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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 this **APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING EMPLOYMENT AND RETENTION OF McGUIREWOODS LLP 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

Sarah B. Boehm
McGuireWoods LLP
One James Center
901 East Cary Street
Richmond, VA 23219

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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**UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF VIRGINIA
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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 McGUIREWOODS LLP
 AS SPECIAL BOND COUNSEL TO THE DEBTOR AS OF PETITION DATE**

The debtor and debtor in possession, Virginia United Methodist Homes of Williamsburg, Inc. ("VUMHW" or the "Debtor"), hereby files this application (this "Application") for entry of an order in the form attached hereto as **Exhibit A** pursuant to Sections 327(e) and 330 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 McGuireWoods LLP ("McGuireWoods" or the "Firm") as special bond counsel. In support of this Application, the Debtor relies on the Declaration of David L. Richardson, dated March 1, 2013 (the "Richardson Declaration"), 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 AND VENUE

1. This Court has jurisdiction to consider this 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 sections 327(e) and 330 of the Bankruptcy Code, Rules 2014 and 2016 of the Bankruptcy Rules, and Rules 2014-1 and 2016-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Eastern District of Virginia (the "Local Bankruptcy Rules").

BACKGROUND

3. On the date hereof (the "Petition Date"), the Debtor commenced this case (the "Bankruptcy 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. By this Application, the Debtor seeks entry of an order pursuant to sections 327(e)

and 330 of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 authorizing the Debtor to retain and employ McGuireWoods as special bond counsel effective as of the Petition Date.

McGUIREWOODS' QUALIFICATIONS

7. By this Application, the Debtor seeks to employ and retain McGuireWoods as special bond counsel because of McGuireWoods' familiarity with the Debtor's business and debt structure and McGuireWoods' recognized expertise and extensive knowledge in the area of public finance, and specifically, of bond financings relating to continuing care retirement communities. In addition, as described below, because of McGuireWoods' prepetition employment by the Debtor, McGuireWoods has historical knowledge of the Debtor's company.

8. Moreover, the Debtor selected the firm of McGuireWoods as special bond counsel for purposes of this chapter 11 case because of its extensive experience in connection with similar bond offerings both for this Debtor, its affiliates and similar entities.

9. Since 2006, the Debtor has employed McGuireWoods with respect to a number of legal matters, including tax-exempt bond financing and other matters related thereto (the "Engagement"). During the time that McGuireWoods has served as bond counsel and provided legal services to the Debtor, McGuireWoods has acquired substantial knowledge and familiarity with the Debtor's business and financial affairs.

10. Accordingly, McGuireWoods is familiar with the Debtor's business in general, as well as many of the legal issues that may arise in the context of the Bankruptcy Case. Due to McGuireWoods' relationship with the Debtor, McGuireWoods is both well qualified and uniquely able to represent the Debtor as special bond counsel in connection with the Debtor's chapter 11 case.

11. Moreover, to the best of the Debtor's knowledge, the members and associates of

McGuireWoods do not have any connection with or any interest adverse to the Debtor, its creditors, or any other party in interest, or their respective attorneys, except as set forth in the Richardson Declaration. McGuireWoods simultaneously represents the Debtor, its sponsor Virginia United Methodist Homes ("VUMH") and the bond issuer the Economic Development Authority of Jones City County, Virginia ("the Authority"). For the reasons set forth in the Richardson Declaration, the Debtor, VUMH and the Authority do not consider this joint representation to be a conflict and each specifically consent to McGuireWoods' current and continued postpetition joint representation.

SERVICES TO BE PROVIDED

12. Subject to further order of the Court, the Debtor requests authority to employ and retain McGuireWoods to render legal services relating to the Debtor and continue to advise and represent the Debtor in the same areas as McGuireWoods represented the Debtor before its bankruptcy filing.

NO DUPLICATION OF SERVICES/SPECIAL PURPOSE

13. McGuireWoods understands that the Debtor intends to retain other professionals during the term of the engagement and agrees to work cooperatively with such professionals to integrate any respective work conducted by the professionals on behalf of the Debtor. McGuireWoods has assured the Debtor that it will work closely with its professionals and will avoid duplication of services being provided by other professionals.

14. The Debtor believes that it is crucial that McGuireWoods be retained as special bond counsel given McGuireWoods' knowledge and experience representing the Debtor over the past seven (7) years. If the Court does not authorize the Debtor's employment and retention of McGuireWoods in the Bankruptcy Case, the Debtor, its estate, and all parties in interest would

be unduly prejudiced by the time and related expense for other counsel to familiarize themselves with the matters described above.

PROFESSIONAL COMPENSATION

15. Subject to the Court's approval, and in accordance with section 330(a) of the Bankruptcy Code, McGuireWoods intends to (a) charge for the legal services provided pursuant to its retention as special bond counsel on an hourly basis in accordance with its ordinary and customary hourly rates in effect on the date services are rendered, and (b) seek reimbursement of actual and necessary out of pocket expenses in connection with such retention. McGuireWoods will maintain detailed, contemporaneous records of time and any actual and necessary expenses incurred in connection with the rendering of the legal services described above by category and nature of the services rendered.

