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October 16, 2024

Honorable Alan S. Trust
United States Bankruptcy Court
Eastern District of New York
Alfonse M. D'Amato Federal Courthouse
290 Federal Plaza, Courtroom 960
Central Islip, New York 11722

Re: Amsterdam House Continuing Care Retirement Community, Inc. d/b/a The Harborside (the "Debtor"); Case No. 23-70989 (AST) – Status Letter

Dear Judge Trust:

We write on behalf of the Debtor in the above-referenced chapter 11 case to report on the status of the sale of substantially all of the Debtor's assets to LCS Harborside LLC ("LCS"). On September 25, 2024, the Court held a status conference at which the Debtor posed two questions: (i) will LCS continue to pursue the sale transaction with the Debtor and (ii) is the New York Department of Health ("DOH") willing to cooperate with LCS and the Debtor so that the parties can understand the status of DOH's review of LCS' change of ownership applications (the "Applications") and the anticipated timeline for completing its review of the Applications. Following statements made by LCS and DOH both on the record and off the record, the Debtor announced to the Court at the conclusion of the status conference that the Debtor, LCS and DOH agreed to reconvene within forty-eight hours, or by September 27, 2024, to discuss next steps prior to the September 30, 2024 outside closing date.

On October 1, 2024, DOH informed the Debtor that, given the outstanding issues, it could not complete its review of the Applications in their current form and could not provide a timeline for completing its review of the Applications. The Debtor understood that DOH intended to send a letter to LCS outlining the outstanding issues that precluded its review of the Applications. On October 4, 2024, DOH sent the Debtor a copy of its letter to LCS, a copy of which is attached as **Exhibit A** (the "DOH Letter"). On October 8, 2024, LCS sent a response letter to DOH, a copy of which is attached hereto as **Exhibit B** (the "LCS Letter").

On October 4, 2024, LCS requested the return of its Deposit and any remaining Interim Escrow Amount¹ in accordance with the *Order Approving Letter Agreement between the Debtor*

¹ The terms "Deposit" and "Interim Escrow Amount" have the definitions ascribed to them in that certain Amended and Restated Asset Purchase Agreement, dated as of December 20, 2023, by and between the Debtor and LCS Harborside LLC as assignee to Life Care Services Communities LLC d/b/a LCS Real Estate.



October 16, 2024

Page Two

and Life Care Services LLC d/b/a LCS Real Estate [Docket No. 849]. On October 10, 2024, the Debtor returned the Deposit and any remaining Interim Escrow Amount to LCS.

Best regards,

/s/ Gregory M. Juell
Gregory M. Juell

EXHIBIT A

DOH Letter



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

JOHANNE E. MORNE, M.S.
Executive Deputy Commissioner

October 3, 2024

Frank M. Cicero
conadmin@ciceroassociates.com
Cicero Consulting Associates
925 Westchester Avenue, Suite 201
White Plains, NY 10604

Alison T. Rosenblum
ATRosenblum@duanemorris.com
Duane Morris LLP
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Chicago, IL 60603-3433

Re: CCRC Change of Ownership Application – LCS Harborside LLC
The Harborside, 300 E Overlook, Port Washington, NY 11050

Dear Frank Cicero and Alison Rosenblum:

I am writing in regard to the above-referenced Public Health Law (“PHL”) Article 46 Certificate of Authority (“CoA”) application (“CCRC application” or “application”), for which you have been identified as consultants and contacts for the applicant, LCS Harborside LLC (“the applicant”). This application also has two companion applications: Adult Care Facility (“ACF”) Certificate of Need (“CON”) # 240003 and Residential Health Care Facility (“RHCF”) Full Review CON # 241003.

Given the following outstanding open items, the completion of review of the CCRC application, in its current state, is not possible. We have identified several critical issues in the applicant’s Continuing Care Retirement Community (“CCRC”) Change of Ownership application. Please note that these are standard requirements made of all applicants to protect consumers and ensure compliance with New York State law. The Department of Health (the “Department”) considers the outstanding issues impairments for any future presentation and action by the Department on the CCRC application and, as a result, constitutes an abandonment and withdrawal of the CCRC application by the applicant, in accordance with 10 NYCRR 900.4(e). The same is applicable to the companion ACF application (18 NYCRR 485.6(i)) and RHCF application (10 NYCRR 600.2(c)).

Key Deficiencies:

- **Lack of required financial transparency:** The applicant has refused to include recent financial statements and details on rate increases for prospective residents, violating statutory requirements.

Re: CCRC Change of Ownership Application – LCS Harborside LLC
October 3, 2024
Page 2

- **Inappropriate admissions request:** The request for indefinite and unlimited non-contract holder admissions to care facilities violates state regulations, which only allow such admissions for a limited time.
- **Mischaracterization of entrance fees:** The applicant improperly described a portion of entrance fees as a loan, which contradicts statutory definitions.
- **Unacceptable management fee structure:** The proposed management fees based on a percentage of revenue create concerns about incentives that could harm consumers.
- **Failure to provide marketing materials:** The applicant has not provided draft marketing and advertising materials for review to ensure statutory compliance.
- **Proposed ownership non-complaint with statutory requirements:** The applicant claimed passive investor 90% ownership that is non-complaint with statutory requirements and failed to provide information on key investors who hold 90% ownership, preventing the Department from conducting a proper statutory review.

These open items have been clearly communicated previously, and the applicant's refusal to address them to the satisfaction of the Department makes further review impossible.

As you know, the applicant submitted the PHL Article 46 CoA application to the Department on January 12, 2024, seeking approval to be the new operator of The Harborside CCRC under an asset purchase agreement approved by the United States Bankruptcy Court for the Eastern District of New York (the "Court"), Case No. 23-70989 (AST). Initially, the CCRC application was rejected by the Department as it only offered a Type C fee for service contract, which did not meet the requirements under statute for PHL Article 46 CCRCs. PHL § 4601(2-b)(e) requires a CCRC to offer a Type A full lifecare or Type B modified contract in addition to a Type C fee for service contract. The applicant is required to obtain a PHL Article 46 CoA to service The Harborside's current Type A contracts to be assumed through the bankruptcy proceeding. After further discussions with the Department, the applicant revised the CCRC application and submitted an amended application on May 7, 2024, that purported to meet the requirements under PHL § 4601(2-b)(e) for contract offerings.

During its review, the Department determined that the application failed to contain sufficient information for the Department to fully evaluate it in accordance with all applicable laws, regulations, and rules. In some cases, the applicant continues to debate the statutory requirements, refused to comply with statutory requirements, and has not agreed to comply with additional requests from the Department. The Department identified specific issues, which have been communicated to the applicant via several requests for additional information and are outlined below. The communication between the Department and the applicant was also outlined in the declaration filed with the Bankruptcy Court ahead of a September 25, 2024, hearing, by Daniel Lahey, Executive Vice President, Chief Financial Officer, and Chief Investment Officer at Life Care Companies LLC, the parent company of the applicant.

The applicant has presented a private equity investor (non-natural persons) ownership structure, with the managing member of the operating entity (applicant) serving as the manager of day-to-day operations of the CCRC via an affiliate. From the onset of discussions with the Department, the applicant was aware of the challenges their proposed model presented to the State regulators

Re: CCRC Change of Ownership Application – LCS Harborside LLC

October 3, 2024

Page 3

under New York State statutory requirements for CCRCs. The applicant and the Debtor in the Bankruptcy Case were made aware by the State regulators of the possible lengthy timeframe for review of the application. The application, as currently constructed, presents numerous policy and statutory issues and in current form, does not meet the statutory requirements for approval. As such, the Department cannot make a positive recommendation for approval of this application and could not do so until the Department was confident that the proposed operating model for The Harborside would be in compliance with the statutory requirements in place to protect consumers and the seniors who reside in NYS CCRCs.

Certain facts related to the Department's review are set forth below and presented for your records. In general, the Department is unable to determine based on the information provided by the applicant if the proposed organization will be able to properly function as the governing authority or operator and conduct affairs of the business in compliance with the statutory requirements for PHL Article 46 CCRCs.

1. The Proposed Organization

The proposed operating entity to be granted a CoA is LCS Harborside LLC. LCS Harborside LLC's sole member is LCS Harborside JV LLC. LCS Harborside JV LLC is also the sole corporate member of Harborside Investment LLC, an entity created to provide 100% of the financing for the transaction via a related party loan agreement to LCS Harborside LLC. The funding for the loan is being provided via contributions of the three members of LCS Harborside JV LLC: LCS Harborside Holdco LLC (10% member), RCI Senior Living Real Estate LLC (75% member), and MPM Harborside JV Investors LLC (15%).

LCS Harborside Holdco LLC is proposed as the managing member and, despite its 10% membership interest, the applicant claims LCS Harborside Holdco LLC is the only entity that will exercise control over the proposed operating entity. LCS Harborside Holdco LLC will provide management services for day-to-day operations via a related party management services agreement with another affiliated entity, Life Care Services LLC. The applicant further states that neither RCI Senior Living Real Estate LLC nor MPM Harborside JV Investors LLC will direct or cause the direction of the actions, management, or policies of LCS Harborside LLC, in its operation and ownership of The Harborside. However, this statement is contradicted by the authority provided to RCI Senior Living Real Estate LLC and MPM Harborside JV Investors LLC, which have voting rights for major decisions as defined in LCS Harborside JV LLC's operating agreement. As such, The Department contends that RCI Senior Living Real Estate LLC and MPM Harborside JV Investors LLC, which together represent 90% of ownership interest, are subject to review under PHL § 4604(6)(c). To date the applicant has not agreed with the Department's interpretation, which has prohibited the Department from conducting a proper review of these entities, and other related entities, as required under statute. The request being made by the applicant to consider the two members as passive investors would not be in compliance with requirements found in PHL §§ 4601(4) and 4604(2)(j). This is also in violation of PHL §§ 2801-a(3)(b) and 2801-a(3-b), and 10 NYCRR 600.2(b)(2), requirements for the RHCF companion application; and, similarly, 18 NYCRR 485.6(d) for the companion ACF application. Further, as contemplated by the CoA statute, it is in the public interest and the interest of consumers to review 90% of an organization that is providing a significant portion of

Re: CCRC Change of Ownership Application – LCS Harborside LLC

October 3, 2024

Page 4

the funding for this transaction and CCRC operations going forward. The 90% ownership will also be entitled to the distribution of equity from operations of The Harborside, either directly through LCS Harborside LLC or through Harborside Investment LLC.

