

**STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD**

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**EMERGENCY CERTIFICATE OF NEED APPLICATION  
by  
BURLINGTON LABS ACQUISITION LLC**

for the Acquisition of

**BURLINGTON LABS, LLC**

Dated August 26, 2016

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# **CERTIFICATE OF NEED APPLICATION**

**By**  
**BURLINGTON LABS ACQUISITION, LLC**

for the Acquisition of  
**BURLINGTON LAB'S ASSETS**

## **SECTION I** **DESCRIPTION OF THE PROJECT**

Please accept this information as the application of Burlington Lab Acquisition, LLC for an emergency Certificate of Need to acquire and operating the business former operated by Burlington Labs, LLC.

### **1. Ownership Structure**

The Applicant is a manager-managed limited liability company organized under the laws of the state of Delaware.

The Applicant will be capitalized with equity investments totaling \$4.5 million. The owners of Applicant will consist of (a) the investor group led by James H. Crook Jr. (the "Investor Group"), (b) the current owners of Burlington Labs ("BL Members") and The University of Vermont Health Network ("UVMHN").

The initial ownership structure is expected to be approximately as follows:

Owner	Common Units	Preferred Units	Total Units	Percentage
BL Members	1,500,000	0	1,500,000	23%
Investor Group	0	4,000,000	4,000,000	62%
UVMHN	0	1,000,000	1,000,000	15%
			6,500,000	100%

The initial ownership breakdown shown above will be subject to dilution based on the following:

(a) issuance of discount units to Mr. Crook in consideration for the pre-closing bridge loans extended by him to Burlington Labs, (b) issuance of equity incentive units to officers and employees as approved by the Board, and (c) future issuances of membership interest units.

It is expected that UVMHN will provide loans to the Applicant in the amount of \$3 to \$5 million. Of this amount, it is expected that a portion of the debt will be convertible into preferred units of the Applicant in the second calendar quarter of 2018 at a conversion rate equal to the fair market value of Applicant at the time of conversion. Since it is impossible to know the value of Applicant at that time, it is also impossible

to determine the percentage of the company that UVMHN would obtain upon conversion (estimated to be approximately an additional 10%).

## 2. Transaction Structure

The Applicant will acquire the business of Burlington Labs and hire substantially all of the employees of Burlington Labs through the purchase of assets (which may take the form of a contribution of assets in exchange for shares of the Applicant) or through the purchase of equity interests in Burlington Labs. The final transaction structure will be determined based on number of factors including tax considerations and licensure considerations. While the Applicant's preferred transaction structure would be an asset purchase, due to the length time required to obtain licenses which are necessary in order to conduct the business, it may be necessary for the Applicant to achieve ownership of the business through the purchase of membership interests of Burlington Labs. If this is the case, the ownership structure would nevertheless be as set forth above and the governance of the Applicant would be as shown below.

## 3. Governance of Applicant

The Applicant will be governed by the Board of Managers that will initially consist of James H. Crook Jr. (who will serve as Chairman of the Board), Christopher Powell (who will serve as CEO), John A Kane (who will serve as Chair of Audit/Finance committee), Todd Keating (an executive of UVMHN) and Michael Casarico.

It is expected that, for a period of two or three months following the closing, the Applicant will engage the services of Dorman and Fawcett to assist with operational and financial management matters. As such, it is expected that Stephen Barraclough will serve in a senior advisory role during this transition.

## 4. KeyBank Indebtedness

The Applicant is seeking a loan from KeyBank, NA or a another commercial lender (the "Senior Lender") in the same amounts as KeyBank's existing loans to Burlington Labs. The Applicant believes that it will be successful in obtaining a loan in the approximate amount of \$4.89 million on terms no less favorable to the Applicant than as exists under KeyBank's current loan to Burlington Labs. The current loan terms include a \$2 million demand note for the line of credit, which accrues interest at prime plus 1%, and \$2.89 million term note, having a 10-year term and accruing interest at prime plus 2%. It will be necessary for the Applicant to close on this loan from a Senior Lender concurrently with the closing of its acquisition of the Burlington Labs business.

