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* To be admitted *pro hac vice*

Proposed 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

NOTICE OF MOTION

PLEASE TAKE NOTICE THAT on March 1, 2013, the Debtor filed with the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the "Court") this **APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING EMPLOYMENT AND RETENTION OF HIRSCHLER FLEISCHER, P.C. AS COUNSEL TO THE DEBTOR NUNC PRO TUNC TO THE PETITION DATE** (the "Application").

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to grant the relief sought in the Application, or if you want the Court to consider your views on the Application, then within **fourteen (14) days** from the date of this Notice, you or your attorney must:

File with the Court, either electronically or at the address shown below, a written response pursuant to Local Bankruptcy Rule 2014-1. If you mail your response to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the date stated above.

William C. Redden, Clerk of Court
United States Bankruptcy Court

701 East Broad Street, Suite 4000
Richmond, VA 23219-1888

You must also deliver a copy to all parties on the Certificate of Service below and to:

Robert S. Westermann, Esq.
Sheila deLa Cruz, Esq.
Hirschler Fleischer, P.C.
Post Office Box 500
Richmond, VA 23218-0500

If you or your attorney do not take these steps, the Debtor will submit a proposed order to the Court approving the Application, and the Court may deem any opposition waived, treat the Application as conceded, and issue an order granting the requested relief without further notice or hearing.

PLEASE TAKE FURTHER NOTICE that a hearing will be set at a later date before the Honorable Kevin R. Huennekens, in Courtroom 5000, United States Bankruptcy Court, 701 E. Broad Street, Richmond, Virginia 23219, to consider any timely filed objection(s). You will receive an additional notice in the event that such hearing is scheduled.

Dated: March 1, 2013

By: /s/ Robert S. Westermann
Counsel

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In re:

VIRGINIA UNITED METHODIST HOMES
 OF WILLIAMSBURG, INC.,

Debtor.

Case No. 13-31098

Chapter 11

**APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING
 EMPLOYMENT AND RETENTION OF HIRSCHLER FLEISCHER, P.C. AS
 COUNSEL TO THE DEBTOR NUNC PRO TUNC TO THE PETITION DATE**

The debtor and debtor in possession, Virginia United Methodist Homes of Williamsburg, Inc. (“VUMHW” or the “Debtor”), by its proposed attorneys, hereby files this application (this “Application”) for entry of an order pursuant to Sections 327 and 328 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing the Debtor to retain and employ Hirschler Fleischer, P.C. (“Hirschler Fleischer”) as its local bankruptcy counsel. In support of this Application, the Debtor relies on the Declaration of Robert S. Westermann, dated March 1, 2013 (the “Westermann Declaration”), a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference, and Hirschler Fleischer’s Disclosure

of Compensation (the "Disclosure of Compensation"), a copy of which is attached hereto as **Exhibit B** and incorporated herein by reference. In further support of this Application, the Debtor respectfully represents as follows:

JURISDICTION

1. The Court has jurisdiction over the Application pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are Bankruptcy Code Sections 327(a) and 328(a) and Bankruptcy Rules 2014 and 2016.

Background

3. On the date hereof (the "Petition Date"), the Debtor commenced this case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. No trustee, examiner or creditors' committee has yet been appointed in this case.

4. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor in possession pursuant to Bankruptcy Code Sections 1107(a) and 1108.

5. The factual background relating to the Debtor's commencement of this Chapter 11 case and the facts and circumstances supporting the relief requested herein are set forth in greater detail in the Declaration of Christopher P. Henderson in Support of Chapter 11 Petition and First Day Motions (the "Henderson Declaration") filed contemporaneously with this Application and incorporated herein by reference.

Relief Requested

6. Pursuant to Bankruptcy Code Sections 327(a) and 328(a) and Bankruptcy Rules 2014 and 2016, the Debtor hereby seeks the entry of an order authorizing it to retain and employ

Hirschler Fleischer as local bankruptcy counsel in this Chapter 11 case to represent the Debtor in all aspects of the reorganization, *nunc pro tunc* to the Petition Date.

