

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re: : Chapter 11

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Amsterdam House Continuing Care Retirement : Case No. 21-71095-AST

Community, Inc. :

aka The Amsterdam at Harborside :

aka The Harborside :

aka Harborside Legacy Fund :

aka Harborside Legacy Foundation, :

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Debtor. :

:

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**ORDER (I) SETTING “HYBRID” HEARING WITH PARTICIPATION BY
APPEARANCE IN-PERSON AT COURTHOUSE AND BY VIDEO,
AND (II) ESTABLISHING RELATED DEADLINES**

In accordance with Eastern District of New York Administrative Order No. 2021-04-4 et seq. (IN RE:CORONAVIRUS/COVID-19 PANDEMIC), and the EDNY Health and Safety Protocols for Courthouses in the Eastern District of New York, in order to protect the health and safety of the public, the Court adopts the following hybrid in-person/video conference procedures, and **ORDERS** as follows:

The Court will conduct an evidentiary hearing on the following matters (the “Matters”) pending in the above-captioned case:

- (i) *Motion for Entry of interim and Final Orders (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 [dkt item 4];*
- (ii) *Emergency Motion for Entry of Interim and Final Orders (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 [dkt item 5];*
- (iii) *Emergency Motion for Entry of Interim and Final Orders Authorizing (I) Continued Use of The Debtor's Existing Cash Management System, (II) Maintenance of Its Existing Bank Accounts, (III) Continued Use of Its Existing Business Forms, and (IV) a Waiver of Certain Deposit and Investment Requirements in 11 U.S.C. § 345(B) and the UST Guidelines [dkt item 10];*
 - (iv) *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 [dkt item 11];*
 - (v) *Emergency Motion for Entry of an Order Pursuant to Section 333(A) of Bankruptcy Code and Bankruptcy Rule 2007.2 (I) Waiving the Appointment of Patient Care Ombudsman and (II) Allowing Debtor to Self-Report [dkt item 12];*
 - (vi) *Motion for an Order (I) Approving the Disclosure Statement; (II) Establishing Plan Solicitation Voting, and Tabulation Procedures; (III) Approving Forms of Notices and Ballots; (IV) Scheduling a Hearing For Plan Confirmation; (V) Shortening Notice For Disclosure Statement Hearing and Objections to Disclosure Statement; (VI) Shortening Notice For Objections to Plan and (VII) Granting Related Relief [dkt item 46];*
 - (vii) *Application to Employ Sidley Austin LLP as Attorneys for Debtor [dkt item 66];*
 - (viii) *Application to Employ RBC Capital Markets LLC as Investment Banker [dkt item 67];*
 - (ix) *Application to Employ Kurtzman Carson Consultants LLC as Administrative Advisor [dkt item 68];*
 - (x) *Application for Compensation. as Retained Professionals [dkt item 71]; and*
 - (xi) *Application for Compensation. as Certain Professionals Utilized in the Ordinary Course of Business Effective as of the Petition Date [dkt item 72]*

The Matters shall be heard simultaneously in-person in **Courtroom 960** (the “Courtroom”) at

the Alfonse M. D'Amato Federal Courthouse, 290 Federal Plaza, Central Islip, New York 11722 (the "Courthouse"), and via video conference format at **11:30 A.M. (prevailing Eastern time) on the thirteenth (13th) day of July, 2021** (the "Hearing").

The following procedures shall be followed in connection with the Hearing:

1. **In-Person Attendance.** In-person attendance in the Courtroom is limited to the parties, witnesses and attorneys listed below ("In-Person Attendance List"), unless otherwise authorized by the Court:
 - (a) Tom Califano, counsel for the Debtor;
 - (b) Eric Walker, counsel for the Committee;
 - (c) Christine Black, counsel from the Office of the United States Trustee;
 - (d) Daniel Bleck, counsel for the Bond Trustee; and
 - (e) James Davis, President and CEO of the Debtor.

