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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 **MOTION FOR ORDER UNDER 11 U.S.C. §§ 105(a) AND 331 ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS** (the "Motion").

PLEASE TAKE FURTHER NOTICE THAT the Court has scheduled a hearing (the "Hearing") on the Motion for **Tuesday, March 26, 2013 at 2:00 p.m. (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 approving the Motion.

Your rights may be affected. You should read the Motion 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.)

PLEASE TAKE FURTHER NOTICE THAT if you do not want the Court to grant the relief sought in the Motion, or if you want the Court to consider your views on the Motion, then you or your attorney must, **on or before March 19, 2013:**

1. File with the Court at the address shown below written response(s) to the Motion

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 address 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

3. Attend the Hearing on the Motion scheduled for March 26 2013, at 2:00 p.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 Motion as conceded, and enter orders granting the requested relief without further notice or hearing.

Dated: March 1, 2013

By: /s/ Robert S. Westermann
Counsel

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**IN THE 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

**MOTION FOR ORDER UNDER 11 U.S.C. §§ 105(A) AND 331
 ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION
 AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS**

The debtor and debtor in possession, Virginia United Methodist Homes of Williamsburg, Inc. (“VUMHW” or the “Debtor”), by its proposed attorneys, hereby submits this motion (the “Motion”) for entry of an order pursuant to Sections 105 and 331 of Title 11 of the United States Code (the “Bankruptcy Code”) establishing procedures for interim compensation and reimbursement of expenses of professionals. In support of this Motion, the Debtor respectfully represents as follows:

Jurisdiction

1. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief requested herein are Sections 105 and 331 of the Bankruptcy Code.

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 Motion and incorporated herein by reference.

Relief Requested

6. By this Motion, the Debtor requests that the Court authorize and establish procedures for the compensation and reimbursement of court-approved professionals (the "Professionals") on a monthly basis, on terms comparable to those procedures recently established in other Chapter 11 cases in this District. Such an order will streamline the

professional compensation process and enable the Court and all other parties to monitor the professional fees incurred in this Chapter 11 case more effectively.

Basis for Relief

7. During this case, the Debtor is seeking to retain (a) DLA Piper LLP (US) ("DLA Piper") as lead bankruptcy counsel; (b) Hirschler Fleischer, P.C. as local bankruptcy counsel; and (c) Deloitte Financial Advisory Services LLP as financial and restructuring advisor.¹

8. In short, the requested procedures will permit each Professional subject to these procedures to present a statement of services rendered and expenses incurred by the Professional for the prior month to the following parties: (a) the Debtor; (b) the Office of the United States Trustee for the Eastern District of Virginia (the "United States Trustee"); (c) counsel for UMB Bank, N.A., the master and bond trustee (the "Master and Bond Trustee"); (d) counsel for Virginia United Methodist Homes, Inc. ("VUMH"); and (e) any appointed creditors' committee. If there is no timely objection, the Debtor will pay eighty-five percent (85%) of the amount of fees incurred for the month, with a fifteen percent (15%) holdback, and one hundred percent (100%) of disbursements for the month. These payments will be subject to the Court's subsequent approval as part of the normal interim fee application process approximately every 120 days.

9. More specifically, the Debtor proposes that the monthly payment of compensation and reimbursement of expenses of the Professionals be structured as follows:

- (a) On or before the last day of the month following the month for which compensation is sought (the "Monthly Statement Date"), each Professional shall submit a monthly statement to: (i) the Debtor, Virginia United Methodist Homes of Williamsburg, Inc., 7113 Three Chopt Road, Suite 300, Richmond, VA 23226 (Attn: Christopher P. Henderson) (E-

¹ The relief sought in this Motion and the interim compensation procedures herein are not applicable to BMC Group, Inc. ("BMC"), who is the Debtor's proposed claims, noticing, and solicitation agent in this bankruptcy case. BMC's compensation and reimbursement of expenses will be the subject of a separate motion and proposed order.

mail: chenderson@vumh.org); (ii) lead bankruptcy counsel to the Debtor, DLA Piper LLP (US), 1251 Avenue of the Americas, New York, NY 10020-1104 (Attn: George B. South III, Esq. and Thomas R. Califano, Esq.) (E-mail: thomas.califano@dlapiper.com and george.south@dlapiper.com); (iii) local bankruptcy counsel to the Debtor, Hirschler Fleischer, P.C., P.O. Box 500, Richmond, VA 23218-0500 (Attn: Robert S. Westermann, Esq. and Sheila deLa Cruz, Esq.) (E-mail: rwestermann@hf-law.com and sdelaacruz@hf-law.com); (iv) the financial advisor to the Debtor, Deloitte Financial Advisory Services LLP (Attn: Louis E. Robichaux IV and Russell A. Perry) (E-mail: lrobichaux@deloitte.com and rperry@dloitte.com) (v) counsel for VUMH, Spotts Fain P.C., 411 East Franklin Street, Suite 600, Richmond, VA 23219 (Attn: Robert H. Chappell, Esq.) (E-mail: rchappell@spottsfain.com); (vi) counsel to the Master and Bond Trustee, McDermott Will & Emery, 227 West Monroe Street, Chicago, IL 60606-5096 (Attn: Miles W. Hughes, Esq. and Nathan F. Coco, Esq.) (Email: mwhughes@mwe.com and ncoco@mwe.com); (vii) counsel to any creditors' committee; and (viii) the United States Trustee (collectively, the "Fee Notice Parties"). Each such entity receiving such a statement shall have ten (10) days after the Monthly Statement Date to review the statement. The first statement would be submitted and served by each of the Professionals by April 30, 2013, and would cover the period from the Petition Date through March 30, 2013.

