



AlaFile E-Notice

03-CV-2016-901323.00

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

BOKF, N.A. V. MEDICAL CLINIC BOARD OF THE CITY OF ET AL
03-CV-2016-901323.00

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CIRCUIT COURT CLERK
MONTGOMERY COUNTY, ALABAMA
251 S. LAWRENCE STREET
MONTGOMERY, AL, 36104

334-832-1260



IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

BOKF, N.A., as Indenture Trustee,

Plaintiff,

v.

MEDICAL CLINIC BOARD OF THE CITY
 OF MONTGOMERY—1976 EAST;
 WATERFORD PLACE ALF, LLC; OXTON
 PLACE OF MONTGOMERY, LLC; MANOR
 HOUSE OF MONTGOMERY, LLC;
 AFFINITY LIVING GROUP, LLC;
 DWAYNE EDWARDS; and TODD
 BARKER,

Defendants.

Case No. 03-CV-2016-901323

MONTHLY OPERATING REPORT DATED JANUARY 19, 2017

Healthcare Management Partners, LLC (“**HMP**”) and Derek Pierce (“**Pierce**” and together with HMP, the “**Receiver**”), as receiver, by and through its undersigned counsel, submits this Monthly Operating Report for the period from December 4, 2016 through January 14, 2017 (the “**Reporting Period**”).

ADMINISTRATION OF THE RECEIVERSHIP ESTATE AND FACILITY OPERATIONS

Since the Receiver’s appointment on October 18, 2016 pursuant to the *Order Granting Consent Motion for the Entry of an Order: (I) Appointing an Interim Receiver; (II) Granting Injunctive Relief; and (III) Approving Receiver Financing* (the “**Receivership Order**”),¹ the Receiver has gained access to and control over the Receivership Estate. In particular, the Receiver has, among other things, toured the assets comprising the Receivership Estate, taken possession and control of bank accounts and other assets necessary for the continued operation of

¹ Capitalized terms used in this report and not otherwise defined shall have the meanings ascribed to them in the Receivership Order.

the Receivership Estate, reviewed past financial reports pertaining to the Receivership Estate, interviewed key personnel, continued preparation of marketing materials for the eventual sale of the assets comprising the Receivership Estate, provided oversight and direction to the current manager of the assets comprising the Receivership Estate, and begun preparing forward-looking cash flow analyses and projections. In addition, the Receiver has had preliminary communications with potential purchasers of substantially all assets of the Receivership Estate. Further, the Receiver has engaged Tim Barron to assist the Receiver in obtaining bids for necessary capital improvements to the Receivership Estate. The Receiver will continue to take all actions the Receiver deems necessary and advisable to fulfill the Receiver's obligations under the Receivership Order.

TURNOVER OF ASSETS AND RECORDS

The Receivership Order appointed the Receiver to control, manage, administer, operate, and protect the Receivership Estate. In addition, the Receiver was appointed to, among other things, operate and administer the Receivership Estate in an economical and efficient manner.

To that end, upon the Receiver's appointment, as previously reported, the Receiver immediately demanded that the above-captioned defendants (the "*Defendants*") deliver to the Receiver: (i) full access to all Books and Records; (ii) full and exclusive control over any and all Cash Equivalent Assets, Contract and Licenses, and Contact Information Assets; and (iii) full access to and exclusive control over any and all Physical Assets. Further, the Receiver: (a) has taken control of (i) the administration and operation of the Facility and Physical Assets and (ii) the bank accounts and accounts receivable; (b) is establishing protocols to ensure unhindered control of the identified Cash Equivalent Assets; and (c) has requested full access to the Books

and Records.² To date, the Defendants have cooperated with the Receiver. The Receiver continues to investigate whether requests for additional information are necessary and to assess whether he has obtained access to all necessary Books and Records.

PROFESSIONAL FEES AND EXPENSES

As previously reported, Affinity Living Group, LLC (“*Affinity*”) continues to manage the Facility under the Receiver’s direction and control.

Waller Lansden Dortch & Davis, LLP (“*Waller*”) continues to act as general counsel to the Receiver and to assist with the substantial legal work required to advise and represent the Receiver with respect to his general duties under the Receivership Order. The reasonable fees and expenses of the Receiver and Receiver Affiliates are payable on a current basis as priority administrative claims against the Receivership Estate, without the need for any fee application or other filing with or order of this court. The fees and expenses of the Receiver from December 1, 2016 through December 31, 2016 are \$10,361.25. The fees and expenses of the Waller for the period from December 1, 2016 through December 31, 2016 are \$33,380.49. As of the date of this report, the foregoing fees and expenses of the Receiver and Waller have not been paid.

FINANCIAL PERFORMANCE

Attached as Exhibit A to this monthly operating report is a cash flow analysis for the Reporting Period. As set forth in the attached cash flow analysis, during the Reporting Period, the Receivership Estate collected \$192,815 in cash receipts and expended \$150,085 in necessary operating expenses, resulting in a positive cash flow in the amount of \$42,730. As of January 13, 2017, the census at the Facility was twenty-nine (29), with one (1) vacant unit available for occupancy. The Receiver anticipates being able to continue implementing measures to enhance

² Many records have been received; however, the Receiver still has certain requests outstanding.
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revenue generation and decrease expenses incurred in connection with the operation of the Receivership Estate.