Officers of the organizations. The applicant has identified officers of the entities within the organization as a basis for the Department to conduct a required character and competence review. The applicant, related to their position stated above, contends the submission of materials required to conduct character and competence reviews should be limited to the four officers of LCS Harborside JV LLC. For the avoidance of doubt, the officers are the same across the following entities within the organization: LCS Harborside LLC, Harborside Investment LLC, LCS Harborside Holdco LLC, and LCS Harborside JV LLC. The four officers are also named for the related party management company, Life Care Services LLC, with one additional officer. The applicant has not agreed that the officers of RCI Senior Living Real Estate LLC and MPM Harborside JV Investors LLC are subject to a character and competence review, despite meeting the statutory and regulatory definitions of control or controlling person found in Public Health Law § 4601(4) and 10 NYCRR 900.1(g). This has presented a challenge for the Department as the officers of RCI Senior Living Real Estate LLC and MPM Harborside JV Investors LLC, meet the definition of controlling persons, and the statutory authority to review corporate officers for character and competence cannot be set aside at the Department's discretion. The Department also has concerns about the ability to hold officers accountable under the same criteria as natural person owners under statute. It should be noted that the Department has been made aware that one of the proposed officers of LCS Harborside LLC announced that they are leaving Life Care Companies at the end of the year. This announcement has heightened the Departments concerns over its ability to properly oversee this proposed organization, its management structure, and similar proposed organizations that could follow.

2. Failure to Comply with Requirements for Disclosure as per PHL § 4606(8)

The applicant has refused to include in the Disclosure Statements to prospective residents a statement of the changes in the scope of, or the rates for care or services provided, including tables showing the frequency and average dollar amount of each increase in periodic rates at each such facility for the previous five years or such shorter period as the facility may have been operated by the provider. As previously raised with the applicant, the applicant's rationale for not complying with this statutory requirement is not acceptable to the Department.

3. Failure to Comply with Requirements for Disclosure as per PHL § 4606(10)

The applicant has refused to include in the Disclosure Statements to prospective residents recent financial statements of the provider prepared in accordance with generally accepted accounting principles applied on a consistent basis and certified by an independent certified, or public accountant, including a balance sheet as of the end of the provider's last fiscal year and income statements for the last two fiscal years, or such shorter period of time as the provider has been in operation. The applicant's rationale for not complying with this statutory requirement is not acceptable to the Department and the Department has raised this as a concern with the applicant. Previous applicants have also been required to provide financial information from sponsoring entities within the organization. Consumers are entitled to review the financial health of the organization as a whole, especially in light of the financial history of the existing CCRC, The

Re: CCRC Change of Ownership Application – LCS Harborside LLC

October 3, 2024

Page 5

Harborside, which is undergoing its third bankruptcy. While the applicant has shown the Bankruptcy Court statements to support financial resources, the applicant is unwilling to provide similar information to consumers, as is required pursuant to PHL § 4606(10) and is therefore not in compliance with the statute.

4. Request for Indefinite and Unlimited Non-Contract Holder Admissions to ACF and RHCF Portion of the CCRC.

The applicant has requested as part of the application a request to continue non-contract holder admissions to the ACF and RHCF health care facility beds as capacity within those levels of care allow. While the Department recognized the need for a 7-year request for nursing home services, in accordance with 10 NYCRR 900.8(b), to be authorized by the Council, in order to achieve compliance with Insurance Regulations for CCRCs, the indefinite and unlimited request as structured is not within the exclusive authority of the Department to grant. An indefinite and unlimited permission to admit non-contract holders into the ACF and RHCF would also be a violation of PHL § 4605(2), which authorizes such requests “for a limited period.” The Department has raised this concern with the applicant.

5. Failure to Provide Marketing and Advertising Materials Upon Request

The applicant has denied a request to provide draft marketing and advertising materials to be used post approval to allow for review under PHL § 4613 and 10 NYCRR 901.6. The applicant states the materials will be created upon licensure and will be in compliance with statute. The applicant’s response is not acceptable to the Department. Sales and marketing for The Harborside are critical to the future feasibility of the CCRC, and materials should have been drafted at this point. A review of the materials by State regulators and the CCRC Council is necessary to ensure transparency to consumers and compliance with statute given the complexities of the proposed organization.

6. Restating the Statutory Defined Entrance Fee and Entrance Fee Refund as a Loan Agreement Between a CCRC and Resident

The applicant has proposed continuing care retirement contracts terms not defined in Public Health Law Article 46. Specifically, the applicant proposes defining a portion of the entrance fee defined in Public Health Law § 4601(6) to be classified as a loan supported with a loan agreement to be executed between the CCRC and the resident. The applicant provided an explanation for the necessity of this loan agreement language and variance from the entrance fee refund terminology based solely on their for-profit business model. The Department has stated concerns over the variance from statutory defined terms in the proposed continuing care retirement contracts and the possible confusion this may cause to consumers when referencing the requirements for entrance fee refunds as stated in PHL § 4609 and as required in continuing care retirement contracts pursuant to PHL § 4608. The Department advised the applicant that the Department does not have the exclusive authority to approve the continuing care retirement contract language as proposed, and would need this matter to be discussed publicly with the CCRC Council. The Council’s consideration of this matter is a statutory necessity, pursuant to its authority per PHL § 4602(2)(i), and is the appropriate regulatory mechanism to determine if the variance in continuing care retirement contract language and associated loan agreement between a CCRC and the resident is in compliance with the statutory requirements for approval.

Re: CCRC Change of Ownership Application – LCS Harborside LLC
October 3, 2024
Page 6

7. The Management Agreement Fee Structure

The proposed management agreement fee structure for Life Care Services LLC is based on a percentage of revenue, with the exception of the portion applied to the management of the RHCF. While the applicant has acknowledged RHCF statutory and regulatory requirements for prohibiting revenue sharing by non-established entities and adjusted the fee for that portion, the applicant contends a revenue sharing fee structure is allowed for the CCRC as a whole. The Department, pursuant to policy, has not allowed existing CCRCs to enter into revenue sharing fee structures when contracting for services and The Department is not willing to recommend approval in this case with specific concerns over the incentive based revenue sharing of large entrance fees paid. Discussion about whether revenue-based management fees may be permitted is a question for prior consideration by the CCRC Council and is not the exclusive authority of the Department.

Given the preceding, outstanding issues and the applicant's desire obtain approval and operating certificates in short order (as communicated to the Bankruptcy Court on September 25, 2024), completion of review of the CCRC application, in its current state, is not a possibility. Completion of review of the companion ACF and RHCF applications is also not possible as these applications rely on the accuracy and completeness of the CCRC application to operate The Harborside. The Department considers the outstanding issues impairments for any future action by the Department on the CCRC application and, as a result, constitutes an abandonment and withdrawal of the CCRC application by the applicant. The same is applicable to the companion ACF and RHCF applications.

This letter does not purport to set forth a full and complete recitation of all relevant facts or law. As of the date of this letter, all three of the applications for a change of operator of The Harborside will be closed.

Sincerely,



Michael Heeran
CCRC Program Unit
Center for Long-Term Care Licensure, Planning, and Finance
Office of Aging & Long-Term Care

cc: Kathy Marks, DOH General Counsel, Division of Legal Affairs
Marthe Ngwashi, DOH Division of Legal Affairs
Valerie Deetz, DOH Office of Aging & Long-Term Care
Department of Financial Services

EXHIBIT B

LCS Letter



October 8, 2024

Michael Heeran
Long-Term Care Licensure Specialist
Center for Long-Term Care Licensure, Planning, and Finance
Office of Aging and Long-Term Care
New York State Department of Health
875 Central Avenue
Albany, New York 12206
CCRC@health.ny.gov
Michael.heeran@health.ny.gov

Dear Mr. Heeran:

We were shocked and extremely disappointed to receive your letter dated October 3, 2024 (the “October 3 Letter”) in which the Department of Health (the “Department”) stated that it would be impossible for the Department to complete its review of LCS Harborside LLC’s (“LCS”) CCRC application and that the Department considered the application, as well as the companion residential health care facility and assisted living residence applications (collectively with the CCRC application, the “Applications”), to be abandoned and withdrawn.

As you know, LCS and The Harborside were told by the Department that it would be providing a comprehensive list of open issues related to the Applications—a list both LCS and The Harborside have been requesting for months—in an effort to make it possible for the parties to determine the future of the proposed acquisition of The Harborside. Instead, LCS and The Harborside were dismayed to receive a letter making categorically false accusations against LCS and “closing” the applications that, until October 3, LCS believed were still under active consideration and review by the Department.

The October 3 Letter is an obvious unsworn attempt to mitigate the factual sworn testimony in the *Declaration of Daniel L. Lahey 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* (the “Lahey Declaration”), a copy of which is attached hereto. Needless to say, LCS strongly disagrees with and has already refuted the baseless and patently false allegations made by the Department throughout the October 3 Letter in the Lahey Declaration. At no time has LCS “refused” to provide information or documentation requested by the Department. Rather, LCS has engaged in many rounds of discussion and problem-solving with respect to the issues raised in the October 3 Letter and it was told by the Department that further discussion on these issues was forthcoming.

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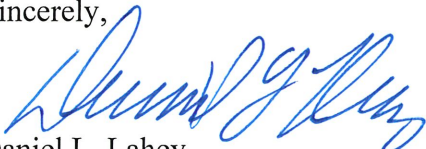
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Michael Heeran
New York State Department of Health
October 8, 2024
Page 2

Indeed, on numerous occasions over the past year, LCS has requested clarification and discussion with respect to the Department's expectations—making clear that LCS was open to supplementing its submissions. Further, LCS maintains that its proposed CCRC contracts and management fees are fully compliant with New York requirements. LCS believed, perhaps naively, that the Department was continuing to review and consider these issues, of which it has been aware for between ten and fifteen months, in good faith and had the best interests of the residents of The Harborside in mind. Clearly this belief was misplaced.

