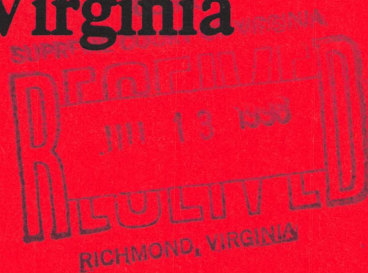


257 VA 146

IN THE
Supreme Court of Virginia

AT RICHMOND

RECORD NO. 980498



CITY OF RICHMOND,

Appellant,

v.

VIRGINIA UNITED METHODIST HOMES, INC.,

Appellee.

JOINT APPENDIX

John A. Rupp, City Attorney
Debra L. Mallory, Assistant City
Attorney
Jan T. Reid, Assistant City
Attorney
OFFICE OF THE CITY ATTORNEY
900 East Broad Street, Suite 300
Richmond, Virginia 23219
(804) 780-7940

Counsel for Appellant

E. Olen Culler
GAYLE, BOYLES & CULLER
Dale Building, Suite 203
1504 Santa Rosa Road
Richmond, Virginia 23228
(804) 288-1231

Counsel for Appellee

TABLE OF CONTENTS

	<u>Appendix Page</u>
Motion for Judgment filed July 25, 1996.....	1
First Amended Motion for Judgment filed October 17, 1997	4
Stipulation of Facts filed October 17, 1997	7
Transcript of Trial Held October 30, 1997 before The Honorable Melvin R. Hughes, Jr.	14
Testimony of William Gerald Fink.....	30
Testimony of Charles Warner Crumb.....	59
Testimony of Clint Smith.....	79
Testimony of Cheryl Duff.....	101
Testimony of Clint Smith.....	123
Testimony of Cheryl Duff.....	141
Transcript of Trial continued to October 31, 1997 before The Honorable Melvin R. Hughes, Jr.	155
Final Order with attached Memorandum of Objections to Final Order entered December 12, 1997	231
Assignments of Error filed March 12, 1998	240
 <u>Plaintiffs Trial Exhibits:</u>	
Excerpts of No. 1 – Charter, Certificate of Incorporation, Articles of Amendment, Restatement of Articles of Incorporation filed by Virginia United Methodist Homes, Inc.	241

Disclosure Statement filed with the State Corporation Commission by Virginia United Methodist Homes for years 1995-96 pursuant to Virginia Code Annotated Sections 38.2-4900 et seq.	290
Fee Schedule for Virginia United Methodist Homes, Inc. effective June 1, 1996 (included in above Disclosure Statement).....	354

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND
Civil Division

VIRGINIA UNITED METHODIST HOMES, INC.
t/a THE HERMITAGE IN RICHMOND,

Plaintiff,

v.

Case No.

**CITY OF RICHMOND,
Serve: City Attorney
City Hall
900 East Broad Street
3rd Floor, Room 300
Richmond, VA 23219**

Defendant.

MOTION FOR JUDGMENT

The plaintiff, by counsel, brings this action under Section 58.1-3984 of the Code of Virginia seeking an order finding the assessment of real estate taxes as alleged to be illegal, and to that end states as follows:

1. The plaintiff is a Virginia non-stock corporation.
2. The plaintiff operates a Continuing Care Service Facility in the City of Richmond, Virginia operating the name of The Hermitage In Richmond at 1600 Westwood Avenue, identified on the tax map of the City of Richmond as Tax Parcel N000-1322/001 (the "Property").

3 As a Continuing Care Service Provider, registered under Chapter 49 of Title 38.2 of the Code of Virginia, the plaintiff provides care for the elderly through their progressive aging processes from independent living, through assisted living to full nursing health care.

4. The plaintiff has been continuously providing these services at the "Property" from not later than 1950 through the present.

5. From not later than 1950 through April of 1996 the Property has been listed as exempt from real estate taxation by the defendant.

6. The Property has been listed as tax exempt for reason of the determination of the City of Richmond that the Property was exempt from taxation under the provisions of Article X of the Constitution of Virginia.

01

7. On or about June 15, 1996 the City of Richmond withdrew its classification of the Property as exempt from real estate taxation and assessed taxes against the property.

8. The assessment of taxes against the Property is illegal and unconstitutional and in violation of Article X of the Constitution of Virginia and Section 58.1-3606 of the Code of Virginia for reason that the Property is used by the owner for charitable and benevolent purposes as those terms apply to the owner and the Property.

9. Article X, Section 6(7)(f) of the Constitution of Virginia provides that all property exempt from taxation as of July 1, 1971 remains exempt unless the General Assembly should otherwise provide.

10. The General Assembly of Virginia has not authorized the City of Richmond to restrict or condition the plaintiff's exemption.

WHEREFORE, the plaintiff prays for an order directing the Tax Assessor of the City of Richmond to strike the assessment of the Property from the land book of taxable real estate and to include the Property in the inventory of tax-exempt real property maintained under Section 58.1-3604 of the Code of Virginia and that the defendant be ordered to refund to the plaintiff any taxes paid pursuant to the erroneous assessment.

Virginia United Methodist Homes, Inc.

By  _____

Counsel

E. Olen Culler (VSB#5365)
Gayle, Boyles & Culler
Dale Building - Suite 203
1504 Santa Rosa Road
Richmond, VA 23288
(804) 288-1231

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CIVIL RIGHTS

CIRCUIT COURT CITY OF RICHMOND - LAW
400 N. 9TH STREET
RICHMOND VIRGINIA 23219
(804) 780-6536

PROOF OF SERVICE

VIRGINIA:

RICHMOND CITY

IN THE CIRCUIT COURT CITY OF RICHMOND - LAU

CASE NO. 7400CL96B01503-00
SERVICE NO. 501
SERVICE FILED: 07/15/96
REJ
ENC VS CITY OF RICHMOND

VIRGINIA UNITED METHODIST INC VS CITY OF RICHMOND

SERVICE TO: CITY OF RICHMOND
CITY ATTORNEY
CITY HALL
900 EAST BROAD STREET
3RD FLOOR, ROOM 300
RICHMOND, VA, 23219

RETURNS SHALL BE MADE HEREOF, SHOWING SERVICE OF NOTICE THEREON JULY 25, 1996 WITH A COPY OF MOTION FOR JUDGMENT FILED JULY 25, 1996 ATTACHED.

FOR SPECIAL USE ONLY

NAME City Attorney
John Rugg

☐ PERSONAL SERVICE

Being unable to make personal service, a copy was delivered in the following manner:

☒ Delivered to person at place of usual place of business or employment hours and giving information: B. Barber - 504-1001 - ATAS

☐ Delivered to person at home of recipient or guest only or party named on return receipt. Support. List names of persons at home of recipient to person.

☐ Posted on door as appears to be the person to be served. (If not found, listed above, return not found.)

03 Served on person who is not in class of persons.

☐ Evicted ☐ Not Evicted

☐ Served on registered agent ☐ Affidavit attached

☐ Not found

☐ NO EFFECTS FOUND

8-1-96

DEPUTY SHERIFF

Paul Canyon FOR

Sherill Michelle B. Mitchell
City of Richmond

DATE

RECEIVED
CIRCUIT COURT
JUN 1975
DEVILLA, DIANA CLERK
By *[Signature]* D.C.

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND
Civil Division

VIRGINIA UNITED METHODIST HOMES, INC.
t/a THE HERMITAGE IN RICHMOND,

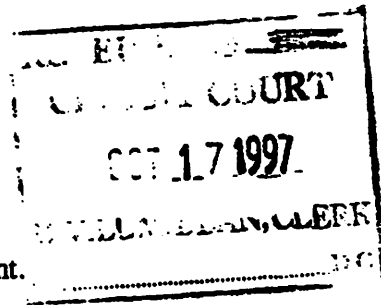
v.

