

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

In re:

AMSTERDAM HOUSE CONTINUING CARE
RETIREMENT COMMUNITY, INC.,¹
aka The Amsterdam at Harborside
aka The Harborside
aka The Harborside Legacy Fund
aka The Harborside Legacy Foundation,

Debtor.

Chapter 11

Case No. 21-71095 (AST)

**SECOND INTERIM ORDER
(I) PROHIBITING UTILITY PROVIDERS
FROM ALTERING, REFUSING OR DISCONTINUING SERVICE,
(II) DEEMING THE UTILITY PROVIDERS ADEQUATELY ASSURED
OF FUTURE PERFORMANCE, AND (III) ESTABLISHING PROCEDURES
FOR DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE**

Upon the emergency motion (the “Motion”)² of the debtor in the above-captioned chapter 11 case (the “Debtor”) for entry of an interim order (this “Second Interim Order”), pursuant to sections 105(a), 363 and 366 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (i) prohibiting the Debtor’s Utility Providers (as defined in the Motion) from altering, refusing, or discontinuing service, (ii) deeming the Debtor’s Utility Providers adequately assured of future performance, and (iii) establishing procedures for determining requests for additional adequate assurance by the Debtor’s Utility Providers, and (iv) granting 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

¹ 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.

² All capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.



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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 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 on a further interim basis.

2. A 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 on the Motion shall be filed on or before 4:00 p.m. prevailing Eastern Time, on July 7, 2021 and served on the following parties: (i) the Debtor, Pamela Landman, General Counsel, 300 E. 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 United States 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.

3. The Debtor is authorized, but not directed, to maintain its prepetition relationship and practice with respect to the Utility Providers.

4. Subject to the Procedures described below, no Utility Provider may (a) alter, refuse, terminate or discontinue services to, and/or discriminate against, the Debtor on the basis of the commencement of this Chapter 11 Case or on account of outstanding prepetition invoices; or (b) require additional payment of a deposit or receipt or any other security for continued service other than the adequate assurance Deposit, as a result of the Chapter 11 Case or any unpaid prepetition invoices as a condition to the Debtor receiving such utility services (except subject to the Procedures established in the Motion).

5. The Debtor shall provide notice, via first class mail, of this Second Interim Order within three (3) business days of entry of this Second Interim Order on (i) all Utility Providers identified on **Exhibit C** attached to the Motion (the "Utility Services List"); (ii) the Office of the United States Trustee for the Eastern District of New York (the "U.S. Trustee"); (iii) the Debtor's twenty (20) largest unsecured creditors; and (iv) counsel for UMB Bank, N.A., as Trustee of the 2014 Bonds ("2014 Bond Trustee"). For any Utility Provider that may have been omitted from the Utility Services List, the Debtor shall have the right to supplement such list and shall promptly provide notice of the Motion and this Second Interim Order upon learning of such Utility Provider.

6. Within fifteen (15) days of the date of the Petition Date, the Debtor shall establish the Utility Deposit Account for the benefit of the Utility Providers and deposit an amount equal to two weeks of the average monthly cost for Utility Services as set forth on **Exhibit C** to the Motion (unless any Utility Provider agrees in writing to a lesser amount, is paid in advance for Utility Services, or already holds a deposit for the Utility Services—in which case, the deposit on account of such Utility Service was reduced by the amount of the deposit or prepayment).

7. Except as provided herein with respect to the rights of the Utility Providers, no creditor of the Debtor shall have any interest in or lien on the Deposit or the Utility Deposit Account.

8. The Deposit may be adjusted by the Debtor if the Debtor (a) terminates any of the Utility Services provided by a Utility Provider; (b) makes other arrangements with certain Utility Providers for adequate assurance of payment; (c) determines that an entity listed on the Utility Services List is not a utility as defined by section 366 of the Bankruptcy Code; or (d) supplements the Utility Services List to include additional Utility Providers (as described below). The Deposit shall be maintained until the earlier of (a) entry of an order of the Court authorizing the return of the Deposit to the Debtor, or (b) the effective date of a Chapter 11 plan in this Chapter 11 Case.

9. To the extent the Debtor becomes delinquent with respect to a Utility Provider's account, such Utility Provider shall file the Delinquency Notice with the Court and serve such notice on (i) the Debtor, (ii) counsel to the Debtor, (iii) counsel to the 2014 Bond Trustee; and (iv) the U.S. Trustee (collectively, the "Parties In Interest"). If the Debtor has not cured such delinquency or no Party In Interest has objected to the Delinquency Notice within ten (10) days of the receipt of the Delinquency Notice, then the Debtor shall remit to such Utility Provider from

the Deposit the lesser of: (i) the amount allocated in the Deposit for such Utility Provider's account; and (ii) the amount of post-petition charges claimed as delinquent in the Delinquency Notice.

