PR Cases	PM PR Cases as a % of PR Total	PM PR Cases '17-'19 % change	Total PR Cases '17-'19 % change
<b>Single-Specialty (PM)</b>														
Mays and Snapp Pain Clinic & Rehab. Center	2*	8265	8265	100%	2*	4478	4478	100%	2*	4981	4981	100%	-39.7%	-39.7%
Midsouth Interventional Pain Institute	2	3376	3376	100%	2	4497	4497	100%	2	6205	6205	100%	83.8%	83.8%
<b>Single Specialty Total/Average</b>	<b>4</b>	<b>11641</b>	<b>11641</b>	<b>100%</b>	<b>4</b>	<b>8975</b>	<b>8975</b>	<b>100%</b>	<b>4</b>	<b>11,186</b>	<b>11,186</b>	<b>100%</b>	<b>-3.9%</b>	<b>-3.9%</b>
<b>Multi-Specialty ASTCs</b>														
Memphis Surgery Center	1	26	26	100.0%	1	18	18	100.0%	1	5	109	4.6%	-80.8%	319.2%
Shea Clinic	0	0	0	N/A	0	0	0	N/A	0	0	0	N/A	N/A	N/A
Le Bonheur East Surgery Center, II	0	0	0	N/A	0	0	0	N/A	0	0	0	N/A	N/A	N/A
East Memphis Surgery Center	3	570	1219	46.8%	3	348	832	41.8%	3	234	676	34.6%	-58.9%	-44.5%
Campbell Clinic Surgery Center Midtown	0	0	0	N/A	0	0	0	N/A	0	0	0	N/A	N/A	N/A
Methodist Surgery Center Germantown	1	1336	1336	100.0%	1	1156	1156	100.0%	1	754	754	100.0%	-43.6%	-43.6%
North Surgery Center	1	1126	1126	100.0%	1	956	956	100.0%	1	217	217	100.0%	-80.7%	-80.7%
Baptist Germantown Surgery Center	0	0	0	N/A	0	0	0	N/A	1	2467	2467	100.0%	N/A	N/A
Campbell Clinic Surgery Center	1	3226	3226	100.0%	1	3254	3254	100.0%	1	3183	3183	100.0%	-1.3%	0.6%
Semmes-Murphey Clinic	2	5185	5185	100.0%	2	6648	6648	100.0%	2	6745	6745	100.0%	30.1%	30.1%
Surgery Center at Saint Francis	2	2073	3293	63.0%	2	1899	3121	60.8%	2	655	1876	34.9%	-68.4%	-43.0%
<b>Multi-Specialty Total/Average</b>	<b>11</b>	<b>13542</b>	<b>15411</b>	<b>87.9%</b>	<b>11</b>	<b>14279</b>	<b>15985</b>	<b>89.3%</b>	<b>12</b>	<b>14260</b>	<b>16027</b>	<b>89.0%</b>	<b>5.3%</b>	<b>4.0%</b>
<b>Grand Total/Average</b>	<b>15</b>	<b>25,183</b>	<b>27,052</b>	<b>93.1%</b>	<b>15</b>	<b>23,254</b>	<b>24,960</b>	<b>93.2%</b>	<b>16</b>	<b>25,446</b>	<b>27,213</b>	<b>93.5%</b>	<b>1.0%</b>	<b>0.6%</b>

Source: Joint Annual Reports

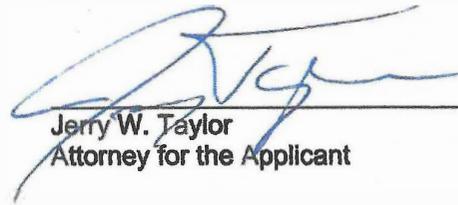
\* Mavs and Snapp Pain Clinic and Rehabilitation Center reported 2 Ors and 0 PRs. Since all cases performed there are pain management cases, the rooms are counted as PRs for the purpose of this table.

**AFFIDAVIT**

STATE OF TENNESSEE  
COUNTY OF WILLIAMSON

NAME OF FACILITY: Encore Surgical Institute

I, JERRY W. TAYLOR, after first being duly sworn, state under oath that I am the applicant named in this Certificate of Need application or the lawful agent thereof, that I have reviewed all of the supplemental information submitted herewith, and that it is true, accurate, and complete.

  
\_\_\_\_\_  
Jerry W. Taylor  
Attorney for the Applicant

Sworn to and subscribed before me, a Notary Public, this the 28<sup>th</sup> day of September 2020, witness my hand at office in the County of Williamson, State of Tennessee.

