

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

In re:

AMSTERDAM HOUSE CONTINUING CARE
RETIREMENT COMMUNITY, INC.,¹

Debtor.

Chapter 11

Case No. 23-70989 (AST)

**DECLARATION OF MICHAEL MORTON
IN SUPPORT OF THE DEBTOR’S MOTION FOR ENTRY OF
AN ORDER APPROVING LETTER AGREEMENT BETWEEN THE
DEBTOR AND LIFE CARE SERVICES LLC D/B/A LCS REAL ESTATE**

Pursuant to 28 U.S.C. § 1746, I, Michael Morton, do hereby declare, under penalty of perjury, the following to the best of my information, knowledge, and belief:

1. I am the Chief Restructuring Officer (“CRO”) of Amsterdam House Continuing Care Retirement Community, Inc. (d/b/a The Harborside) (the “Debtor” or “The Harborside”), the debtor and debtor in possession in the above-captioned case. I am also a Senior Managing Director at Ankura Consulting Group LLC (“Ankura”). Ankura was retained by the Debtor in November 2022, and I was appointed to the role of CRO on March 21, 2023.

2. I submit this declaration (the “Declaration”) in support of the *Debtor’s Motion for Entry of an Order Approving Letter Agreement between the Debtor and Life Care Services LLC D/B/A LCS Real Estate* [Dkt. No. 811] (the “Motion”).²

3. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my discussions with members of the Debtor’s management team and the

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 Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion and APA (as defined below).

Debtor's advisors, my review of relevant documents and information concerning the Debtor's operations, financial affairs, and sale to Life Care Services Communities LLC d/b/a LCS Real Estate (together with any assignees, "LCS"), or my opinions based upon my experience and knowledge. If called as a witness, I could and would testify competently to the facts set forth in this Declaration. I am authorized to submit this Declaration on behalf of the Debtor.

4. I am familiar with the Debtor and have extensive knowledge regarding all aspects of its business affairs, day-to-day operations, books and records, financial condition and sale to LCS. In my capacity as CRO, I am responsible for all restructuring-related aspects of the Debtor's business.

Professional Background and Role

5. I hold a bachelor's degree in business administration, a Master of Accounting degree from Southern Methodist University, and am a Certified Public Accountant. I have more than fourteen years of financial advisory, restructuring, and bankruptcy-related experience, with a focus on the U.S. healthcare market. During that time, I have advised and assisted distressed companies across various complex financial, operational, and strategic situations, including serving in interim management positions. My experience includes financial statement analysis, financial projection development, liquidity and cash management, M&A support, stakeholder negotiations, balance sheet recapitalization and restructuring, postpetition financing and sourcing, and bankruptcy preparation and administration.

6. I have played a key role in many successful chapter 11 restructurings, including *In re SQLC Senior Living Ctr. at Corpus Christi, Inc., d/b/a/ Mirador*, Case No. 19-20063 (DRJ) (Bankr. S.D. Tex. 2019); *In re Mayflower Communities, Inc. d/b/a The Barrington of Carmel*, Case No. 19-30283 (HDH) (Bankr. N.D. Tex. 2019); *In re Elk Petroleum, Inc.*, Case No. 19-11157

(LSS) (Bankr. D. Del. 2019); *In re Tarrant County Senior Living Ctr., Inc. d/b/a The Stayton at Museum Way*, No. 19-33756 (SGJ) (Bankr. N.D. Tex. 2019); *In re 4 West Holdings, Inc.*, Case No. 18-30777 (HDH) (Bankr. N.D. Tex. 2018); and *In re Gulf Coast Health Care, LLC*, Case No. 21-11336 (KBO) (Bankr. D. Del. Dec. 17, 2021). I have also served in interim management roles in other out-of-court matters.

7. The Debtor's Board of Directors (the "Board") oversees the Debtor's management and I report directly to the Board. In my capacity as CRO, I advise the Board and the Debtor's chief executive officer, Brooke Navarre, with respect to restructuring matters and support the Debtor's bankruptcy and sale process.

