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*Proposed Counsel to the Debtor and Debtor-in-Possession*

**UNITED STATES BANKRUPTCY COURT  
 EASTERN DISTRICT OF NEW YORK**

In re:

AMSTERDAM HOUSE CONTINUING CARE  
 RETIREMENT COMMUNITY, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 21-\_\_\_\_ (\_\_\_\_)

**DEBTOR'S EMERGENCY MOTION FOR ENTRY OF AN  
 ORDER AUTHORIZING THE IMPLEMENTATION OF PROCEDURES  
 TO MAINTAIN AND PROTECT CONFIDENTIAL RESIDENT INFORMATION**

The debtor and debtor in possession in the above-captioned chapter 11 case (the “Debtor”) submits this emergency motion (this “Motion”), pursuant to sections 105(a), 107, and 521(a)(1) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”) and rules 1007, 9018, and 9037 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of an order (the “Proposed Order”), substantially in the form attached hereto as **Exhibit A**, authorizing the implementation of procedures to protect confidential information of current and

<sup>1</sup> The last four digits of the Debtor’s federal tax identification number are 1764. The Debtor’s mailing address is 300 East Overlook, Port Washington, New York 11050.



former Residents of the Debtor (collectively, the “Residents”), and granting certain related relief. A summary of the facts and circumstances supporting this Motion are set forth in the *Declaration of James Davis in Support of the Debtor’s Chapter 11 Petition and First Day Pleadings* (the “First Day Declaration”),<sup>2</sup> filed concurrently herewith. In further support of this Motion, the Debtor respectfully states as follows:

**STATUS OF THE CASE AND JURISDICTION**

1. On the date hereof (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of New York (the “Court”). The Debtor continues to operate and maintain its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in this case, and no statutory committee has been appointed.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the standing order with respect to referral of bankruptcy cases from the United States District Court for the Eastern District of New York dated December 5, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtor confirms its consent to the entry of a final order or judgment by the Court in connection with this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>2</sup> Capitalized terms used but not defined in this Motion shall have the meanings given to them in the First Day Declaration.

4. The statutory and other predicates for the relief requested herein are sections 105(a), 107, and 521(a)(1) of the Bankruptcy Code and Bankruptcy Rules 1007, 9018, and 9037.

**BACKGROUND OF THE DEBTOR**

5. Additional information regarding the Debtor’s business, capital structure and the circumstances preceding the Petition Date are set forth in the First Day Declaration, the content of which is incorporated by reference herein.

**RELIEF REQUESTED**

6. By this Motion, the Debtor requests entry of the Proposed Order, substantially in the form attached hereto as **Exhibit A**, pursuant to sections 105(a), 107, and 521(a)(1) of the Bankruptcy Code and Bankruptcy Rules 1007, 9018, and 9037, authorizing the implementation of procedures to protect confidential information of the Debtor’s Residents as may be required by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).

**PROPOSED PROCEDURES TO MAINTAIN  
AND PROTECT CONFIDENTIAL RESIDENT INFORMATION**

7. In the ordinary course of providing care for its Residents, the Debtor is required to maintain the confidentiality of Resident information pursuant to HIPAA. However, the Debtor recognizes that such requirements may conflict with the duty to disclose certain information under the Bankruptcy Code, including, without limitation, the duty to file a list of creditors under section 521(a)(1)(A) and, if necessary, a list of schedules of assets and liabilities under section 521(a)(1)(B)(i).

8. In an effort to comply with both federal statutes, the Debtor proposes the following procedures to maintain Resident confidentiality during the pendency of this chapter 11 case (the “Resident Confidentiality Procedures”):

- a. The Debtor, with the assistance of its professionals, is authorized to prepare and maintain (i) a separate creditor matrix of the Residents (the “Resident

- Matrix”), and, if necessary, (ii) separate schedules of claims that may be asserted by and against the Residents (the “Resident Schedules”);
- b. The Debtor is not required to file the Resident Matrix and the Resident Schedules, but is permitted to file a redacted version of the Resident Schedules that redacts the names and addresses of the Residents and assigns a unique identification number to each of the Residents, *provided however*, that the Resident Matrix and the Resident Schedules may be reviewed by (i) this Court, (ii) the Office of the United States Trustee, (iii) any applicable state regulatory agency (through the respective state attorney general), and (iv) any other party in interest that obtains, after notice and a hearing, an order directing the Debtor to disclose the Resident Matrix and Resident Schedules to such party;
  - c. To the extent the Debtor is required to list Residents on any document filed with the Court, including, the list of the top 30 unsecured creditors, the Debtor is authorized to list such Residents by their assigned unique identification number on such document;
  - d. If the Debtor’s HIPAA certified noticing and claims agent, Kurtzman Carson Consultants LLC (“KCC”), serves any document upon any person listed on the Resident Matrix, KCC is authorized to note in the certificate of service that the parties served include individuals listed on the Resident Matrix;
  - e. KCC shall process Residents’ Proofs of Claim (“Proofs of Claim”) and, upon request, make available a summary of the total number and amount of all claims filed by Residents against the Debtor, which summary shall exclude any information subject to HIPAA, its associated regulations, and other privacy requirements;
  - f. KCC shall make copies of any Proofs of Claim filed by Residents available to the Court for in camera review, and any such Proofs of Claim shall otherwise be maintained by KCC and the Debtor on a confidential basis and not subject to public dissemination or disclosure; and
  - g. To the extent any Resident discloses his or her own “protected health information” (“PHI”) (as such term is defined in HIPAA) in any pleading, notice, or other publicly available document, the Debtor and its professionals shall be permitted, and to the extent required by the Bankruptcy Code, the Bankruptcy Rules, or any other applicable law, rule, or court order, directed to include such PHI in any subsequent pleading, notice, document, list, or other public disclosure made in connection with this chapter 11 case, and such disclosure shall not be deemed to be a “wrongful disclosure” within the meaning of HIPAA or any regulation promulgated thereunder.