10. The following adequate assurance procedures (the "Procedures") are approved in all respects:

- a. Absent any further order of this Court and except as otherwise provided herein, the Utility Providers may not alter, refuse, or discontinue service to, or discriminate against the Debtor on account of the commencement of this Chapter 11 Case or any unpaid prepetition charges, or request payment of a deposit or receipt of other security in connection with any unpaid prepetition charges;
- b. The Debtor will serve this Motion and any order granting this Motion (an "Order"), if granted by the Court, via first-class mail, within three (3) business days after the date that the Order is entered by the Court on all Utility Providers identified in Exhibit C attached hereto; provided that for any Utility Provider that may have been omitted from Exhibit C, the Debtor shall have the right to supplement such list of Utility Providers and shall promptly provide notice of the Order upon learning of such Utility Provider;
- c. In the event that a Utility Provider maintains that the Deposit is not satisfactory adequate assurance of payment as contemplated by Section 366(c)(2) of the Bankruptcy Code, a Utility Provider may submit a written request for additional assurance of payment (the "Additional Assurance Request") by submitting such request to Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Thomas R. Califano, Esq., tom.califano@sidley.com and William E. Curtin, Esq., wcurtin@sidley.com), and One South Dearborn Street, Suite 900, Chicago, Illinois 60603 (Attn: Jackson T. Garvey, Esq., jgarvey@sidley.com) on or before fifteen (15) days after the Petition Date (the "Additional Assurance Request Deadline"), with a copy to the counsel for the 2014 Bond Trustee;
- d. Any Additional Assurance Request must: (a) be in writing; (b) set forth the location for which utility services are provided; (c) include a summary of the Debtor's payment history relevant to the affected account(s), including any security deposits or other prepayments or assurances previously provided by the Debtor; (d) describe in sufficient detail the reason(s) why the treatment afforded pursuant to the procedures set forth herein does not constitute satisfactory adequate assurance of payment; (e) include a proposal for what treatment would constitute adequate assurance of payment from the Debtor, along with an explanation of why such proposal is reasonable; and (f) provide an e-mail address to which the Debtor may respond to the Additional Assurance Request;

- e. If a Utility Provider makes a timely Additional Assurance Request that the Debtor believes is reasonable, then the Debtor shall be authorized in its sole discretion (but subject to the terms of an Order of this Court with respect to the Debtor's use of cash collateral) to comply with such request without further order of the Court;
- f. If the Debtor believes that the Additional Assurance Request is unreasonable, then the Debtor will schedule a hearing to determine the adequate assurance to such Utility Provider as necessary at the next omnibus hearing scheduled in this Chapter 11 Case (the "Determination Hearing");
- g. Pending resolution of that issue at any such Determination Hearing, any Utility Provider making an Additional Assurance Request shall be prohibited from altering, refusing, or discontinuing service to the Debtor;
- h. Any Utility Provider that does not serve an Additional Assurance Request by the Additional Assurance Request Deadline shall be deemed to have consented to and be bound by the procedures and amount of the Deposit provided by the Debtor; and
- i. A Utility Provider shall be deemed to have adequate assurance of payment unless and until a future order of this Court is entered requiring further adequate assurance of payment.

11. Concurrently with the Supplemental Service, (i) the Debtor will file with the Court a supplement to the Utility Services List adding the name of the Utility Provider so served, and (ii) the Debtor will increase the Deposit by an amount equal to approximately one half of one month of the estimated utility expense for the Utility Services provided by the added Utility Provider.

12. The Debtor is authorized to, in its sole discretion, close any Utility Services account (a "Closed Account") without the need for further order of this Court or notice to any parties. If any Utility Services account becomes a Closed Account during the course of this Chapter 11 Case, without the need for further order of this Court or notice to any parties, the Debtor shall be authorized to decrease the amount of the Deposit by withdrawing from the segregated account the amount deposited with respect to such Closed Account, which amount shall be deposited into the

Debtor's operating account and shall be subject to the 2014 Bond Trustee's lien in accordance with the Cash Collateral Order (as defined below).

13. Any amounts deposited in the Utility Deposit Account or paid to Utility Providers after the Petition Date that are refunded to the Debtor shall be subject to the Adequate Protection Liens (as such term is defined in the *Interim Order (I) Authorizing the Debtor to Use the Cash Collateral; (II) Granting Adequate Protection; (III) Scheduling a Final Hearing; And (IV) Granting Related Relief* (the "Cash Collateral Order")) in favor of UMB Bank, N.A., in its capacity as Trustee of the 2014 Bonds, to the full extent provided in the Cash Collateral Order. All payments made hereunder shall be subject to the Cash Collateral Order, including the budget attached thereto.

14. Notwithstanding the relief granted in this Second Interim Order and any actions taken pursuant to such relief, nothing in this Second Interim 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 Second Interim 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.

15. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b) because the relief granted in this Second Interim Order is necessary to avoid immediate and irreparable harm to the Debtor's estate.

16. 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 satisfied by such notice or waived.


17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Second Interim Order shall be immediately effective and enforceable upon its entry.

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

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

Dated: June 25, 2021
Central Islip, New York





Alan S. Trust
Chief United States Bankruptcy Judge

Notice Recipients

District/Off: 0207-8
Case: 8-21-71095-ast

User: admin
Form ID: pdf000

Date Created: 6/25/2021
Total: 4

Recipients of Notice of Electronic Filing:

ust	United States Trustee	USTPRegion02.LI.ECF@usdoj.gov
aty	Thomas R Califano	tom.califano@sidley.com

TOTAL: 2

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Amsterdam House Continuing Care Retirement Community, Inc.	300 E. Overlook	Port Washington, NY
	10050		
aty	Jackson Garvey	Sidley Austin LLP	One South Dearborn Chicago, IL 60603

TOTAL: 2