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**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)

**DECLARATION OF JAMES DAVIS IN SUPPORT OF THE  
REVISED FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION FOR  
AMSTERDAM HOUSE CONTINUING CARE RETIREMENT COMMUNITY, INC.**

I, James Davis, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

1. I am the President and Chief Executive Officer (“CEO”) of Amsterdam Continuing Care Health System, Inc. (“ACCHS” or the “Member”) and Amsterdam House Continuing Care Retirement Community, Inc. (the “Debtor”). I previously submitted the *Declaration of James*

<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.



*Davis in Support of the Debtor's Chapter 11 Petition and First Day Pleadings* (the "First Day Declaration") [Docket No. 2], which is incorporated by reference herein.

2. Except as otherwise indicated herein, all statements set forth in this declaration (this "Declaration") are based upon (a) my personal knowledge of and familiarity with the Debtor's operations, finances and restructuring efforts, (b) my review of relevant documents and information provided to me by employees of or advisors to the Debtor, and (c) my opinion based on my experience and knowledge concerning the Debtor's operations and financial, legal and business affairs. I am over the age of 18 and authorized to submit this Declaration on behalf of the Debtor. If called upon to testify, I would testify competently to the facts set forth herein.

3. I submit this Declaration in connection with the *Debtor's Memorandum of Law in Support of Entry of an Order Confirming the Revised First Amended Chapter 11 Plan of Reorganization for Amsterdam House Continuing Care Retirement Community, Inc.* (the "Confirmation Memorandum"), filed concurrently herewith, and in support of confirmation of the *Debtor's Revised First Amended Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 193] (as it may be further amended, modified, or supplemented from time to time, the "Revised First Amended Plan").<sup>2</sup>

## **I. General Background**

4. On June 14, 2021 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of New York (this "Court").

5. On July 12, 2021, the Debtor filed its *First Amended Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 105] (the "First Amended Plan") and

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Plan or the Confirmation Memorandum, as applicable.

the *Disclosure Statement for the Debtor's First Amended Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 106]. On July 19, 2021, the Debtor filed a further revised *Disclosure Statement for Debtor's First Amended Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* (the "Disclosure Statement") [Docket No. 129]. The Debtor filed the Revised First Amended Plan, which made certain conforming, technical, and non-material edits to the First Amended Plan at the request of various parties in interest, on August 20, 2021.

6. The First Amended Plan is the product of an extensive cooperative restructuring process which involved the Debtor's principal creditors, residents, families of former residents and regulators. The Debtor commenced this Chapter 11 Case, with support from the Member, the 2014 Bond Trustee and the Consenting Holders (which comprise holders of approximately 75% in principal amount of the 2014 Bonds), to implement a restructuring of their outstanding 2014 Bond Obligations to facilitate payment of Resident Refund Claims in full and the Reorganized Debtor's compliance with all regulatory requirements on a go-forward basis. The Revised First Amended Plan is the product of extensive good-faith, arm's-length negotiations between the Debtor and its primary stakeholders, and was accepted by two of the three impaired Voting Classes entitled to vote on the Revised First Amended Plan. Accordingly, I believe that confirmation of the Revised First Amended Plan is in the best interests of the Debtor and its stakeholders.

## **II. The Revised First Amended Plan Satisfies Each of the Bankruptcy Code's Requirements for Confirmation**

7. Based on my understanding of the Revised First Amended Plan, the events of the Chapter 11 Case and my discussions with the Debtor's professionals regarding the requirements of the Bankruptcy Code, I believe that the Revised First Amended Plan satisfies all provisions of section 1129 of the Bankruptcy Code and complies with all other applicable sections of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and applicable non-bankruptcy laws as

such requirements have been explained to me. Accordingly, I believe that the Court should enter an order confirming the Revised First Amended Plan.

**A. The Revised First Amended Plan Complies with the Applicable Provisions of the Bankruptcy Code**

8. I understand that section 1129(a)(1) of the Bankruptcy Code requires the Revised First Amended Plan to comply with the applicable provisions of the Bankruptcy Code. As detailed below, I have been advised by the Debtor's legal advisors that the Revised First Amended Plan satisfies this requirement.

