

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

In re:

AMSTERDAM HOUSE CONTINUING CARE  
RETIREMENT COMMUNITY, INC.,<sup>1</sup>  
AKA THE AMSTERDAM AT HARBORSIDE  
AKA THE HARBORSIDE  
AKA HARBORSIDE LEGACY FUND  
AKA HARBORSIDE LEGACY FOUNDATION

Debtor.

Chapter 11

Case No. 21-71095 (AST)

**SECOND INTERIM ORDER (I) AUTHORIZING THE DEBTOR TO  
USE CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION;  
(III) SCHEDULING A FINAL HEARING; AND (IV) GRANTING RELATED RELIEF**

This Second Interim Order (this “Second Interim Order”) is entered upon the *Debtor’s Emergency Motion for Interim and Final Orders (I) Authorizing the Debtor to Use the Cash Collateral of UMB Bank, N.A., as 2014 Bond Trustee; (II) Providing UMB Bank, N.A., as 2014 Bond Trustee, Adequate Protection; and (III) Modifying the Automatic Stay* (the “Motion”),<sup>2</sup> and upon terms agreed to by and between Amsterdam House Continuing Care Retirement Community, Inc. (the “Debtor”) and UMB Bank, N.A., in its capacity as trustee for the bonds described more fully below (the “2014 Bond Trustee”). Capitalized terms used in this Second Interim Order but not specifically defined have the meanings set forth in the Motion.

In connection with the negotiation and filing of the Chapter 11 Case and the Motion, the Debtor and the 2014 Bond Trustee have stipulated and agreed as follows:

<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> Capitalized terms used but not defined in this Order shall have the meanings given to them in the Motion.

**The Debtor's Chapter 11 Case; Procedural Background; Jurisdiction; Notice**

A. On June 14, 2021 (the "Petition Date"), the Debtor filed a voluntary petition for relief (the "Chapter 11 Case") with this Court under title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code").

B. The Debtor is the owner and operator of a continuing care retirement community known as The Amsterdam at Harborside ("The Harborside").

**The Secured Bond Obligations**

C. The Debtor is obligated to the 2014 Bond Trustee for the benefit of the beneficial holders of the tax-exempt Series 2014 Bonds described below, authorized, and issued by Nassau County Industrial Development Agency (the "2014 Issuer"). The 2014 Issuer issued (1) Continuing Care Retirement Community Fixed Rate Revenue Bonds (Amsterdam at Harborside Project) Series 2014A (the "Series 2014A Bonds"), (2) Continuing Care Retirement Community Fixed Rate Revenue Bonds (Amsterdam at Harborside Project) Series 2014B (the "Series 2014B Bonds") and (3) Continuing Care Retirement Community Excess Cash Flow Revenue Bonds (Amsterdam at Harborside Project) Series 2014C (the "Series 2014C Bonds") and together with the Series 2014A Bonds and Series 2014B Bonds, the "Series 2014 Bonds") pursuant to the Indenture of Trust dated as of November 1, 2014, as amended by the First Amendment to Indenture of Trust dated January 22, 2020 (as so amended, the "2014 Indenture").

D. In connection with the issuance of the Series 2014 Bonds, the 2014 Issuer and the Debtor entered into that certain Installment Sale Agreement dated as of November 1, 2014, as amended by the First Amendment to the Installment Sale Agreement dated as of January 22, 2020 (as so amended, the "Installment Sale Agreement") to further the consummation on November 13, 2014 of the restructuring transactions effectuated pursuant to the Debtor's

*Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 142-1] in its prior chapter 11 case captioned *Amsterdam House Continuing Care Retirement Community, Inc.*, Case No. 14-73348 (AST).

E. As security for its obligations under the Installment Sale Agreement, the Debtor granted the 2014 Bond Trustee a security interest against the Mortgaged Property (as defined in the Mortgage (defined below)) and a security interest against substantially all of the Debtor's assets pursuant to that Mortgage, Assignment of Lease and Rents and Security Agreement dated November 1, 2014 (the "Mortgage") and the Trust Estate (as defined in the 2014 Indenture) pursuant to the 2014 Indenture (such collateral, to the extent and as further described in the Bond Documents, the "Prepetition Bond Collateral"). The 2014 Indenture, the Installment Sale Agreement, the Series 2014 Bonds, the Mortgage and any other document or agreement delivered as security for, or in respect to, the Series 2014 Bonds or the Debtor's obligations under any of such documents are collectively referred to herein as the "Bond Documents."

F. In addition, under the terms of the Bond Documents, certain accounts were established and are held by the 2014 Bond Trustee, including, but not limited to the following funds, each as defined in the Bond Documents: the Bond Fund, the Project Fund, the Revenue Fund, the Debt Service Reserve Fund, the Operating Reserve Fund, and the Entrance Fee Fund (the Bond Fund, the Project Fund and the Debt Service Reserve Fund are collectively referred to herein as the "Trustee-Held Funds"). As of the Petition Date, the Trustee-Held Funds totaled approximately \$5,304,000. The Debtor acknowledges and agrees, and the Court finds, that the Trustee-Held Funds are held in trust for the holders of the Series 2014 Bonds (the "Bondholders"). In the alternative, the Debtor acknowledges that the 2014 Bond Trustee holds a validly perfected possessory security interest in the Trustee-Held Funds and is entitled to apply

