

<p>Robert S. Westermann (VSB No. 43294) Sheila deLa Cruz (VSB No. 65395) HIRSCHLER FLEISCHER, P.C. The Edgeworth Building 2100 East Cary Street Post Office Box 500 Richmond, Virginia 23218-0500 Telephone: (804) 771-9500 Facsimile: (804) 644-0957 E-mail: rwestermann@hf-law.com sdelacruz@hf-law.com</p>	<p>Thomas R. Califano (NY Bar No. 2286144)* George B. South, III (NY Bar No. 2446771)* Sarah E. Castle (NY Bar No. 4932240)* DLA PIPER LLP (US) 1251 Avenue of the Americas New York, New York 10020-1104 Telephone: (212) 335-4500 Facsimile: (212) 335-4501 E-mail: Thomas.Califano@dlapiper.com George.South@dlapiper.com Sarah.Castle@dlapiper.com</p> <p>* Admitted <i>pro hac vice</i></p>
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Counsel for Virginia United Methodist Homes of Williamsburg, Inc., Debtor and Debtor In Possession

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re:)	
VIRGINIA UNITED METHODIST HOMES)	Case No. 13-31098
OF WILLIAMSBURG, INC.,)	Chapter 11
Debtor.)	

**NOTICE OF: (A) DEBTOR'S OBJECTION TO CLAIM OF
ROBIN'S NEST AVIARIES, INC.; AND (B) HEARING THEREON**

PLEASE TAKE NOTICE THAT on June 11, 2013, the debtor and debtor in possession, Virginia United Methodist Homes of Williamsburg, Inc. (the "Debtor"), by counsel, filed an objection (the "Objection") to your claim in this bankruptcy case with the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the "Court").

Your claim may be reduced, modified, or eliminated. You should read these papers carefully and discuss them with an attorney, if you have one.

PLEASE TAKE FURTHER NOTICE THAT the Court has scheduled a hearing (the "Hearing") on the Objection for **July 11, 2013, at 11:00 a.m. (prevailing Eastern Time), in the United States Bankruptcy Court for the Eastern District of Virginia, Fifth Floor, Courtroom 5000, 701 East Broad Street, Richmond, Virginia 23219**, at which time the Debtor will move the Court for entry of an Order sustaining the Objection.

Your rights may be affected. You should read the Objection carefully and discuss it with your attorney, if you have one in this Chapter 11 case. (If you do not have an attorney, you may wish to consult one.) Under the Case Management Order (as defined below) and Local Bankruptcy Rule 9013-1, unless a written response to the Objection is

filed with the Clerk of Court and served on the moving party within five (5) business days before the scheduled hearing date, the Court may deem any opposition waived, treat the Objection as conceded, and issue an order granting the relief requested.

PLEASE TAKE FURTHER NOTICE THAT in connection with the Debtor's Chapter 11 case, an Order Pursuant to Bankruptcy Code Sections 102 and 105, Bankruptcy Rules 2002 and 9007, and Local Bankruptcy Rules 2002-1 and 9013-1 Establishing Certain Notice, Case Management, and Administrative Procedures (the "Case Management Order") was entered by the Court on March 6, 2013. The Case Management Order prescribes, among other things, the manner in which written objections must be filed and served and when hearings will be conducted. A copy of the Case Management Order may be obtained at no cost at www.bmcgroup.com/vumhw or for a fee via PACER at <http://www.vaeb.uscourts.gov>.

PLEASE TAKE FURTHER NOTICE THAT if you do not want the Court to grant the relief sought in the Objection, or if you want the Court to consider your views on the Objection, then in accordance with the procedures set forth in the Case Management Order and in this Notice, you or your attorney must, **on or before July 5, 2013:**

1. File with the Court at the address shown below written response(s) to the Objection pursuant to Local Bankruptcy Rule 9013-1. You must mail or otherwise file it early enough so the Court will **receive** it on or before the due date identified herein.

Clerk of the Court
United States Bankruptcy Court
701 E. Broad Street, Suite 4000
Richmond, VA 23219

2. You must also serve your written response(s) on the following counsel for the Debtor at the addresses shown below. You must serve the written response(s) early enough so that such counsel will **receive** it on or before the due date identified herein.

Robert S. Westermann, Esq. Sheila deLa Cruz, Esq. Hirschler Fleischer, P.C. The Edgeworth Building 2100 East Cary Street Post Office Box 500 Richmond, VA 23218-0500	Thomas R. Califano, Esq. George B. South, III, Esq. Sarah E. Castle, Esq. DLA PIPER LLP (US) 1251 Avenue of the Americas New York, New York 10020-1104
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3. Attend the Hearing on the Objection scheduled for **July 11, 2013, at 11:00**

a.m.