**1. The Revised First Amended Plan's Classification of Claims and Interests Complies with Section 1122 of the Bankruptcy Code**

9. In addition to Administrative Claims (including Professional Fee Claims) and Priority Tax Claims, which I am advised need not be classified, the Revised First Amended Plan classifies six Classes of Claims against (Classes 1–6) and one Class of Interests (Class 7) in the Debtor.

10. I am advised that the Revised First Amended Plan separately classifies Claims and Interests based upon their different legal nature and/or priority; the classifications of Claims and Interests under the Revised First Amended Plan were not promulgated for any improper purpose; and the Claims or Interests classified into each Class are substantially similar to the other Claims or Interests, as the case may be, in such Class.

**2. The Revised First Amended Plan Complies with the Requirements of Section 1123(a) of the Bankruptcy Code**

11. I understand that section 1123(a) of the Bankruptcy Code lists eight requirements that a chapter 11 plan proponent must satisfy when seeking plan confirmation. As detailed below, I have been advised by the Debtor's legal advisors, after an opportunity to discuss and ask questions, that the Revised First Amended Plan satisfies these requirements, as applicable.

**a. The Revised First Amended Plan Provides Adequate Means For Its Implementation (11 U.S.C. § 1123(a)(5))**

12. On the basis of my understanding and discussions with the Debtor's legal and financial advisors, the Revised First Amended Plan complies with section 1123(a)(5) of the Bankruptcy Code because the Revised First Amended Plan and the various documents in the Plan Supplement provide adequate and proper means for implementing the Revised First Amended Plan, including, without limitation: (i) the Refinancing Transaction (as defined below); (ii) the issuance of the Series 2021 Bonds and entry into the 2021 Bond Documents; (iii) the contribution of \$9 million by the Member in accordance with the terms of the Member Contribution Agreement; (iv) the maintenance of supporting reserve funds and the Member's provision of \$9 million in liquidity support pursuant to the Liquidity Support Agreement; (v) the continued corporate existence of the Debtor on and after the Effective Date the Reorganized Debtor; (vi) the vesting of assets in the Reorganized Debtor; (vii) the cancellation of agreements, security interests, and other interests; (viii) the exemption from certain transfer taxes and recording fees; (ix) the maintenance of the members of the board of directors and officers unless otherwise disclosed in the Plan Supplement or prior to the commencement of the Confirmation Hearing; (x) the assumption of certain insurance policies; (xi) the preservation of rights of action; (xii) all actions set forth in Section 6 of the Revised First Amended Plan; and, (xiii) the taking of all necessary and appropriate actions by the Debtor or Reorganized Debtor, as applicable, to effectuate the transactions under and in connection with the Revised First Amended Plan.

**b. The Revised First Amended Plan Contains Only Provisions That Are Consistent with the Interests of Creditors and Interest Holders and With Public Policy With Respect to the Manner of Selection of Officers and Directors (11 U.S.C. § 1123(a)(7))**

13. On the basis of my understanding and discussions with the Debtor's legal and financial advisors, the Revised First Amended Plan complies with section 1123(a)(7) of the Bankruptcy Code because, as further detailed in paragraph 18 below, Section 6.16 of the Revised First Amended Plan is consistent with the interests of creditors and interest holders and with public policy with respect to the manner of selection of the Reorganized Debtor's officers and directors.

**B. The Revised First Amended Plan Has Been Proposed In Good Faith and Not by Any Means Forbidden by Law (11 U.S.C. § 1129(a)(3))**

14. I believe that the Revised First Amended Plan was proposed with the legitimate and honest purposes of maximizing the value of the Estate and allowing the Debtor to emerge from bankruptcy with a capital structure that will permit the Reorganized Debtor to continue to operate its facility, care for its Residents and satisfy its bond obligations. The Revised First Amended Plan was the subject of extensive good faith, arm's-length negotiations among the Debtor, the 2014 Bond Trustee, the Consenting Holders, the Member, the Creditors' Committee, various other stakeholders, and their respective representatives and professionals, with input from the United States Trustee. All of the Debtor's Residency Agreements will be assumed under the Revised First Amended Plan. Accordingly, I believe that the Revised First Amended Plan satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code.