the Trustee-Held Funds in accordance with the terms of the Bond Documents. To the extent that the automatic stay applies to such Trustee-Held Funds pursuant to Section 362(a) of the Bankruptcy Code, as adequate protection for the use of the Cash Collateral (as defined below), the Debtor stipulates to relief from such stay for the purpose of allowing the 2014 Bond Trustee to administer and apply the Trustee-Held Funds in accordance with the Bond Documents. The Trustee-Held Funds shall be administered and applied as set forth in the Bond Documents and for the express purposes set forth therein, and shall not be used or made available to Debtor as Cash Collateral or otherwise pursuant to this Second Interim Order or any other order entered in this Chapter 11 Case; provided that notwithstanding the occurrence or continuation of any Default or Event of Default (each as defined in the 2014 Indenture), during the pendency of this chapter 11 case the 2014 Bond Trustee shall not apply or transfer any funds in the Revenue Fund or Operating Reserve Fund for any purpose whatsoever, other than to transfer funds from the Revenue Fund and Operating Reserve Fund to the Debtor (but not to other parties or accounts held by the 2014 Bond Trustee) in accordance with historical practice and Sections 5.08(b)(i) and 5.07(b) of the 2014 Indenture, or as otherwise reasonably requested by the Debtor to fund payment of expenses in accordance with the Cash Collateral Budget.

G. As of the Petition Date, the amounts due and owing by the Debtor with respect to the Series 2014 Bonds and the obligations under the Bond Documents are as follows (collectively, the “Bond Claim”):

- (i) Unpaid principal on the Series 2014 Bonds (including accreted value on the Series 2014C Bonds) in the amount of \$207,793,773;
- (ii) Accrued but unpaid interest on the Series 2014 Bonds in the amount of \$6,517,450 as of June 14, 2021; and
- (iii) unliquidated, accrued and unpaid fees and expenses of the 2014 Bond Trustee and its professionals incurred through the Petition Date. Such

amounts, when liquidated, shall be added to the aggregate amount of the Bond Claim.

**Use of Cash Collateral and Need for Adequate Protection**

H. The Debtor has requested the use of Cash Collateral (as defined below) in connection with the Chapter 11 Case to preserve the value of its business. Pursuant to the Bankruptcy Code, the Debtor is required, upon the 2014 Bond Trustee's request, to provide adequate protection to the 2014 Bond Trustee in respect of the Debtor's use of Cash Collateral. The 2014 Bond Trustee has informed the Debtor and this Court that the 2014 Bond Trustee does not consent to the use of Cash Collateral except upon the terms and conditions of this Second Interim Order.

I. Without the use of Cash Collateral on an interim basis, the Debtor would suffer immediate and irreparable harm pending a final hearing on the Motion. At a minimum, the Debtor's inability to use Cash Collateral would disrupt the Debtor's operations as a going concern and would otherwise not be in the best interests of the Debtor, its estate, or its creditors, including residents of The Harborside. In lieu of giving the 2014 Bond Trustee relief from stay or attempting to obtain this Court's approval for use of Cash Collateral on a non-consensual basis, the Debtor wishes to provide adequate protection of the liens and security interests of the 2014 Bond Trustee in Cash Collateral and other Prepetition Bond Collateral on the terms set forth in this Second Interim Order, reflecting the agreement of the Debtor and the 2014 Bond Trustee.

J. The Debtor agrees that they shall not take any action to assert that: (i) the Bond Claim is not a valid, binding, and allowed claim against the Debtor's estate; (ii) the Bond Claim is not secured by valid, enforceable, duly perfected first priority liens on and security interests in the Prepetition Bond Collateral pursuant to the Bond Documents, subject only to the lien on the

Debtor's real property securing the Debtor's obligations under that certain Payment in Lieu of Taxes Agreement, dated as of December 1, 2007, between the Debtor and the Issuer, as amended pursuant to that certain First Amendment to Payment in Lieu of Taxes Agreement dated as of June 1, 2014 between the Issuer and the Debtor, and as ratified by the Debtor in connection with the issuance of the Bonds pursuant to that certain Ratification dated November 13, 2014; and (iii) either the Bond Claim or the liens or security interests securing the Bond Claim, are subject to avoidance or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

K. Good cause has been shown for the entry of this Second Interim Order.

**NOW, THEREFORE, THE COURT HEREBY CONCLUDES AND ORDERS AS FOLLOWS:**

1. Jurisdiction. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334, and this matter constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409. The Debtor has operated its business and managed its property as debtor in possession pursuant to 11 U.S.C. §§ 1107 and 1108. No request has been made for the appointment of a trustee or examiner in the Chapter 11 Case and no committee of unsecured creditors has been appointed in the Chapter 11 Case under Section 1102 of the Bankruptcy Code as of the date hereof.

2. Notice. The Debtor has properly served notice of the Motion and the interim hearing thereon pursuant to Sections 102, 361, 362, and 363 of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001, and the Local Bankruptcy Rules of this Court (the "Local Rules"), which notice was sent to, among others: (i) the United States Trustee for the Eastern District of New York; (ii) the United States Attorney for the Eastern District of New York; (iii) counsel for the 2014 Bond Trustee; (iv) the Debtor's other secured creditors; (v) the Internal

Revenue Service; (vi) the Member, Amsterdam Continuing Care Health System, Inc.; (vii) the United States Department of Justice; (viii) the New York State Attorney General (ix) the United States Securities and Exchange Commission; (x) the holders of the thirty largest unsecured claims against the Debtor; and (xi) those who have formally appeared and requested service in these proceedings pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”). This notice is appropriate in the particular circumstances and is sufficient for all purposes under the Bankruptcy Code and the applicable Bankruptcy Rules and Local Rules in respect to the relief requested.