All persons appearing in-person in the Courtroom are instructed to review and follow the COVID-19 procedures applicable to the Courthouse, which are available on the Court's website, at <https://www.nyeb.uscourts.gov/information-regarding-court-operations-during-covid-19-pandemic>

2. **Witnesses.** Only those persons listed above and identified as witnesses may be present in the courtroom. Rebuttal or impeachment witnesses who are not listed will not be physically present. The party(s) who may call any such rebuttal or impeachment witnesses shall ensure that they are in compliance with the Procedures for Remote Witnesses set out in this Order.

3. **Video or Telephonic Appearances.** All other parties in interest are not permitted in the Courtroom but may attend the hearing via video or telephonically, in accordance with the instructions in this Order. Parties in interest attending the hearing by video or telephonically are to turn their cameras off and place their phones on mute at all times unless they have complied with the Requirement to Inform Court of Planned Participation as set out in this Order.

4. **Courthouse and Courtroom Conduct.**

- a. All persons attending the Hearing in-person in the Courtroom, including witnesses, are required to wear a face mask (fitting above the nose and below the chin) at all time while in the Courthouse, unless given permission by the Court to remove the mask within the courtroom.
- b. In-person witnesses will testify from the witness stand when called to testify, and to return to the gallery when excused from the stand. Attorneys will address the Court and witnesses from counsel's lectern within the well. However, no person shall approach the bench, the clerk, or the witness stand unless given express permission by the Court, and persons in the Courtroom shall otherwise refrain from unnecessary movement about the Courtroom during the Hearing.
- c. All persons must maintain responsible social distancing to the extent practicable, including in the courtroom, in the hallways, in the restrooms, and at the security checkpoint. All persons must follow any posted signs or verbal instructions as to behavior in the courtroom and the courthouse.

5. **General Procedures for Witnesses and Exhibits.** Each party is directed to comply with the following directions concerning witness lists and exhibits:

- a. **Witness List.** Prepare a witness list and indicate for each witness whether you will call or may call that witness. Designation of a witness on a "may call" list does not obligate the party to call that witness and hence does not relieve any other party desiring to call that witness from serving a subpoena for that witness. Designation of a witness on a "will call" list obligates that party to ensure that the witness will be present, so that the other side need not subpoena a "will call" witness. Except for witnesses called for impeachment or rebuttal purposes only, a party will not be permitted to call a witness omitted from that party's witness list. Serve the witness list on the opposing party and email a copy to the Courtroom Deputy at AST hearing no later than **24 hours** prior to the Hearing.
- b. **Exhibits.** Mark each exhibit that will be or might be offered into evidence. Serve a set of the exhibits and the exhibit list on the opposing party by no later than **24 hours** prior to the Hearing.
- c. **Submission of Exhibits to the Court.**
 - i. No later than **24 hours** prior to the Hearing, each party shall provide to the Court a complete set of the exhibits provided to opposing counsel pursuant to paragraph 13, above. The Court's sets of exhibits shall be sent via email by each party to

ast_hearings@nyeb.uscourts.gov, and the email transmission shall in the Re line include: Exhibits submitted by [party] for Hearing on [date] in case [name and number]. The exhibits so delivered shall constitute the official exhibits in this matter.

- ii. **Each party shall create a single, searchable, non-password protected PDF document labeled with the name of the submitting party, with each exhibit labeled with the exhibit number or letter as required by this Order; each exhibit must be accessible by a master exhibit list at the front of or as a side tab of the PDF document older. Each combined PDF document shall not exceed 50MB in size.**

- d. Except for exhibits used for rebuttal or impeachment purposes only, a party will not be permitted to use or offer an exhibit not identified in that party's exhibit list. Any objections to an opposing party's exhibits must be filed with the Court and served on opposing counsel on or before **12 hours (12 hours)** prior to the Hearing. Objections as to authenticity, privilege, competency and relevancy of the exhibits shall be included. Any listed exhibit to which an objection is not timely raised shall be deemed to have been stipulated as to admission without further proof.