  
\_\_\_\_\_  
NOTARY PUBLIC

My commission expires 12/18/2022

HF-0043

Revised 7/02



2017 - 2019 Service Area Utilization Trends

ASTC	2017				2018				2019				2017 - 2019	
	# PRs	PM PR Cases	Total PR Cases	PM PR Cases as a % of PR Total	# PRs	PM PR Cases	Total PR Cases	PM PR Cases as a % of PR Total	# PRs	PM PR Cases	Total PR Cases	PM PR Cases as a % of PR Total	PM PR Cases '17-'19 % change	Total PR Cases '17-'19 % change
<b>Single-Specialty (PM)</b>														
Mays and Snapp Pain Clinic & Rehab. Center	2*	8265	8265	100%	2*	4478	4478	100%	2*	4981	4981	100%	-39.7%	-39.7%
Midsouth Interventional Pain Institute	2	3376	3376	100%	2	4497	4497	100%	2	6205	6205	100%	83.8%	83.8%
<b>Single Specialty Total/Average</b>	<b>4</b>	<b>11641</b>	<b>11641</b>	<b>100%</b>	<b>4</b>	<b>8975</b>	<b>8975</b>	<b>100%</b>	<b>4</b>	<b>11,186</b>	<b>11,186</b>	<b>100%</b>	<b>-3.9%</b>	<b>-3.9%</b>
<b>Multi-Specialty ASTCs</b>														
Memphis Surgery Center	1	26	26	100.0%	1	18	18	100.0%	1	5	109	4.6%	-80.8%	319.2%
Shea Clinic	0	0	0	N/A	0	0	0	N/A	0	0	0	N/A	N/A	N/A
Le Bonheur East Surgery Center, II	0	0	0	N/A	0	0	0	N/A	0	0	0	N/A	N/A	N/A
East Memphis Surgery Center	3	570	1219	46.8%	3	348	832	41.8%	3	234	676	34.6%	-58.9%	-44.5%
Campbell Clinic Surgery Center Midtown	0	0	0	N/A	0	0	0	N/A	0	0	0	N/A	N/A	N/A
Methodist Surgery Center Germantown	1	1336	1336	100.0%	1	1156	1156	100.0%	1	754	754	100.0%	-43.6%	-43.6%
North Surgery Center	1	1126	1126	100.0%	1	956	956	100.0%	1	217	217	100.0%	-80.7%	-80.7%
Baptist Germantown Surgery Center	0	0	0	N/A	0	0	0	N/A	1	2467	2467	100.0%	N/A	N/A
Campbell Clinic Surgery Center	1	3226	3226	100.0%	1	3254	3254	100.0%	1	3183	3183	100.0%	-1.3%	-1.3%
Semmes-Murphey Clinic	2	5185	5185	100.0%	2	6648	6648	100.0%	2	6745	6745	100.0%	30.1%	30.1%
Surgery Center at Saint Francis	2	2073	3293	63.0%	2	1899	3121	60.8%	2	655	1876	34.9%	-68.4%	-43.0%
<b>Multi- Specialty Total/Average</b>	<b>11</b>	<b>13542</b>	<b>15411</b>	<b>87.9%</b>	<b>11</b>	<b>14279</b>	<b>15985</b>	<b>89.3%</b>	<b>12</b>	<b>14260</b>	<b>16027</b>	<b>89.0%</b>	<b>5.3%</b>	<b>4.0%</b>
<b>Grand Total/Average</b>	<b>15</b>	<b>25,183</b>	<b>27,052</b>	<b>93.1%</b>	<b>15</b>	<b>23,254</b>	<b>24,960</b>	<b>93.2%</b>	<b>16</b>	<b>25,446</b>	<b>27,213</b>	<b>93.5%</b>	<b>1.0%</b>	<b>0.6%</b>

Source: Joint Annual Reports

\* Mays and Snapp Pain Clinic and Rehabilitation Center reported 2 Ors and 0 PRs. Since all cases performed there are pain management cases, the rooms are counted as PRs for the purpose of this table.

**AFFIDAVIT**

STATE OF TENNESSEE  
COUNTY OF WILLIAMSON

NAME OF FACILITY: Encore Surgical Institute

I, JERRY W. TAYLOR, after first being duly sworn, state under oath that I am the applicant named in this Certificate of Need application or the lawful agent thereof, that I have reviewed all of the supplemental information submitted herewith, and that it is true, accurate, and complete.

  
Jerry W. Taylor  
Attorney for the Applicant

Sworn to and subscribed before me, a Notary Public, this the 28 day of September 2020, witness my hand at office in the County of Williamson, State of Tennessee.

  
NOTARY PUBLIC

My commission expires 11-20-2022

HF-0043

Revised 7/02