## 5. Vermont Medicaid

Subject to reviewing the final Settlement Agreement, the Applicant will agree that it will take financial responsibility for the obligations set forth in the Settlement Agreement between Burlington Labs and the State of Vermont. The Applicant has built the payment obligations expected under the Settlement Agreement into its financial projections. The Applicant plans to include in the agreements between the Applicant and its investors covenants relating to corporate integrity and compliance with legal billing requirements.

## 6. Diminishment of Service

The Applicant plans to continue the business that is currently being conducted by Burlington Labs using the same or equivalent lab testing procedures, specimen collection procedures, and proprietary methods, including the continuance of the “color line” method of randomized testing.

The Applicant plans to make every effort to maintain the geographical scope of its business through the use of regional collection centers throughout the State of Vermont. The Applicant has determined that some collection centers currently being operated by Burlington Labs are underutilized. The Applicant has also determined that there may be geographic regions of the State of Vermont where the placement of new collection centers are needed. It is the Applicant’s expectation that the location and relocation of collection centers will be an ongoing process in the years to come.

The Applicant has also determined that it can better serve the public by moving the Barre center to Montpelier. In addition, there is one collection center in Massachusetts and one collection center in New York that will likely be closed due to low usage. The Burlington Lab collection center in Enosburg was recently closed due to a default under the lease, but the Applicant would reopen a center in Enosburg. The Applicant is evaluating potential usage in White River Junction. If projected use of such a center supports opening a center in White River Junction, the Applicant intends to open a new center there.

## 7. Financial Projections

See Attachment 1.

We have provided financial projections for the balance of 2016 and 2017. These projections are based on detailed financial analysis of revenues and a continuing examination of operating costs. It includes expected payment to the State of Vermont under the Settlement Agreement and debt service payments to its Senior Lender. Continuing work is being done on the expense model for Applicant with the goal of achieving break-even status in 2017.

## **SECTION II** **PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Applicant hereby incorporates by reference the Proposed Findings of Fact and Conclusions of Laws submitted to the Board on August 24, 2016 into this Application.

### **III. CONCLUSION**

Based upon the information contained in this Application, Applicant respectfully asks that the Application be APPROVED and that a CON for the Project be issued.

Dated at Burlington, Vermont this 26<sup>th</sup> day of August, 2016.

**RESPECTFULLY SUBMITTED,**

**BURLINGTON LABS ACQUISITION, LLC**



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By: James H. Crook, Jr.