Hirschler Fleischer's Qualifications

7. Hirschler Fleischer is well qualified to serve as Debtor's local bankruptcy counsel in this Chapter 11 case. Located in Richmond, Virginia, Hirschler Fleischer's professionals possess substantial experience in representing debtors and debtors in possession, trustees, creditor committees, creditors, and/or other parties in interest in the United States Bankruptcy Courts for the Eastern and Western Districts of Virginia and throughout the country. In particular, Hirschler Fleischer has extensive bankruptcy and restructuring, corporate, employee benefits, finance, real estate, securities, and tax expertise.

8. Hirschler Fleischer is also familiar with the Debtor's business. In connection with various pre-Petition Date matters, Hirschler Fleischer's professionals have worked closely with the Debtor's management and other professionals and, as a result, have become well acquainted with the Debtor's history, operations, capital structure and related matters. Prior to the Petition Date, Hirschler Fleischer represented the Debtor in connection with its efforts to restructure out-of-court and, subsequently, in preparing the filing of this Chapter 11 case and consensual Chapter 11 plan. More specifically, Hirschler Fleischer, among other activities, represented the Debtors in connection with: (a) addressing issues related to the Debtor's restructuring of its short-term and long-term secured and bond obligations; (b) negotiating extensions of the Debtor's letter of credit; (c) advising the Debtor's Board of Directors on all facets of the restructuring process and attendant duties; (d) addressing and resolving numerous resident and employee concerns and issues; (e) interfacing with the State Corporation Commission and other regulatory bodies; and (f) preparing pleadings and filings relating to the Chapter 11 case. Accordingly, Hirschler Fleischer has developed substantial knowledge regarding the Debtor that

will result in effective and efficient services in this Chapter 11 case without overlapping with services provided by DLA Piper LLP (US).

Services to be Provided

9. The Debtor anticipates that Hirschler Fleischer will render general legal services to the Debtor as needed throughout the course of this Chapter 11 case, including bankruptcy and restructuring, corporate, employee benefits, finance, real estate, securities, and tax advice. In particular, the Debtor anticipates that Hirschler Fleischer will perform, among others, the following legal services:

- (a) advising the Debtor of its rights, powers and duties as debtor and debtor in possession while operating and managing its business and property under Chapter 11 of the Bankruptcy Code;
- (b) preparing on behalf of the Debtor all necessary and appropriate applications, motions, proposed orders, other pleadings, notices, schedules and other documents, and reviewing all financial and other reports to be filed in this Chapter 11 case;
- (c) advising the Debtor concerning, and preparing responses to, applications, motions, other pleadings, notices and other papers that may be filed by other parties in this Chapter 11 case;
- (d) advising the Debtor with respect to, and assisting in the negotiation and documentation of, financing agreements and related transactions;
- (e) reviewing the nature and validity of any liens asserted against the Debtor's property and advising the Debtor concerning the enforceability of such liens;
- (f) advising the Debtor regarding its ability to initiate actions to collect and recover property for the benefit of its estate;
- (g) advising and assisting the Debtor in connection with any potential property dispositions;
- (h) advising the Debtor concerning executory contract and/or unexpired lease assumptions, assignments and rejections as well as contract restructurings and recharacterizations;
- (i) advising the Debtor in connection with the formulation, negotiation and promulgation of a plan of reorganization, and related transactional documents;

- (j) assisting the Debtor in reviewing, estimating and resolving claims asserted against the Debtor's estate;
- (k) commencing and conducting litigation necessary and appropriate to assert rights held by the Debtor, protect assets of the Debtor's Chapter 11 estate or otherwise further the goal of completing the Debtor's successful reorganization; and
- (l) providing non-bankruptcy services for the Debtor to the extent requested by the Debtor.