CITY OF RICHMOND,

Case No.

Plaintiff,

Defendant.



FIRST AMENDED MOTION FOR JUDGMENT

The plaintiff, by counsel, brings this action under Section 58.1-3984 of the Code of Virginia seeking an order finding the assessment of real estate taxes as alleged to be illegal, and to that end states as follows:

1. The plaintiff is a Virginia non-stock corporation.
2. The plaintiff operates a Continuing Care Service Facility in the City of Richmond, Virginia operating the name of The Hermitage In Richmond at 1600 Westwood Avenue, identified on the tax map of the City of Richmond as Tax Parcel N000-1322/001 (the "Hermitage").
3. The plaintiff operates a facility as a home for the aged in the City of Richmond at 310 West 31st Street under the name of the Snyder Memorial Home, the Hermitage and the Snyder Memorial Home, together herein being referred to as the "Properties."
4. As a Continuing Care Service Provider, registered under Chapter 49 of Title 38.2 of the Code of Virginia, the plaintiff provides care for the elderly through their progressive aging processes from independent living, through assisted living to full nursing health care.
5. The plaintiff has been continuously providing these services at the "Properties" from not later than 1950 through the present.
6. From not later than 1950 through April of 1996 the Properties have been listed as exempt from real estate taxation by the defendant.

7. The Properties have been listed as tax exempt for reason of the determination of the City of Richmond that the Properties were exempt from taxation under the provisions of Article X of the Constitution of Virginia.

8. On or about June 15, 1996 the City of Richmond withdrew its classification of the Properties as exempt from real estate taxation and assessed taxes against the Properties.

9. The assessment of taxes against the Properties is illegal and unconstitutional and in violation of Article X of the Constitution of Virginia and Section 58.1-3606 of the Code of Virginia for reason that the Properties are used by the owner for charitable and benevolent purposes as those terms apply to the owner and the Properties and the Properties constitute asylums as that term is used in the Constitution of Virginia.

10. Article X, Section 6(7)(f) of the Constitution of Virginia provides that all property exempt from taxation as of July 1, 1971 remains exempt unless the General Assembly should otherwise provide.

11. The General Assembly of Virginia has not authorized the City of Richmond to restrict or condition the plaintiff's exemption.

WHEREFORE, the plaintiff prays for an order directing the Tax Assessor of the City of Richmond to strike the assessment of the Properties from the land book of taxable real estate and to include the Properties in the inventory of tax-exempt real property maintained under Section 58.1-3604 of the Code of Virginia and that the defendant be ordered to refund to the plaintiff any taxes paid pursuant to the erroneous assessment.

Virginia United Methodist Homes, Inc.

By 

Counsel

E. Olen Culler (VSB#5365)
Gayle, Boyles & Culler
Dale Building - Suite 203
1504 Santa Rosa Road
Richmond, VA 23288
(804) 288-1231

CERTIFICATE

I hereby certify that on the 15 day of October, 1997, I mailed or delivered a true copy of the foregoing to all counsel of record herein pursuant to Rule 1:12 of the Rules of the Supreme Court of Virginia, and served a true copy on all parties not represented by counsel, if any.

A handwritten signature, likely of E. Olen Culler, written in ink over a horizontal line.

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

VIRGINIA UNITED METHODIST HOMES, INC.
t/a THE HERMITAGE IN RICHMOND,

Plaintiff,

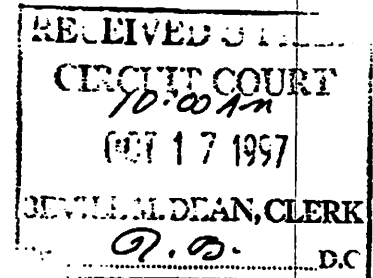
v.

Case No. LB-1865-4

CITY OF RICHMOND,

Defendant.

STIPULATION OF FACTS



Plaintiff Virginia United Methodist Homes, Inc. and Defendant City of Richmond, by counsel, agree that the following facts are true facts and require no further proof in this case.

1. The following exhibits, copies of which are attached hereto, are true and accurate copies of documents filed by plaintiff with the State Corporation Commission:

a. Exhibit A - Charter for Virginia Methodist Home for the Aged, Incorporated, dated October 15, 1945.

b. Exhibit B - Certificate of Incorporation for a Non-stock and Non-profit Corporation dated October 15, 1945 for Virginia Methodist Home for the Aged, Incorporated.

c. Exhibit C - Articles of Amendment of Virginia Methodist Home for the Aged, Incorporated dated April 1960 or 1961 (date is unclear).

d. Exhibit D - Articles of Amendment of the Articles of Incorporation of Hermitage Methodist Homes of Virginia, Inc. dated

August 3, 1965.

e. Exhibit E - Articles of Amendment of the Articles of Incorporation of Virginia Methodist Homes, Inc. dated January 18, 1973.

f. Exhibit F - Articles of Amendment of the Articles of Incorporation of Virginia United Methodist Homes, Inc. dated January 29, 1976.

g. Exhibit G - Certificate of Transacting Business under Assumed Name for The Hermitage in Richmond dated September 26, 1985.

h. Exhibit H - Certificate of Transacting Business under Assumed Name for The Snyder Memorial Home dated September 26, 1985.

i. Exhibit J - Restatement of Articles of Incorporation of Virginia United Methodist Homes, Inc. dated January 31, 1986.

j. Exhibit K - Articles of Amendment of Virginia United Methodist Homes, Inc. dated October 1994.

k. Exhibit L - Disclosure statement filed by plaintiff pursuant to Virginia Code § 38.2-4900 et seq. for years 1995-96.

l. Exhibit M - Fee Schedule for Virginia United Methodist Homes, Inc. effective June 1, 1996.

2. The following exhibits, copies of which are attached hereto, are true and accurate copies of the following documents:

m. Exhibit N - Financial statements for Hermitage Methodist Homes of Virginia, Inc. for years 1970 through 1972.

n. Exhibit O - Financial statements for the Hermitage in Richmond for years 1994 through 1997.

o. Exhibit P - copies of the official assessment cards on file with the City of Richmond Assessor's Office for the land and improvements located at 1600 Westwood Avenue

p. Exhibit Q - copies of the official assessment cards on file with the City of Richmond Assessor's Office for the land and improvements located at 310 West 31st Street.

q. Exhibit R - copy of the deed dated June 15, 1948 by which Virginia Methodist Home for the Aged, Incorporated acquired the property located at 1600 Westwood Avenue, presently known as The Hermitage in Richmond.

THE HERMITAGE IN RICHMOND

The following stipulations apply to The Hermitage in Richmond only:

The Hermitage has the following levels of living arrangements:

3. The independent living portion of the Hermitage is licensed for _____ beds and was first licensed on _____.

4. The Hermitage is licensed under Va. Code § 63.1-175 by the Virginia Department of Social Services to provide Level I and II Assisted Living for _____ (number of) beds and was first licensed in 1950.

5. The Hermitage's Via Health Care Center is licensed under Va. Code § 32.1-125 by the Virginia Department of Health as a nursing home for 115 beds and was first licensed in 1976.

6. The Hermitage's Via Health Care Center was constructed in 1976.

7. VUMH acquired the property currently known as the Hermitage in 1948 and has continuously held title since that date.

8. Twenty-nine (29) identified residents at the Hermitage in Richmond are not paying the full contract fees listed on the applicable schedule of fees published by VUMH and as a result, VUMH or the Hermitage is crediting the residents' bills for the difference between what the resident is able to pay and the full contract amount.

9. The total amount of monies being credited to residents' bills each month from the Samaritan fund or any other source because such residents are unable to pay the full contract amount is \$ 32,000.

10. 25% of the residents at the Hermitage are on a monthly lease.