	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	2016 Total
<b>Revenue</b>	<b>\$ 1,401,909</b>	<b>\$ 1,657,035</b>	<b>\$ 1,742,275</b>	<b>\$ 1,718,073</b>	<b>\$ 1,771,373</b>	<b>\$ 1,835,283</b>	<b>\$ 1,591,502</b>	<b>\$ 1,630,675</b>	<b>\$ 1,841,959</b>	<b>\$ 1,878,798</b>	<b>\$ 1,916,374</b>	<b>\$ 1,954,701</b>	<b>\$ 20,939,957</b>
<i>% Growth</i>		18.2%	5.1%	-1.4%	3.1%	3.6%	-13.3%	2.5%	13.0%	2.0%	2.0%	2.0%	5.5%
Cost of Revenue	793,106	692,635	692,768	562,851	576,379	675,521	583,632	589,704	622,453	651,276	657,100	663,041	7,760,466
<b>Gross Profit</b>	<b>608,803</b>	<b>964,401</b>	<b>1,049,508</b>	<b>1,155,222</b>	<b>1,194,994</b>	<b>1,159,762</b>	<b>1,007,869</b>	<b>1,040,971</b>	<b>1,219,505</b>	<b>1,227,522</b>	<b>1,259,274</b>	<b>1,291,660</b>	<b>13,179,490</b>
<i>Gross Margin</i>	43.4%	58.2%	60.2%	67.2%	67.5%	63.2%	63.3%	63.8%	66.2%	65.3%	65.7%	66.1%	62.9%
Sales & Marketing	806,806	786,808	741,143	679,121	715,460	699,788	682,545	689,752	729,150	753,601	766,114	771,262	8,821,550
<i>% Revenue</i>	57.6%	47.5%	42.5%	39.5%	40.4%	38.1%	42.9%	42.3%	39.6%	40.1%	40.0%	39.5%	42.1%
General & Admin	588,657	538,161	550,520	510,418	531,791	566,247	600,097	604,055	612,268	644,485	645,611	643,316	7,035,628
<i>% Revenue</i>	42.0%	32.5%	31.6%	29.7%	30.0%	30.9%	37.7%	37.0%	33.2%	34.3%	33.7%	32.9%	33.6%
<b>EBIDA</b>	<b>(786,661)</b>	<b>(360,569)</b>	<b>(242,156)</b>	<b>(34,318)</b>	<b>(52,257)</b>	<b>(106,273)</b>	<b>(274,772)</b>	<b>(252,836)</b>	<b>(121,913)</b>	<b>(170,564)</b>	<b>(152,451)</b>	<b>(122,918)</b>	<b>(2,677,687)</b>
<i>% Revenue</i>	-56.1%	-21.8%	-13.9%	-2.0%	-3.0%	-5.8%	-17.3%	-15.5%	-6.6%	-9.1%	-8.0%	-6.3%	-12.8%
Other	13,613	16,799	49,906	11,273	24,416	51,160	57,017	57,017	57,017	57,017	57,017	57,017	509,265
<b>Net Income</b>	<b>\$ (800,273)</b>	<b>\$ (377,368)</b>	<b>\$ (292,061)</b>	<b>\$ (45,590)</b>	<b>\$ (76,673)</b>	<b>\$ (157,434)</b>	<b>\$ (331,789)</b>	<b>\$ (309,853)</b>	<b>\$ (178,929)</b>	<b>\$ (227,581)</b>	<b>\$ (209,468)</b>	<b>\$ (179,934)</b>	<b>\$ (3,186,952)</b>