Background

A. General Background

8. The Debtor is a New York not-for-profit corporation that operates a continuing care retirement community in Port Washington, New York. The Debtor currently provides living accommodations and related health care and support services to approximately 180 residents (the "Residents"). The average age of the Residents is 90.

9. As of September 22, 2024, 103 Residents live in independent living units, 20 Residents live in enriched housing units and 16 Residents live in skilled nursing units.

B. The LCS Sale and Outside Closing Date

10. On December 27, 2023, following an extensive marketing and sale process, the Court entered the *Order (I) Approving the Amended and Restated Asset Purchase Agreement Between the Debtor and Life Care Services Communities LLC d/b/a LCS Real Estate; (II) Authorizing the Sale of Substantially All of the Debtor's Assets Free and Clear of Liens, Claims, Interests and Encumbrances, Except for Certain Assumed Liabilities; (III) Authorizing the*

Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith; and (IV) Granting Related Relief [Dkt. No. 607] (the “Sale Order”) approving the sale of substantially all of the Debtor’s assets to LCS pursuant to the terms of that certain Amended and Restated Asset Purchase Agreement, dated as of December 20, 2023, between the Debtor and LCS (the “APA”), a copy of which is attached to the Sale Order as Exhibit 1.

11. The APA provides, in relevant part, that LCS will pay, among other amounts: (i) a purchase price of Sixty-Three Million Two Hundred and Fifty Thousand Dollars (\$63,250,000) and (ii) an amount equal to the amount by the which the aggregate Resident Refund Liabilities exceed Forty Million Seven Hundred and Fifty Thousand Dollars (\$40,750,000).

12. Following entry of the Sale Order, LCS advised the Debtor that it submitted:

- a. An application to the New York Department of Health (“DOH”) and New York Department of Financial Services (“DFS”) on January 12, 2024 for a Certificate of Authority to operate The Harborside as a continuing care retirement community (the “CCRC Application”);
- b. An Adult Care Facility Common Application to DOH on January 3, 2024 for a change of operator of The Harborside’s 55-bed enriched housing program/assisted living residence, including a special needs and enhanced assisted living residence certification (the “Assisted Living Application”); and
- c. A Certificate of Need Application to DOH on January 3, 2024 for a change of ownership of The Harborside’s 56-bed residential health care facility (the “Skilled Nursing Application” and collectively with the CCRC Application and Assisted Living Application, the “Applications”).

13. Pursuant to Section 10.01 of the APA, closing of the sale to LCS was to occur no later than December 31, 2023 (the “Outside Closing Date”); *provided however*, that the Outside Closing Date could be extended to March 31, 2024 upon written notice by either the Debtor or LCS to the other party; and *provided further*, that the Outside Closing Date could be further extended to June 30, 2024 by mutual written agreement of the Debtor and LCS.

14. On December 30, 2023, the Debtor provided written notice to LCS of an extension of the Outside Closing Date to March 31, 2024. On March 29, 2024, LCS and the Debtor agreed to a second extension of the Outside Closing Date to June 30, 2024.

C. The Global Settlement Agreement

15. Shortly after entry of the Sale Order, the Debtor, the Official Committee of Unsecured Creditors, Amsterdam Continuing Care Health System, Inc., Amsterdam Nursing Home Corporation (1992) d/b/a Amsterdam Nursing Home, UMB Bank, N.A., in its capacity as bond trustee (the “Bond Trustee”), and members of the restricted group of bondholders holding a majority of the Bonds,³ entered into a global settlement agreement, the terms of which are set forth in the term sheet (the “Global Settlement Term Sheet”) attached as Exhibit B to the *Joint Motion of the Debtor and the Official Committee of Unsecured Creditors for Entry of an Order Approving Settlement and Compromise Pursuant to Federal Rule of Bankruptcy Procedure 9019* [Dkt. No. 669] (the “Global Settlement Motion”).

16. The Global Settlement Term Sheet provides for, among other things, (i) a recovery to the Bond Trustee from the proceeds of the sale to LCS and the Member Financial Contribution Obligation (as defined in the Global Settlement Term Sheet) and (ii) funding for the payment of entrance fee refunds owed to former residents of the Debtor.