3. Good Cause. Good cause has been shown for entry of this Second Interim Order.

4. Disposition. The Motion is GRANTED on an interim basis on the terms set forth in this Second Interim Order. The requirements of Bankruptcy Rule 4001(b)(2) and Local Rules 4001-5 are satisfied with respect to the use of Cash Collateral on an interim and preliminary basis pending a final hearing on the Motion. Any objections to the relief sought in the Motion that have not been previously resolved or withdrawn, and all reservations of rights contained therein, are overruled on the merits, without prejudice, however, to any such objection or reservation of rights being reasserted in connection with the hearing on entry of the Final Order.

5. Authorization to Use Cash Collateral. The Debtor is authorized to use cash collateral (as defined in Section 363 of the Bankruptcy Code), any Revenues derived by the Debtor in the ordinary course of their business, all accounts receivable held by the Debtor, and all amounts currently held in the Debtor’s operating accounts (the “Cash Collateral”) until the earlier of (i) the Debtor’s ability to use Cash Collateral terminates as the result of the occurrence of a Termination Event (as set forth below) or (ii) the last day included in the Cash Collateral Budget (as defined below), but only on the terms of this Second Interim Order. Subject to the

preceding sentence, such use of Cash Collateral shall be limited solely to the categories of expenses listed in the budget attached hereto as Schedule A (the “Cash Collateral Budget”). Further, such use of Cash Collateral shall be limited solely to pay expenses in the amounts and at the times listed in the Cash Collateral Budget; provided, however, that the Debtor shall have authority to use Cash Collateral in excess of, and at times different from, the amounts set forth in the Cash Collateral Budget to the extent such a variance does not constitute a Termination Event described in paragraph 15(i) of this Second Interim Order.

6. Exclusion from Cash Collateral. The Debtor is not authorized to use and shall not use any Revenues (or other cash proceeds) not derived in the ordinary course of the Debtor’s operations.

7. Prohibited Use of Cash Collateral. Except as expressly provided in this Order, no Cash Collateral, proceeds thereof, or other proceeds of the Prepetition Bond Collateral shall be used for the purpose of: (i) objecting to, or contesting in any manner, or raising any defense to, the validity, amount, extent, perfection, priority, or enforceability of the Series 2014 Bonds, the Prepetition Bond Collateral, the Bond Claim, or any liens or security interests with respect thereto; (ii) asserting any claims or defenses or causes of action against the 2014 Bond Trustee, the holders of the Series 2014 Bonds in their capacity as such, or their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors including, without limitation, causes of action arising out of, based upon, or related to, in whole or in part, the Series 2014 Bonds or the Bond Documents or any actions under Chapter 5 of the Bankruptcy Code, including with respect to payments made pursuant to the Bond Documents; (iii) paying any amounts on account of claims arising before the Petition Date, except to the extent provided for in the Cash Collateral Budget and approved by the Court; (iv) seeking to modify any of the

rights granted to the 2014 Bond Trustee hereunder, or (v) seeking to bifurcate any claims of the 2014 Bond Trustee. Notwithstanding the foregoing, not more than \$10,000 of the Cash Collateral may be made available to reimburse the Official Committee of Unsecured Creditors (the "Committee"), if appointed, upon appropriate application therefor, for the Committee's fees and expenses in investigating the validity, priority, perfection, and enforceability of the 2014 Bond Trustee's liens in the Prepetition Bond Collateral.

8. Amendment or Extension of Use of Cash Collateral. The Debtor may, at any time, propose to the 2014 Bond Trustee in writing (including by email) an amended Cash Collateral Budget, either for the period covered by the Cash Collateral Budget or for any period thereafter, and the 2014 Bond Trustee may approve or not approve any such amendment in its sole and absolute discretion. Upon the written consent of the 2014 Bond Trustee, the amended Cash Collateral Budget shall become the Cash Collateral Budget for purposes of this Second Interim Order. At such time as the amended Cash Collateral Budget becomes the Cash Collateral Budget, the Debtor shall file a copy thereof with this Court and shall provide a copy thereof to any party in interest upon request to the Debtor's counsel. In the event the 2014 Bond Trustee does not approve a requested amendment to a Cash Collateral Budget, the Debtor reserves the right to seek an order authorizing the use of the Cash Collateral by filing a motion with the Bankruptcy Court, and the 2014 Bond Trustee reserves all rights to object to such motion.

9. Replacement Lien. As adequate protection for any diminution in the value of its Cash Collateral and other Prepetition Bond Collateral resulting from the Debtor's use thereof after the Petition Date ("Diminution"), and solely to the extent of any Diminution, the 2014 Bond Trustee shall have a valid, perfected, and enforceable replacement lien and security interest

(the “Replacement Lien”) in (i) all assets of the Debtor existing on or after the Petition Date of the same type as the Prepetition Bond Collateral, together with the proceeds, rents, products, and profits thereof, whether acquired or arising before or after the Petition Date, to the same extent, validity, perfection, enforceability, and priority of the liens and security interests of the 2014 Bond Trustee as of the Petition Date (the “Postpetition Bond Collateral”); and (ii) all other assets of the Debtor of any kind or nature whatsoever within the meaning of Section 541 of the Bankruptcy Code, whether acquired or arising prepetition or postpetition, together with all proceeds, rents, products, and profits thereof (the “Supplemental Collateral” and, collectively with the Postpetition Bond Collateral, the “Postpetition Collateral”); provided, however, that actions for preferences, fraudulent conveyances or other avoidance power claims and any recoveries under Sections 502(d), 542, 544, 545, 547, 548 (exclusive of transferees under Section 549), 550 and 553 of the Bankruptcy Code (collectively, the “Avoidance Actions”) shall not be Postpetition Collateral under this Second Interim Order. Notwithstanding the foregoing, the 2014 Bond Trustee reserves the right to request that the Postpetition Collateral include Avoidance Actions in any Final Order on the Motion. Further, the Replacement Lien shall be subject and subordinate to the Carve Out (as defined below) and any valid and perfected liens existing on the Petition Date (“Prior Liens”).