11. At any given time, approximately 4 or 5 residents of the Hermitage are on a daily lease.

SNYDER MEMORIAL HOME

The following stipulations apply to the Snyder Memorial Home only:

12. The independent living portion of the Snyder consists of _____ beds and was first licensed on _____.

13. The Snyder is licensed under Va. Code § 63.1-175 by the Virginia Department of Social Services to provide Level I and II Assisted Living for _____ (number of) beds and was first licensed in _____.

14. There are currently 6 residents at the Snyder Memorial Home who have life care contracts with VUMH. The other 19 residents are on monthly leases.

15. VUMH acquired Snyder Memorial Home in 1948 and has

continuously held title since that date.

16. There are no identified residents at the Snyder Memorial Home who are not paying the full contract fees listed on the applicable schedule of fees published by VUMH and as a result, VUMH or the Hermitage is crediting the residents' bills for the difference between what the resident is able to pay and the full contract amount.

17. The total amount of monies being credited to residents' bills each month from the Samaritan fund or any other source because such residents are unable to pay the full contract amount is \$ -0-.

BOTH FACILITIES

The following stipulations apply to both facilities (The Hermitage in Richmond and Snyder Memorial Home):

18. Residents on monthly leases who can no longer pay the monthly fees are asked to relocate.

19. Residents on monthly leases are not eligible to receive any financial assistance from VUMH or the Samaritan fund.

20. Neither The Hermitage in Richmond nor Snyder Memorial Home accepts payment from Medicare or Medicaid.

21. VUMH is required under Va. Code § 38.2-4900 et seq. to file a disclosure statement with the State Corporation Commission as a continuing care provider.

22. VUMH is required to file a disclosure statement with the State Corporation as a continuing care provider under Va. Code § 38.2-4900 et seq. because VUMH and facilities do not meet the qualifications listed in Va. Code § 38.2-4917 for exemption from

disclosure.

~~23. VUMH and its facilities are not affiliated with nor subject to the control of the Methodist Church or any conferences, boards or associations of the Methodist Church.~~

24. The Methodist Church and any conferences, boards or associations of the Methodist Church will not be financially or contractually responsible for the obligations of VUMH or its facilities.

~~25. No resident of the Hermitage or Snyder receives any monies from the Samaritan fund until all other possible means of satisfying the resident's bill are exhausted, including but not limited to the assets of the resident, the assets of any persons signing as a surety, and contacting family members for financial assistance/support.~~

26. The Samaritan Fund was not started until the 1980's.

27. About \$8 million was taken from VUMH's general investment portfolio to build the Hermitage at Cedarfield facility located in Henrico County.

28. The existence of the Samaritan fund has created additional funds to pay for operating losses and therefore facilitates VUMH putting aside funds for capital improvements.

WITNESS the following signatures.

A handwritten signature in black ink, appearing to be 'E. Olen Culler', written over a horizontal line.

E. Olen Culler
Gayle, Boyles and Culler
Dale Building, Suite 203
1504 Santa Rosa Road
Richmond, Virginia 23288
Counsel for plaintiff

Jan T. Reid
Elizabeth Butterworth Stutts
Assistant City Attorney
City Attorney's Office
900 East Broad Street, Room 300
Richmond, Virginia 23219
Counsel for defendant

980498

VIRGINIA:

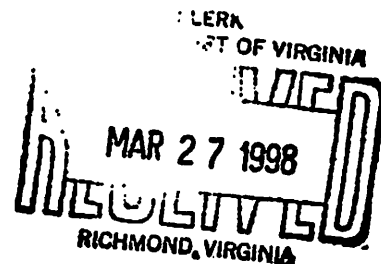
IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
JOHN MARSHALL COURTHOUSE

VIRGINIA UNITED METHODIST HOME,
PLAINTIFF,

vs.

CITY OF RICHMOND,

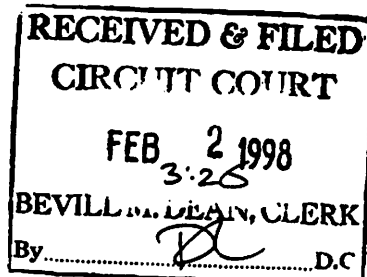
DEFENDANT.



Case No.

Transcript of testimony and other incidents in
the above, when heard on October 30, 1997 before the
Honorable Melvin R. Hughes, Jr., Judge.

VOLUME II



COPY

APPEARANCES:

OLEN CULLER, ESQUIRE
 Gayle, Boyles & Culler
 1504 Santa Rosa Road
 Richmond, VA 23229
 Counsel on behalf of the Plaintiff

DEBRA MALLORY, ESQUIRE
 Room 300, City Hall
 Ninth and Broad Streets
 Richmond, VA 23219
 Counsel on behalf of the Defendant

JAN T. REID, ESQUIRE
 Room 300, City Hall
 Ninth and Broad Streets
 Richmond, VA 23219
 Counsel on behalf of the Defendant

I N D E X

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	DIRECT	CROSS	REDIRECT	RECROSS
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WILLIAM GERALD FINK	17	37	--	--
CHARLES WARNER CRUMB	46	62	64	65
CLINT SMITH	66	--	--	--
CHERYL DUFF	88	--	--	--
CLINT SMITH	110	123	127	--
CHERYL DUFF	128	134	135	--

E X H I B I T S

Page

EXHIBIT NUMBER 1 DISCLOSURE STATEMENTS	21
EXHIBIT NUMBER 2 ARTICLES OF CORPORATION	25
EXHIBIT NUMBER 3 DEEDS	25
EXHIBIT NUMBER 4 AFFIDAVITS	46
EXHIBIT NUMBER 5 AFFIDAVITS	46
EXHIBIT NUMBER 6 501-C3 APPLICATION	91
EXHIBIT NUMBER 7 CHECKS AND BILLS	93
EXHIBIT NUMBER 8 990 TAX RETURNS	90
EXHIBIT NUMBER 9 FINANCIAL RECORDS	93

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1 OCTOBER 30, 1997, 11:30 A.M.

2 NOTE: Court is convened, and the hearing
3 commences as follows:

4 THE COURT: Are you ready to proceed?

5 MR. CULLER: Yes, sir. I feel like I
6 made most of my opening statement in the trial
7 brief. I won't repeat all of that.

8 MS. MALLORY: Your Honor, I'm sorry,
9 before Mr. Culler starts could we make a motion
10 to exclude the witnesses from the courtroom?

11 THE COURT: Everyone who is in the
12 courtroom that expects to testify, please step
13 outside. While you're outside, please don't
14 discuss the case.

15 NOTE: All witnesses are excluded from
16 the courtroom.

17 MR. CULLER: I wonder if I could have
18 these folks identified for the record at counsel
19 table?

20 MS. MALLORY: This is Mac Lockhart, the
21 city assessor.

22 THE COURT: Who?

23 MS. MALLORY: Mr. Mac Lockhart is our --

24 THE COURT: Lockhart?

25 MS. MALLORY: Lockhart, L-O-C-K-H-A-R-T.

1 THE COURT: He's what?

2 MS. MALLORY: The city assessor.

3 And this is Robert Jaffer, and he's
4 supervising appraiser for Mr. Lockhart, both
5 from the City Assessor's Office, and neither
6 one -- we don't intend to call neither one as a
7 witness.

8 MR. CULLER: Your Honor, this is an
9 action to collect real estate taxes paid. The
10 assertion is that the tax payer is entitled to
11 exemption under the Constitution and under the
12 Code of Virginia on account of its use of
13 properties. In --

14 THE COURT: I thought it took care of
15 that, fairly recently, your clients were exempt?

16 MR. CULLER: Yes, sir, from 1952 when
17 they acquired these properties all the way
18 through 1996 they were deemed exempt by the City
19 of Richmond. That's part of the pleadings that
20 stipulated that they were exempted as an asylum.
21 In 1996 the City, without any warning, sent a
22 tax bill, and upon inquiry they said that they
23 had made a mistake all those years, that they
24 really weren't an asylum. We paid the tax. We
25 paid the tax, and we file this action on account

1 that it's not properly acceptable.