LCS has worked tirelessly and at great expense over the past year and a half to submit, and in many cases re-submit, required information and to respond to the Department's requests and concerns in the hopes of obtaining the necessary regulatory approvals to become the new owner and operator of The Harborside. LCS has already, under penalty of perjury and not in an unsworn letter, presented the facts of this situation to a federal court. The Department's efforts to obfuscate will fail. The facts here, as set forth in painstaking detail in the Lahey Declaration, reveal a government failure that has resulted in the loss of a solution that would have preserved for the benefit of current, future and former residents, employees and the community. The residents of The Harborside deserve better.

Sincerely,



Daniel L. Lahey
Executive Vice President

Cc: Rachel Nanes, Michael Morton, Frank Cicero, Alison Rosenblum, Chris D'Amato



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

In re:

AMSTERDAM HOUSE CONTINUING CARE
RETIREMENT COMMUNITY, INC.
d/b/a THE HARBORSIDE,¹

Debtor.

Chapter 11

Case No. 23-70989 (AST)

**DECLARATION OF
DANIEL L. LAHEY IN SUPPORT
OF 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**

I, Daniel L. Lahey, hereby declare under penalty of perjury as follows:

1. I submit this declaration (this "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* (the "Motion," and the letter agreement discussed therein, the "Letter Agreement") [Docket No. 811].

2. I am an Executive Vice President, the Chief Financial Officer and the Chief Investment Officer at Life Care Companies LLC, the parent company of Life Care Services Communities LLC, d/b/a LCS Real Estate (collectively, "LCS"), where I oversee our finance and real estate organizations. LCS is the court-approved good-faith purchaser of Amsterdam House Continuing Care Retirement Community Inc., d/b/a The Harborside (the "Debtor" or the "Harborside"). I have extensive experience in identifying and evaluating potential senior living real estate investment opportunities, and I have over 14 years of experience in the real estate

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.

industry. I have overseen a number of LCS transactions in the past five years—collectively valued at over \$2.3 billion—a significant portion of which have been CCRC acquisitions and recapitalizations. In 2022, I moved to the Chief Investment Officer role and earlier this year, I also took on Chief Financial Officer responsibilities for the LCS organization. Prior to the launch of LCS Real Estate in 2010, I had various tax and finance roles at LCS. I hold a Bachelor of Arts in accounting and finance from Wartburg College and worked in public accounting prior to joining LCS in 2008.

3. I am directly responsible for LCS’ pursuit of the Harborside and the facts and circumstances set forth in this Declaration. The statements made in this Declaration are based on my actual knowledge as well as information provided to me by my colleagues at LCS. In addition, my statements are based, in whole or part, upon my review of public and non-public documents. Except as otherwise noted, I have personal knowledge of the matters set forth in this Declaration.

4. I believe, to the best of my knowledge, that the facts and circumstances set forth herein are true and correct. References to bankruptcy, the chapter 11 process, and related legal matters are based on my personal understanding of such matters. I am over the age of 18 and authorized to submit this Declaration on behalf of LCS. If called upon to testify, I would testify competently to the facts set forth herein.

Preliminary Statement

5. As is set forth in greater detail herein, LCS has invested significant time, effort and considerable amounts of its own funds in an attempt provide a “rescue transaction” for a community which has been required to seek chapter 11 protection three times. The process that led to LCS being the successful bidder was complex, lengthy and often contentious. In spite of

this, multiple constituencies were able to find enough common ground and compromise to provide a solution for The Harborside that was different than the past failed restructurings.

6. After the Sale Order was issued in December 2023, and the Global Settlement reached in February 2024, the last remaining obstacle to closing was obtaining the state regulatory approvals for the transaction. Although LCS knew the work involved in obtaining the approvals would be significant, we had been working diligently on many of the regulatory filings months in advance, had proactively communicated with the Department of Health (“DOH”) and the Department of Financial Services (“DFS”) on multiple key aspects of our transaction, and had every expectation that the Departments would act with the proper amount of haste, diligence, and transparency to ensure that the transaction could be completed before the Outside Closing Date. While we have seen some cooperation and progress with DFS, it is our view that the DOH regulators have demonstrated a lackadaisical attitude toward the situation and the future of residents at the Harborside, and their level of inaction and lack of communication with LCS regarding the status of the applications has led to a situation that nine months after the Sale Order, LCS does not have clarity on whether or not an ultimate approval can take place, or if it would take months or years to achieve.

7. Despite the fact that LCS has been the only party to ever provide a transaction that preserves the contractual, financial and care obligations the Harborside has to its residents, it has faced a Kafkaesque bureaucracy with the DOH that would rather postpone a decision indefinitely, or repeatedly suggest closure of the community, rather than take actions to protect the very same elderly citizens it is charged with protecting. To be clear, LCS is not unfamiliar with regulatory processes, and understands the critical nature of effective oversight of senior living communities. We regularly work with the relevant authorities of a number of states—including New York—but

have never experienced a process as frustrating, fragmented, and mismanaged as this one. Chief among LCS's frustrations is the DOH's messaging to LCS and multiple outside parties that the applications remained "under review" or "incomplete," while, at the same time, failing to provide specific information requests to LCS.

8. The facts here are fairly straightforward—as the Court has been informed, and as all parties have recognized, the longer the process of approval takes, the more money and residents the community loses, the further the deferred maintenance needs of the building grow, and the more challenging the turnaround of the Harborside becomes. Specifically, from the approval of the sale in December to date, the Harborside has seen a decrease in independent living occupancy from 113 to 94 occupied units. Accordingly, the Asset Purchase Agreement between LCS and the Harborside (as amended, the "Modified LCS APA"),² provided for an Outside Closing Date of December 31, 2023, which LCS has, in good faith and on with the belief that the regulators would act, agreed to extend on multiple occasions, eventually to September 30, 2024. With each extension of the target closing date, LCS applied additional resources, including hiring additional consultants and intensifying the communications with multiple parties in an effort to expedite the regulatory approvals before the community no longer is viable. As the DOH was repeatedly informed by LCS and the Harborside, September 30, 2024 is the absolute final date by which this transaction could close. Despite LCS's continued best efforts, which are detailed herein, the Outside Closing Date is a week away and not only has there been no regulatory approval, there is no indication of when such approval will occur, if ever.

9. Pursuant to Section 12.01 of the Modified LCS APA, LCS reluctantly terminated the Modified LCS APA on August 20, 2024 when it felt, based on communications with DOH,

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Motion or the Modified LCS APA.

that achieving a closing by the Outside Closing Date was no longer possible. While at that point LCS was entitled to return of its \$2.75 million deposit, it was simultaneously walking away from approximately \$3.5 million in third party expenses, \$1.2 million in funded operating expenses, and countless hours of effort by its employees, consultants, and advisors. Shortly thereafter, the Official Committee of Unsecured Creditors (the “Committee”) emailed baseless threats to LCS’s counsel. The Harborside (and the New York State regulators) thereafter sought LCS’ agreement to re-engage. LCS was legitimately concerned that entering into additional renegotiations would undercut its position that it had utilized “best efforts,” as required under the Modified LCS APA, and that it would be participating in meetings with parties who were actively considering litigation against it, especially given the Committee’s outstanding threats.

10. Against that backdrop, LCS agreed to enter into further discussions with the Harborside and the applicable regulators in the hope that a closing by September 30, 2024 was still possible, on the condition that the Harborside acknowledge that LCS had exercised best efforts and satisfied its obligations under the Modified LCS APA, that it had validly terminated the Modified LCS APA, and that it was entitled to return of its deposit. The Harborside agreed and, in reliance thereupon, LCS has expended significant additional time, money and effort in the past four weeks in diligently working on obtaining the regulatory approvals, once again to no avail. As of this Declaration, the DOH has still failed to provide a timeline for approval of the transaction, has refused on multiple occasions to engage with LCS in any meaningful way, and as such, has failed to protect the residents of the Harborside.

I. LCS’s History as a CCRC Owner and Operator.

11. LCS, an established leader in senior living services with over 50 years of senior living experience, is made up of five senior-focused companies and provides senior living management solutions to 135 communities across 31 states, serving approximately 36,000 seniors.

LCS is the 3rd largest manager of senior living communities in the United States and for each of the last five years, JD Power has ranked LCS highest in customer satisfaction among independent senior-living communities.

12. LCS holds ownership in 44 communities—15 of which carry Continuing Care Retirement Community (“CCRC”) licensure. Accordingly, LCS has completed numerous CCRC acquisitions throughout its history, many of which, like the Harborside, involved a not-for-profit to for-profit ownership conversion and/or financial distress of the previous ownership group. One example is The Clare in Chicago (the “Clare”), which was acquired out of bankruptcy in 2012 with a 35% occupancy rate after the Clare experienced significant financial struggles. Under LCS’s ownership and management, the Clare’s sales velocity materially increased and, by 2017, the independent living occupancy rate had stabilized above 95%. More recently, LCS acquired The Arlington of Naples (the “Arlington”), a luxury CCRC in Naples, Florida in December of 2022. The Arlington was also in financial distress, and its outsized debt burden was causing prospective residents to delay their move-in decision. In the short time since LCS’s acquisition of the community and rightsizing of the debt load, the Arlington has seen a sizable jump in prospective resident inquiries and sales velocity. In all situations where LCS has acquired an existing CCRC, we have assumed the existing residency agreements, and all obligations to the residents, financial or otherwise, in their entirety.

13. In every other state in which LCS has applied for regulatory licensure, LCS has worked cooperatively and successfully obtained all necessary licenses in a reasonable time, generally around 60-120 days. In fact, since 2014, LCS has applied for and received numerous regulatory approvals for communities in which LCS had an ownership interest, including:

- a. 47 assisted living residence licenses;
- b. 9 CCRC licenses; and

- c. 19 skilled nursing facility licenses.