- (b) At the expiration of the ten (10) day period, the Debtor shall promptly pay eighty-five percent (85%) of the fees and one hundred percent (100%) of the disbursements requested in such statement, except such fees or disbursements as to which an objection has been served as provided in paragraph (c) below. Any Professional who fails to submit a monthly statement will be ineligible to receive further payments of fees and expenses as provided herein until such time as the monthly statement is submitted.
- (c) In the event that any of the Fee Notice Parties have an objection to the compensation or reimbursement sought in a particular statement, such party shall, within ten (10) days of the Monthly Statement Date, serve upon the respective Professional and the other persons designated to receive monthly statements, a written "Notice of Objection to Fee Statement" setting forth the precise nature of the objection and the amount at issue. Thereafter, the objecting party and the Professional whose statement is objected to shall attempt to reach an agreement regarding the correct payment to be made. If the parties are unable to reach an agreement on the objection within ten (10) days after receipt of such objection, the objecting party may file its objection with the Court and serve such objection on the respective Professional and the other Fee Notice Parties and the Court would consider and dispose of the objection at the next hearing scheduled on applications for interim Court approval

and allowance of compensation and reimbursement of expenses for Professionals (the "Interim Fee Application(s)") pursuant to Section 331 of the Bankruptcy Code. The Debtor will be required to promptly pay those fees and disbursements that are not the subject of a Notice of Objection to Fee Statement.

- (d) Each of the Professionals will file with the Court and serve on the Fee Notice Parties, on or before the 15th day following the last day of the compensation period, an Interim Fee Application for the prior four (4) months for which compensation is sought pursuant to Section 331 of the Bankruptcy Code. The first such Interim Fee Application would be filed on or before July 15, 2013, and would cover the period from the Petition Date through June 30, 2013. Any Professional who fails to file an Interim Fee Application when due will be ineligible to receive further interim payments of fees or expenses as provided herein until such time as the Interim Fee Application for the prior 4-month compensation period is submitted.
- (e) The Debtor shall request that the Court schedule a hearing on Interim Fee Applications at least once approximately every four (4) months. The Debtor, however, may request that a hearing be held at such other intervals as the Court deems appropriate. The Court, in its discretion, may approve an uncontested Interim Fee Applications without the need for a hearing, upon the Professional's filing of a certificate of no objection. Upon allowance by the Court of a Professional's Interim Fee Application, the Debtor shall be authorized to promptly pay such Professional all requested fees (including the 15% holdback of compensation pursuant to subparagraph (a) above) and disbursements that were not previously paid.
- (f) The pendency of an Interim Fee Application and/or the pendency of any Notice of Objection to Fee Statement or other objection shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses as set forth above. Neither the payment of, nor the failure to pay, in whole or in part, monthly interim compensation and reimbursement as provided herein shall bind any party-in-interest or this Court with respect to the final allowance of applications for compensation and reimbursement of Professionals. Furthermore, the decision by any Fee Notice Party not to object to a monthly statement shall not be deemed a waiver of any kind or prejudice that party's right to object to any interim or final fee application subsequently made to the Court.

10. Except as otherwise ordered by the Court, all parties who have filed a notice of appearance with the Clerk of the Court would only receive notice of the hearings on Interim Fee Applications.

Applicable Authority

11. Section 331 of the Bankruptcy Code provides, in relevant part, as follows:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title

11 U.S.C. § 331.

12. Section 105(a) of the Bankruptcy Code provides, in relevant part, as follows:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title . . . shall be construed to preclude the Court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules

11 U.S.C. § 105(a).

13. Similar procedures for compensating and reimbursing court-approved professionals have been established in other Chapter 11 cases in this District. See, e.g., In re Roomstore, Inc., Case No. 11-37790 (DOT) (Bankr. E.D. Va. Jan. 6, 2012); In re Movie Gallery, Inc., Case No. 10-30696 (DOT) (Bankr. E.D. Va. Feb. 8, 2010); In re Circuit City Stores, Inc., Case No. 08-35653 (KRH) (Bankr. E.D. Va. Dec. 9, 2008); In re Movie Gallery, Inc., Case No. 07-33849 (DOT) (Bankr. E.D. Va. Oct. 19, 2007); In re US Airways, Inc., Case No. 04-13819 (SSM) (Bankr. E.D. Va. Sept. 15, 2004); In re NTELOS, Inc., Case No. 03-32094 (DOT) (Bankr. E.D. Va. Mar. 4, 2003); In re Fas Mart Convenience Stores, Inc., Case No. 01-60386 (DOT) (Bankr. E.D. Va. Mar. 9, 2001). The Debtor submits that the procedures sought herein are appropriate considering the above factors and cases.

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

Notice

15. Notice of the Motion has been given to (a) counsel to VUMH, (b) counsel to the Master and Bond Trustee, (c) counsel to any creditors' committee, (d) the United States Trustee, (e) the Debtor's twenty (20) largest creditors, (f) counsel for the Virginia State Corporation Commission, and (g) 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.

Conclusion

WHEREFORE, the Debtor respectfully requests that the Court enter an order substantially in the form attached hereto as Exhibit A (i) authorizing and establishing procedures for the compensation and reimbursement of Professionals on a monthly basis as set forth above 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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