**C. The Revised First Amended Plan Provides that the Payments of Professional Fees and Expenses Are Subject to Bankruptcy Court Approval (11 U.S.C. § 1129(a)(4))**

15. It is my understanding that any payment made or to be made by the Debtor or Reorganized Debtor for professional services or costs and expenses in or in connection with the

case, or in connection with the plan and incidental to the case, in each case incurred from the Petition Date to the Confirmation Date, must be approved by the Court or subject to the Court's approval, as reasonable.

16. Except as otherwise provided or permitted by the Revised First Amended Plan or other orders of the Court, the payments for professional services or costs and expenses in or in connection with the Chapter 11 Case, or in connection with the Revised First Amended Plan and incidental to the Chapter 11 Case, in each case incurred from the Petition Date to the Confirmation Date, will be authorized by order of this Court or are otherwise permitted under the Bankruptcy Code. Therefore, I believe that the Revised First Amended Plan satisfies the requirements of section 1129(a)(4) of the Bankruptcy Code.

**D. The Debtor Has Disclosed All Necessary Information Regarding Directors and Officers of the Reorganized Debtor (11 U.S.C. § 1129(a)(5))**

17. On the basis of my understanding and discussions with the Debtor's legal and financial advisors, section 1129(a)(5) of the Bankruptcy Code requires (a) that the plan proponent disclose the identity and affiliations of the proposed officers and directors of the Reorganized Debtor; (b) that the appointment or continuance of such officers and directors be consistent with the interests of creditors and interest holders and with public policy; and (c) that the plan proponent disclose the identity and compensation of any insiders to be retained or employed by the Reorganized Debtor.

18. I believe that Section 6.16 of the Revised First Amended Plan satisfies section 1129(a)(5) by providing that the members of the board of directors and officers of the Debtor as of the Petition Date will remain in their current capacities as directors and officers of the Reorganized Debtor unless otherwise disclosed in the Plan Supplement or prior to the commencement of the Confirmation Hearing, in each case subject to the ordinary rights and

powers of the board of directors to remove or replace the officers in accordance with the Reorganized Debtor's organizational documents and any applicable employment agreements that are assumed pursuant to the Revised First Amended Plan. The Debtor's existing officers and directors are competent and have extensive experience managing the Debtor's affairs. Further, no additional insiders are being employed by the Reorganized Debtor and the compensation of insiders being retained by the Reorganized Debtor will remain unchanged from prior to the Petition Date. Accordingly, I believe that the retention of the Debtor's existing officers and directors is consistent with the interests of holders of Claims against and Interests in the Debtor and with public policy.

**E. The Revised First Amended Plan Is in the Best Interests of All Creditors and Stakeholders (11 U.S.C. § 1129(a)(7))**

19. I understand that, with respect to claims in impaired classes held by claim holders who did not vote to accept the Revised First Amended Plan, the Revised First Amended Plan must provide value to such claim holders equal to or greater than the value such claim holders would receive under a chapter 7 plan of liquidation. I believe that, based on the Liquidation Analysis performed by the Debtor and attached to the Disclosure Statement as Exhibit E, each such holder of a claim that did not vote to accept the Revised First Amended Plan will receive value that is equal to or greater than the value that holder of a claim would receive under a chapter 7 plan of liquidation.

**F. At Least One Impaired Class of Claims Has Accepted the Revised First Amended Plan (11 U.S.C. § 1129(a)(10))**

20. On the basis of my understanding and discussions with the Debtor's legal and financial advisors, section 1129(a)(10) of the Bankruptcy Code requires that "[i]f a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider." 11 U.S.C.



§ 1129(a)(10). As set forth in the Ballot Tabulation Summary attached as Exhibit A to the *Declaration of Andres A. Estrada With Respect to the Tabulation of Votes on the Debtor's First Amended Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 190], Class 3 (Bond Claims) and Class 5 (Resident Refund Claims) are impaired, entitled to vote, and voted to accept the Revised First Amended Plan (excluding any acceptances by insiders). Accordingly, I believe that the Revised First Amended Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code.

**G. Confirmation of the Revised First Amended Plan is Not Likely to be Followed by the Need for Further Reorganization or Liquidation (11 U.S.C. § 1129(a)(11))**

21. I understand that the Bankruptcy Code requires that, for the Revised First Amended Plan to be confirmed, it must be feasible—i.e., not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor. I believe that the Debtor has satisfied this requirement.