II. LCS's Expenses in Pursuit of the Acquisition of the Harborside.

14. LCS has been expressing its interest in acquiring the Harborside and working diligently to move to a closing of that transaction (the "Harborside Transaction") since October 2022. In addition to its \$2.75 million deposit, which it funded on July 20, 2023, and remains with the Harborside, LCS funded \$1.2 million to the Escrow Account (as defined in the Interim Escrow Agreement) on January 5, 2024, which has been used by the Harborside to pay operating expenses and care for the Residents on the terms and conditions set forth in Section 6.16 of the Asset Purchase Agreement and the Interim Escrow Agreement.

15. To date, LCS has also spent at least \$3.5 million to date in out-of-pocket expenses on the Harborside Transaction. This includes professional fees paid to Sidley Austin LLP as restructuring counsel, Duane Morris LLP as regulatory counsel, Cicero Consulting Associates as regulatory consultant, Park Strategies as government relations consultant, FORVIS as feasibility consultant, and Continuing Care Actuaries as actuarial consultant.

16. Internally, LCS estimates that our personnel have spent in excess of 4,500 hours on the Harborside transaction.

III. LCS's Year-Long Attempt to Acquire the Harborside and the Associated Regulatory Roadblocks.

17. In New York, DOH and DFS regulate and oversee the CCRC program, although applications for a Certificate of Authority ("COA") to operate a CCRC must be approved by the independent, statutory CCRC Council following review and recommendation for approval by DOH and DFS. Assisted Living Residences ("ALRs") are licensed exclusively by DOH. Skilled nursing facilities, also called residential health care facilities ("RHCFs") in New York, are subject to regulation and oversight by the DOH; applications for RHCF licensure are reviewed by the

DOH, which recommends such applications for approval by the Public Health and Health Planning Council (the “PHHPC”), the independent, statutory council that has authority to approve the establishment and licensure of RHCs. To operate CCRCs and their constituent skilled nursing facilities and adult care facilities, such as the Harborside, three applications—a CCRC application, an ALR application, and a RHC application—must be complete and approved pursuant to New York State laws and regulations.

18. Notwithstanding LCS’s status as a leading national leader in senior living, its established track-record of success in other states, and its significant and ongoing efforts to provide all information requested and required by statute, regulation, and the DOH, not to mention the increasingly dire financial situation at the Harborside, DOH regulators have demonstrated a lackadaisical attitude toward the situation and the future of residents at the Harborside, and their level of inaction and lack of communication with LCS regarding the status of the applications has resulted in the Harborside and LCS having to modify the closing date on multiple occasions. Such resistance is not only harmful to the Harborside Transaction and each of the interested parties, it is also, quite frankly, inexplicable in that it harms the very residents the regulators are charged with protecting. Indeed, LCS has worked diligently for well over a year to comply with the regulators’ requests in order to consummate the transaction, and still has no clear indication when, if ever, approval will be granted. A detailed description of the events leading to the Motion and this Declaration is set forth below.

19. Given its substantial experience with CCRCs around the country and its previous experience with ALR regulatory approvals in New York specifically, LCS recognized that the Harborside Transaction might present a challenging approval process, as there are currently no for-profit owners of CCRCs in New York and given that New York State has one of the most

complex, demanding, and time-consuming approval processes for CCRCs, ALRs, and RHCs in the country. Accordingly, when LCS first heard indications that the Harborside may be heading toward another bankruptcy and seeking new ownership in September 2022, LCS immediately engaged Duane Morris LLP, its experienced regulatory counsel with an established track record in New York. LCS had been told that the regulators were “looking for solutions” and LCS wanted to obtain a better understanding of what a potential acquisition might entail, especially with respect to the nuances and challenges of the New York approval processes.

20. After it initially appeared that the Harborside was moving forward with another potential purchaser in late 2022 and LCS had paused its pursuit, LCS once again began exploring a potential bid for the Harborside in May 2023 and retained Sidley Austin LLP, its experienced restructuring counsel. Because it recognized that issues related to for-profit CCRC ownership would likely be new to DOH and DFS and would require further consideration by both agencies, beginning in May of 2023, seven months prior to even being approved by the Court as the successful purchaser, LCS began actively engaging with DOH and DFS representatives to preview their anticipated bid, including a proposed ownership structure and means of financing a potential acquisition.

21. In advance of a requested introductory meeting with DOH and DFS, LCS submitted to DOH and DFS a preliminary list of questions on May 18, 2023 and an overview of the potential ownership structure of the entity through which LCS proposed to acquire the Harborside on June 9, 2023.

22. LCS had an introductory meeting with DOH and DFS representatives on June 12, 2023. Pursuant to a request from DFS made during the meeting, LCS submitted a letter on June 16, 2023 (the “June 16th Letter”), detailing two proposed mechanisms for financing an

acquisition of the Harborside—one via equity and another via related-party financing—and seeking DFS’s feedback on the same. LCS, DOH, and DFS met again on July 7, 2023 to discuss the June 16th Letter as well as other questions that had been raised during the June 12 meeting. During these calls, DOH and DFS representatives expressed interest in reviewing any applications expeditiously and a willingness to engage in regular communications with a future applicant to maximize efficiency in the application and review process.

23. In July and August 2023, LCS’s regulatory counsel had further communications with DOH regarding the regulatory processes and submissions in light of LCS’s proposed ownership structure.

24. On July 12, 2023, LCS submitted to Harborside its bid and summary of terms regarding the transaction. Shortly thereafter, on July 19, 2023, the Harborside designated LCS as the Stalking Horse Bidder.³

25. On August 7, 2023, the Bankruptcy Court (the “Court”) entered the *Order Approving Designation of Life Care Services Communities LLC d/b/a LCS Real Estate as the Stalking Horse Bidder* [Docket No. 316], which approved LCS’s designation as Stalking Horse Bidder.

26. On September 20, 2023, the Harborside commenced an auction (the “Auction”) with the Initial LCS APA serving as the Stalking Horse Bidder.⁴ Although the Auction was originally set to have three rounds of bidding, the Harborside adjourned the Auction after the first two rounds, ultimately declaring another party as the successful bidder.

27. On October 23, 2023, the Harborside informed all interested parties, including LCS, that the original successful bidder had withdrawn its bid. In light of this information, LCS agreed

³ See *Notice of Designation of Stalking Horse Bidder* [Docket No. 262].

⁴ See *Letter Regarding Adjournment of Auction and Sale Hearing* [Docket No. 411].

to reinstate its bid. Accordingly, on October 25, 2023, the Harborside filed a notice designating LCS as Successful Bidder.

28. On October 31, 2023, the Committee and the Harborside filed a joint 9019 motion (the “9019 Motion”) that settled certain claims for a contribution by the Harborside’s parent of \$35 million or, if the Bond Trustee became a party to such settlement, \$50 million.⁵

29. The Court held a sale hearing on November 15, 2023 in which LCS vigorously defended the Initial LCS APA and integrity of the Auction. The Court adjourned the sale hearing to November 21, 2023 for parties to provide closing arguments. At the November 21, 2023 hearing, the Court again adjourned the sale hearing, to December 1, 2023, and invited parties to file letter briefs to supplement their respective arguments.

30. Throughout this time, LCS worked diligently to prepare its applications for regulatory approval to become the new owner of the Harborside. As part of those efforts, LCS maintained an open line of communication with DOH and DFS in an effort to seek clarity on expectations with respect to certain application components related to CCRC contract offerings as well as ownership structure and related disclosures.

31. Indeed, throughout November and December 2023, LCS’s regulatory counsel exchanged emails with the DFS regarding regulatory reserve requirements, CCRC contract offerings, and DFS oversight in the event LCS wished to offer only fee-for-service or “Type C” CCRC residency agreements going forward while nonetheless honoring all life plan or “Type A” CCRC residency agreements already in effect. DFS made clear that it would need to retain oversight for as long as Type A contracts remained in place, but neither DOH nor DFS explicitly stated that LCS would need to obtain a COA under New York Public Health Law (“PHL”), Article

⁵ *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* [Docket No. 455].

46 (“Article 46”) (as opposed to a COA to operate a fee-for-service CCRC under PHL Article 46A (“Article 46A”)) in order to honor the Type A contracts held by current residents of the Harborside.

32. The DOH did not respond to LCS’s questions about contract and COA types. Nevertheless, in an effort to provide the detailed information required by DFS in connection with its financial oversight of the Harborside, LCS moved forward with preparing an application for a COA under Article 46, but including only the Type C residency agreements it wished to offer.

33. On November 27, 2023, LCS’s regulatory counsel emailed a letter (the “November 27 Letter”) to the DOH, providing: (1) a complete organizational structure chart for the proposed applicant entity; (2) a detailed overview and explanation of the proposed ownership structure, including a discussion of the statutory and regulatory provisions allowing for such an ownership structure; and (3) proposing an approach for how the DOH could handle necessary disclosures and related reviews of the applicant entity’s background, track record, and character and competence since we understood that, for historical reasons, the DOH had not previously dealt with review of ownership structures of this nature in the CCRC context (even though LCS believes the structure was acceptable from a legal/regulatory standpoint). LCS received a response from the DOH inquiring whether the Court had issued an order approving the sale of the Harborside to LCS. We were left with the impression that the DOH did not wish to engage further with LCS until and unless the Court had officially approved LCS as the acquirer of the Harborside.

34. At the sale hearing on December 1, 2023, the Court overruled all sale objections but denied approval of the Initial LCS APA and the 9019 Motion. The Court also set forth a proposed transaction (the “Modified LCS APA”), as well as a modified 9019 settlement (the “Modified 9019 Settlement”), that the Court would approve. The Court further invited interested

parties to docket a letter clarifying whether they would pursue the Modified LCS APA and Modified 9019 Settlement.