- e. **Requirement to Bring Own Set of Exhibits.** Each party and each witness attending the Hearing in-person must arrive at the Courthouse with his or

her own set of exhibits so that no person shares paper. No attorney will approach the witnesses or present exhibits to them, either on direct or cross examination, unless authorized by the Court. Any witness attending the Hearing remotely must be provided with copies of both parties' exhibits no less than **24 hours** in advance of the commencement of the Hearing.

- f. **Compliance with Federal Rule of Bankruptcy Procedure 9037.** All papers submitted to the Court, including exhibits, must comply with Federal Rule of Bankruptcy Procedure 9037.
- g. **Final Argument.** At the conclusion of the evidentiary hearing, in lieu of final argument, the Court may request that each party file a proposed memorandum opinion with findings of fact and conclusions of law.

6. **Procedures for Remote Witnesses.**

- a. **Remote Witness Testimony.** Having found "good cause in compelling circumstances" and "adequate safeguards," as required under Rule 43(a) of the Federal Rules of Procedure, any witness called to testify at the Hearing remotely shall testify by contemporaneous transmission from a different location into the courtroom (each, a "Remote Witness").
- b. **Taking of Oath.** Each Remote Witness called to testify shall be placed under oath and their testimony shall have the same effect and be binding upon the Remote Witness in the same manner as if such Remote Witness was sworn and testified in open court.
- c. **Remote Witness Environment.** Each Remote Witness shall provide their

testimony from a quiet room and must situate themselves in such a manner as to be able to both view the video feed and be seen by the Court. While the Remote Witness is sworn and testifying: (i) no person may be present in the room from which the Remote Witness is testifying except counsel for that witness, (ii) the Remote Witness may not have in the room any documents except the exhibits submitted by the parties pursuant to the procedures in this Order, and (iii) may not communicate with any person regarding the subject of their testimony, by electronic means or otherwise. If the witness or their counsel seek to communicate with one another, either shall openly request a recess for such purpose. If such request is granted by the Court, the witness and their counsel may privately confer "offline," i.e., by telephonic or other means that are not transmitted to the other parties.

7. **Participating by Video.** For those persons participating or otherwise appearing remotely, the Hearing will be conducted on the Zoom platform, which provides for full video conference capacity as well as for separate audio-only capacity.
 - a. **Video Link.** The following is the link for the Hearing:

<https://www.zoomgov.com/j/16177601614?pwd=Z2dQekJPVml5TG9yU0U52cFFKaElyZz09>

Meeting ID: 161 7760 1614

Passcode: 6277

One tap mobile

+16692545252,,16177601614# US (San Jose) 16468287666,,16177601614# US

+(New York)

Dial by your location

+1 669 254 5252 US (San Jose)

+1 646 828 7666 US (New York)
+1 551 285 1373 US
+1 669 216 1590 US (San Jose)
Meeting ID: 161 7760 1614

Join by SIP
16177601614@sip.zoomgov.com

Join by H.323
161.199.138.10 (US West)
161.199.136.10 (US East)
Meeting ID: 161 7760 1614

- b. **Pre-Hearing Test Requirement.** All counsel shall conduct a pre-hearing test of the Zoom platform using the same equipment that they intend to use during the Hearing, no later than **24 hours** before the Hearing; this test shall not be with the Court. In addition, all parties are to log in or dial in to the Hearing no less than **thirty (30) minutes** prior to the Hearing, and place their audio lines on mute. Please consult your IT personnel if you have any problems registering or logging into the Hearing.
- c. **Requirement to Inform Court of Planned Participation.** All persons planning to participate in the Hearing by video or telephonically shall send an email to ast_hearings@nyeb.uscourts.gov at least **24 hours** in advance of the Hearing to identify the parties that will appear. Such email shall state in the subject line the adversary and/or main case number(s) in which the party(s) shall participate, and the date of the Hearing; the body of the email shall include the full name and electronic mail address of the proposed participant(s) and the party(s) represented, and whether the party shall

appear by audio only or by audio and video. The parties are directed to limit video conference participation to those who are necessary to address the Matters to come for hearing. If the number of persons wishing to participate in the video conference, in the Court's view, exceeds the number which would permit the efficient, stable, and reliable transmission of the Hearing by video conference, the Court may require that certain persons be permitted to participate in the Hearing only by audio. **Only parties who have timely filed papers in connection with the Matters to be heard and who timely and fully comply with this Order may participate in the Hearing.**