22. It is my belief that the Revised First Amended Plan is feasible in that the Reorganized Debtor is likely to be able to meet its financial obligations under the Revised First Amended Plan and the Revised First Amended Plan is not likely to be followed by a liquidation or further financial reorganization of the Debtor. I believe that the terms of the Revised First Amended Plan reflect a carefully conceived restructuring, developed through several months of negotiations between the Debtor and its principal stakeholders.

23. The Revised First Amended Plan maximizes the value of the Debtor's estate and is projected to provide a substantial recovery for all creditors. The Debtor, with the assistance of RBC Capital Markets, LLC, (the Debtor's investment banker) and GMSC New York, LLC (the Debtor's ordinary course operational financial advisor), have analyzed the Reorganized Debtor's

ability to meet its obligations under the Revised First Amended Plan. The Debtor prepared financial projections, attached to the Disclosure Statement as Exhibit D (the “Financial Projections”), which show that after the Effective Date, the Reorganized Debtor will have sufficient liquidity to operate its business and that no liquidation or further reorganization will be necessary. In consultation with its advisors, the Debtor believes that the Reorganized Debtor will have access to sufficient funds to meet its financial obligations going forward.

24. Furthermore, each of the Debtor, the Member, the Bond Trustee, the Consenting Holders, and the Creditors’ Committee, along with their respective advisors, has scrutinized the Revised First Amended Plan and the financial projections in connection with the development of the Revised First Amended Plan. As part of the restructuring process, the Debtor, the Bond Trustee, and the Consenting Holders negotiated a consensual bond exchange (the “Refinancing Transaction”) and the appurtenant Plan Support Agreement, both of which entailed voluminous correspondence among these parties and their respective legal and financial advisors. During the negotiation of the Refinancing Transaction, the parties in interest extensively reviewed the Revised First Amended Plan, the Disclosure Statement, and the Financial Projections, and this negotiation process ultimately resulted in the terms incorporated into the Revised First Amended Plan. As a result, there has been detailed review of the Revised First Amended Plan by multiple parties, many of whom will benefit from the Debtor’s emergence from chapter 11 as a viable entity capable of paying its debts. The fact that the Member and the Consenting Holders have agreed to support the Revised First Amended Plan is a testament to the Revised First Amended Plan’s feasibility and likelihood of success.

**H. Section 1129(a)(13) Does Not Apply to the First Amended Plan**

25. Section 1129(a)(13) requires that a plan provide for the continuation of payment of all retiree benefits (as defined under section 1114 of the Bankruptcy Code) after the effective date. The Debtor does not have obligations for “retiree benefits” within the meaning of section 1114 of the Bankruptcy Code. Accordingly, I believe that section 1129(a)(13) of the Bankruptcy Code is inapplicable to the Revised First Amended Plan.

**I. Section 1129(a)(14) of the Bankruptcy Code Is Inapplicable to the Revised First Amended Plan (11 U.S.C. §§ 1129(a)(14))**

26. On the basis of my understanding and discussions with the Debtor’s legal and financial advisors, section 1129(a)(14) of the Bankruptcy Code requires that “[i]f the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.” The Debtor owes no domestic support obligations and is not an individual. Accordingly, I believe that section 1129(a)(14) of the Bankruptcy Code is inapplicable to the Revised First Amended Plan.

**J. Section 1129(a)(15) of the Bankruptcy Code Is Inapplicable to the Revised First Amended Plan**

27. On the basis of my understanding and discussions with the Debtor’s legal and financial advisors, section 1129(a)(15) of the Bankruptcy Code requires that if the Debtor is an individual and a holder of an allowed unsecured claim objects to the confirmation of the plan, “(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or (B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that

the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer. The Debtor is not an individual, therefore, I believe section 1129(a)(15) is inapplicable to the Revised First Amended Plan.

**K. The Revised First Amended Plan Complies with All Applicable Provisions of Nonbankruptcy Law Governing Transfers of Property by Not-for-Profit Corporations (11 U.S.C. § 1129(a)(16))**

28. On the basis of my understanding and discussions with the Debtor’s legal and financial advisors, section 1129(a)(16) of the Bankruptcy Code requires that any transfers of property by a not-for-profit corporation be made in accordance with any applicable provisions of nonbankruptcy law. Here, other than payments of the claims of creditors permitted under applicable nonbankruptcy law, the Revised First Amended Plan does not provide for the transfer of any of the Debtor’s assets. The Debtor’s primary regulators—the New York State Department of Health and the New York State Department of Financial Services—have been consulted throughout the restructuring process. Under the Revised First Amended Plan, the Reorganized Debtor will continue to operate as a New York not-for-profit corporation and remain subject to all applicable laws regarding the use of its property. Accordingly, I believe that section 1129(a)(16) of the Bankruptcy Code is satisfied.