17. On April 3, 2023, the Court entered an order [Dkt. No. 698] granting the Global Settlement Motion and approving the terms of the Global Settlement Term Sheet.

³ “Bonds” refers to the Nassau County Industrial Development Agency Continuing Care Retirement Community Taxable Revenue Bonds, Series 2021A (Amsterdam at Harborside Project), and Tax-Exempt Refunding Revenue Bonds, Series 2021B (Amsterdam at Harborside Project).

D. The Debtor and LCS Amend the APA

18. When it became clear that the June 30, 2024 Outside Closing Date was not feasible because of the status of the regulatory approval process, the Debtor and LCS negotiated an amendment to the APA (the “Amendment”), as described in the *Debtor’s Motion for Entry of an Order Approving Amendment to Amended and Restated Asset Purchase Agreement Between the Debtor and Life Care Services Communities LLC d/b/a LCS Real Estate* [Dkt. No. 778].

19. In particular, the Amendment provided, in relevant part, that the Outside Closing Date under Section 10.01 of the APA will be extended to September 30, 2024, *provided however* that LCS may terminate the APA by written notice to the Debtor on August 15, 2024 (the “Reasonable Assurance Deadline”) if, in LCS’ reasonable discretion, either of the conditions described below have not been met (collectively, the “Extension Conditions”):

- a. DOH and DFS have provided reasonable assurances to LCS and the Debtor that the unresolved issues with respect to the CCRC Application, Assisted Living Application and Skilled Nursing Application will be resolved or reserved as contingencies that will not hold up approval by September 30, 2024.
- b. DOH and DFS have provided reasonable assurances that LCS’ Skilled Nursing Application will be considered by the Establishment Committee and PHHPC at their next meetings on August 22, 2024 and September 12, 2024, respectively.

20. On July 25, 2024, the Court entered an order approving the Amendment [Dkt. No. 789] (the “Amendment Order”).

21. Following entry of the Amendment Order, LCS agreed to extend the August 15 Reasonable Assurance Deadline three (3) times, with the final extension to August 20, 2024 at 2:00 p.m. (ET).

22. During the limited extension of the Reasonable Assurance Deadline, the Debtor learned that LCS’ Skilled Nursing Application was not listed on the agenda for the meeting of

Establishment Committee on August 22, 2024. To prevent a termination of the APA by LCS, the Debtor attempted to negotiate a further extension of the Outside Closing Date to allow for additional time for the regulatory review process.

23. However, on August 20, 2024, LCS gave notice (the “Termination Notice”) of its termination of the APA pursuant to Section 12.01(i) of the APA and paragraph 2.i. of the Amendment Order. The Termination Notice stated that LCS gave such notice because neither of the Extension Conditions had been met. Additionally, LCS also asserted its entitlement under Section 12.02(c) of the APA to receive a refund of its deposit.

24. The Debtor requested that LCS reconsider the Termination Notice.

The Letter Agreement

25. On August 27, 2024, the Debtor and LCS entered into the Letter Agreement. The material terms of the Letter Agreement are described below:⁴

- a. ***Outside Closing Date.*** To the extent that LCS agrees to rescind the Termination Notice, the Outside Closing Date under Section 10.01 of the APA will remain September 30, 2024, *provided* however that LCS may terminate the APA by written notice to the Debtor at any time in its full discretion.
- b. ***Stipulation and Release.*** The Debtor and LCS stipulate that, as of August 26, 2024, the other party has been diligently pursuing the Approvals required under Section 9.09 of the APA and that the fact that the Closing has not yet occurred is through no fault of either party, and accordingly Seller agrees on behalf of itself and its respective present and former parents, subsidiaries, affiliates, officers, directors, shareholders, members, successors, and assigns (collectively, the “Releasors”) hereby releases, waives, and forever discharges LCS and its respective present and former, direct and indirect, parents, subsidiaries, affiliates, employees, officers, directors, shareholders, members, agents, representatives, permitted successors, and permitted assigns (collectively, the “Releasees”) of and from any and all actions, causes of action, suits, losses, liabilities, rights, debts, dues, sums of money, accounts, reckonings, obligations, costs, expenses, liens, bonds, bills, specialties, covenants, contracts,

⁴ Capitalized terms used in this section but not otherwise defined herein will retain the meanings ascribed to such terms in the Letter Agreement.

controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands, of every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law or equity, which any of such Releasors ever had, now have, or hereafter can, shall, or may have against any of such Releasees for, upon, or by reason of any matter, cause, or thing whatsoever from the beginning of time through August 26, 2024, arising out of or relating to the Agreement.