10. The Debtor requires knowledgeable counsel to render these essential professional services. As noted above, Hirschler Fleischer has substantial expertise in all of these areas. Moreover, as also indicated above, Hirschler Fleischer has obtained valuable institutional knowledge of the Debtor's business and financial affairs through its representation of the Debtor prior to the Petition Date. Accordingly, the Debtor respectfully submits that Hirschler Fleischer is well qualified to perform these services and represent the Debtor's interests in this Chapter 11 case.

Professional Compensation

11. Subject to the Court's approval of this Application, Hirschler Fleischer intends to (a) charge for its legal services on an hourly basis in accordance with its ordinary and customary hourly rates in effect on the date the services are rendered,¹ and (b) seek reimbursement of actual and necessary out-of-pocket expenses. The names, positions and current hourly rates of the Hirschler Fleischer lawyers and paraprofessionals currently expected to have primary responsibility for providing services to the Debtor are set forth in the Westermann Declaration.²

12. Hirschler Fleischer will maintain detailed, contemporaneous records of time and any actual and necessary expenses incurred in connection with rendering the legal services

¹ The hourly rates charged by Hirschler Fleischer professionals differ based on, among other things, the professional's level of experience and the rates normally charged in the location of the office in which the professional is resident.

² Hirschler Fleischer's hourly rates may change from time to time in accordance with Hirschler Fleischer's established billing practices and procedures.

described above. Hirschler Fleischer intends to apply to the Court for compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the "Local Rules"), the United States Trustee Guidelines and pursuant to any additional procedures that have been or may be established by the Court in this bankruptcy case. Hirschler Fleischer has agreed to accept as compensation such sums as may be allowed by the Court. Hirschler Fleischer understands that interim and final fee awards are subject to approval by the Court.

Disinterestedness of Professionals

13. In reliance on the Westermann Declaration, the Debtor believes that, except as may be set forth in the Westermann Declaration: (a) Hirschler Fleischer has no connection with the Debtor, its creditors, the United States Trustee for the Eastern District of Virginia (the "United States Trustee"), any person employed in the office of the United States Trustee or any other party with an actual or potential interest in this Chapter 11 case or their respective attorneys or accountants; (b) Hirschler Fleischer is not a creditor, equity security holder or insider of the Debtor; (c) Hirschler Fleischer is not and was not, within two years of the Petition Date, a director, officer or employee of the Debtor; and (d) Hirschler Fleischer does not have an interest materially adverse to the Debtor, its estate or any class of creditors or equity security holders by reason of any direct or indirect relationship to, connection with or interest in the Debtor, or for any other reason. Accordingly, the Debtor believes that Hirschler Fleischer is a "disinterested person," as defined in Section 101(14) of the Bankruptcy Code and as required by Section 327(a) of the Bankruptcy Code.

14. The Debtor submits that the engagement and retention of Hirschler Fleischer on the terms and conditions set forth herein is necessary and in the best interests of the Debtor, its estate, and its creditors and should be approved.

Notice of Application

15. Notice of the Application has been given to (a) the Office of the United States Trustee for the Eastern District of Virginia, (b) counsel for Virginia United Methodist Homes, Inc., as proposed DIP Lender, (c) counsel for UMB Bank, N.A., as master trustee and bond trustee, (d) counsel for the Virginia State Corporation Commission, and (e) each of the Debtor's twenty (20) largest creditors. In light of the nature of relief requested, the Debtor submits that no further notice is required.

Conclusion

WHEREFORE, based upon the foregoing, the Debtor respectfully requests that the Court enter an order substantially in the form annexed as **Exhibit C** hereto (a) granting this Application, (b) authorizing the Debtor to retain and employ Hirschler Fleischer in this proceeding as counsel *nunc pro tunc* to the Petition Date, and (c) granting such other and further relief as may be deemed just and proper.

Dated: March 1, 2013

By: /s/ Robert S. Westermann
Counsel

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