35. After engaging in significant discussions, the Harborside and LCS agreed to pursue the Modified LCS APA and Modified 9019 Settlement. As such, the Harborside filed a letter notifying the Court of this agreement (the “LCS Sale Letter”).⁶

36. On December 27, 2023, the Court entered order approving (i) the Modified 9019 Settlement (the “9019 Order”),⁷ and (ii) the Modified LCS APA and its proposed Transaction (the “Sale Order”).⁸

37. On December 30, 2023 LCS and the Harborside agreed to extend the Outside Closing Date to March 31, 2024, as provided for in Section 10.01 of the Modified LCS APA.

38. Four business days after the Court approved the sale and entered the Sale Order, on January 3, 2024, LCS submitted its ALR and skilled nursing, also known as the residential health care facility (“RHCF”) applications via the New York State Electronic Certificate of Need System (“NYSE-CON”), which is a web-based, electronic application system. Also on that day, LCS’s regulatory counsel reached out to DOH and DFS representatives via email to inform them that LCS had submitted its ALR and RHCF applications and to request weekly calls to discuss the applications as DOH and DFS proceeded with their respective reviews. The email also attached the November 27 Letter and once again requested that the DOH confirm its expectations with respect to disclosure requirements, noting that LCS had submitted its application materials in line

⁶ See *Letter Regarding LCS Sale* [Docket No. 568].

⁷ See *Order Approving Settlement and Compromise pursuant to Federal Rule of Bankruptcy Procedure 9019* [Docket No. 606].

⁸ See *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* [Docket No. 607].

with the proposal set forth in the November 27 Letter but was prepared to supplement as necessary. The email also followed up on LCS's open questions about CCRC contract offerings and COA types.

39. At the same time, LCS was in the process of finalizing its comprehensive CCRC application. LCS reached out to representatives from the DOH to confirm whether the application materials would need to include the full set of "Schedules" from the ALR and RHCF applications (as indicated in the application instructions previously provided by DOH), given that those applications were already submitted through NYSE-CON and were quite voluminous. The DOH confirmed that the CCRC application could be submitted via email and would not need to include the ALR and RHCF applications, as the DOH had access to them via NYSE-CON.

40. On January 5, 2024, LCS placed \$1.2 million into the Escrow Account to fund the operating needs of the Harborside.

41. On January 12, 2024, LCS submitted its CCRC application via email and did not re-include the ALR and RHCF applications. Also on that day, LCS received the DOH's formal acknowledgment of the ALR application via NYSE-CON, as well as a request that LCS submit the ALR residency agreement for DOH review (which LCS did shortly thereafter, ultimately obtaining approval on March 11, 2024). Formal acknowledgments or "Completeness Letters," as they are more commonly known, indicate that an application is substantially complete and will then be circulated from the Project Management Unit of DOH to the specific review units and staff who will review the application.

42. LCS emailed DOH representatives again on January 19 and 26, 2024, once again requesting regular calls to expedite the application process and seeking DOH feedback for the third and fourth time on the November 27 Letter. The emails also requested a status update on the

RHCF application as the application submission had not yet been formally acknowledged by DOH via NYSE-CON, a step critical to commencement of DOH's review of the application and distribution of various application items to the applicable DOH review units.

43. On January 26, 2024, Lynn Baniak of the DOH responded to LCS's email inquiries, expressing reluctance to schedule regular application update calls and asking for the reasons for which LCS was requesting such calls. Ms. Baniak also confirmed that the RHCF application had not yet been acknowledged as complete and indicated that an unrelated DOH component had ownership of that process. It was becoming apparent that various DOH review units were reviewing the applications independently from one another and it was unclear whether these review units were coordinating their efforts in any way, despite the fact that all three applications submitted to DOH were highly interrelated.

44. On February 2, 2024, LCS received via NYSE-CON an "Incomplete Application Letter" regarding the RHCF application, asking LCS to "Please put the new facility name on the Sites Tab of NYSE-CON and remove the old one." LCS promptly made the requested, non-substantive change.

45. On February 5, 2024, following a request received from the DOH through representatives of the Harborside (rather than a request made directly to LCS), LCS provided to the Harborside a letter to Marthe Ngwashi, DOH Senior Counsel for Planning and Development, detailing LCS's plans for the acquisition of the Harborside.

46. On February 7, 2024, LCS sent a detailed response to Lynn Baniak's January 26, 2024 email, explaining the requests for calls, inquiring about the future scheduling of a CCRC Council meeting (which would be necessary for the final approval of LCS's acquisition of the Harborside), and, for the fifth time, requesting the DOH's response to the November 27

Letter. Ms. Baniak responded the following day, declining to schedule regular calls to discuss application materials and instructing LCS to resubmit its questions via NYSE-CON to the relevant review units, apparently not acknowledging that an applicant cannot initiate correspondence in NYSE-CON. Ms. Baniak indicated that the “process is the same for all nursing home and assisted living licensure applications before the Department” and disclaimed any previous indications that the DOH would be open to calls to move the applications forward expeditiously. It appeared that, despite its ongoing biweekly calls with representatives of the Harborside throughout the current bankruptcy, the DOH was at this point not inclined to give the applications the attention and prioritization necessary to ensure the quick transition of ownership necessitated by the Harborside’s declining financial situation.

47. On February 9, 2024, the DOH finally issued its official Completeness Letter with respect to the RHCF application. Four days later, on February 13, 2024, the DOH issued a 30-day Letter, directing LCS to distribute certain required notification letters, informing residents and staff of the Harborside about the submission of the change of ownership application in compliance with regulations and “Dear Administrator Letter” NH 22-08. The 30-day Letter indicated that LCS was required to submit information about these notification letters within 30 days of receipt of the 30-day Letter (i.e. by March 14, 2024). We knew that this timeline was short, but also understood that the DOH had completed its review of the necessary applications for a previous CCRC bankruptcy in approximately one month, so believed that such a review timeline would be possible.

48. On February 20, 2024, the Bond Trustee, the Harborside, and the Committee agreed to a global settlement which modified certain provisions contained in the 9019 Order in favor of the Bond Trustee and required the Bond Trustee to move to dismiss its appeal of the sale

order. The Harborside and the Committee filed a joint 9019 motion to this effect (the “Global Settlement Motion”).

49. On February 29, 2024, LCS and the Harborside submitted a joint letter to the DOH requesting expedited review of the Harborside application. Among other things, the letter requested that the DOH schedule the proposed change of ownership of the RHCF for consideration at the March 28, 2024 meeting of PHHPC’s Establishment and Project Review Committee (the “Establishment Committee”), with consideration by the full PHHPC at its April 11, 2024 meeting.

50. On March 4, 2024, Lynn Baniak from the DOH responded to the joint letter, stating that the DOH would be unable to schedule the RHCF application for consideration by the Establishment Committee and PHHPC at their respective March and April meetings and, further, if the March 31, 2024 Outside Closing Date could not be extended, the applicant may need to consider a closure plan as a backup (of course, any closure plan would have been the responsibility of the Harborside, not the “applicant,” LCS). To justify the DOH’s delay in reviewing the application, Ms. Baniak pointed to the fact that LCS had not yet submitted its response to DOH’s February 13, 2024 30-day Letter (described above). There was no explanation as to why this letter would preclude review of the remainder of the application.

51. At the time of this email, LCS was already working with the Harborside to draft joint notification letters, which were then distributed to the Harborside’s residents and staff members. Copies of these letters and information about the distribution of the letters was submitted to DOH via NYSE-CON on March 4, 2024. Also on March 4, 2024, LCS responded to Ms. Baniak’s earlier email, providing a copy of this submission and reiterating a desire to work collaboratively with DOH and DFS to move the applications forward.

52. On March 7, 2024, LCS's regulatory counsel sent an email to Ms. Baniak, Mark Furnish, and the two DOH attorneys involved in the applications (Ms. Ngwashi and Vince DiCocco), requesting for the sixth time the DOH's feedback on LCS's proposal regarding ownership disclosures, as set forth in the November 27 Letter. The email explained that, although LCS had been directed to submit the questions via NYSE-CON, LCS was reaching out directly because it could neither initiate correspondence in NYSE-CON, nor direct correspondence to a specific review unit. The email also emphasized the importance of obtaining the DOH's feedback on the November 27 Letter, as it raised critical questions that would impact all three applications. Rather than providing a substantive response or even indicating that these issues were under consideration, Ms. Ngwashi responded on March 12, 2024, simply directing LCS to submit any requests through NYSE-CON or to general and anonymous DOH email addresses pertaining to each application.

53. On March 11, 2024, approximately two months after the CCRC Application was filed, the DFS provided LCS with an initial Completeness Letter regarding LCS's CCRC application, raising concerns about the lack of inclusion of Type A or Type B CCRC contracts with the application and asking pointed questions about the proposed Loan Agreement. On March 18, 2024, the DOH provided LCS with its initial completeness review letter regarding the CCRC application, also raising concerns about the lack of inclusion of Type A or Type B CCRC contracts and declining to continue review until the issue was resolved.

54. LCS believed, and still believes, that New York statute allows LCS to offer only Type C contracts to new residents while continuing to honor existing Type A contracts of current Harborside residents, which was an important part of our transaction and commitment to keep the current residents whole. On March 20, 2024, LCS responded to the completeness reviews with a

letter explaining its position on CCRC contract requirements and requesting further discussion and consideration.

55. On March 27, 2024, LCS, DOH, and DFS representatives met to discuss the March 20 letter and possible solutions to contract concerns. The DOH made clear that it disagreed with LCS's position and the proposals contained in LCS's March 20, 2024 letter, at one point again going so far as to state that the parties had an obligation to begin discussions regarding a potential closure of the Harborside. Nonetheless, by the end of the call, the DOH and DFS invited LCS to submit further detail as to how one of LCS's proposed solutions could be implemented as well as a proposed timeline for DOH and DFS to consider the proposal and complete their reviews of the various applications.

56. In light of the delays due to the New York State regulators' granting the necessary approvals, LCS agreed to another extension of the Outside Closing Date to June 30, 2024, pursuant to Section 10.01 of the Modified LCS APA. This was the final extension provided for under the Modified LCS APA because, as all parties recognized and this Court was informed, with the declining occupancy rates and increasing capital needs of the Harborside, each extension decreased the likelihood of LCS being able to effectuate a successful turnaround plan for the Harborside.