2 The Constitution provides that certain
3 kinds of entities that operate properties in
4 certain kinds of ways are entitled to exemption.
5 We need to show that we're nonprofit, and I
6 think we can do that. We need to show that we
7 are charitable. What that word means,
8 charitable, depends on whether or not we were
9 tax exempt in 1971. If we were indeed tax
10 exempt in 1971, charitable means with a dominant
11 purpose of doing good. If we were not exempt in
12 1971, charitable means something else. We're
13 not entirely sure, but it's to be strictly
14 construed, we know that much.

15 We think we ought not to prove, ought
16 not be required to prove that we were tax exempt
17 in 1971 because it's a done deal. It's an
18 established fact. It was an established fact
19 for all those years. The constitution provides
20 that property that was exempt on July 1, 1971,
21 shall remain exempt. The City says they are not
22 bound by their mistake, that under some case law
23 that they are not estopped to deny mistakes,
24 that doesn't mean a thing, that we have to come
25 in here today to produce evidence of the nature

1 of their operation in 1971 to show that it was
2 charitable and also an asylum.

3 That issue, if the Court is prepared to
4 rule on it, will save some time. Some of our
5 witnesses --

6 THE COURT: Now, what issue? The issue
7 of whether or not you were exempt in '71?

8 MR. CULLER: Yes. The issue of the fact
9 that they said we were exempt in 1971, they
10 listed us as charitable for that and the next 25
11 years. Do we now have to come in and prove that
12 fact, or it's the case law that says the
13 definition of these terms is the definition that
14 the administrators employ to imply the acts.
15 That is the case law that says a plumber is what
16 the building guys say he is, a plumber, and we
17 have a controversy about what's the plumber.
18 Then we look at what's been happening in the
19 building business and find out what those guys
20 call a plumber.

21 Based on this point, it is what is an
22 asylum, and I say that the City has told us 25
23 times that we were an asylum, and we ought not
24 now have to prove that. We are prepared to
25 prove it, but it's going to be, first, difficult

1 to show what we did and what we were like in
2 1971, and I don't think we ought to have to do
3 that, and if the Court is not prepared to rule
4 on that, I understand. We'll put that evidence
5 on.

6 The final thing we need to prove is that
7 we were an asylum, and as already anticipated we
8 are going to put on evidence as to what we do.
9 We don't have any evidence as to what the legal
10 standard is, and that's a matter of legal
11 argument, and I thank the Court for it's
12 indulgence in this group already, and we're
13 prepared to begin to present evidence.

14 THE COURT: Thank you, Mr. Culler. Ms.
15 Mallory, anything? An opening statement?

16 MS. MALLORY: Well, Your Honor, when I
17 was writing the brief to try to explain the law
18 in this case, I meant to keep it short, and it
19 ended up being 18 pages, and that was the bare
20 minimum.

21 Responding to what Mr. Olen Culler has
22 said first, he puts most of the emphasis of his
23 argument on they have to be charitable and that
24 depends on the tax exemption in 1971. Actually,
25 there is under Virginia Constitution in 1902 and

1 after the Virginia Constitution of 1971 Code, a
2 two prong test for tax exemption by
3 classification. The two prongs of that test
4 are, one, the plaintiff has to be one of the
5 types of organizations named in the
6 classification statute. That would include, at
7 least in the one that Mr. Culler is relying on,
8 YMCAs, orphans or other asylums, reformatories
9 hospitals and nunneries.

10 The second prong of the test is that
11 such organization has to be conducted not for
12 profit, but exclusively as a charity. Now, that
13 was a section in the 1902 Constitution, and when
14 the 1971 Constitution was enacted, this was
15 codified into the Code, 58.1-36.6, that says
16 essentially the same thing.

17 The reason that 1971 is important is
18 because when the 1971 Constitution came into
19 effect it preserved and set in stone forever the
20 classifications listed in the 1902 Constitution
21 and gave the General Assembly no authority to
22 expand them, and so depending on whether this
23 Court finds that the plaintiff was, in fact,
24 entitled to an exemption in 1971 will depend on
25 what type of construction you should apply to

1 the plaintiff in determining their tax exemption
2 status after 1971. If you determine --

3 THE COURT: I don't know if I follow
4 that.

5 MR. CULLER: All right. If you
6 determine that they meet both prongs of that
7 test on or before 1971, actually as of 1971,
8 July 1, 1971, then what is known as the
9 grandfather clause kicks in and they are
10 entitled to liberal construction of their tax
11 exempt status forever. It sets that
12 classification and that liberal construction in
13 stone as of 1971 and says anybody --

14 THE COURT: So long as he's satisfied
15 the two prongs testified evidence of what
16 existed in '71?

17 MS. MALLORY: Right, then he's entitled
18 to liberal construction. If Your Honor finds
19 that he has not satisfied that test and that he
20 wasn't entitled to tax exemption by
21 classification on July 1, 1971, then Your Honor
22 is supposed to apply the strict construction
23 after '71 to determine their tax exempt status.
24 That's the significance of 1971 and the
25 grandfather clause. It stops the liberal

1 construction at '71 for these classifications
2 only and property falling within the
3 classifications, and after 1971 everything
4 should be construed as strict, so that's why '71
5 is important.

6 The City has not said to the plaintiff,
7 you have to pay your 1971 taxes. We informed
8 them in 1996 that they were no longer entitled,
9 if they ever were entitled to a tax exemption
10 then the current state of their facility now,
11 they were not entitled to that tax exemption,
12 and we also argue that they weren't entitled to
13 it in '71, but the significance is whether you
14 would use liberal construction or strict
15 construction to construe their current request
16 for exemption. That's why that is important.

17 THE COURT: So the City's position is
18 they didn't fit the definition in '71 or now?

19 MS. MALLORY: That's correct. They have
20 the burden of proof to show that they are
21 entitled to a tax exemption, and there is a case
22 that says that the legislature must exhibit
23 clear intent to exempt a property before an
24 exemption will be construed, and that is a City
25 of Petersburg case that goes back to --

1 THE COURT: So it's not the City's
2 position that they were entitled in '71, but
3 somehow lost that entitlement on the way and up
4 to 1996, that's not your position?

5 MS. MALLORY: Well, actually it's an
6 alternative argument if Your Honor finds that
7 they were entitled to it in '71.

8 THE COURT: Can you be exempt in '71 and
9 become not exempt and then taxable?

10 MS. MALLORY: Of course.

11 THE COURT: But I thought if you were
12 exempt in '71 then that's it.

13 MS. MALLORY: Well, if an organization
14 relied on the grandfathering, the grandfathering
15 of their tax exemption and suddenly chose to
16 operate profitably, for example, which is not
17 what I'm saying they're doing, but that's an
18 example, if they chose to change their structure
19 or organization so that they no longer met those
20 requirements, they couldn't say, you can't tax
21 us because we were grandfathered and now we can
22 do anything we want. The logic of that is you
23 have to continue to meet those requirements
24 under the construction that's applicable to you
25 whether it be liberal or strict. So you cannot

1 stop being an asylum or you cannot stop being a
2 hospital, or you cannot stop being charitable or
3 operating as a charity without losing that tax
4 exemption, but as I said, they do have the
5 burden of proof, and the intent of the
6 legislature must be clear beyond a reasonable
7 doubt.

