



## AlaFile E-Notice

03-CV-2016-901323.00

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# NOTICE OF ELECTRONIC FILING

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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

The following CASE STATUS REPORT was FILED on 12/20/2016 8:52:48 AM

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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 DECEMBER 20, 2016**

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 October 30, 2016 through December 3, 2016 (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**”),<sup>1</sup> the Receiver has undertaken to gain access to and control over the Receivership Estate. In connection with those efforts, the Receiver has, among other things, toured the assets comprising the Receivership Estate, taken actions to gain possession and control of bank accounts and other

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

assets necessary for the continued operation of 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. 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.<sup>2</sup> 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.

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<sup>2</sup> Many records have been received; however, the Receiver still has certain requests outstanding.  
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### RETENTION OF PROFESSIONALS

In the exercise of the Receiver's sound business judgment, the Receiver has permitted Affinity Living Group, LLC ("*Affinity*") to continue managing the Facility under the Receiver's direction and control. Affinity was the manager of the Facility at the time the Receiver was appointed.

In addition, in the exercise of the Receiver's sound business judgment and in accordance with the powers granted under the Receivership Order, the Receiver retained Waller Lansden Dortch & Davis, LLP 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 November 1 through November 30, 2016 are \$14,560.42. The fees and expenses of the Waller for the period from November 1 through November 30, 2016 are \$45,108.17. 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 \$97,151 in cash receipts and expended \$81,575 in necessary operating expenses, resulting in a positive cash flow in the amount of \$15,576. The Receiver has retained \$15,576 as an operating reserve. As of December 3, 2016, the census at the Facility was twenty-nine (29). The Receiver anticipates being able to implement measures to enhance 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 has 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. The Indenture Trustee is not required to participate in the proposed procedures, because the court has already made a determination as to the amount and validity of the Indenture Trustee's claims.

#### LITIGATION AND RELATED MATTERS

As previously reported, before the Receiver was appointed, litigation involving Maxus, Inc.'s ("*Maxus*") claims for unpaid construction work at the Facility was ongoing. In response to the litigation, since filing the last monthly operating the report, the Receiver, through its counsel, sought to intervene in the pending Maxus litigation and obtain a stay of the litigation. The Maxus court denied the Receiver's request. Maxus has obtained a default judgment in the ongoing litigation against Dwayne Edwards and a default judgment has been submitted to the court and is pending against Waterford Place ALF, LLC. Since then, in an effort to avoid the necessity for the Receiver to bring an action in this case seeking to find Maxus in contempt of the Receivership Order's prohibition against any party other than the Indenture Trustee enforcing its claims against the Receivership Estate (Receivership Order, at ¶¶ O, Y), the Receiver obtained

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written confirmation from Maxus that it would not proceed to execute upon property of the Receivership Estate without first seeking relief in this court. The Receiver is seeking to address claims of creditors, including Maxus, through the relief sought in the Claims Procedures Motion. Maxus has objected to the Claims Procedures Motion. The Receiver has filed a reply in further support of the Claims Procedures Motion and the Claims Procedures Motion is before this court.

In addition to the foregoing litigation with Maxus, the Receiver filed a motion seeking to confirm that certain bank accounts are property of the Receivership Estate. There is no dispute that the bank accounts contain revenues generated from the Facility. That motion is currently pending before this court.

Dated: December 20, 2016

Respectfully submitted,

/s/ Brian J. Malcom

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*Attorneys for Healthcare Management Partners,  
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**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 20<sup>th</sup> day of December, 2016.

/s/ Brian J. Malcom  
Of Counsel

**EXHIBIT A**  
**CASH FLOW REPORT**



**Manor House Cash flow- Waterford**

From 30th October to 3rd December 2016

Category	Week beginning:	10/30/2016	11/6/2016	11/13/2016	11/20/2016	11/27/2016	Total for period
	Week ending:	11/5/2016	11/12/2016	11/19/2016	11/26/2016	12/3/2016	
	Week number:	-4	-3	-2	-1	0	
	Actual/Projected:	Act	Act	Act	Act	Act	
<i>Census</i>						29	
<b>Bal b/f</b>		<b>28,316</b>	<b>102,822</b>	<b>86,766</b>	<b>81,201</b>	<b>50,233</b>	
<b>Deposits</b>							
Resident deposits		77,525	26,200	-	-	-	103,725
Intragroup inflows		-	-	-	(6,574)	-	(6,574)
Advances from Indenture Trustee		-	-	-	-	-	-
<b>Total inflows</b>		<b>77,525</b>	<b>26,200</b>	<b>-</b>	<b>(6,574)</b>	<b>-</b>	<b>97,151</b>
<b>Payments</b>							
Administrative costs		-	-	-	-	-	-
Bank charges		-	-	-	(86)	-	(86)
BOKF protection payment		-	-	-	-	-	-
Case cost		-	-	-	-	-	-
Refund		-	-	-	-	-	-
Intragroup outflows		-	-	-	6,574	-	6,574
Equipment		-	-	-	-	-	-
Food		-	(4,484)	-	-	-	(4,484)
Housekeeping and Laundry		-	-	-	-	-	-
Insurance		(3,019)	-	-	-	-	(3,019)
Maintenance		-	-	-	-	-	-
Marketing		-	-	-	-	-	-
Mgmt Fee		-	(7,531)	-	-	(6,133)	(13,664)
Other		-	(400)	-	-	-	(400)
Other employee costs		-	-	-	-	-	-
Other expense		-	-	-	-	-	-
Payroll		-	(29,148)	-	(26,404)	(208)	(55,760)
Permits & License Fee		-	-	-	-	-	-
Petty Cash		-	(693)	-	-	-	(693)
Rent-Wire Bank of Oklahoma		-	-	-	-	-	-
Repairs and Maintenance		-	-	-	-	-	-
Telephone & internet		-	-	-	(4,478)	-	(4,478)
Utilities		-	-	(5,565)	-	-	(5,565)
Wire-Mortgage Payment Shortage		-	-	-	-	-	-
<b>Total payments</b>		<b>(3,019)</b>	<b>(42,256)</b>	<b>(5,565)</b>	<b>(24,394)</b>	<b>(6,341)</b>	
<b>Balance c/f</b>		<b>102,822</b>	<b>86,766</b>	<b>81,201</b>	<b>50,233</b>	<b>43,891</b>	