PLEASE TAKE FURTHER NOTICE THAT if you or your attorney do not take these steps, the Court may deem any opposition waived, treat the Objection as conceded, and enter an Order granting the requested relief without further notice or hearing.

Dated: June 11, 2013

By: /s/ Sheila deLa Cruz
Counsel

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*Counsel for Virginia United Methodist Homes of Williamsburg, Inc.,
Debtor and Debtor In Possession*

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:

VIRGINIA UNITED METHODIST HOMES
OF WILLIAMSBURG, INC.,

Debtor.

Case No. 13-31098

Chapter 11

DEBTOR’S OBJECTION TO CLAIM OF ROBIN’S NEST AVIARIES, INC.

The debtor and debtor in possession, Virginia United Methodist Homes of Williamsburg, Inc. (the “Debtor”), by counsel, files this Objection to Claim of Robin’s Nest Aviaries, Inc. (the “Objection”) and requests entry of an Order modifying Robin’s Nest Aviaries, Inc.’s (“Robin’s Nest”) unsecured priority claim in the amount of \$400.00 (Claim No. 24) (the “Claim” or “Claim No. 24”) to an unsecured nonpriority claim in the amount of \$400.00 for the reasons set forth herein. In support of its Objection, the Debtor respectfully states the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Objection pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper under 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are sections 105 and 502 of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), Rules 3003 and 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 3007-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the “Local Bankruptcy Rules”).

BACKGROUND

4. On March 1, 2013 (the "Petition Date"), the Debtor filed a voluntary petition with this Court for relief under Chapter 11 of the Bankruptcy Code.

5. The Debtor is continuing to operate its business and manage its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. No trustee, examiner or creditors' committee has yet been appointed in this case.

7. The Debtor owns and operates a continuing care retirement community ("CCRC").

8. On March 14, 2013, the Debtor filed the *Motion of Debtor for Order Setting Bar Date for Filing of Claims* [Doc. No. 82] (the "Claims Bar Date Motion"). Pursuant to the Claims Bar Date Motion, the Debtor sought to establish the deadline of April 30, 2013 (the "General Claims Bar Date") by which date creditors must file proofs of claim in this bankruptcy case. Per the Claims Bar Date Motion, the General Claims Bar Date would apply to all creditors, including government units, except for current residents of the CCRC who hold claims against the Debtor under their respective residency agreements.

9. On March 15, 2013, the Debtor filed its schedules of assets and liabilities (as amended) [Doc. Nos. 89, 155, 167, and 213] (the "Schedules").

10. Pursuant to Schedule F, the Debtor listed Robin's Nest as holding an unsecured nonpriority claim in the total amount of \$400.00. Such claim represents the amount owed by the Debtor to Robin's Nest for Robin's Nest's quarterly maintenance visit to the tropical bird aviary at WindsorMeade.

11. By Order dated March 28, 2013 [Doc. No. 117], the Court granted the relief sought in the Claims Bar Date Motion.

12. Accordingly, on March 29, 2013, the Debtor, through its claims and noticing agent, BMC Group, Inc. (“BMC”), served on all known creditors and parties in interest in this bankruptcy case a Notice of General Bar Date for Filing Claims [Docket No. 121] (the “Notice of General Claims Bar Date”).

13. The Notice of General Claims Bar Date provided notice of the April 30, 2013 General Claims Bar Date for all creditors (except for the Residents) to file proofs of claim and notified creditors that all claims must be timely filed with BMC, not with the Court.

14. In addition, the Debtor published the Notice of General Claims Bar Date in the following regional newspapers and on the following dates to provide further notice to creditors of the General Claims Bar Date:

- a. April 6, 2013: The Virginia Gazette (see declaration of publication at Doc. No. 163);
- b. April 7, 2013: The Virginian-Pilot (see affidavit of publication at Doc. No. 164);
- c. April 9, 2013: The Daily Press (see affidavit of publication at Doc. No. 162); and
- d. April 9, 2013: The Richmond Times-Dispatch (see affidavit of publication at Doc. No. 165).

15. On April 18, 2013, BMC received a claim (Claim No. 24) from Robin’s Nest in the total, unsecured priority amount of \$400.00 against the Debtor in the underlying bankruptcy case. A true and complete copy of Claim No. 24 is attached hereto as Exhibit A.