10. No Further Action Required. The approval of this Second Interim Order by the Court shall be sufficient and conclusive evidence of the validity, extent, enforceability, and perfection of the Replacement Lien granted to the 2014 Bond Trustee, whether or not the 2014 Bond Trustee elects to file or record financing statements or any other documents that may otherwise be required under federal or state law in any jurisdiction, or to take such other steps as may otherwise be required to obtain, evidence, or perfect such liens under applicable law;

provided, however, that upon the request of the 2014 Bond Trustee, the Debtor shall execute such other documents as may be reasonably requested to evidence and perfect such liens; that the 2014 Bond Trustee may, in its sole discretion, but shall not be required to, file a certified copy of this Second Interim Order in any filing or recording office in any jurisdiction in which the Debtor has real or personal property; that the Debtor is authorized and directed to execute, or cause to be executed, all such financing statements or other documents upon the 2014 Bond Trustee's reasonable request; and that such filing or recording shall be accepted and shall constitute further evidence of perfection of the 2014 Bond Trustee's liens and security interests. No obligation, payment, transfer, or grant of security under this Second Interim Order shall be stayed (other than by court order in an appeal from this Second Interim Order), restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any otherwise applicable state law, or subject to any defense, reduction, setoff, recoupment, or counterclaim.

11. Superpriority Claim. As additional adequate protection for any Diminution, and solely to the extent of any Diminution, the 2014 Bond Trustee shall have a superpriority administrative expense claim pursuant to Section 507(b) of the Bankruptcy Code with recourse to and payable from any and all assets of the Debtor's estate, including but not limited to rights of the Debtor, choses in action, or claims of any kind whatsoever, choate or inchoate, present or residual, other than Avoidance Actions (the "Secured Party Superpriority Claim"). The Secured Party Superpriority Claim shall be subject only to Prior Liens and the Carve Out and shall have priority, pursuant to Section 507(b) of the Bankruptcy Code, over any and all administrative expenses, diminution claims, and all other claims against the Debtor, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all other administrative expenses of the kind specified in Section 503(b) of the Bankruptcy Code, and over any and all

administrative expenses or other claims arising under Sections 105, 326, 328, 330, 331, 503(b), 506(c) (following entry of the Final Order), 507(a), 507(b), 546, 726, 1113, or 1114 of the Bankruptcy Code, and shall at all times be senior to the rights of the Debtor, any successor trustee, or any creditor in this Chapter 11 Case or any subsequent proceedings under the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment.

12. Allowance of Claim. Except as set forth in paragraph 23 below, the entry of this Second Interim Order by the Court shall be a conclusive and binding determination on all parties (x) as to the amount of the Bond Claim set forth herein, and (y) as to the scope, extent, perfection, validity, and enforceability, in all respects, of the 2014 Bond Trustee's security interests and liens in the Prepetition Bond Collateral, including, without limitation, the Cash Collateral as set forth in the Debtor's acknowledgements herein.

13. Financial Information. As additional adequate protection of the 2014 Bond Trustee's security interests in the Cash Collateral, the Debtor shall allow the 2014 Bond Trustee and its professionals and designees reasonable access, during normal business hours and on not less than 24 hours' notice, to the premises of the Debtor in order to conduct appraisals, analyses, and/or audits of the Prepetition Bond Collateral and the Postpetition Collateral, and shall otherwise reasonably cooperate in providing any other financial information reasonably requested by the 2014 Bond Trustee for this purpose. From and after the entry of this Second Interim Order, the Debtor shall provide to the 2014 Bond Trustee no later than the last business day of each week (commencing with the second week after the Petition Date), a weekly report certified by an authorized representative of the Debtor and in the same form as the Cash Collateral Budget indicating all receipts received and disbursements made by the Debtor in the week ending

the prior Saturday compared to the Cash Collateral Budget and detailing any variances of expenses of more than one hundred and ten percent (110%) in aggregate or more than both one hundred and fifteen percent (115%) and \$35,000 for the line items identified in Paragraph 15(i)(y) of this Second Interim Order from the expenditures and receipts in the Cash Collateral Budget for the applicable time period as described in Paragraph 15(i) of this Second Interim Order. The Debtor and its professionals shall be available once each week (subject to reasonable scheduling conflicts) for a telephonic conference call with the 2014 Bond Trustee to discuss matters pertaining to The Harborside and the Chapter 11 Case. The Debtor shall provide to the 2014 Bond Trustee such other reports and information as the 2014 Bond Trustee may reasonably request from time to time.