### **BASIS FOR RELIEF**

9. HIPAA creates a duty for health care providers to maintain the confidentiality of Resident information. These regulations impose stringent standards on health care providers and also establish significant penalties for any health care provider that uses or discloses Resident information. 45 C.F.R. § 164.502 (addressing the use and disclosure of PHI by a “covered entity”).”<sup>3</sup>

10. Because the Debtor provides health care services and transmits health information in electronic form, it is considered to be a “covered entity” under 45 C.F.R. § 160.103. Such requirements prevent the Debtor from disclosing, except in limited circumstances, “protected health information.” 45 C.F.R. § 164.502. “Protected health information” means “individually identifiable health information... that is (i) [t]ransmitted by electronic media; (ii) [m]aintained in electronic media; or (iii) [t]ransmitted or maintained in any other form or medium.” 45 C.F.R. § 164.103.

11. “Individually identifiable health information” is:

[I]nformation that is a subset of health information, including demographic information collected from an individual, and

- (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) [t]hat identifies the individual; or (ii) [w]ith respect to which there is a reasonable basis to believe the information can be used to identify the individual.

*Id.*

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<sup>3</sup> These regulations also apply to “business associates,” which includes persons who provide management, legal, accounting, and consulting services for a covered entity. 45 C.F.R. § 160.103.

12. The Debtor could be subjected to significant monetary penalties for the unauthorized disclosure of protected health information. 45 C.F.R. § 160.402.<sup>4</sup>

13. The Debtor believes that the requirements to maintain Resident confidentiality under HIPAA conflict with the requirements to disclose information under the Bankruptcy Code, specifically the duty to file a list of all creditors under section 521(a)(1)(A) and the duty to file schedules of all assets and liabilities under section 521(a)(1)(B)(i). The Debtor, therefore, respectfully requests that such Resident information be protected through the proposed Resident Confidentiality Procedures described herein pursuant to section 107(c)(1) of the Bankruptcy Code, which provides that, “[t]he bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property: (A) Any means of identification . . . contained in a paper filed, or to be filed, in a case under this title.” 11 U.S.C § 107(c)(1).

14. This Court may also approve the proposed Resident Confidentiality Procedures pursuant to section 105(a) of the Bankruptcy Code, which authorizes the court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

15. The Debtor believes that the relief requested herein appropriately balances the need to maintain confidential Resident information under HIPAA with the need for adequate disclosure under the Bankruptcy Code.

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<sup>4</sup> Under 45 C.F.R. § 160.404, monetary penalties of up to \$50,000 could be imposed for each violation, up to an aggregate of \$1,500,000 for identical violations occurring during a calendar year. Such penalties can be imposed even if a person “did not know and, by exercising reasonable diligence, would not have known” that a violation occurred. 45 C.F.R. § 160.404(b)(2)(i).

16. Relief similar to that requested in this Motion has been granted in comparable chapter 11 cases. *See, e.g., In re Promise Healthcare Grp., LLC*, Case No. 18-12491 (CSS) (Bankr. D. Del. Nov. 6, 2018) [Docket No. 41] (authorizing the implementation of similar procedures to protect confidential information of current and former Residents in compliance with HIPAA); *In re EBH TOPCO, LLC*, Case No. 18-11212 (BLS) (Bankr. D. Del. May 24, 2018) [Docket No. 40] (same).

### **RESERVATION OF RIGHTS**

17. Nothing contained herein is intended or should be construed as (a) an admission as to the validity or priority of any claim or lien against the Debtor, (b) a waiver of the Debtor's rights to subsequently dispute such claim or lien on any grounds, (c) a promise or requirement to pay any prepetition claim, (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or the Proposed Order, (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, or (f) a waiver of the Debtor's or any other party in interest's rights under the Bankruptcy Code or any other applicable law.

### **NOTICE**

18. Notice of this Motion will be provided to (i) the U.S. Trustee for the Eastern District of New York; (ii) the holders of the thirty (30) largest unsecured claims against the Debtor, (iii) UMB Bank, N.A., as Trustee for the 2014 Bonds and counsel thereto, (iv) the Member, Amsterdam Continuing Care Health System, Inc., (v) the United States Attorney's Office for the Eastern District of New York, (vi) the Internal Revenue Service, (vii) the United States Department of Justice, (viii) the New York State Attorney General, (ix) the United States Securities and Exchange Commission, and (x) any party that has requested notice pursuant to Bankruptcy Rule 2002. The

Debtor submits that, in light of the nature of the relief requested herein, no other or further notice need be given.