16. McGuireWoods' hourly rates are set at a level designed to fairly compensate McGuireWoods for the work of its attorneys and paralegals and to cover fixed and routine overhead expenses. Hourly rates vary with the experience and seniority of the individuals assigned. These hourly rates are subject to periodic adjustments to reflect economic and other conditions and are consistent with the rates charged elsewhere. McGuireWoods' current hourly rates for this Engagement may range from \$350 to \$1020 per hour for attorneys and \$100 to \$325 for legal assistants and support staff.

17. The hourly rates set forth above are the Firm's standard hourly rates for work of this nature. Consistent with the Firm's policy with respect to its other clients, McGuireWoods will charge the Debtor for services provided and for costs and expenses incurred in the performance of the Firm's services. It is McGuireWoods' policy in all areas of practice to charge the client for most expenses incurred in connection with the client's case. The expenses

routinely charged to the Firm's clients include, but are not limited to, photocopies, travel expenses (including mileage, parking, airfare, lodging, meals and ground transportation), long distance telephone calls, delivery and courier services, express mail, air courier services, computerized legal research tools such as LEXIS, WESTLAW and PACER, court costs and filing fees, court reporters, hearing transcripts, expert witness fees, certain secretarial and other overtime expenses, certain transportation expenses, and certain expenses for business meals. The Firm will charge the Debtor for these expenses in a manner and at rates consistent with charges made generally to the Firm's other clients.

18. McGuireWoods will apply to the Court for payment of compensation and reimbursement of expenses in accordance with the procedures set forth in the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, Local Bankruptcy Rules, the U.S. Trustee Guidelines and any other applicable orders or procedures established by the Court. McGuireWoods will submit with its fee applications detailed daily time entries for each individual providing services in one-tenth (.10) hour increments, explaining the services provided as well as a categorized summary of disbursements and expenses for which McGuireWoods is seeking reimbursement.

19. Pursuant to Bankruptcy Rule 2016(b), McGuireWoods further states that it has not shared, nor agreed to share, (a) any compensation it has received or may receive with another party or person, other than with the partners, associates and contract attorneys associated with McGuireWoods, or (b) any compensation another person or party has received or may receive.

PREPETITION FEES AND EXPENSES

20. As set forth in greater detail in the Richardson Declaration, prior to the Petition Date, the Debtor paid McGuireWoods a total of \$120,678.50, which includes \$20,000 for

McGuireWoods to hold as a retainer (the "Retainer"). The Retainer shall serve as security for the payment of all unpaid prepetition and postpetition fees and expenses owed to McGuireWoods by the Debtor. The Debtor and McGuireWoods contemplate that the Retainer will be held by McGuireWoods and applied first towards any outstanding prepetition fees and expenses owed to McGuireWoods by the Debtor, if any, and then towards McGuireWoods' final billing in connection with the Engagement and against any outstanding fees and expenses billed prior thereto.

21. To the best of the Debtor's knowledge, the members, counsel, and associates of McGuireWoods do not have any connection with or any adverse interest to the Debtor, its creditors, or any other party in interest, or their respective attorneys and accountants with respect to the matters on which McGuireWoods is to be engaged, except as set forth in the Richardson Declaration.

22. Section 327(e) of the Bankruptcy Code provides that a debtor in possession, subject to court approval:

[M]ay employ, for a specified special purpose, other than to represent the [debtor in possession] in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C § 327(e).

23. Moreover, Bankruptcy Rule 2014(a) requires that an application for retention include:

[S]pecific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the [firm's] connections with the debtor, creditors, any other

party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R Bankr. P. 2014(a).

24. The Debtor has selected McGuireWoods as its special bond counsel to assist it in the matters described herein because of McGuireWoods experience with respect to such matters. The Debtor believes that McGuireWoods' retention is in the best interests of its estate. Further, the Debtor believes that McGuireWoods is well-qualified to serve as special bond counsel and the duplicative cost involved in the failure to retain McGuireWoods and obtaining substitute counsel at this juncture would prejudice the Debtor and its estate.

25. Accordingly, the Debtor believes that McGuireWoods is qualified to provide the specialized legal services sought by the Debtor. Moreover, as discussed in more detail above, McGuireWoods asserts that to the best of its knowledge, information and belief, at the time of the filing of this Application, McGuireWoods does not represent or hold any interest adverse to the Debtor with respect to matters on which McGuireWoods is to be employed and will disclose any conflicts that may arise in the future or of which it becomes aware and will not represent any party with interests adverse to the Debtor with regard to the matters on which it is to be retained. Thus, the retention of McGuireWoods is in the best interests of the Debtor's estate, its creditors and all other parties in interest.

WAIVER OF MEMORANDUM OF LAW

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

NOTICE

27. Notice of the Application has been given to (a) the United States Trustee, (b) counsel for UMB Bank, N.A., the master and bond trustee, (c) each of the Debtor's twenty (20) largest unsecured creditors, (d) each of the Debtor's secured creditors, and (e) any party that has filed a notice of appearance in this case. In light of the nature of relief requested, the Debtor submits that no further notice is required.

NO PRIOR REQUEST

28. No previous request for the relief sought in this Application has been made to this Court or any other court.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that this Court enter an order substantially in the form attached hereto as **Exhibit A**, (i) authorizing the Debtor's retention of McGuireWoods upon the terms outlined in this Application; and (ii) granting the Debtor such other and further relief as is just and proper.

Dated: March 1, 2013

By: /s/ Robert S. Westermann
Counsel

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