14. Compliance With Bond Documents. As further adequate protection against Diminution, the Debtor shall comply with those terms and provisions of the Bond Documents set forth on **Schedule B** attached hereto and incorporated herein; provided that during the pendency of this Chapter 11 Case the Debtor will not be required to comply with Section 5.5 of the Installment Sale Agreement or any other provision of the Bond Documents which would require the Debtor to transfer Revenues or other amounts into the Revenue Fund or other accounts held by the 2014 Bond Trustee. The requirements of this Second Interim Order shall be in addition to, and not in substitution for, the terms and provisions of the Bond Documents set forth on **Schedule B**; provided, however, that in the event of any inconsistency between the Bond Documents and this Second Interim Order, the terms of this Second Interim Order shall control.

15. Termination of Use of Cash Collateral With Notice. A Termination Event shall be deemed to have occurred five (5) business days after written notice sent by the 2014 Bond

Trustee to the Debtor, its counsel, the Committee, if any, the Committee's counsel, if any, and the United States Trustee of the occurrence of any of the following (each, a "Termination Event"):

- (i) the payment of any expenses that would cause: (x) aggregate expenditures under the Cash Collateral Budget to exceed one hundred and ten percent (110%) of the total budgeted expenses for that same Measuring Period (as defined below) in aggregate or (y) expenditures under the payroll, employee benefits, agency and staffing fees, food services, management and marketing fees, marketing costs, marketing personnel costs (provided that an increase in commissions due to higher move-ins than budgeted shall be disregarded for the purposes of this subparagraph (y)), medical supplies and services, other expenses, repairs and maintenance, therapy fees, or utilities single line items of the Cash Collateral Budget to exceed the greater of one hundred and fifteen percent (115%) or \$35,000 of the amount budgeted for that same line item for that same Measuring Period; or (z) expenditures under the debtor's total restructuring costs line item shall not exceed one hundred percent (100%) of such budgeted line item. This variance shall be measured on a rolling four week period (the "Measuring Period"); provided, however, that for purposes of calculating such variances, (i) the first Measuring Period shall be the one week after the Petition Date and the first week of the Cash Collateral Budget, (ii) the second Measuring Period shall be the two weeks after the Petition Date and the first two weeks of the Cash Collateral Budget, (iii) the third Measuring Period shall be the three weeks after the Petition Date and the first three weeks of the Cash Collateral Budget, and (iv) the fourth Measuring Period shall be the first four weeks after the Petition Date and the first four weeks of the Cash Collateral Budget. Any budgeted expenditures not paid in a particular budget period may be paid during a subsequent period and, for the purpose of calculating rolling four week variances set forth above, shall be deemed to have been budgeted in such later period, it being understood that such later period can be outside the four-week period. Expenditures may be paid in an earlier period in the reasonable discretion of the Debtor, in which event, the Cash Collateral Budget shall be deemed amended to move the expenditure into the week of the actual expenditure for the purpose of calculating rolling four week variances set forth above. The Debtor will provide to the 2014 Bond Trustee a written explanation in reasonable detail explaining the amount of and the reason for the prepayment or delay in payment upon reasonable request;
- (ii) the failure of the Debtor to pay, within ten (10) days of the applicable due date, all undisputed administrative expenses in full in accordance with their terms to the extent provided for in the Cash Collateral Budget;

- (iii) the occurrence of a Support Agreement Termination Event (as defined in that certain Plan Support Agreement dated June 14, 2021 between the Debtor, the certain holders of the Series 2014 Bonds, and Amsterdam Continuing Care Health System, Inc. (the “PSA”)) and expiration of any cure period under the PSA;
- (iv) the failure of the Debtor to timely pay all fees due under 28 U.S.C. § 1930; and
- (v) the failure of the Debtor to comply with, keep, observe, or perform any of its agreements or undertakings under this Second Interim Order.

Unless the Debtor has cured the Termination Event(s) specified in the 2014 Bond Trustee’s notice prior to the expiration of the five (5) business day period (the “Default Notice Period”) described in this paragraph or obtained an order of this Court, on notice to and with the opportunity to be heard by the 2014 Bond Trustee, that no such Termination Event has occurred, the Debtor’s authority to use Cash Collateral hereunder shall terminate immediately at the expiration of the Default Notice Period, without prejudice to the Debtor seeking an order of this Court to use Cash Collateral on a non-consensual basis. During the Default Notice Period, the Debtor shall (x) have the right to use Cash Collateral to contest the alleged occurrence or continuation of a Termination Event, and (y) be entitled to an emergency hearing before the Court, with proper notice to the 2014 Bond Trustee, to contest the alleged occurrence or continuation of a Termination Event. The 2014 Bond Trustee shall have the power to waive any Termination Event set forth in this paragraph in its sole discretion without further order of the Court.

16. Termination of Use of Cash Collateral Without Prior Notice. The Debtor’s authority to use Cash Collateral hereunder shall terminate without any further action by this Court, and a Termination Event shall occur without prior notice, upon the occurrence of any of the following (each, also a “Termination Event”):

- (i) the Chapter 11 Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code;

- (ii) the earlier of (y) the date of the entry of an order of this Court appointing a Chapter 11 trustee or an examiner with enlarged powers (beyond those set forth in Sections 1104(c) and 1106(a)(3) and (4) of the Bankruptcy Code) for the Debtor; or (z) the date the Debtor files a motion, application, or other pleading consenting to or acquiescing in any such appointment;
- (iii) this Court suspends the Chapter 11 Case under Section 305 of the Bankruptcy Code;
- (iv) this Second Interim Order becomes stayed, reversed, vacated, amended, or otherwise modified in any respect without the prior written consent of the 2014 Bond Trustee;
- (v) an order is entered in the Chapter 11 Case over the objection of the 2014 Bond Trustee approving financing pursuant to Section 364 of the Bankruptcy Code that would grant an additional security interest or a lien on any Collateral or granting a superpriority administrative claim that is equal or superior to the superpriority administrative claim granted to the 2014 Bond Trustee under this Second Interim Order; or
- (vi) an adversary proceeding or contested matter is commenced by the Debtor challenging the amount, validity, enforceability, priority, or extent of the 2014 Bond Trustee's liens, security interests, or claims, or the Bankruptcy Court grants standing to the Committee or another third party to pursue such adversary proceeding or contested matter in accordance with Paragraph 23 of this Second Interim Order.