16. Robin’s Nest’s stated basis for the Claim is “services provided.” See Claim No. 24, § 2.

17. Attached to Robin’s Nest’s Claim is an invoice dated February 28, 2013 for the quarterly maintenance visit to the tropical bird aviary at WindsorMeade.

RELIEF REQUESTED AND BASIS FOR RELIEF

18. Bankruptcy Rule 3003 provides that proofs of claim filed by creditors shall supersede any scheduling of such claims by a debtor under section 521(a)(1) of the Bankruptcy Code. See Fed. R. Bankr. P. 3003(c)(4).

19. Once filed, section 502 of the Bankruptcy Code provides that proofs of claim shall be deemed allowed unless a party in interest objects. See 11 U.S.C. § 502(a). Section 502(b) of the Bankruptcy Code provides in pertinent part:

[i]f such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

(1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured

See 11 U.S.C. § 502(b)(1).

20. In order to constitute a valid proof of claim, the writing purporting to be the proof of claim must establish the claimant's intent to recover from the estate. In re A.H. Robins Co., Inc., 118 B.R. 436, 439 (Bankr. E.D. Va. 1990). This Court has previously held that a proof of claim must consist of a writing "which contains a demand against the debtor and manifests the creditor's intention to hold the debtor liable." In re Middle Plantation of Williamsburg, Inc., 48 B.R. 789, 795 (E.D.Va.1985).

21. An objection to a proof of claim must be based upon some good faith ground. In re Falwell, 434 B.R. 779, 783 (Bankr. W.D. Va. 2009). "A debtor or other party in interest may object to the amount, existence or classification of a claim." Id. at 789. If the debtor wishes to object to a proof of claim, then it "(a) must assert a basis for the objection and (b) must come

forward with evidence of equal or greater value than that provided by the creditor in conjunction with the proof of claim.” Id.

22. It is essential for the Debtor to establish the proper amount of liabilities asserted against it. By this Objection, and in order to achieve the necessary finality and certainty in the claims process, the Debtor seeks entry of an Order, pursuant to Bankruptcy Code sections 105(a) and 502, Bankruptcy Rules 3003 and 3007, and Local Bankruptcy Rule 3007-1, modifying Robin’s Nest’s Claim in the unsecured priority amount of \$400.00 to an unsecured nonpriority claim in the amount of \$400.00.

23. The Debtor does not dispute the unsecured nature of the Claim or the amount of the Claim. However, the Debtor does dispute Robin’s Nest’s contention that its Claim is entitled to priority under 11 U.S.C. § 507(a)(4), as Robin’s Nest’s Claim is not for “wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual.” 11 U.S.C. § 507(a)(4)(A). Moreover, Robin’s Nest’s Claim is not for “sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor’s business” 11 U.S.C. § 507(a)(4)(B). Thus, the Debtor seeks to modify the Claim to establish that it is an unsecured nonpriority claim in the amount of \$400.00.

NOTICE

24. Notice of this Objection will be given to: (i) Robin’s Nest; and (ii) registered users of the ECF system who have filed notices of appearance in this case. The Debtor submits that, under the circumstances, no other or further notice of the Objection is required.

WAIVER OF MEMORANDUM OF LAW

25. Pursuant to Local Bankruptcy Rule 9013-1(G), and because there are no novel issues of law presented in the Objection and all applicable authority is set forth in the Objection, the Debtor requests that the requirement that all motions be accompanied by a separate memorandum of law be waived.

NO PRIOR REQUEST

26. No previous request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court enter an Order, substantially in the form attached hereto as **Exhibit B**, granting the relief requested in the Objection, and requests such further relief as may be just and proper.

Dated: June 11, 2013

By: /s/ Sheila deLa Cruz
Counsel

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*Admitted *pro hac vice*

*Counsel for Virginia United Methodist Homes of Williamsburg, Inc.,
Debtor and Debtor In Possession*

CERTIFICATE OF SERVICE

I do hereby certify that on June 11, 2013, true and complete copies of the foregoing Notice and Objection (including all Exhibits) were served using the Court's ECF system, which thereby caused the Notice and Objection to be electronically served on all registered users of the ECF system that have filed notices of appearance in this matter; I further certify that true and complete copies of the Notice and Objection were also served via electronic mail and/or first class mail, postage prepaid, and/or electronic mail to the following party:

Robin's Nest Aviaries, Inc.
215 Topper Road
Fairfield, PA 17320

/s/ Sheila deLa Cruz
Counsel