	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	2017 Total
<b>Revenue</b>	<b>\$ 1,428,755</b>	<b>\$ 1,710,728</b>	<b>\$ 1,822,814</b>	<b>\$ 1,825,457</b>	<b>\$ 1,905,603</b>	<b>\$ 1,996,360</b>	<b>\$ 1,779,424</b>	<b>\$ 1,845,444</b>	<b>\$ 2,083,574</b>	<b>\$ 2,147,259</b>	<b>\$ 2,211,681</b>	<b>\$ 2,276,854</b>	<b>\$ 23,033,952</b>
<i>% Growth</i>		19.7%	6.6%	0.1%	4.4%	4.8%	-10.9%	3.7%	12.9%	3.1%	3.0%	2.9%	10.0%
Cost of Revenue	638,575	690,334	675,761	693,451	713,928	736,049	719,935	738,222	783,186	810,805	828,844	847,000	8,876,089
<b>Gross Profit</b>	<b>790,181</b>	<b>1,020,394</b>	<b>1,147,052</b>	<b>1,132,006</b>	<b>1,191,675</b>	<b>1,260,311</b>	<b>1,059,489</b>	<b>1,107,222</b>	<b>1,300,388</b>	<b>1,336,454</b>	<b>1,382,837</b>	<b>1,429,855</b>	<b>14,157,864</b>
<i>Gross Margin</i>	55.3%	59.6%	62.9%	62.0%	62.5%	63.1%	59.5%	60.0%	62.4%	62.2%	62.5%	62.8%	61.5%
Sales & Marketing	699,240	737,117	752,223	752,048	762,614	774,805	745,664	754,733	786,520	795,075	803,728	812,483	9,176,249
<i>% Revenue</i>	48.9%	43.1%	41.3%	41.2%	40.0%	38.8%	41.9%	40.9%	37.7%	37.0%	36.3%	35.7%	39.8%
General & Admin	643,639	673,487	700,414	650,460	651,838	651,864	631,259	632,394	636,489	637,584	638,691	639,812	7,787,930
<i>% Revenue</i>	45.0%	39.4%	38.4%	35.6%	34.2%	32.7%	35.5%	34.3%	30.5%	29.7%	28.9%	28.1%	33.8%
<b>EBIDA</b>	<b>(552,698)</b>	<b>(390,210)</b>	<b>(305,585)</b>	<b>(270,502)</b>	<b>(222,776)</b>	<b>(166,358)</b>	<b>(317,434)</b>	<b>(279,905)</b>	<b>(122,621)</b>	<b>(96,204)</b>	<b>(59,583)</b>	<b>(22,440)</b>	<b>(2,806,315)</b>
<i>% Revenue</i>	-38.7%	-22.8%	-16.8%	-14.8%	-11.7%	-8.3%	-17.8%	-15.2%	-5.9%	-4.5%	-2.7%	-1.0%	-12.2%
Other	5,017	5,017	5,017	5,017	5,017	5,017	5,017	5,017	5,017	5,017	5,017	5,017	60,199
<b>Net Income</b>	<b>\$ (557,715)</b>	<b>\$ (395,227)</b>	<b>\$ (310,601)</b>	<b>\$ (275,519)</b>	<b>\$ (227,793)</b>	<b>\$ (171,375)</b>	<b>\$ (322,451)</b>	<b>\$ (284,921)</b>	<b>\$ (127,637)</b>	<b>\$ (101,221)</b>	<b>\$ (64,599)</b>	<b>\$ (27,457)</b>	<b>\$ (2,866,515)</b>



STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD


In re: The Acquisition of Burlington Labs     )  
          Docket No. 024-16 con     )  
   )  
   )

JAMES H. CROOK JR., being duly sworn, states on oath as follows:

1. My name is James H. Crook, Jr., I am the lead investor in Burlington Labs Acquisition, LLC and I am currently the sole Manager of the Company. I have reviewed the foregoing Certificate of Need Application.
2. Based on my personal knowledge, after diligent inquiry, the information contained in the Application is true, accurate and complete, does not contain any untrue statement of a material fact, and does not omit to state a material fact necessary to make the statement made therein not misleading, except as specifically noted herein.
3. My personal knowledge of the truth, accuracy and completeness of the information contained in the Application is based upon either my actual knowledge of the subject information or, where identified below, upon information reasonably believed by me to be reliable and provided to me by the individuals identified below who have certified that the information they have provided is true, accurate and complete, does not contain any untrue statement of a material fact, and does not omit to state a material fact necessary to make the statement made therein not misleading.
4. The following certifying individuals have provided information or documents to me in connection with the Application, and each such individual has certified, based on his or her actual knowledge of the subject information or, where specifically identified in such certification, based on information reasonable believed by the certifying individual to be reliable, that the information or documents they have provided are true, accurate and complete, do not contain any untrue statement of a material fact, and do not omit to state a material fact necessary to make the statement made therein not misleading:
  - (a) Terry Dorman, Principal of Dorman and Fawcett
  - (b) Stephen Barraclough, Principal of Dorman and Fawcett
5. In the event that the information contained in the Application becomes untrue, inaccurate or incomplete in any material respect, I acknowledge my obligation to notify the Green Mountain Care Board, and to supplement the Application, as soon as I know, or reasonably should know, that the information or document has become untrue, inaccurate or incomplete in any material respect.

  
\_\_\_\_\_  
JAMES H. CROOK JR

On August 26<sup>th</sup> 2016, JAMES H. CROOK, JR. appeared before me and swore to the truth, accuracy and completeness of the foregoing.

  
\_\_\_\_\_  
Notary Public  
My commission expires 2/10/19