8 THE COURT: But alternatively, that's
9 the City's initial alternative, that if they
10 were exempt in '71 --

11 MS. MALLORY: If Your Honor finds that
12 they were exempt in '71 --

13 THE COURT: -- that circumstances have
14 changed --

15 MS. MALLORY: -- as of '96 when we put
16 them back on the tax role, they were not
17 entitled to tax exemption.

18 Your Honor asked earlier about the
19 definition of asylum. I guess you could look
20 almost anywhere for that. We think that what is
21 relevant is what was meant by asylum in 1902 and
22 around that time when the Constitution was
23 enacted. There is -- well, what it actually
24 says, the statute and Constitution said, orphan
25 or other asylums and by that phrase

1 characterizing what they meant by asylums.
2 There's an 1891 addition of Black's Law
3 Dictionary that defines asylum as, an
4 institution or the protection and relief of
5 unfortunate, as asylums for the poor, for the
6 deaf and the dumb, and for the insane, and the
7 Constitution threw in --

8 MR. CULLER: I think this is supposed to
9 be opening statement, and she's telling the
10 Court what her case is going to be, and it has
11 the tinge of closing argument. I gave the Court
12 an opportunity to comment on that. If you want
13 to hear it --

14 THE COURT: That's fine.

15 I think you are arguing the case, and
16 we're getting a little more into what the law is
17 and --

18 MS. MALLORY: I was trying to clarify
19 the law for Your Honor.

20 THE COURT: If you can just tell me just
21 by way of opening what you expect the evidence
22 to be.

23 MS. MALLORY: We expect that the City's
24 evidence will show that Virginia United
25 Methodist Homes was not an asylum and not

1 charitable in 1971, and certainly not in 1996
2 which is when they were placed back on the tax
3 roles.

4 Mr. Culler did bring up the estoppel
5 argument. Westminster Canterbury is the case we
6 need to refer to for that argument which says
7 that in this exact circumstance where a city
8 government is performing their government
9 function, they are not estopped from correcting
10 a mistake --

11 THE COURT: Well, that's the question
12 that Mr. Culler was making regarding estoppel.

13 MS. MALLORY: That is correct, Your
14 Honor, and with Mr. Canterbury, which happens to
15 be a case about a home for the elderly with a
16 nursing home, or a health wing attached to it,
17 it's quite similar in many respects to the case
18 at large, and the Supreme Court in that case
19 said estoppel does not run against the City when
20 performing governmental functions, and in that
21 case they specifically said that applies to
22 assessment and collection of taxes. So even if
23 it was found that the City did make an error, we
24 would not be estopped to correct it at this
25 point, but we're not saying that we did.

1 So we will show, we expect to show that
2 the plaintiff is not in asylum, and they're not
3 operating exclusively as a charity, and that
4 they are not entitled to liberal construction as
5 in 1971, but even if Your Honor finds that they
6 were, they are not entitled to tax exemption as
7 of 1996 upon review of the facts that were
8 applicable at that time.

9 THE COURT: All right.

10 MR. CULLER: William Gerald Fink is our
11 first witness.

12 NOTE: The witness enters the courtroom.

13 THE COURT: Do you swear that the
14 testimony you will give here today will be the
15 truth and the whole truth, so help you God?

16 MR. FINK: I do.

17 WILLIAM GERALD FINK, a witness called by the
18 Plaintiff, first being duly sworn, is examined and
19 testifies as follows:

20 DIRECT EXAMINATION

21 BY MR. CULLER:

22 Q Would you identify yourself?

23 A William Gerald Fink.

24 Q How are you employed?

25 A I'm an ordained United Methodist

1 Minister serving as President of Virginia United Methodist
2 Homes, Inc.

3 Q How long have been so employed?

4 A Approximately 14 years.

5 THE COURT: Is that Fink, F-I-N-K?

6 THE WITNESS: Yes.

7 Q What are your duties as president?

8 A It's my responsibility to oversee the
9 daily operations of seven communities we have across the
10 Commonwealth of Virginia, to see that the policies of the
11 board are carried out.

12 Q How is the corporation managed?

13 A There's a board of directors of 12
14 persons. They employ the president and set the policies
15 for the corporation.

16 Q How is the board elected?

17 A The board is a self-perpetuating board.
18 We're a 501-C3, and the board is a self-perpetuating board
19 with a limit of ten year party membership.

20 Q Who owns the corporation?

21 A No one owns it. It's a non-stock
22 corporation. There are no owners.

23 Q What does the corporation do?

24 A The corporation came into existence --
25 Dr. Vie (phonetic), who was the first administrator at the

1 Hermitage in Richmond said to be a place where elderly
2 people could spend their declining years, so our mission is
3 to provide services, programs and facilities for aging
4 persons.

5 Q And you do that at seven facilities
6 across the state?

7 A Correct.

8 Q Where are they located?

9 A We have one in the City of Alexandria,
10 one in Onancock on the Eastern Shore, one in the City of
11 Norfolk, one in the City of Roanoke, one in Henrico County,
12 two in the City of Richmond.

13 Q How many employees do you have?

14 A Just over a thousand employees.

15 Q How many elderly do you take care of?

16 A About 1250.

17 Q Do you pay taxes anywhere besides the
18 City of Richmond?

19 A No, we do not.

20 Q It's been stipulated that VUMH is a
21 continuing care provider. Would you tell His Honor what
22 that means?

23 A When people come to live in one of our
24 communities, we provide a full continuum of care for an
25 individual over his or her lifetime. We provide basically

1 three levels of care. One is independent living, the
2 second is assisted living where people may need help with
3 medication, going to the dining room, dressing, things of
4 this type, and then healthcare which is providing almost
5 like a mini-hospital setting.

6 Q As a continuing care provider you
7 register with the Commonwealth of Virginia?

8 A Yes, we do. We're controlled by,
9 licensed by the Department of Social Services and the
10 Department of Health, and the State requires that we file
11 disclosure statements every year disclosing financial
12 information, operations, cost, this type of thing, and
13 these are made available to all potential residents and to
14 all residents of the communities.

15 Q I'm handing or presenting you with a
16 stack of documents. Could you identify those?

17 NOTE: Documents are handed to Mr. Fink.

18 A These are disclosure statements of the
19 corporation filed with the insurance commission.

20 Q What do you do with these things? Do
21 you give one of these to any perspective resident?

22 A We're required by law that perspective
23 residents be given these several days prior to signing the
24 continuing care lifetime contract with us, and they are
25 also made available to all residents every year when they

1 are printed.

2 MR. CULLER: I'm going to present these
3 to the Court. These are our only copies, and
4 I'm going to introduce them into evidence to the
5 extent they will be helpful to the Judge.

6 THE COURT: They're not all the same
7 thing?

8 MR. CULLER: No, sir. They cover
9 several different years.

10 THE COURT: I see. What do you call
11 those again?

12 THE WITNESS: Disclosure statements.

13 THE COURT: Disclosure statements, and
14 these are provided to each resident?

15 THE WITNESS: And every potential
16 resident. This is required by the State through
17 the Insurance Commission.

18 THE COURT: All right.

19 NOTE: The above-referred to documents
20 are admitted into evidence and received as
21 Exhibit Number 1.

22 BY MR. CULLER:

23 Q Basically these things describe the
24 deal, have a copy of the contract, describe the services,
25 and have a financial disclosure?

1 A Two years worth of audits, the contract,
2 the fees that are included -- the services that are
3 included for the fees, who was on the board of directors of
4 relationship to any religious organization, information of
5 that type.