Upon the occurrence of a Termination Event described in this paragraph, the Debtor's authority to use Cash Collateral hereunder shall immediately and automatically terminate, without prejudice to the Debtor seeking an order of this Court to use Cash Collateral on a non-consensual basis. The 2014 Bond Trustee shall have the power to waive any Termination Event set forth in this paragraph in its sole discretion without further order of the Court.

17. Claims and Causes of Action. Subject to paragraph 23 of this Second Interim Order, the Debtor hereby waives, releases, and discharges the 2014 Bond Trustee, all Bondholders in their capacity as such, and their respective affiliates, agents, attorneys, professionals, officers, directors, and employees (collectively, the "Released Parties"), from any and all claims and causes of action arising out of, based upon, or related to, in whole or in

part, the Series 2014 Bonds and the Bond Documents; any aspect of the prepetition relationship between the 2014 Bond Trustee and/or the Bondholders, and the Debtor; and any other acts or omissions by the 2014 Bond Trustee and/or the Bondholders in connection with either the Bond Documents or the 2014 Bond Trustee's and/or Bondholders' prepetition relationship with the Debtor. Further, subject to paragraph 23 of this Second Interim Order, the Debtor waives any and all rights to object to or contest the amount of the Bond Claims or the 2014 Bond Trustee's security interest in the Prepetition Bond Collateral (including the Trustee-Held Funds) and agrees not to challenge that all such claims and security interests have been duly perfected and are in all respects valid and enforceable first priority security interests and liens.

18. Failure of Adequate Protection. Nothing herein shall constitute a waiver, release or modification of the rights of the 2014 Bond Trustee to assert a claim under Sections 364(c) and 507(b) of the Bankruptcy Code.

19. Deemed Request for Stay Relief. This Second Interim Order shall be deemed to constitute a request by the 2014 Bond Trustee for relief from the automatic stay with respect to the Prepetition Bond Collateral for purposes of any request for adequate protection granted hereunder.

20. No Charge on Collateral; Carve Out. In partial consideration of the Debtor's acknowledgement of the debt due and owing and the Debtor's waiver of any claims under Sections 506(c) and 552(b) of the Bankruptcy Code (upon entry of the Final Order), the 2014 Bond Trustee consents to certain expenses and professional fees incurred during the pendency of this Chapter 11 Case that shall be superior in all instances to the liens and claims of the 2014 Bond Trustee and all other parties (the "Carve Out"). For purposes hereof, the "Carve Out" means the sum of (a) an aggregate amount not to exceed the sum of: (i) the unpaid dollar amount

of the fees and expenses of professionals retained by the Debtor or a Committee, if any, to the extent (A) incurred or accrued prior to the occurrence of a Termination Event and remaining unpaid and (B) provided for under the Cash Collateral Budget, plus (ii) the dollar amount of the fees and expenses of the professionals retained by the Debtor to the extent incurred or accrued after the occurrence of a Termination Event in an aggregate amount not to exceed \$675,000 (the “Post-Termination Event Professional Fee Cap”), in each of (i) and (ii) to the extent allowed by the Court at any time, whether by interim order, procedural order, or otherwise, plus (b) the statutory fees of the United States Trustee pursuant to 28 U.S.C. § 1930 and the fees of the Clerk of this Court plus any interest at the statutory rate, plus (c) reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code. In the event of a disposition of any of the Prepetition Bond Collateral or any other collateral for the obligations owed by the Debtor to the 2014 Bond Trustee, whether before or after a conversion of this Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, the Carve-Out will apply with equal force and effect to the proceeds of such disposition. Prior to the payment of such fees and expenses from the amount available under the Carve Out, such professionals shall first apply any retainers held by such professional to their allowed fees and expenses. Nothing herein shall constitute a waiver of any right of the 2014 Bond Trustee to object to fees and expenses of any professionals or to challenge any assertion that any amount of the fees and expenses remain unpaid. Except to the extent of and in consideration of the Carve-Out, subject to entry of the Final Order, (i) no expenses of administration of the Chapter 11 Case or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the 2014 Bond Trustee, the Prepetition Bond Collateral, or the Postpetition Collateral pursuant

to Section 506(c) of the Bankruptcy Code or similar principal of law; and (ii) the “equities of the case” exception under Section 552(b) of the Bankruptcy Code is waived as to the 2014 Bond Trustee, the Prepetition Bond Collateral, and the Postpetition Collateral.