**L. The Revised First Amended Plan Does Not Discriminate Unfairly (11 U.S.C. § 1129(b)(1))**

29. On the basis of my understanding and discussions with the Debtor’s legal and financial advisors, pursuant to §1129(b), a plan proponent may only utilize “cram down” to confirm a plan over the objection of a dissenting impaired class of claims “if all of the applicable requirements of subsection (a) of [§1129] other than paragraph (8) are met with respect to the plan . . . .” and if the plan does not “discriminate unfairly” and is “fair and equitable” with respect to the dissenting class. It is my understanding that the Claims and Interests in Classes 1 through 7

are legally distinct from one another and are properly classified in separate classes under the Revised First Amended Plan. Accordingly, I believe that the Revised First Amended Plan does not “discriminate unfairly” pursuant to Section 1129(b)(1) of the Bankruptcy Code.

**M. The Revised First Amended Plan’s Principal Purpose Is Not the Avoidance of Taxes (11 U.S.C. § 1129(d))**

30. On the basis of my understanding and discussions with the Debtor’s legal and financial advisors, Section 1129(d) of the Bankruptcy Code states that “the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933.” The purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act. Moreover, no governmental unit or any other party has requested that the Court decline to confirm the Plan on such grounds. Accordingly, I believe the Revised First Amended Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

**N. Section 1129(e) of the Bankruptcy Code Is Inapplicable in the Chapter 11 Case**

31. On the basis of my understanding and discussions with the Debtor’s legal and financial advisors, Section 1129(e) of the Bankruptcy Code provides that “[i]n a small business case, the court shall confirm a plan that complies with the applicable provisions of [the Bankruptcy Code] and that is filed in accordance with section 1121(e) not later than 45 days after the plan is filed unless the time for confirmation is extended in accordance with section 1121(e)(3).” The Chapter 11 Case is not a small business case. Accordingly, I believe section 1129(e) of the Bankruptcy Code is inapplicable in the Chapter 11 Case.

**II. The Release, Exculpation, and Injunction Provisions of the Revised First Amended Plan are Appropriate**

32. I understand that section 1123(b) of the Bankruptcy Code sets forth permissive provisions that may be incorporated into a chapter 11 plan. I have been advised by the Debtor's legal advisors, after an opportunity to discuss and ask questions, that each such provision of the Revised First Amended Plan is consistent with section 1123(b). In particular, I understand that the Revised First Amended Plan contains certain discharge, release, exculpation and injunctive provisions that are consistent with the applicable provisions of the Bankruptcy Code and are essential to the reorganization.

**A. The Court Should Approve the Debtor Release and Consensual Third-Party Release Contained in the Revised First Amended Plan**

33. The Revised First Amended Plan provides for the release of certain claims by the Debtor, the Estate, and the Reorganized Debtor (the "Debtor Release") as well as releases provided by certain Releasing Parties that do not elect to opt-out of the release (the "Third-Party Release"). I believe that the release provisions of the Revised First Amended Plan are necessary and integral components of the Debtor's formulation and implementation of the Revised First Amended Plan and should be approved. I further believe that such releases are provided in exchange for, and are supported by, fair, sufficient and adequate consideration provided by the parties receiving such releases, and are a good faith settlement and compromise of the claims released. Each non-Debtor Released Party was instrumental to the formulation of the Revised First Amended Plan, including through the financial support, negotiation, documentation and the successful prosecution of the Chapter 11 Case and, in my opinion, provided significant benefits to the Debtor and the Estate.

**1. The Court Should Approve the Debtor Release.**

34. The Debtor Release provides that the Debtor, the Reorganized Debtor, and the Estate will release each Released Party, including each Consenting Holder, the 2014 Bond Trustee, and the Member, from claims arising from or related to the Chapter 11 Case.