57. Beginning in the middle of March and continuing through the middle of May 2024, LCS received and submitted responses to numerous requests for additional information ("RFAIs") with respect to the ALR and RHCF applications. The requests pertained to: (1) the character and competence of the applicant entity's officers; (2) the compliance records of various out-of-state assisted living and nursing facilities affiliated with LCS; and (3) the financial and budget information submitted as part of the RHCF application. The majority of the RFAIs related to the RHCF application were sent by Steven Mack and Philip LaCombe of the DOH.

58. On April 3, 2024, the Court entered the *Order Approving Settlement and Compromise Pursuant to Federal Rule of Bankruptcy 9019* [Docket No. 698], which approved the Global Settlement Motion.

59. On April 8, 2024, in follow up to the March 27, 2024 meeting, LCS submitted a letter to DOH and DFS proposing a detailed solution to DOH and DFS's concerns, with the understanding that the DOH and DFS would consider the proposal in good faith. The letter outlined how DOH and DFS could implement a model through which LCS would obtain two COAs simultaneously: a COA under Article 46 to allow LCS to honor existing residents' Type A CCRC contracts and a COA under Article 46A to allow LCS to offer exclusively Type C CCRC contracts to new residents. As requested, the letter also set forth a timeline that would allow for a June 30, 2024 closing date on LCS's acquisition of the Harborside. LCS also requested a call with DFS and DOH to discuss the letter.

60. On April 16, 2024, Marthe Ngwashi at the DOH emailed LCS rejecting LCS's proposed approach. From the vantage point of LCS, the tone of the email implied that review of LCS's application was an inconvenience and the DOH would prefer to close the community. LCS responded to Ms. Ngwashi's email later that day, expressing disappointment and requesting reconsideration of DOH's position, and confirming that LCS would investigate the possibility of offering a Type B contract. LCS once again requested a call to discuss this issue further so as to avoid more inefficient back and forth by email.

61. On April 19, 2024, Marthe Ngwashi followed up with LCS to communicate that the DOH was open to considering LCS's proposal and would be back in touch about DOH's availability, presumably to schedule the requested call.

62. On April 26, 2024, Alice McKenney of DFS sent an email indicating that DFS representatives were available and ready to discuss LCS's dual-COA proposal. LCS responded, reiterating its interest in such a call.

63. On April 30, 2024, the Harborside filed a letter updating the Court on the transaction, disclosing that the transaction closing required regulatory approval and that "LCS has been actively engaged with" the New York State regulators, including making requests to expedite the regulatory process. The letter also disclosed that LCS was "work[ing] diligently to ensure a smooth and timely closing by the Outside Closing Date of June 30, 2024."⁹

64. On May 3, 2024, without responding to LCS's requests for a call to discuss, the DOH definitively rejected LCS's proposals and required re-submission of CCRC application, inclusive of either a Type A or Type B CCRC contract.

65. On May 7, 2024, LCS re-submitted the full CCRC application, modified to include a Type B CCRC contract. Outside of a handful of minor changes related to the inclusion of a new Type B contract in addition to the Type C contracts submitted with the original application and a couple of other modifications based on feedback and questions from DOH and DFS, the vast majority of the multi-hundred-page submission remained unchanged from the original January 12th application.

66. At the Harborside's confirmation hearing on May 8, 2024, LCS requested that the court order the New York State regulators attend the next status conference to impress upon them the urgency of the situation. The Court denied the request; instead, permitting the Harborside to invite the regulators.

⁹ See *Letter Regarding Status if [sic] LCS Sale* [Docket No. 713].

67. Also on May 8, 2024, LCS both sent and received myriad communications regarding its applications:

- a. LCS messaged Steven Mack from the DOH requesting confirmation that there were no open requests regarding character and competence on the RHCF application. (No response was ever received from the DOH.);
- b. LCS responded to a question from the Health Facility Planning review unit and requested confirmation that there were no open items or questions;

LCS received and responded to a follow-up question regarding its track record from Steven Mack of the DOH; and
- c. LCS received a request for certain documents related to its RHCF application from Philip LaCombe of the DOH.

68. On May 9, 2024, LCS submitted Schedule 2Cs for officers in connection with its RHCF and ALR applications. This application component was one of the issues raised in the November 27 Letter and, since LCS had still not received a response to the questions and proposals set forth in that letter, LCS decided to move forward with submitting these forms in light of the approaching Outside Closing Date.

69. On May 13, 2024, the DOH's Office of Counsel transmitted via NYSE-CON its first RFAI regarding the RHCF application, and in it, the Office of Counsel requested a resubmission of all legal schedules as bookmarked PDFs and including certain additional documents. It was clear from the nature of the request that DOH had not yet begun its review of the legal schedules. LCS asked for clarification regarding one aspect of the request from the Office of Counsel but received no response. The following day, LCS complied with the Office of Counsel's RFAI request and resubmitted all of the requested application schedules and documents.

70. On May 15, 2024, LCS received a letter from Ergys Shanaj at the DFS that contained questions concerning the Type B actuarial analysis, residency agreements, and the loan agreement (the "May 15th RFAI").

71. To answer the DFS's questions, LCS scheduled a call with Ergys Shanaj and Alice McKenney on May 17, 2024. LCS spoke with Ergys Shanaj and Alice McKenney again on May 22, 2024 to discuss issues the DFS raised in the May 15th RFAI. On May 23, 2024, LCS submitted its first of several written responses to the May 15th RFAI.

72. On May 29, 2024, LCS submitted via NYSE-CON all of the Schedule 6 documents required in connection with its ALR application. LCS also provided via email additional information responsive to the DFS's May 15th RFAI, including an updated draft of the loan agreement, revised to resolve the issues discussed during the recent calls with the DFS.

73. On May 30, 2024, LCS followed up with the DOH and DFS to ensure that the applications were progressing. These communications included:

- a. Messages via NYSE-CON to inquire whether the Office of Counsel had any questions regarding the documents that LCS submitted on May 14. No response was received.
- b. Messages via NYSE-CON with other regulatory review units to confirm that there were no outstanding requests, including the NH License and Certification, Health & Planning, and Project Management units—none of whom responded.
- c. Additional responses to the DFS in connection with the May 15th RFAI.

74. Later on May 30, 2024, DOH publicly released the agenda for the upcoming June 6, 2024 meeting of the Establishment Committee. LCS and the Harborside learned for the first time that LCS's RHCF application was not included on the agenda.

75. On May 31, 2024, LCS submitted its final response to the May 15th RFAI, providing the requested Type B contract profit margin analysis, which our actuarial consultants had just completed.

76. On June 3, 2024, representatives of LCS, the Harborside, and the DOH had a call in which the DOH generally stated that it would not put LCS's application on the agenda for the

upcoming meeting of the Establishment Committee (the “EC Agenda”) until the CCRC application was complete. While LCS was aware of a few items that remained under DFS’s review, there were no outstanding questions from the DOH at that time.

77. Also on June 3, 2024, LCS, at its own cost and expense, formally engaged Park Strategies as government relations consultant. While there was no requirement to engage a government relations consultant, LCS went above and beyond to ensure that it achieved all requisite approvals on its contemplated timeline. Further, beginning in July of 2023 and continuing throughout this time, LCS made site visits to the Harborside, even housing a sales specialist, at our own cost and expense, at the Harborside to aid them in fielding when the Harborside was without a sales team. In total, individuals from LCS have made at least 28 site visits, to help prepare for an eventual closing.

78. On June 20, 2024, LCS received emails suggesting that the DOH had communicated to other individuals and entities that it was waiting for responses from LCS; however, there were no outstanding information requests from DOH at that time. Indeed, for most of this process, the DOH appeared to have little or few questions for LCS (other than the questions from two reviewers discussed above) and only very recently did the DOH begin making any substantive requests with respect to legal submissions and the CCRC application.

79. Also on June 20, 2024, LCS submitted a joint letter from LCS and the Harborside to DOH and DFS, requesting a status update on the agencies’ respective reviews of LCS’s applications as well as a comprehensive list of open items regarding the applications. Alison Rosenblum, on behalf of LCS, and Ergys Shanaj also met on June 21, 2024 to discuss the DFS’s outstanding questions and concerns.

80. On June 23, 2024, LCS and the Harborside began to discuss an extension to the Outside Closing Date, which was then set for June 30, 2024. The Harborside also requested additional operating liquidity from LCS to fund the Harborside's operations through a September 30, 2024 Outside Closing Date.

81. On June 24, 2024, Steven Mack requested updates to previously submitted affidavits regarding the compliance records of LCS-owned nursing facilities (the "June 24th RFAI"). Thus, even though LCS submitted the original affidavits at the appropriate time, because of the significant delay in approvals, the shelf life of the originals passed and LCS was required to devote more time and effort to providing the updates.

82. On June 25, 2024, LCS and DFS representatives met again to discuss open questions regarding the revised loan agreement, which had been submitted on May 29, 2024 and, upon information and belief, the DFS appeared to be receptive to the proposed revisions. In response to a question raised during the call, LCS submitted a letter to the DFS regarding Section 7.3 of the loan agreement.

83. On June 26, 2024, LCS received an email from the DOH designating Michael Heeran as the primary point of contact for the applications. Philip LaCombe also submitted another RFAI for financial information regarding the RHCF application (the "June 26th RFAI").

84. On June 27, 2024, LCS, the Harborside, DOH, and DFS representatives met to discuss the status of the applications.

85. On June 28, 2024, LCS submitted an updated letter regarding Section 7.3 of the loan agreement to respond to questions raised on the prior day's call. Michael Heeran called Alison Rosenblum to discuss his new involvement in the application process, which would include scheduling meetings whenever questions or issues arose that would be most efficiently resolved

through discussions between LCS and DOH, facilitating communications, and resolving any confusion with reviewers. Mr. Heeran also indicated that he had begun reviewing the application materials and did not see anything that would prevent approval of LCS's applications.

86. On June 30, 2024, the Outside Closing Date occurred and, while no extension had been agreed to, LCS continued to diligently work on its applications.