21. Modification of Stay. The automatic stay imposed by Section 362 of the Bankruptcy Code is hereby vacated and modified insofar as necessary to permit the 2014 Bond Trustee to: (i) receive payments to be made by the Debtor to the 2014 Bond Trustee for and on behalf of the Bondholders, (ii) apply, allocate, or make payments from any of the funds or accounts maintained by the 2014 Bond Trustee in accordance with the terms of the Bond Documents (including the Trustee-Held Funds), except as otherwise provided by this Second Interim Order, and (iii) take any action expressly authorized or contemplated by this Second Interim Order.

22. Preservation of Rights. If any or all of the provisions of this Second Interim Order are, at any time, modified, vacated or stayed, such stay, modification, or vacation shall not affect the validity, extent, priority, and enforceability of any lien, priority, or other benefit conferred under this Second Interim Order prior to such stay, modification, or vacation.

23. Binding Effect. This Second Interim Order shall be binding on all creditors and parties in interest in this Chapter 11 Case, including, but not limited to, the Debtor and any successors thereto, any Chapter 11 or Chapter 7 trustee that is appointed or elected in this case; provided, however, that this Second Interim Order is without prejudice to the rights of any party in interest (other than the Debtor) to challenge the validity, amount, perfection, priority, extent, or enforceability of the Bond Claim or the prepetition security interests of the 2014 Bond Trustee or to commence any other cause of action or claim against the 2014 Bond Trustee (any and all claims and causes of action against the 2014 Bond Trustee, including, but not limited to, any

challenge to the validity, amount, perfection, priority, extent, or enforceability of the Bond Claim or the prepetition security interests of the 2014 Bond Trustee, a “Challenge”), so long as any Challenge is made on or before August 30, 2021 (the “Challenge Period”), after which Challenge Period all Challenges shall be deemed finally and conclusively barred; provided further that if one or more Challenges are timely made under this paragraph and properly filed, then except for such Challenges timely made, all potential Challenges are hereby deemed forever waived and relinquished. Nothing in this Second Interim Order shall be deemed to confer standing on any Committee or any other non-Debtor party-in-interest to commence a Challenge, and such Committee or other non-Debtor party in interest shall be required to move for standing and satisfy the applicable standard for obtaining standing to pursue a Challenge.

24. No Competing Liens. Except as set forth herein, the Debtor shall not grant liens on, or security interests in, the Prepetition Bond Collateral or the Postpetition Collateral to any other party, pursuant to Section 364 of the Bankruptcy Code or otherwise, without the consent of the 2014 Bond Trustee.

25. Reservation of Rights. Except as provided in this Second Interim Order, neither the Debtor nor the 2014 Bond Trustee waives any of its rights under the Bankruptcy Code, any applicable law, or the Bond Documents, including, without limitation, the right of the Debtor or the 2014 Bond Trustee at any time to seek any relief (or to oppose any such relief) under the Bankruptcy Code, or the right of the Debtor or the 2014 Bond Trustee to exercise any of its rights and remedies under the Bankruptcy Code at any time.

26. Further Relief. Nothing herein shall (i) preclude the 2014 Bond Trustee from seeking any other relief that it may deem appropriate, including relief from the automatic stay;

or (ii) prevent the 2014 Bond Trustee from asserting at some later time that its liens and security interests in the Prepetition Bond Collateral are not being adequately protected.

27. No Control. Nothing in this Second Interim Order shall cause the 2014 Bond Trustee to be deemed to be in control of the operations of the Debtor or to be acting as a “responsible person,” “managing agent,” or “owner or operator” (as such terms or any similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any similar Federal or state statute) with respect to the operation or management of the Debtor, notwithstanding its consent to this Second Interim Order or its extension of financial accommodations of any type, kind, or nature under this Second Interim Order.

28. No Third-Party Beneficiaries. Except as expressly provided herein, no rights are created hereunder for the benefit of any third party, any creditor, or any direct, indirect or incidental beneficiary except for the Bondholders, as set forth herein.

29. Effectiveness. The rights and obligations of the parties under this Second Interim Order shall be effective and enforceable as of the Petition Date. This Second Interim Order shall be deemed effective immediately and Bankruptcy Rule 6004(h) shall not apply hereto. If any or all of the provisions of this Second Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacatur, or stay shall not affect (i) the validity, extent, priority, or enforceability of any obligations incurred prior to the actual receipt of written notice by the 2014 Bond Trustee of the effective date of such reversal, modification, vacatur, or stay, or (ii) the validity, extent, or enforceability of the liens and claims granted hereunder.

30. Notices. All notices, requests, demands, waivers, and other communications required or permitted to be given under this Second Interim Order shall be in writing and shall

be deemed to have been duly given if (a) delivered personally, (b) sent by email with a next-day or overnight mail or delivery, or (c) sent by facsimile, with a confirming phone message or call to the addressee:

(a) If to the Debtor to:

Amsterdam House Continuing Care  
Retirement Community, Inc.  
300 East Overlook  
Port Washington, NY 11050  
Attn: James Davis

with a copy sent contemporaneously by email to:

Amsterdam House Continuing Care  
Retirement Community, Inc.  
1060 Amsterdam Avenue  
New York, NY 10025  
Attn: Pamela Landman

and:

Sidley Austin LLP  
787 Seventh Avenue  
New York, NY 10019  
Attn: Thomas Califano

If to the 2014 Bond Trustee to:

UMB Bank, N.A.  
Corporate Trust Services  
120 Sixth Street South, Suite 1400  
Minneapolis, MN 55402  
Attn: Virginia Housum

with a copy sent contemporaneously by email to:

Mintz, Levin, Cohn, Ferris, Glovsky and  
Popeo, P.C.  
One Financial Center  
Boston, MA 02111  
Attn: Daniel S. Bleck

31. Notice of Final Hearing. The Debtor shall, within two (2) business days after entry of this Second Interim Order, mail a notice of the entry of this Second Interim Order, together with a copy of the Motion and notice of the Final Hearing, to the Notice Parties.