35. Based upon my participation in the negotiations that culminated in the execution of the Plan Support Agreement and the Revised First Amended Plan, I believe that the Debtor Release is an essential component of the Revised First Amended Plan and a sound exercise of the Debtor's business judgment. The Debtor and the non-Debtor Released Parties were instrumental in negotiating the Plan Support Agreement, which served as the cornerstone for the Revised First Amended Plan. Together, the Debtor and the other parties to the Plan Support Agreement were able to seamlessly consummate the Plan Support Agreement, thereby preserving the value of the estate.

36. Significantly, the Debtor and its advisors do not believe that there are any valuable or significant claims against the Released Parties, and the *de minimis* value of such claims is far outweighed by, on the one hand, the valuable benefits afforded by the Revised First Amended Plan and the restructuring contemplated thereby and, on the other hand, the costs the Debtor would inevitably incur if it were to pursue the claims proposed to be released.

37. As a result, the Debtor and its advisors believe that preserving causes of action against the Released Parties would likely result in little, if any, benefit to the Debtor or the Estate, but could result in material harm to the Debtor's reorganization efforts, as the consent of the Consenting Holders and the Bond Trustee to the Refinancing Transaction and the Revised First Amended Plan are predicated on the Debtor Release. If the Debtor had tried to preserve claims and causes of action against the Released Parties, then substantial bondholder consent to the

Revised First Amended Plan and to the Refinancing Transaction would have been impossible to achieve. The Debtor Release represents a valid settlement of whatever claims the Debtor may have against the Released Parties and a valid exercise of the Debtor's business judgment.

38. Accordingly, and for all of these reasons, I believe that the Debtor Release is justified, fair, reasonable, in the best interests of the Estate and creditors, is an integral part of the Revised First Amended Plan and should be approved.

## **2. The Court Should Approve the Third-Party Release**

39. The Revised First Amended Plan also provides for the Third-Party Release, which I understand is consensual in that all parties to be bound by the Third-Party Release have been given due and adequate notice of the Third-Party Release and were given sufficient opportunity and instruction to elect to "opt out" of the Third-Party Release by completing and timely returning a Ballot or timely filing an objection. I believe that the Third-Party Release is fair to Holders of Claims and Interests, necessary to the proposed reorganization, given in exchange for, and supported by, fair, sufficient, and adequate consideration provided by the Released Parties, and is a good-faith settlement and compromise of the claims released. Further, (a) the release of the 2014 Bond Trustee and the Consenting Holders as of the Voting Deadline by Holders of Claims and Interests is appropriate and necessary in light of such parties' active role in the formulation and prosecution of the Revised First Amended Plan, commitment to purchase Series 2021A Bonds to fund the Revised First Amended Plan, agreement to exchange their 2014 A and B Bonds for Series 2021B Bonds at a discount, and agreement to cancel their 2014 C Bonds without any payment or consideration and (b) the release of the Member by Holders of Claims and Interests is appropriate and necessary in light of the Member's active role in the formulation and prosecution of the Revised First Amended Plan, contribution of \$9 million to fund the Revised First Amended Plan



pursuant to the Member Contribution Agreement, and provision of \$9 million of liquidity support pursuant to the LSA.

**B. The Court Should Approve the Exculpation Provisions Contained in the Revised First Amended Plan**

40. I understand that the Revised First Amended Plan provides for exculpations to certain parties (the “Exculpated Parties”) that protect them with respect to actions taken or failed to be taken in connection with the Chapter 11 Case. I believe the exculpations are the product of good faith, arm’s-length negotiations, are a critical component of the Revised First Amended Plan, and should be approved.

**C. The Injunction Should be Approved**

41. The Revised First Amended Plan also provides for injunctions to implement the Revised First Amended Plan’s release and exculpation provisions. I have been advised by the Debtor’s legal advisors that the injunction provisions permanently enjoin certain entities from commencing or maintaining any action against the Debtor, the Reorganized Debtor, the Released Parties or the Exculpated Parties on account of the discharged Claims or released liabilities. I believe that the injunction is a key provision of the Revised First Amended Plan because it enforces the Revised First Amended Plan’s releases and exculpation provisions, all of which are vital to the Revised First Amended Plan.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: August 20, 2021  
New York, New York

/s/ James Davis  
James Davis  
President & Chief Executive Officer  
Amsterdam House Continuing Care  
Retirement Community, Inc.