87. On July 2, 2024, LCS's actuarial consultants met with Mark Brandes, DFS's actuary, to discuss open questions. Later that day, LCS submitted an addendum to the actuarial study, reflecting additional information pertaining to the offer of Type B CCRC contracts.

88. Michael Heeran and Alison Rosenblum met again on July 3, 2024. Mike stated that he was working to ensure coordination and consistency across all three applications, and he suggested that he had yet to see anything that would prevent approval LCS's request for authorization to admit non-CCRC residents to the Harborside's ALR and RHCF, a critical component of LCS's turnaround plan and an authorization we understand is in place for most if not all CCRCs currently operating in the State of New York. Mr. Heeran stated that he believed all of the information needed for DOH and DFS to evaluate the request was already included in the application materials, but requested that LCS resubmit its request for such authorization in a slightly different form. LCS immediately set to work on complying with this request.

89. On July 5, 2024, LCS received an RFAI from the Office of Counsel requesting revisions to various legal documents (the "July 5th RFAI") as well as submission of certain additional documents. On July 8, 2024, the Office of Counsel submitted an additional message regarding the July 5th RFAI. LCS submitted a response to the June 24th RFAI from Steven Mack.

90. On July 9, 2024, representatives from the DOH and LCS met to discuss open application items and questions, with the primary focus on financial items, including those raised

in the June 26th RFAI from Philip LaCombe. Also on July 9, 2024, LCS's regulatory counsel sent an email to Michael Heeran, requesting a call with DOH legal counsel to discuss the July 5th RFAI about which LCS had a number of questions. LCS felt it would be most efficient to obtain a better understanding of the DOH's requests so it could submit exactly what the DOH wanted without the need for multiple further rounds of submissions and reviews. LCS also believed it would be most efficient to discuss these questions in real time rather than going back and forth via email or NYSE-CON messages. Mr. Heeran responded that he would try to set up the requested call and asked LCS to send a list of its questions.

91. On July 10, 2024, the Harborside filed a motion (the "APA Amendment Motion") to, among other things, amend the Modified LCS APA to extend the Outside Closing Date from June 30, 2024 to September 30, 2024; *provided* that LCS could terminate the Modified LCS APA on August 15, 2024 if the DOH and DFS did not provide reasonable assurances that (i) unresolved issues with respect to the CCRC, ALR, and RCHF applications would be resolved or reserved as contingencies that would not hold up approval by the Outside Closing Date and (ii) that LCS's RCHF application would be considered at the Establishment Committee's next meeting (collectively, the "Reasonable Assurances," and the August 15, 2024 deadline, the "Reasonable Assurance Deadline"). August 15, 2024 was chosen as the Reasonable Assurance Deadline because it was anticipated the Establishment Committee would release the August 22, 2024 agenda (the "August 22nd EC Agenda") by that date.¹⁰ The APA Amendment Motion also provided for the following:

- a. LCS's consent to the continued use of the remaining Interim Escrow Amount on the terms and conditions set forth in Section 6.16 of the

¹⁰ See *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* [Docket No. 778].

Modified LCS APA and Interim Escrow Agreement through September 30, 2024;

- b. LCS's continued provision to the Debtor of all correspondence concerning the regulatory approvals in accordance with Section 6.05 of the Modified LCS APA;
- c. If the Modified LCS APA is not terminated on August 15, 2024, LCS's promise to escrow an additional \$800,000 in cash to be used by the Debtor on the terms and conditions set forth in Section 6.16 of the Modified LCS APA and the Interim Escrow Agreement;
- d. Section 6.18 of the Modified LCS APA would be amended to provide that LCS shall fund \$4.75 million on account of a portion of the Excess Refund Amount at closing; and
- e. Stipulations that the Debtor and LSA have been diligently pursuing the approvals required under Section 9.09 of the Modified LCS APA, and that the fact that closing had not yet occurred was through no fault of either party.

92. Also on July 10, 2024, LCS sent an email to Michael Heeran providing its questions seeking clarification on a number of the requests in the July 5th RFAI. At Mr. Heeran's request, LCS also submitted these questions via NYSE-CON. Among other things, LCS believed a number of the documents already complied with the requirements for which DOH was demanding revisions. In addition, LCS requested confirmation that DOH would not require further revisions to certain legal documents before LCS moved forward with executing and/or filing those documents. LCS had questions about other requests from the Office of Counsel. No response was received and no call was ever scheduled to discuss the questions. Had LCS been given any clarity on these items, its response could have been completed much quicker. Instead, LCS was forced to guess what information the DOH wanted.

93. On July 11, 2024, LCS submitted a formal letter in the format requested by Mr. Heeran earlier that month, seeking authorization to admit non-CCRC residents to the Harborside

RHCF and ALR, expanding upon the information and request previously submitted to DOH and DFS.

94. On a call on July 12, 2024 between LCS, the Harborside, the DFS, and the DOH, Michael Heeran demanded a letter explaining the reasonable assurances LCS needed to provide \$800,000 to the Harborside. The DFS raised questions regarding the numbers in the outside admissions request letter.

95. On July 15, 2024, LCS received another RFAI requesting additional financial information for the RHCF application (the “July 15th RFAI”).

96. On July 16, 2024, LCS received a notification of (i) approval of the Schedule 6 that was submitted in connection with the ALR application and (ii) disapproval and request for resubmission of the EHP Delayed Egress Waiver request.

97. On July 17, 2024, LCS received an RFAI from the DFS for a Type B fee structure and profit margin analysis. Also on that date, LCS formally retained Frank Cicero of Cicero Consulting Associates as a regulatory consultant to assist in the approvals with the DOH. Again, while there was no requirement to engage a regulatory consultant, LCS went above and beyond to ensure that it achieved all requisite approvals on its contemplated timeline.

98. On July 18, 2024, LCS responded to the RFAI from the prior day. At the insistence of the DOH, Alison Rosenblum then submitted a letter to the DOH outlining what reasonable assurances LCS sought from the DOH, emphasizing that the current meeting cycle was the absolute last chance for the transaction to proceed and explaining why LCS needed such assurances before it could commit to contributing the additional \$800,000 to the Harborside. LCS also submitted an updated version of formal letter requesting authorization to admit non-CCRC

residents, revised to correct and explained what appeared to be slight inconsistencies in the numbers set forth therein.

99. On July 19, 2024, LCS joined the Harborside's biweekly call with the DOH. On the call, the DOH refused to answer any of LCS's clarifying questions, thereby forcing LCS to guess how to resubmit components of its application. Michael Heeran indicated that the Harborside may need to start discussing a plan of closure as the August 15, 2024 deadline approached.

100. Also on July 19, 2024, LCS submitted a response to the July 15th RFAI and separately submitted a follow-up to its July 10 request for clarification on the Office of Counsel's RFAI from July 5, 2024. No response was received. LCS learned from a representative of the Harborside that Marthe Ngwashi had communicated to the Harborside (but never to LCS directly) that she would not address LCS's questions until LCS submitted the requested documents. Accordingly, and in the interest of continuing to move the application forward, LCS made its best efforts at incorporating the DOH's requests into the legal documents previously submitted.

101. On July 22, 2024, LCS provided the DOH with formal notice of Frank Cicero's engagement to provide consulting support on the applications.

102. The Court entered an order approving the APA Amendment Motion on July 25, 2024, thereby establishing the new Outside Closing Date as September 30, 2024.¹¹

103. On a call with Philip LaCombe on July 25, 2024, Mr. LaCombe requested that LCS shorten its July 19th RFAI response. Michael Heeran also called Alison Rosenblum to discuss questions regarding ownership and control. Despite multiple written requests and phone calls,

¹¹ See *Order Granting 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* [Docket No. 789].

LCS received no answers to its clarifying questions regarding the July 5th RFAI. Accordingly, LCS responded to the July 5th RFAI, submitting a majority of the requested items and making best efforts to respond to the requests.

104. On July 28, 2024, LCS submitted additional requested items responsive to the July 5th RFAI.

105. On July 30, 2024, LCS resubmitted the July 19th RFAI response, shortened per Philip LaCombe's request on the July 25th call.

106. On July 31, 2024, LCS and the DOH met to discuss the status of the applications, including open items on financial and legal submissions. The DOH stated that the character and competence review for the RHCF application was currently complete, but additional items could arise. The DOH also raised further concerns about LCS's responses to the two recent financial RFAs from Philip LaCombe, which we had the impression were a result of a miscommunication or disconnect among DOH reviewers. LCS immediately took steps to identify the concerns and remedy them. Also on this call, the DOH recommended that LCS submit all remaining items responsive to the July 5th RFAI, despite the Office of Counsel's failure to respond to LCS's questions about its requests.

107. On a call on August 2, 2024 between LCS, the Harborside, the DOH, and the DFS, the regulators declined to provide any specific updates. LCS also submitted an updated Schedule 9 and Affidavit of Disproportionate Share for the RHCF application in connection with the ongoing financial review.

108. On August 4, 2024, LCS submitted additional requested items in connection with the July 5th RFAI.

109. On August 9, 2024, LCS received news regarding a conversation with Michael Heeran in which he expressed some confidence about LCS receiving the requisite approvals by September 20, 2024. LCS also received a letter from the DFS with further questions about the management agreement, equity contributions, and certain other items (the “August 9th RFAI”).

110. On August 13, 2024, LCS had another call with the DOH and DFS. The DOH stated that it still had questions, but failed to provide any specificity upon request. On the call, I emphasized that the week of the call was absolutely critical to the Harborside’s future. LCS also submitted (i) a response to the August 9th RFAI and (ii) a letter to Office of Counsel further explaining the organizational structure and submitting Affidavits of No Control in connection with the RHCF application. These Affidavits had been proposed in the November 27 Letter to which LCS had still not received a response and we were hopeful they might help expedite the remainder of DOH’s review.

111. On August 14, 2024, LCS met with regulators to discuss open questions related to the RHCF financial submissions. Also on August 14, 2024, LCS received a request for a loan amortization schedule in connection with the RHCF application, which LCS promptly provided.