6 Q What is the relationship between your
7 corporation and the United Methodist Church?

8 THE COURT: United Methodist Homes is
9 the name of the corporation?

10 THE WITNESS: Yes, sir.

11 MR. CULLER: Yes, sir.

12 A What is now Virginia United Methodist
13 Homes -- I will not go into church history, but back in the
14 days when it was started, you had the Methodist Church, not
15 the United Methodist Church, and prior to 1939, Methodist
16 in Virginia, and I suppose non-Methodist, went to a
17 community in Gaithersburg, Maryland, Asbury Village which
18 is still in existence today, and this serves as a life care
19 residence for people who sought this. There was a change
20 in some of the structure of the Methodist Church in 1939,
21 new boundaries were drawn, so Gaithersburg Home is in
22 what's now the Baltimore Conference, and we have the
23 Virginia Conference where we are, so Methodist in Virginia
24 said we need to provide some type of care for elderly
25 people within the bounds of the Virginia Conference, and

1 this was when Dr. Vie and other people became involved with
 2 the Methodist Church. However, we are not owned, we are
 3 not controlled, we are not governed by the United Methodist
 4 Church. We are 501-C3 owned right with a self-perpetuating
 5 board of directors, so we have no control from the Church.
 6 However, I look on it like a mother giving birth to a
 7 child, you cut the umbilical cord and you see the child
 8 grow and stand on its on feet, and we love the mother. We
 9 love what we do and who we represent and what we
 10 accomplish, and we come from the Judeo-Christian
 11 experience, so we feel that there is a good relationship.
 12 An offer is taken each year in the United Methodist Church
 13 to provide the medical care for people in our communities,
 14 things of this type, but we're not owned by the church.

15 Q You're not enemies either. Do you have
 16 chaplains in your facilities?

17 A Yes, sir, we do.

18 Q And chapels?

19 A Yes, we do.

20 Q Are the members of the board of
 21 directors paid?

22 A There are 12 on the board of directors.
 23 The only paid board member is me, the person who holds
 24 position of president of the corporation.

25 Q What volunteers, and I want to ask you

1 now to kind of focus in on these two properties, the use of
2 the Hermitage and the use of the Snyder Home, how many
3 volunteers are used in the operation of these homes?

4 A There are several things which involve
5 volunteers. I say that we operate only because of three
6 groups of people, residents, employees and volunteers and
7 each is essential to the other. We have for each of our
8 communities what we call original advisor to counsel.
9 These are the persons who come from the geographic area in
10 close proximity to the community itself, and they advise
11 the board, the president, and the administrator on matters
12 of church and public relations, fund development -- most of
13 that fund development is benevolent care improvement
14 property -- and planning for the community. We also have
15 what we call a Hermitage guild, and it's all over the
16 Commonwealth and the boundaries of the United Methodist
17 Church, but we ask that each church name a representative
18 to serve on the guild and help promote the property, talk
19 about the ministry of the various communities, and then by
20 in large from that group will come a contingent of
21 volunteers, and we have between Hermitage and Richmond and
22 Snyder Home probably 150, 200 volunteers.

23 Q And what sort of things do these
24 volunteers do besides help you raise money?

25 A These volunteers will furnish

1 transportation for residents who may need transportation
2 that perhaps we have not provided or timing is not right.
3 I have known them to do mending to clothes, sew on buttons,
4 read letters, write letters, make phone calls, they'll run
5 errands. They do anything that they possibly can to be of
6 help to the residents, in turn which is saving us money.

7 MR. CULLER: Your Honor, I've got here a
8 certified copy of the articles of the
9 corporation as it's changed over the years, and
10 I would ask that this would be accepted into
11 evidence.

12 I also have copies of the deeds to the
13 two pieces of property. These are certified by
14 your clerk.

15 THE COURT: Okay. Let's see, these are
16 what, the deeds?

17 MR. CULLER: Yes, sir.

18 NOTE: The above-referred to documents
19 are admitted into evidence and received as
20 Exhibit Number 2 and Exhibit Number 3.

21 Q Can you tell us how your corporation
22 acquired these properties?

23 A The Methodist Church raised funds and
24 formed the board of trustees for the Hermitage. That was
25 the Bower property that was being purchased, and when Ms.

1 Bower found the purpose of it, she reduced it down to
2 \$5,000 because of what it would be doing, and then we had
3 Mr. Snyder and his sister who lived in the Southside of
4 Richmond, and they gifted their property to be a place of
5 residence for elderly persons.

6 Q Snyder Home was a gift, and the Westwood
7 Avenue, the Hermitage, was sold at a reduced price, which
8 the seller knew the purpose of your use?

9 A Yes.

10 Q Who profits from the revenues that your
11 corporation receives?

12 A We are not-for-profit. We have staff we
13 have to pay, bills to pay, but beyond that only our
14 residents profit from what we do. This is the reason for
15 our existence is to provide quality care to the residents.

16 Q Can you tell His Honor how the operation
17 at the Hermitage and the operation at the Snyder changed
18 over the years, the extent to what there's been some change
19 and what they do?

20 A It's a lot more expensive now than what
21 it used to be, but basically it's the same as when the
22 homes were first established. There are some new levels
23 of care. For example, this assisted living is something
24 that's come on line in just the last probably ten years or
25 so. So that's a new dimension to the type of services we

1 provide. We provide that because it saves people going to
2 healthcare, which is what used to have to happen. Now you
3 don't, and it can save money, and we keep people alert and
4 moving around for a longer period of time, but essentially
5 I would say it's the same basic mission and ministry we've
6 always had.

7 MR. CULLER: Your Honor, I'm going to
8 put another witness on to tell you about the
9 levels of care and that.

10 Q What records does the board of directors
11 keep of its business activities?

12 A We try to maintain very meticulous
13 records. We have a secretary at each of our meetings.
14 Records are kept. Records, or minutes are mailed out or
15 distributed at meetings. They are reviewed by members of
16 the board, by regional advisory counsel and so on, and
17 approve or correct it as the case may be, but always
18 reviewed.

19 Q Whose job is it to take care and
20 preserve those minutes?

21 A That's part of the responsibility I have
22 to the corporation.

23 Q I'm going to hand you two pieces of
24 paper and ask if you can identify them.

25 MS. MALLORY: Can we see them?

1 MR. CULLER: They're the ones I
2 delivered to your office.

3 MS. MALLORY: That was a big box.

4 MR. CULLER: You didn't look at it?

5 MS. MALLORY: Yes, we did.

6 NOTE: The documents are shown to
7 counsel, and then to Mr. Fink.

8 BY MR. CULLER:

9 Q Can you identify these documents?

10 A Yes, I can. These are extracts from
11 minutes of our board and our executive committee. Both of
12 these I believe are executive committee. These are all
13 executive committee.

14 Q Okay. These minutes seem to discuss the
15 various level of charitable and free care that the
16 corporation was giving at various times. Is that currently
17 a matter of interest and concern with the corporation?

18 A I would be inclined to say that our
19 board of directors probably spend as much or more time on
20 this one subject than any other. We feel that we're in the
21 business of providing quality care to people, and there are
22 many people who need assistance, and we still continue to
23 receive people into our communities who do not meet the
24 cost of care, and yes, it's a great concern to this board.

25 Q Can you describe the philosophy of the

1 board further than saying it's a matter of concern? Are
2 the concerns for it or against it?

3 A There's a great concern for seeking to
4 constantly find new funds so we can provide more care for
5 more people. We, for example, have a vice president for
6 fund development who works with me. This individual is
7 involved in fund development within the bounds of the
8 United Methodist Church in the Commonwealth. One of his
9 main responsibilities is to raise money for benevolent
10 care. We also have a person, because of relationships with
11 the church it's not all limited to United Methodist, but a
12 retired United Methodist minister who is vice president for
13 church relations and he's out constantly seeking to raise
14 money for benevolent care. That's the primary thrust he
15 has.

16 Q Have you created a mechanism depository
17 for the funds used for your benevolent care?

18 A Several years ago, back in the '80s, we
19 developed what we call a Samaritan Fund, and this is a fund
20 which is used to help provide benevolent care to persons in
21 need. We have a little under \$2 million in that fund at
22 this particular time. Most of that money was raised
23 through church offerings and through bequests. Each year
24 we have a deficit on our operating revenue, operating
25 expenses as compared to the revenue, and most of that is

1 made up through gifts that come to us, bequests, this type
2 of thing, so we're constantly working on that.