- c. ***Deposit.*** Within two (2) business days of demand from LCS, the Debtor shall, a) pursuant to Section 12.02(c) of the APA, refund the Deposit to LCS and b) pursuant to Section 6.16 of the APA, release any remaining Interim Escrow Amount to LCS.
- d. ***Additional Escrow.*** To the extent LCS agrees to rescind the Termination Notice, LCS will fund an additional \$800,000 in cash (the “Additional Escrow Amount”) to the Escrow Agent, to be used by the Debtor on the terms and conditions set forth in Section 6.16 of the APA and the Interim Escrow Agreement only upon the receipt of all Approvals necessary for Closing to occur and for LCS to assume ownership and operation of The Harborside on or before September 30, 2024, including the following milestones for each required license:
 - 1. RHCF: Receipt of final approval from the Public Health and Health Planning Council, satisfaction of any and all contingencies, and subsequent issuance of an Operating Certificate for the Residential Health Care Facility;
 - 2. Assisted Living: Receipt of Part 1 and Part 2 approvals from DOH and subsequent issuance of an Operating Certificate for the Assisted Living Residence; and
 - 3. CCRC: Receipt of final approval from the Continuing Care Retirement Communities Council, satisfaction of any and all contingencies, and subsequent issuance of a Certificate of Authority for the Continuing Care Retirement Community.
- e. ***Regulator Call.*** LCS shall, in good faith, participate in a call on August 27, 2024 with the Debtor, DOH and DFS regarding the sale.

26. On August 27, 2024, the Debtor, LCS and representatives of DOH and DFS participated in a call regarding LCS’ Applications.

27. On August 28, 2024, the Debtor filed the Motion seeking entry of an order approving the Letter Agreement.

28. I respectfully submit that the Letter Agreement should be approved for several reasons. First, without the Letter Agreement, LCS advised the Debtor that it would not engage in the regulatory approval process nor would it pursue the sale. Therefore, the Letter Agreement provided for the continued engagement by LCS on a call with the Debtor, DOH and DFS on August 27, 2024, notwithstanding LCS' termination of the APA on August 20, 2024.

29. I believe that preservation of the sale is in the paramount interests of the Debtor's estate and all of its creditors because closing on the sale to LCS provides for, among other things, the continuation of The Harborside as a continuing care retirement community, the assumption of the Debtor's current residency agreements (thereby allowing the residents to remain in their homes and continue to receive healthcare services) and continued employment for approximately 140 employees.

30. Additionally, the sale to LCS is a critical component of the Global Settlement Term Sheet, which provides for, among other things, a recovery to the Bond Trustee from the proceeds of the LCS sale and the Member Financial Contribution Obligation (as defined in the Global Settlement Agreement) as well as funding for the payment of entrance fee refunds owed to former residents of The Harborside.

31. Furthermore, particularly given the Debtor's limited liquidity, I believe that preservation of the sale outweighs possible protracted litigation with LCS, which will be burdensome, time consuming and costly.

32. For these reasons, I respectfully submit that the terms of the Letter Agreement, including the release provided to LCS, is within the range of reasonableness and in the best interest

of all of the Debtor's stakeholders. Therefore, I respectfully request that the Court approve the Letter Agreement and grant such other and further relief as may be deemed just and proper.

33. 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, information, and belief.

Dated: September 23, 2024

Amsterdam House Continuing Care
Retirement Community, Inc.

Debtor and Debtor in Possession

/s/ Michael Morton
Michael Morton
Chief Restructuring Officer