112. On August 15, 2024, the DOH requested that LCS resubmit all of its CCRC application materials to expedite review of such, including up-to-date versions of any documents that had been revised subsequent to the May 7, 2024 resubmission. LCS completed this request that same day.

113. Also on August 15, 2024, in anticipation that the EC Agenda may not be published that day, LCS and the Harborside agreed to a short term extension of the Reasonable Assurance Deadline to the date that is twenty-four (24) hours after the public release of the August 22nd EC Agenda.

114. On August 16, 2024, LCS and the Harborside had a call with the DOH, expecting to receive confirmation that the application was on the August 22nd EC Agenda. Instead, the DOH refused to answer whether or not the application would be on the August 22nd EC Agenda, instead characterizing the application as “incomplete,” despite failing to communicate any specific items they still needed, claiming that they would send a letter with that information the following week. LCS representatives were asked to leave the call so that the DOH could discuss a plan of closure with the Harborside’s counsel.

115. On August 16, 2024, the August 22nd EC Agenda was published and the Harborside Transaction was not on it. Because the August 22nd EC Agenda was published on August 16, 2024, the Reasonable Assurance Deadline was thereby set as August 17, 2024.

116. On August 17, 2024, LCS and the Harborside agreed to another short-term extension of the Reasonable Assurance Deadline, setting the new deadline on August 18, 2024.

117. After further good faith negotiations between LCS and the Harborside, on August 18, 2024, the parties agreed to extend the Reasonable Assurance Deadline, and thus, LCS termination right, to August 20, 2024 at 2:00 p.m.¹² Additionally, LCS proposed a further amendment (the “Proposed Amendment”) to the Modified LCS APA that would (i) allow LCS to terminate at any time up to September 30, 2024; (ii) stipulate that LCS and the Harborside had been diligently pursuing the necessary regulatory approvals required under the Modified LCS APA; and (iii) provide for LCS to fund additional funds under the Interim Escrow Agreement upon receipt of all such regulatory approvals.

118. On August 20, 2024, Frank Cicero received an encouraging update from Michael Heeran. On the call, Mr. Heeran stated that he would convey to other representatives at

¹² See *Letter Regarding Notice of Extension of Deadline* [Docket No. 802].

the DOH that if LCS did not make the EC Agenda, LCS would need to terminate the Modified LCS APA. In general, Frank expressed that the call was positive and well-received.

119. When the Harborside responded to the Proposed Amendment on August 20, 2024, it pushed back on the Proposed Amendment and suggested its own modifications (the “Proposed Modifications”). The Proposed Modifications were unacceptable to LCS and therefore, LCS promptly exercised its termination right pursuant to Section 12.01 of the Modified LCS APA, and served the Harborside with the requisite notice on August 20, 2024 (the “Termination Notice”).

120. On August 21, 2024, counsel to LCS received an email (the “Litigation Threat”) from Eric Walker, counsel to the Committee, which stated:

The Committee has learned that LCS abruptly and prematurely terminated their APA with the Harborside. It is unconscionable that LCS would so callously abandon its commitment to the Harborside community and its residents this way. It appears that this decision was made by LCS as part of its reckless game of chicken with the New York Department of Health and New York Department of Financial Services, where LCS failed to fulfill its obligation to work expeditiously and collaboratively with the Harborside and New York State regulators to obtain regulatory approval and close the transaction and instead made unreasonable demands through the application process that were impossible to meet. These actions by LCS and its counsel have unnecessarily jeopardized the health and well-being of approximately 190 residents who rely on the Harborside for their home and healthcare, and who placed their faith and trust in LCS to deliver on their promises under the APA.

In the event the APA transaction does not close pursuant to its terms, the Committee reserves all rights, including but not limited to pursuing all legal remedies against LCS for its intentionally reckless and unlawful conduct against the Harborside, its bankruptcy estate and its current and former residents.

121. On August 22, 2024, LCS received an RFAI from Philip LaCombe requesting a non-password protected 2021-2022 balance sheet and income statement for the Harborside (the “August 22nd RFAI”).

122. The Harborside requested that LCS reconsider the Termination Notice and participate in a call with the Harborside, DOH and DFS on August 27, 2024 (the “August 27th Call”).

123. Following this request and after arms-length negotiations, on August 27, 2024, the Harborside and LCS entered into the Letter Agreement whereby LCS agreed to participate in good faith in the August 27th Call and the Harborside and LCS further agreed that:

- a. To the extent [LCS] agrees to rescind the Termination Notice, the Outside Closing Date under Section 10.01 of the Agreement will remain September 30, 2024, *provided* however that LCS may terminate the Asset Purchase Agreement by written notice to the [Harborside] at any time in its full discretion.
- b. The [Harborside] 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 Agreement and that the fact that the Closing has not yet occurred is through no fault of either party, and accordingly [the Harborside] 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, 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. Within two (2) business days of demand from [LCS], the [Harborside] shall,
 - a) pursuant to Section 12.02(c) of the Agreement, refund the Deposit to [LCS] and b) pursuant to Section 6.16 of the Agreement, release any remaining Interim Escrow Amount to Buyer.

- d. 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 [Harborside] on the terms and conditions set forth in Section 6.16 of the Agreement 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:
- (i) 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;
 - (ii) Assisted Living: Receipt of Part 1 and Part 2 approvals from the New York State Department of Health and subsequent issuance of an Operating Certificate for the Assisted Living Residence; and
 - (iii) 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.

124. On the August 27th Call, LCS and the Harborside once again informed DOH and DFS that the transaction had to be closed by September 30, 2024. In response, DOH requested that LCS provide a proposed timeline showing how the reviews could be concluded to allow for a September 30, 2024 closing.

125. Immediately prior to the August 27th Call, Valerie Deetz at DOH called Frank Cicero and reported that Marthe Ngwashi would be sending a draft RFAI (the “August 27th Draft RFAI”) listing certain open questions and requests for revisions to submitted documents, but that it not be provided to LCS until after the August 27th Call.

126. On August 29, 2024, in response to the request made by DOH during the August 27, 2024 call, Frank Cicero sent, on behalf of LCS, a detailed timeline showing how the reviews could be concluded to allow for a September 30, 2024 closing and a request for a further call with DOH and DFS on August 30, 2024.

127. Also on August 29, 2024, (i) LCS submitted the balance sheet and income statement requested in the August 22nd RFAI, (ii) LCS immediately provided a chart outlining certain information about contracts pertaining to the RHCF in response to a request for the same, and (iii) Ergys Shanaj at DFS sent LCS an RFAI with various questions about the management agreement, equity contributions, loan agreement, CCRC contracts and the disclosure statement (the “August 29th DFS RFAI”).

128. In the early morning hours of August 30, 2024, LCS provided a comprehensive response to a majority of the requests set forth in the August 27th Draft RFAI. Later that day, Ergys Shanaj at the DFS sent a follow-up RFAI with questions about the PILOT Agreement (the “August 30th DFS RFAI”). The DOH also sent a letter to Frank Cicero on this day, stating that the proposed timeline did not represent a realistic outlook of the path forward.

129. On September 3, 2024, LCS met with Alice McKenney and Ergys Shanaj of the DFS to clarify and resolve certain issues raised in the August 29th DFS RFAI. Later that day, LCS submitted its formal response to the August 29th DFS RFAI and the August 30th DFS RFAI.

130. On September 4, 2024, LCS sent Michael Heeran at the DOH a letter providing further background on use of “Loan” terminology in CCRC contracts and further explanation and justification for the proposed management fees.

131. Also on September 4, 2024, Michael Heeran at the DOH sent LCS an RFAI with additional questions about the CCRC application. LCS provided responses to these questions as well as the balance of the items included in the August 27th Draft RFAI on September 5, 2024. Mr. Heeran sent additional similar RFAs on September 9 and 10, 2024, and LCS responded on September 13, 2024. LCS received additional RFAs from Mr. Heeran on September 15 and 16, 2024 and responded on September 19, 2024.

132. On the evening of September 20, 2024, LCS received two emails from Michael Heeran at the DOH. The second email stated, in part that “For the avoidance of doubt, the applicant has, independently, submitted affidavits related to specific entities in an attempt to demonstrate the entity will not exercise control of the proposed operating entity. The affidavits are rejected and the Department will continue its lawful and appropriate review of the organizational documents” Thus, nearly ten months after submitting a formal proposal and request regarding the Affidavits of No Control and repeatedly asking for the DOH’s feedback on the same (and more than a year after first asking for clarity on disclosure requirements), LCS finally received a partial response from the DOH, but still no actionable requests. It appears that DOH is finally taking a closer look at the organizational structure to determine whether it will need additional information from LCS with respect to the CCRC character and competence review. Had DOH considered these matters when LCS first requested, or even in response to any one of LCS’s repeated requests over the last ten months, LCS could have provided the information DOH needed to complete its review of the applications. LCS is still in the dark, however, as to what DOH will request.

IV. Conclusion

133. LCS has gone above and beyond what a reasonable buyer would do to support the Harborside and complete the Harborside Transaction, but closing is impossible absent cooperation from the state regulators. As evidenced by LCS’s history of successful applications with other state regulatory agencies, the requisite regulatory approvals here should not have been, and certainly should not continue to be, a hindrance to the Harborside Transaction.

134. With regard to the Letter Agreement, LCS has exercised its termination right pursuant to Section 12.01 of the Modified LCS APA. LCS only agreed to participate in the August 27th Call as part of the global settlement contained in the Letter Agreement. Indeed, LCS has gone well beyond its obligations pursuant to the Letter Agreement by continuing to engage

actively with DOH and DFS in the intervening three weeks, including promptly responding to all of the RFAs it has received, all in reliance on the protections negotiated in the Letter Agreement. Particularly in light of the Litigation Threat, LCS would not have continued to engage without the protections of the Letter Agreement.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct.

Dated: September 23, 2024

/s/ Daniel L. Lahey
Daniel L. Lahey
Executive Vice President, Chief Financial
Officer and Chief Investment Officer
Life Care Companies LLC