3 Q What is the corporate goal for that
4 Samaritan fund? What do you want to do with that?

5 A The Samaritan fund at this point is
6 used -- we have a church offering that's received for
7 benevolent care, all of it's used for benevolent care.
8 Income for the Samaritan Fund is used and then other gifts
9 that come, and the goal is to provide as much care to as
10 many people as we possibly can who need assistance.

11 Q Is the income from the Samaritan fund
12 sufficient to fund all the benevolent care?

13 A Oh, no. No. That would be a small part
14 of it. The church offering is included and the bequest.
15 We just recently had a request for Hermitage on the Eastern
16 Shore community of \$400,000, but it's to be restricted and
17 all of the income from it is to be used for benevolent care
18 persons in that particular community.

19 Q Do you have occasions where you have to
20 refuse applicants because of financial reasons?

21 A It's the most difficult thing we ever
22 do, and yes, we do. We cannot give what we don't have, so
23 there's a limit to the amount of money that is available to
24 us. An actuary told us several years ago that we were
25 headed for very serious financial difficulties if we didn't

1 carefully monitor this benevolent care, and we tried to be
2 faithful to what he told us to do.

3 Q How is the money from the Samaritan fund
4 allocated for the benefit of your residents?

5 A This is done jointly using -- we have an
6 administrator in each of our communities, and the
7 administrators, the controller and the president will
8 receive information from one of the communities here,
9 someone who's applying. This individual needs assistance,
10 and we have to see what funds are available. We talk about
11 it and make the decision as to where we can allocate it.

12 I would say that of benevolent care, the
13 Hermitage in Richmond probably receives more than its
14 share, but this is -- it's okay. It's been that way
15 through the years. The Snyder Home at this particular
16 moment, there is no one receiving assistance from our
17 Samaritan fund. However, there are people that have been
18 admitted there who are in the pipelines, we have a program,
19 we follow and look at peoples financial situation, and
20 there are funds that will be available to those people
21 because we anticipate they will run out of money, and if
22 they have a life care contract and run out of money, we do
23 not put them out of the facility.

24 Also, the Snyder Home operates on about
25 \$150,000 a year deficit of revenue versus expenses, so in

1 the sense of the word with us having to supplement and to
2 make their existence possible, every resident there is
3 receiving some benevolent care, otherwise the rates would
4 have to go up to make up for that deficit.

5 MR. CULLER: Your Honor, I would ask the
6 Court to take judicial notice of, I guess this
7 is right, it's 58.1-3650.695, it's Code of
8 Virginia, but it's not part of the published
9 Code of Virginia, and this is an act adopted by
10 the legislature in March of 1997, and our
11 legislature found that Virginia United Methodist
12 Homes is a nonprofit organization. It is
13 designated as a charitable and benevolent
14 organization. This is part of the legislation
15 for the exemption of the property in Henrico
16 County, but I think it's a factual finding of
17 our legislature. We are nonprofit. We are
18 charitable and benevolent.

19 I have no further questions of this
20 witness.

21 MS. MALLORY: Your Honor, I would object
22 to your taking judicial notice of what
23 Mr. Culler just said because although the
24 Cederfield in Henrico, which is one of the
25 facilities of Virginia United Methodist Home,

1 has been exempted by designation which is what
2 he just showed you in that code section, the
3 General Assembly did not state why it exempted
4 the facility, and the General Assembly is not
5 bound by the same restrictions that are found in
6 the classification statute, so just because they
7 exempt a facility, they don't have to make a
8 finding that they're charitable, benevolent, an
9 asylum or anything else. They are free to
10 exempt who they want.

11 MR. CULLER: Your Honor, I think I read
12 the words that they found. They found those
13 things that I just read as part of the law in
14 Virginia.

15 THE COURT: Hereby designated as a
16 charitable, benevolent organization within the
17 context of Section 6A -- 686 of the Article 10
18 of the Constitution of Virginia. Is that the
19 part?

20 MR. CULLER: Yes, Your Honor. She says
21 that they didn't do that, and there it is. That
22 came from the legislative advisement service.

23 MS. MALLORY: Your Honor, the difference
24 between exempted by classification and
25 designation is, you know, the classification

1 exemption is a determination made by the
2 locality based on whether the facility falls
3 within that two prong test that we discussed
4 earlier. Designation is the authority granted
5 to the General Assembly pursuant to 1971
6 Constitution, to exempt whomever they wish under
7 no restrictions. They are not bound by the
8 same, and a finding of, even if the General
9 Assembly did find that that particular facility,
10 not the whole corporation, is --

11 THE COURT: It really is --

12 MS. MALLORY: -- benevolent and
13 charitable --

14 THE COURT: This is in two parts. It
15 says the United Methodist Homes is nonprofit.

16 MR. CULLER: And if you included the
17 property in Henrico in the charitable fashion,
18 but that property is entitled to exemption, but
19 it's a finding by the General Assembly what the
20 corporation is.

21 THE COURT: That's what I was pointing
22 out -- meaning to point out, that it has an A
23 Part and a B Part. The A Part refers to
24 Mr. Fink's corporation as being a charitable,
25 benevolent corporation. You don't think I can

1 consider this at all?

2 MS. REID: Well, I guess what we're
3 saying is twofold.

4 One, actually we don't have a copy of
5 that so it's kind of hard to say what we're
6 defending against, but the issues in this case
7 are whether this particular facility is exempt
8 by classification. There are basically two ways
9 in which someone can get tax exemption. You can
10 either, if you fit the square peg in a round
11 hole and literally it has to fit for
12 classification then Mr. Lockhart or someone
13 somewhere in his position can say you are tax
14 exempt, and so that's tax exemption by
15 classification, and that's the position that's
16 before the Court today. They're arguing that
17 they fall into the square hole or round one or
18 whatever. Now, should you decide today that
19 they're not tax exempt, they don't fit into the
20 four corners of that classification, then they
21 can go before the legislature and ask to be
22 designated. So there are two mechanisms by
23 which you can be tax exempt. So it's really --
24 I mean, of course with the General Assembly
25 does, it's codified. When your designated,

1 you're added at the end of the -- and we've got
2 a copy of it somewhere here, but basically at
3 the end of the Code, there's a whole list at the
4 end of 58.1, there's a whole list of I don't
5 know how many pages where they list everybody
6 who has been designated. Now, the fact that you
7 would be taking judicial notice of the fact that
8 Cederfield has been designated really doesn't
9 have so much bearing on this case because as a
10 matter of fact they could go before the General
11 Assembly and ask to have the Hermitage and
12 Snyder designated. The General Assembly hasn't
13 turned them down, so we're really talking apples
14 and oranges because designation is a process by
15 where the General Assembly decides to give them
16 tax exemption. For example, Cederfield --

17 THE COURT: I understand all that, but I
18 think this is being offered at least in part as
19 some authority for the proposition that United
20 Methodist Homes is a nonprofit, charitable,
21 benevolent organization.

22 MS. REID: I think that what they're
23 saying is -- I guess what we're saying is that
24 that's a different kind of standard, that for
25 them to say -- I mean, actually, this document

1 says what it says.

2 THE COURT: I understand the
3 distinction. I'm not saying it's determinative
4 of the classification issue.

5 MS. REID: Right, I guess, and that's
6 the only point we would make.

7 THE COURT: I'll take it for what it's
8 worth.

9 Do you have any questions of Mr. Fink?

10 MS. MALLORY: Yes, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. MALLORY:

13 Q Good morning, Mr. Fink.

14 A Good morning.

15 Q You testified earlier that VUMH is a
16 continuing care provider and they have levels of care
17 including independent living and assisted living. Could
18 you clarify for the Court what independent living means?

