

**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) AUTHORIZING THE DEBTOR TO
(A) PAY PREPETITION WAGES, SALARIES, COMMISSIONS,
EMPLOYEE BENEFITS, PREPETITION PAYROLL TAXES, AND
OTHER OBLIGATIONS, (B) MAINTAIN COMPENSATION AND BENEFITS
PROGRAMS AND PAY RELATED ADMINISTRATIVE OBLIGATIONS,
AND (C) MAKE PAYROLL DEDUCTIONS, (II) AUTHORIZING APPLICABLE
BANKS AND OTHER FINANCIAL INSTITUTIONS TO HONOR AND PROCESS
RELATED CHECKS AND TRANSFERS, AND (III) GRANTING RELATED RELIEF**

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(b), 507(a), 541, 1107(a), and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (i) authorizing, but not directing the Debtor to (a) pay all Compensation Obligations (as defined in the Motion), (b) maintain all Employee Benefit Obligations (as defined in the Motion), and (c) pay all Payroll Taxes and make Payroll Deduction Obligations (as defined in the Motion), (ii) authorizing applicable banks and other financial institutions to receive, process,

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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honor, and pay any and all checks drawn on and transfers made from the Debtor's accounts to the extent such checks or transfers relate to any of the foregoing, and (iii) 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 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. 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 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 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.

3. Subject to the limitations set forth in sections 507(a)(4) and (a)(5) of the Bankruptcy Code, the Debtor is authorized, but not directed, to (a) pay or otherwise honor, in its sole discretion, the Compensation Obligations as and when they come due, (b) honor and continue its programs, policies, and practices with respect to the Employee Benefit Obligations that were in effect as of the Petition Date, in the ordinary course of business, and in the same manner and on the same basis as the Debtor honored and continued such programs, policies, and practices with respect to the Compensation Obligations prior to the Petition Date, and (c) withhold all federal, state, and local taxes relating to the Compensation Obligations and Employee Benefit Obligations as required by applicable law.

4. Notwithstanding any other provision of this Order, (a) payments to or on behalf of any one person on account of prepetition obligations in the interim period shall be limited by sections 507(a)(4) and (5) of the Bankruptcy Code and capped at the amount afforded priority by those statutory subsections, and (b) the Debtor is not authorized to “cash out” unpaid PTO upon

termination of an Employee in excess of the caps provided by sections 507(a)(4) or (5) of the Bankruptcy Code unless applicable state law requires such payment.

5. The Debtor's applicable banks and other financial institutions are authorized to receive, process, honor, and pay all checks, drafts, electronic fund transfers, or other forms of payment drawn or issued on the Debtor's bank accounts prior to the Petition Date in respect of Prepetition Taxes (or to re-issue checks, drafts, electronic fund transfers, or other forms of payment drawn or issued on the Debtor's bank accounts, as may be necessary), and authorized to rely on the representations of the Debtor as to which checks, drafts, electronic fund transfers, or other forms of payment drawn or issued on the Debtor's bank accounts, provided that sufficient funds are on deposit in the applicable bank accounts to cover such payments. Further, the Debtor's banks and financial institutions are prohibited from placing any holds on, or attempting to reverse, any automatic transfers to any account of an Employee or other party for Compensation Obligations, provided that sufficient funds are on deposit in the applicable bank accounts to cover such transfers.

6. The Debtor is authorized to reissue payment on account of the Compensation Obligations and to replace any inadvertently dishonored or rejected payments. Further, the Debtor is authorized to reimburse any expenses that Employees may incur as a result of any bank's failure to honor a prepetition check.

7. All payments made pursuant to this Order (a) may be funded with Cash Collateral (as defined in the Cash Collateral Order) in which the Trustee (as defined in the Cash Collateral Order) has an interest, and (b) shall be subject to any interim or final order entered by the Court governing the Debtor's right to use the Trustee's cash collateral (as such order or orders may be

amended, modified or supplemented, the “Cash Collateral Order”), including the budget attached thereto.

8. 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.

9. 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.

10. 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.


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

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

13. 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