8. **Public Access.** The Hearing scheduled by this Order is a public matter. Parties-in-interest and the general public are invited to listen to the Hearing by audio only in listen only mode. Any person from the general public wishing to attend the Hearing may do so by telephone via audio only:

+1-206-207-1700 United States Toll (Seattle)

+1-646-992-2010 United States Toll (New York City)

No person who is not listed on the In-Person Attendance List may attend the Hearing in-person.

9. **Conduct During Hearing.** Although conducted in part using video conferencing technology, the Hearing is a court proceeding. The formalities of courtroom decorum shall be strictly observed. Counsel who appear on the video shall dress appropriately, exercise civility, and otherwise conduct themselves in a manner consistent with the dignity of an officer of the court. In the interest of public safety,

counsel are directed to refrain from participating either by audio or video while operating a vehicle. At all times when not addressing the Court, persons are directed to place the connection on “mute” to prevent background noise from being heard. When speaking, you must announce who you are each time before speaking, speak up and enunciate so that you can be heard and understood. In addition, the parties are to avoid the use of a speaker phone (use a landline if possible).


10. **Removal of Person from Hearing.** The Court reserves the right to remove from the Hearing any participant who fails to observe the formalities and decorum of the courtroom by removing him/her from the Courtroom or disconnecting his or her line and/or video feed after due warning by either Judge Trust or his Courtroom Deputy. Such person will not be permitted reentry for the remainder of the Hearing.
11. **Recording Prohibited; Office Record.** No person may record the proceedings from any location by any means. The audio recording maintained by the Court shall be the sole basis for creation of a transcript that constitutes the official record of the Hearing.
12. **Settlement.** If the Matters are settled, the parties shall submit to the Court a stipulation approved by all parties and a motion for approval of the same no less than **24 hours** prior to the date of the Hearing, along with an email to ast_hearings@nyeb.uscourts.gov, notifying the Court of the proposed settlement. **If a stipulation and motion are not timely submitted to the Court, all parties shall be prepared to proceed with the evidentiary hearing.** If the contested matter is removed from the calendar based upon the announcement of a settlement,

the contested matter will not be reset for hearing if the parties fail to consummate the settlement. In such event, the Court will consider only a motion to enforce the settlement, unless the sole reason the settlement is not consummated is that the Court did not approve the settlement, in which case the matter will be reset for hearing at a later date.

13. **Sanctions.** Failure to appear at the Hearing or to comply with any provision of this Order may result in sanctions in accordance with Bankruptcy Rules 1001, 7016, 7037 and 9014, including the award of attorney's fees, striking of papers, exclusion of exhibits or witnesses, or the granting or denial of any of the Matters.
14. **Continuances.** Continuances of the Hearing or any deadlines set forth in this Order must be requested by written motion. Any request for continuance or amendment to this order shall set forth the status of discovery and shall state the reasons why the party or parties seek a continuance.
15. **Service.** The Debtor shall serve a copy of this Order on all appropriate parties within **24 hours** following entry of this Order, and file a certificate of service thereof within **24 hours** thereafter.
16. **Modification to Order.** The Court, in its discretion, may amend or supplement the procedures and conditions set forth herein as appropriate.

Dated: July 9, 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: 7/9/2021
Total: 2

Recipients of Notice of Electronic Filing:

ust United States Trustee USTPRegion02.LI.ECF@usdoj.gov

TOTAL: 1

Recipients submitted to the BNC (Bankruptcy Noticing Center):

aty Jackson Garvey Sidley Austin LLP One South Dearborn Chicago, IL 60603

TOTAL: 1