

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

In re:

Chicora Life Center, LC,
Debtor.

Case No. 16-02447-jw

Chapter 11

**ADDENDUM TO DEBTOR'S AMENDED PLAN AND AMENDED
DISCLOSURE STATEMENT FILED ON SEPTEMBER 23, 2016**

The Debtor's Amended Plan ("Plan") and Amended Disclosure Statement ("Disclosure Statement"), which were filed on September 23, 2016 are hereby amended and supplemented, to respond to objections of the United States Trustee filed October 11, 2016 at Docket Entry 143 ("UST Objection") and other filed objections, as follows:

1. Page 22 of the Amended Plan contains a typographical error, wherein it is stated that Doug Durbano is the manager of the Debtor, but Jeremy Blackburn is in fact the manager of the Debtor. This error arose from a failure to change this statement after the change in management on September 12, 2016.
2. The following addresses questions regarding management raised by the UST Objection
 - a. Jeremy Blackburn is the most knowledgeable person regarding the property having been involved as property manager both pre- and post-petition.
 - b. Historically, Jeremy Blackburn had a commission interest in leases, but will not have any such interest post-petition. The leasing of the property will be handled by the Debtor's retained real estate professional.

- c. Jeremy Blackburn will be the manager of the Debtor post-confirmation and will be the decision maker for the Debtor.
- d. Jeremy Blackburn will be responsible for all facets of management of the Debtor, including those aspects mentioned in the UST Objection of making decisions, disbursing any proceeds of sales, etc.
- e. Jeremy Blackburn will serve without compensation post-confirmation.
- f. The Debtor will continue in existence during the pendency of the Amended Plan.

Update on Charleston County Litigation

- 3. The Charleston County Adversary Proceeding was filed on May 17, 2016, Adv. Pro. No. 16-80046.
- 4. To date, each party has issued written discovery requests and responses to those requests have been made in part. Each party has also issued multiple subpoenas to various third parties.
- 5. The Debtor has conducted the depositions of Teddie Pryor, Herb Sass, and Henry Darby. The Rule 30(b)(6) deposition of Charleston County was scheduled for October 11th and 12th, 2016, but was postponed due to the storm event to October 21, 2016 and October 26, 2016. The Rule 30(b)(6) depositions of Walt Smalls and Keith Bustraan were conducted on October 21, 2016 and October 26, 2016, respectively.
- 6. The Scheduling Order entered July 28, 2016 sets a discovery deadline of December 23, 2016, a dispositive motion deadline of January 16, 2017, and the filing of a joint pretrial order by February 15, 2017.

Sale of Unrelated Properties

- 7. By way of additional explanation, the Amended Plan stages the sale of the three unrelated

parcels at different times because it is unlikely that all three parcels would be sold to the same buyer in one sale. The Debtor's real estate professional will handle the marketing and negotiation of potential sales, seeking court approval of a sale once an agreement is negotiated which is acceptable to the Debtor. The listing agreement with the Debtor's real estate professional will govern the payment of a sales commission. The Feasibility Budget estimates the amount of proceeds from the sales, but these figures are only intended as an estimate.

Deadline for Resolution of Charleston County Litigation

8. By way of additional explanation, the Amended Plan set April 1, 2017 as the deadline by which the Debtor will finalize litigation of its claims against Charleston County, because although this date is somewhat arbitrary as no trial date has been set in the litigation, the April 1, 2017 date is consistent with the scheduling order in the adversary proceeding and consistent with the current progress of the litigation. Under the scheduling order, the discovery deadline is December 23, 2016 and a joint pretrial order would be filed by February 15, 2017. The Debtor believes the current progress of the adversary proceeding against Charleston County makes the April 1, 2017 deadline reasonable, but responsive to the UST Objection, the Debtor hereby removes the fixed date from the Amended Plan leaving the date open, to be set by the Court at a scheduling conference or otherwise.

Projected Lease Rate

9. By way of additional explanation, the Feasibility Budget projects a lease rate for future leases of \$20.50 per square foot because this rate is a full service lease rate (\$13.00 base rent plus \$7.50 CAM) consistent with the Debtor's experience in leasing the building with prior tenants. The Debtor's discussions with its real estate professionals, other real estate

professionals, and the appraisal all confirm this as a reasonable lease rate. The projection of the amount of space which will be leased is based on the appraiser's opinion and the Debtor's expectation regarding the interest of future tenants. While the leasing of additional space will be pursued under the Amended Plan because it is sound business to do so, reorganization under the Amended Plan is not dependent on such leases. The Amended Plan looks to success in the litigation against Charleston County as the foundation for reorganization, with failure of that premise changing the direction of the Amended Plan toward liquidation.