*[Remainder of page intentionally left blank]*

WHEREFORE, the Debtor respectfully requests that the Court enter the Proposed Order, substantially in the forms attached hereto, granting the relief requested herein and any further relief the Court may deem just and proper.

Dated: June 14, 2021  
New York, New York

**SIDLEY AUSTIN LLP**

/s/ Thomas R. Califano

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**PROPOSED COUNSEL TO THE DEBTOR AND  
DEBTOR IN POSSESSION**

**Exhibit A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

In re:

AMSTERDAM HOUSE CONTINUING CARE  
RETIREMENT COMMUNITY, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 21-\_\_\_\_ (\_\_\_\_)

**ORDER AUTHORIZING THE IMPLEMENTATION OF PROCEDURES  
TO MAINTAIN AND PROTECT CONFIDENTIAL RESIDENT INFORMATION**

Upon the emergency motion (the “Motion”)<sup>2</sup> of the debtor and debtor in possession in the above-captioned chapter 11 case (the “Debtor”) for entry of an order (this “Order”), pursuant to sections 105(a), 107, and 521(a)(1) of the Bankruptcy Code and Bankruptcy Rules 1007, 9018, and 9037, authorizing the implementation of procedures to protect confidential information of Residents, and granting certain related relief; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the standing order with respect to referral of bankruptcy cases from the United States District Court for the Eastern District of New York dated December 5, 2012; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and this Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors, and other parties in interest; and this Court having found that the Debtor’s notice of the

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<sup>1</sup> The last four digits of the Debtor’s federal tax identification number are 1764. The Debtor’s mailing address is 300 East Overlook, Port Washington, New York 11050.

<sup>2</sup> All capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Motion.

Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and all objections, if any, to the Motion having been withdrawn, resolved or overruled; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The relief requested in the Motion is GRANTED as set forth herein.
2. The following Resident Confidentiality Procedures are hereby approved:
  - a. The Debtor, with the assistance of its professionals, is authorized to prepare and maintain (i) a separate creditor matrix of the Residents (the “Resident Matrix”), and, if necessary, (ii) separate schedules of claims that may be asserted by and against the Residents (the “Resident Schedules”);
  - b. The Debtor is not required to file the Resident Matrix and the Resident Schedules but is permitted to file a redacted version of the Resident Schedules that redacts the names and addresses of the Residents and assigns a unique identification number to each of the Residents, *provided however*, that the Resident Matrix and the Resident Schedules may be reviewed by (i) this Court, (ii) the Office of the United States Trustee, (iii) any applicable state regulatory agency (through the respective state attorney general), and (iv) any other party in interest that obtains, after notice and a hearing, an order directing the Debtor to disclose the Resident Matrix and Resident Schedules to such party;
  - c. To the extent the Debtor is required to list Residents on any document filed with the Court, including the list of the top 30 unsecured creditors, the Debtor is authorized to list such Residents by their assigned unique identification number on such document;
  - d. If the Debtor’s HIPAA certified noticing and claims agent, Kurtzman Carson Consultants LLC (“KCC”), serves any document upon any person listed on the Resident Matrix, KCC is authorized to note in the certificate of service that the parties served include individuals listed on the Resident Matrix;
  - e. KCC shall process Residents’ Proofs of Claim (“Proofs of Claim”) and, upon request, make available a summary of the total number and amount of

all claims filed by Residents against the Debtor, which summary shall exclude any information subject to HIPAA, its associated regulations, and other privacy requirements;

- f. KCC shall make copies of any Proofs of Claim filed by Residents available to the Court for in camera review, and any such Proofs of Claim shall otherwise be maintained by KCC and the Debtor on a confidential basis and not subject to public dissemination or disclosure; and
- g. To the extent any Resident discloses his or her own “protected health information” (“PHI”) (as such term is defined in HIPAA) in any pleading, notice, or other publicly available document, the Debtor and its professionals shall be permitted, and to the extent required by the Bankruptcy Code, the Bankruptcy Rules, or any other applicable law, rule, or court order, directed to include such PHI in any subsequent pleading, notice, document, list, or other public disclosure made in connection with this chapter 11 case, and such disclosure shall not be deemed to be a “wrongful disclosure” within the meaning of HIPAA or any regulation promulgated thereunder.

3. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed as (a) an admission as to the validity or priority of any claim or lien against the Debtor, (b) a waiver of the Debtor’s right to subsequently dispute such claim or lien on any grounds, (c) a promise or requirement to pay any prepetition claim, (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or this Order, (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, or (f) a waiver of the Debtor’s or any other party in interest’s rights under the Bankruptcy Code or any other applicable law.

4. Notice of the Motion shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are waived by such notice.

5. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

6. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.