LIQUIDATION OF CLAIM OF THE RECEIVERSHIP ESTATE

Since the Receiver's appointment, the Receiver and his counsel have focused primarily on securing and preserving the Receivership Estate and maintaining the uninterrupted operations of the Facility. The Receiver intends to address the liquidation of claims and causes of action of the Receivership Estate for the benefit of creditors, as contemplated by the Receivership Order. To that end, the Receiver had filed the *Receiver's Motion to Approve (I) Proposed Claims Verification Procedures, (II) Claims Bar Date, and (III) Proposed Claims Distribution Method* (the "***Claims Procedures Motion***"), which requires any persons or entities with claims against the Receivership Estate to file claims by a date certain. Maxus, Inc. ("***Maxus***") filed an objection to the Claims Procedures Motion. On January 10, 2017, the court conducted a hearing to consider the Claims Procedures Motion. The Receiver's counsel attended the hearing. Following the hearing to consider the Claims Procedures Motion, the court granted the relief sought by the Receiver, and, on January 18, 2017, the court entered the *Order Approving Receiver's Motion to Approve (I) Proposed Claims Verification Procedures, (II) Claims Bar Date, and (III) Proposed Claims Distribution Method* (the "***Claims Procedures Order***"). Pursuant to the Claims Procedures Order, neither the Indenture Trustee nor Maxus is required to file a claim as provided in the Claims Procedures Order. As a result of the entry of the Claims Procedures Order, the Receiver anticipates the previously reported litigation between the Receiver and Maxus will be concluded and any further disputes between the Receiver and Maxus will be resolved through the claims process.

LITIGATION AND RELATED MATTERS

The Receiver previously reported that it filed a motion seeking to confirm that certain bank accounts are property of the Receivership Estate. The court conducted a hearing to consider that motion on January 10, 2017. The Receiver's counsel attended the hearing. On January 11, 2017, the court entered the *Order Granting Receiver's Motion for Order Confirming Certain Property as Part of the Receivership Estate*, confirming that the bank accounts were part of the Receivership Estate.

Dated: January 19, 2017

Respectfully submitted,

/s/ Brian J. Malcom

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 LLC and Derek Pierce, as receiver*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on all counsel of record via United States First Class Mail, proper postage prepaid, addressed as follows:

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This the 19th day of January, 2017.

/s/ Brian J. Malcom
Of Counsel

EXHIBIT A
CASH FLOW REPORT

Manor House Cash flow- Waterford

From 4th December 2016 to 14th January 2017

Category	Week beginning:	12/4/2016	12/11/2016	12/18/2016	12/25/2016	1/1/2017	1/8/2017
	Week ending:	12/10/2016	12/17/2016	12/24/2016	12/31/2016	1/7/2017	1/14/2017
	Week number:	-5	-4	-3	-2	-1	0
	Actual/Projected:	Act	Act	Act	Act	Act	Act
Census	Actual paid						
Bal b/f		43,891	60,577	98,066	63,689	62,339	64,396
Deposits							
Resident deposits	192,815	52,700	43,084	-	-	74,296	22,736
Intragroup inflows	-	-	-	-	-	-	-
Advances from Indenture Trustee	-	-	-	-	-	-	-
Total inflows		52,700	43,084	-	-	74,296	22,736
Payments							
Administrative costs	(184)	-	-	-	-	(184)	-
Bank charges	(109)	-	-	(109)	-	-	-
BOKF protection payment	-	-	-	-	-	-	-
Case cost	-	-	-	-	-	-	-
Refund	(782)	-	-	-	-	(782)	-
Intragroup outflows	(4,172)	-	-	-	-	(4,172)	-
Equipment	-	-	-	-	-	-	-
Food	(4,404)	-	-	-	-	(4,404)	-
Housekeeping and Laundry	(337)	-	-	-	-	(337)	-
Insurance	(6,373)	(2,921)	-	-	-	(3,452)	-
Maintenance	(839)	-	-	-	-	(839)	-
Marketing	-	-	-	-	-	-	-
Mgmt Fee	(5,699)	-	-	-	-	(5,699)	-
Other	(7,233)	-	(852)	-	(400)	(5,470)	(511)
Other employee costs	(1,250)	-	-	-	(950)	(300)	-
Other expense	(1,652)	-	(630)	-	-	(1,022)	-
Payroll	(88,164)	(29,691)	-	(28,438)	-	(30,036)	-
Permits & License Fee	-	-	-	-	-	-	-
Petty Cash	(1,394)	-	(693)	-	-	(701)	-
Rent-Wire Bank of Oklahoma	-	-	-	-	-	-	-
Repairs and Maintenance	(11,170)	-	(3,420)	-	-	(7,750)	-
Telephone & internet	(1,048)	(1,048)	-	-	-	-	-
Utilities	(15,276)	(2,355)	-	(5,830)	-	(7,091)	-
Wire-Mortgage Payment Shortage	-	-	-	-	-	-	-
Total payments	(150,085)	(36,014)	(5,595)	(34,376)	(1,350)	(72,239)	(511)
Balance c/f		60,577	98,066	63,689	62,339	64,396	86,621