32. The Final Hearing on the Motion shall be held on July 13, 2021 at 11:30 a.m. prevailing Eastern Time. Any objections or responses to entry of a final order (the “Final Order”) on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on July 7, 2021, 2021 (the “Objection Deadline”) and served on the following parties: (i) the Debtor, Pamela Landman, General Counsel, 300 East Overlook, Port Washington, NY 11050; (ii) proposed counsel to the Debtor, Sidley Austin LLP, 787 Seventh Avenue, New York, NY 10019 (Attn: Thomas R. Califano, Esq. and William E. Curtin, Esq.), One South Dearborn Street, Chicago, Illinois 60603 (Attn: Jackson T. Garvey, Esq.); (iii) the Office of the U.S. Trustee for the Eastern District of New York (Central Islip Division), Alfonse M. D’Amato Federal Courthouse, 560 Federal Plaza, Central Islip, New York 11722; (iv) counsel to UMB Bank N.A., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111 (Attn: Daniel Bleck, Esq.); (v) counsel to any statutory committee appointed in these chapter 11 cases; and (vi) any party that has requested notice pursuant to Bankruptcy Rule 2002.

**Dated: June 24, 2021**  
**Central Islip, New York**



  
**Alan S. Trust**  
**Chief United States Bankruptcy Judge**

**Schedule A**

**Cash Collateral Budget**



The Amsterdam at Harborside 13 Week Cash Flow As of 6/13/21	Assumed Effective Date		
	17 Projected W/E 8/28/2021	18 Projected W/E 9/4/2021	19 Projected W/E 9/11/2021
<b>Operating Cash Receipts</b>			
Private Pay	355,000		
Medicare	260,000		
Medicaid	15,000		3,000
Hospice	8,000		
Other	8,000		7,000
Other - COVID-19 Related			
<b>Total Cash Receipts</b>	<b>646,000</b>	<b>-</b>	<b>10,000</b>
<b>Operating Cash Disbursements</b>			
Agency and Staffing Fees	75,000	40,000	65,000
Capital Expenditures	35,000		35,000
Employee Benefits	15,000	79,500	15,000
Equipment Leases			3,000
Food Services	3,000	304,000	3,000
HOA Dues		25,649	
Insurance			
Management and Marketing Fees			6,500
Marketing Costs		6,000	12,000
Marketing Personnel Costs			35,000
Medical Supplies and Services		12,000	15,000
Other Expenses		9,100	
Other Expenses - COVID-19	4,000		3,000
Pharmacy			
Payroll (includes Taxes)		220,000	
Phone/Internet/Cable	23,000	1,300	
Professional Fees	6,000	15,000	
Repairs and Maintenance	10,000	12,000	20,000
Software/IT Services	2,000	1,200	6,833
Taxes		70,352	
Therapy Fees			50,000
Transportation and Security	500	4,605	500
Utilities	118,000	10,000	6,550
Payments to Trustee			
<b>Restructuring Costs</b>			
Debtor's Counsel	120,000	80,000	80,000
Owner's Financing Counsel	16,250	10,625	10,625
Debtor's Investment Banker		30,000	1,407,100
Claims and Noticing Agent	41,400		20,700
<b>Debtor's Total</b>	<b>177,650</b>	<b>120,625</b>	<b>1,518,425</b>
Chapter 11 Filing Fee			
US Trustee Fee			
Bond Counsel	23,500	23,500	23,500
Creditors' Committee Counsel	15,000		
Utilities Adequate Assurance Deposit			
Bond Proceeds			
<b>Restructuring Costs Total</b>	<b>216,150</b>	<b>144,125</b>	<b>1,541,925</b>
Closing Costs Funded by Bond Proceeds			(4,000,000)
<b>Total Cash Disbursements</b>	<b>527,650</b>	<b>957,831</b>	<b>(2,184,692)</b>
<b>Net Cash Flow</b>	<b>118,350</b>	<b>(957,831)</b>	<b>2,194,692</b>
<b>Cash Rollforward (Excluding EF)</b>			
Beginning Cash (A)	2,946,458	3,064,808	2,106,977
Cash Increase (Decrease)	118,350	(957,831)	2,194,692
Ending Cash	3,064,808	2,106,977	4,301,669
Days Cash on Hand	37	25	52

Operating Reserve  
Revenue Fund  
Disbursements Account  
Operating Account

**Schedule B**

**Compliance with Bond Documents**

**Relating to Installment Sale Agreement**

Section 6.1 (relating to maintenance and modifications of the facility)

Section 6.2 (relating to taxes, assessments and charges)

Section 6.3 (relating to insurance)

Section 6.6 (relating to payment in lieu of real estate taxes)

Section 8.4 (relating to maintenance of corporate existence and status)

Section 8.10 (relating to maintaining qualification in state)

**Relating to Mortgage, Assignment of Leases and Rents and Security Agreement**

Section 1.02 (relating to title to the mortgaged property)

Section 1.03 (relating to maintenance of the mortgaged property)

Section 1.04 (relating to insurance, restoration)

Section 1.05 (relating to maintenance of existence)

Section 1.06 (relating to taxes and other charges)