Disposition of Litigation Recoveries

10. By way of additional explanation as to how any recoveries in litigation to which the Debtor is a party will be distributed under the Amended Plan, such recoveries are not anticipated to come until the Amended Plan is in either the refinance or liquidation phase, at which time distributions will be according to the normal order of priorities. Trade vendors and administrative claimants that have not, yet, been paid in full will be paid from operating revenues or litigation proceeds.
11. Lee & Associates is the exception to the rule that litigation recoveries will distribute according to the normal order of priorities. The Amended Plan indicated that a stipulation had been entered into allowing Lee & Associates to continue an appeal in state court. Subsequently, the state court ruled that Lee & Associates was entitled to its commission and released the portion of funds, which it was holding for that purposes. The state court is holding a balance of \$79,400 and continues to hold those funds to allow UC Funds to intervene in the state court action. Under the Amended Plan, these funds will be transferred to the DIP account and used for operating expenses.

Chapter 5 Causes of Action Exhibit

12. Page 11 of the UST Objection indicates that the Amended Disclosure Statement references Exhibit A with regard to Chapter 5 Causes of Action but that no such exhibit is attached. The Amended Plan instead turns over this analysis and the capacity to bring recovery suits to the unsecured creditors.

Chain of Priorities Under 11 U.S.C. § 1129(b)(2)

13. At page 12 of the UST Objection, the trustee notes that the Amended Plan violates the priorities of payment provided for under Section 1129(b)(2) by giving first priority of distribution of proceeds from sale of the unrelated parcels to Class 10 unsecured creditors. This is a valid objection, and the Amended Plan is hereby revised to provide that Class 10 unsecured creditors will not be paid until the earlier of the refinance of the property or the Section 363 sale, and then only according to the chain of priorities. Likewise, the Amended Plan is hereby revised to provide that Class 11 general unsecured creditors will not receive a payment, if any, until the earlier of the refinance of the property or the Section 363 sale, and then only according to the chain of priorities. The equity interests of Class 12 remain subordinated as previously provided for in the Amended Plan.

Disputes with Synovus Bank and Fetter Health Care Network, Inc.

14. Responsive to the objections filed by Synovus Bank (October 31, 2016, Docket Number 165) and Fetter Health Care Network, Inc. (November 1, 2016, Docket Number 168), the Debtor has discussed with Synovus Bank and Fetter Health Care Network, Inc. and agreed to the following: Synovus Bank's ("Synovus") Objection to the Debtor's Amended Disclosure Statement and Amended Plan of Reorganization ("Plan") has been resolved, as evidenced by the signatures of counsel appearing below, as follows: In exchange for the withdrawal of its

Objection and its support of the Plan as set forth herein, Synovus shall be dismissed without prejudice from the suit brought by the Debtor in the Court of Common Pleas, Case No. 2016-CP-10-02380, against it¹ and Fetter Health Care Network, Inc. (“Fetter” and the suit shall be referred to herein as the “Fetter Litigation”). This dismissal shall include, without limitation, the alternative relief requested in the Debtor’s Fourth Cause Action which seeks to declare the prior cancellation of its Promissory Note and Mortgage (as defined in the Complaint) as void. Further, Synovus and Fetter hereby agree that they will not terminate Fetter’s line of credit with Synovus and the line of credit will not be drawn upon until the Fetter Litigation has been resolved by final judgment or settlement between the Debtor and Fetter. The line of credit shall continue to be subject to the contractual maturity date and any subsequent renewals are to be made by Synovus in its sole discretion pursuant to its customary credit underwriting policies and procedures. If Synovus is subsequently re-joined as a Defendant to the Fetter Litigation, it reserves all rights and defenses and nothing herein shall be construed to limit its defenses in the Fetter Litigation, including without limitation any defenses based on the effect of the Debtor’s bankruptcy or Plan. The settlement set forth herein shall be effective as of the date counsel for the Fetter and Synovus signed their consent to this Addendum and shall not be contingent upon confirmation of the Debtor’s Plan.

¹ Synovus is incorrectly named as “NBSC Corporation.” Synovus, formerly known as Columbus Bank and Trust, is the successor in interest through name

RESPECTFULLY SUBMITTED on this the 29th day of December 2016 at Columbia, South Carolina.

MCCARTHY, REYNOLDS, & PENN, LLC

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**WE SO AGREE AND CONSENT TO THE TERMS OUTLINED IN PARAGRAPH 14
HEREINABOVE:**

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change and by merger with The National Bank of South Carolina.