19 A Independent living? I don't know that I
20 can give you a rigid definition of it. It's a moving
21 target. In most of our communities independent living
22 means that a person is able to come into the community as
23 the last place where this person wants to live. We enter
24 into an agreement where the person says, I want you to take
25 care of me for the rest of my life. We say we're willing

1 to do that. Many of these people are at the point in age
 2 because of, I think the average age of admission at the
 3 Hermitage is well into the 80s now, and many of these
 4 people are very slow in moving. So independent living --
 5 we're not talking about traveling around the world and
 6 playing basketball and that sort of thing. We're talking
 7 about people who are basically elderly, they may be able to
 8 get to the dining room on their own, to take the medication
 9 on their own. There may be some who can't go to the
 10 hospital or whatever it is, but by in large it is
 11 independence that they are able to express without
 12 assistance in the basic daily needs of life.

13 Q The Hermitage is, I believe you said,
 14 licensed by the State Department of Social Services?

15 A And the Department of Health.

16 Q Right. The Department of Health would
 17 be licensing the healthcare facility?

18 A That's correct.

19 Q And the Department of Social Services
 20 would be licensing independent living and assisted living
 21 sections of the Hermitage?

22 A That's correct.

23 Q Are you familiar with the Department of
 24 Social Services definition of independent living?

25 A I don't believe I could quote that to

1 you.

2 Q Are way aware that independent living
3 does not have to be licensed?

4 A Yes, I am. Independent living at the
5 Hermitage Cederfield is not licensed.

6 Q And that would be because the Department
7 of Social Services --

8 A We choose not to.

9 Q All right.

10 THE COURT: Well, all right. What are
11 you saying? You're not licensed for independent
12 living?

13 THE WITNESS: That's correct.

14 THE COURT: But you're otherwise
15 licensed --

16 THE WITNESS: Yes.

17 THE COURT: -- for the assisted and the
18 healthcare?

19 THE WITNESS: The Department of Health
20 is involved in the healthcare center.

21 BY MS. MALLORY:

22 Q Actually, you are licensed for
23 independent living. I actually got a copy of your license
24 from the Department of Social Services.

25 A Okay.

1 Q It's a voluntary thing. You don't have
2 to be licensed. Did you know that the reason you don't
3 have to be licensed is because independent living doesn't
4 require --

5 MR. CULLER: We ought to put counsel
6 under oath.

7 MS. MALLORY: Pardon?

8 THE COURT: He said we ought to put
9 counsel under oath, because you're testifying.

10 MS. MALLORY: I see.

11 BY MS. MALLORY:

12 Q Are you familiar with the articles in
13 corporation for the Hermitage -- I'm sorry, for Virginia
14 United Methodist Home and its --

15 A I don't have it committed to memory, but
16 I'm --

17 Q All right.

18 MS. MALLORY: May I approach, Your
19 Honor?

20 THE COURT: Yes.

21 NOTE: Counsel approaches the witness.

22 Q There's a paper clip there. Would you
23 turn to the first page that's clipped? Could you read what
24 it says at the very top of that page?

25 A Are you talking about the incorporation

1 of non-stock?

2 Q Yes.

3 A And it looks like it's blurred. It
4 looks like nonprofit corporation.

5 Q All right, and then under Paragraph 3 on
6 that same page, 3-A -- actually, would you read three and
7 then the part that's underlined under A?

8 A There's nothing underlined under A.

9 Q I'm sorry. (Approaching witness.)
10 Well, I'll let you use this one.

11 A Read three and the underlined under A?

12 Q Yes, sir.

13 A The purpose for which the said
14 corporation is formed are as follows: To establish a home
15 or homes for the aged and infirmed and needy persons.

16 Q Okay, and could you flip to the second
17 clipped page, just take the paper clip and turn it over and
18 you'll be looking at the page, and can you identify at the
19 top of the page what you're looking at?

20 A Articles of Amendment, Virginia
21 Methodist Home for the Aged, Incorporated.

22 Q Under Number 2 is there an A and is
23 there an underlined part?

24 A Yes.

25 Q Would you read the underlined part which

1 is --

2 A To establish a home or homes for aging
3 persons.

4 Q And what's the difference between the
5 change in the articles of incorporation that you see in the
6 underlined part?

7 A The way in which we function and operate
8 I don't -- I would not distinguish a change because I know
9 the history and what has been done.

10 Q Well, actually several words have been
11 deleted.

12 A I see that, but I'm saying -- all right.
13 I'll read this: To establish a home or homes for the aged
14 and infirmed and needy persons. To establish a home or
15 homes for aging persons.

16 Q So between the original certificate of
17 incorporation and this article of amendment that was
18 basically filed in 1960, what was deleted from the purpose
19 was that you no longer provided a home for infirmed and
20 needy persons; is that correct, reading these articles?

21 A Let's see what I'm looking at here.

22 MR. CULLER: This gentleman was not
23 employed in 1960.

24 THE COURT: Well, whatever. Can't
25 you -- this is argument. You can point this out

1 during your discussion in argument.

2 MS. MALLORY: That's fine, Your Honor.

3 THE COURT: Unless there's something
4 that Mr. Culler represented.

5 A I don't even see the dates listed here
6 so I don't know what the dates are.

7 Q That's fine.

8 Do you recognize this?

9 NOTE: Document is handed to the
10 witness.

11 A Yes. It looks like a statement -- fees
12 from the disclosure statement of apparently June of 1996.

13 Q And could you turn to Page 4? Could you
14 tell the Court what the range of entrance fees is in the
15 middle column, and I believe those would be the ones --
16 correct me if I'm wrong -- are those the ones applicable to
17 the Hermitage?

18 A That's correct.

19 Q All right the range of entrance fees in
20 that column just from lowest to highest?

21 A 203,375 to 110,000.

22 Q All right, and in the monthly fee
23 column, the range there?

24 A That runs from 1,604 to 2,758.

25 Q And the entrance fees would be the fee

1 that a resident pays before they enter the Hermitage?

2 A At the time of entrance.

3 Q And then the monthly fee would be the
4 continuing monthly payment to the Hermitage for the cost of
5 care?

6 A That's correct.

7 Q You also testified earlier that no one
8 at the Snyder was currently receiving support from the
9 Samaritan fund; is that correct?

10 A That's correct, but there are
11 commitments made upon it for people who are there because
12 the odds are they're going to run out of money and we know
13 that.

14 Q Do you have any residents at the Snyder
15 who are eligible for Samaritan care?

16 A I do not know.

17 Q Do you know how many life-care contracts
18 there are?

19 A There are very few. Most of those are
20 now leases or rental agreements. I do not know the exact
21 breakdown.

22 Q So most of the people are on monthly
23 leases?

24 A Correct.

25 Q Are people on monthly leases eligible

1 for support from the fund?

2 A We have not used Samaritan funds because
3 the difference is a monthly lease, and that person can
4 leave us at any time he or she wants, or we could ask them
5 to leave with 30 days notice. Life care we have entered
6 into a bonding that is for life, and our approach has been
7 that's where the longer term commitment has to be is with
8 life care.

9 Q So basically most of the people at the
10 Snyder are not eligible for help from the Samaritan fund?

11 A From the Samaritan funds, however, we're
12 operating at a deficit of \$150,000 a year, and without
13 raising rates everyone there is receiving benevolent care.

14 MS. MALLORY: Thank you.

15 THE COURT: Anything else?

16 MR. CULLER: No, sir.

17 THE COURT: Thank you, reverend. You
18 may step down.

19 MR. CULLER: I don't plan on recalling
20 him so I would ask that he be permitted to
21 remain in the courtroom.

22 THE COURT: All right.

23 MR. CULLER: I call Warner Crumb.

24 Your Honor, did I admit the extracts
25 into evidence?

1 THE COURT: You didn't, but I was
2 thinking that you would. Yes. I marked those
3 as Exhibits 4 and 5 respectively. Are you
4 speaking of these affidavits?

5 MR. CULLER: Yes, sir.

6 THE COURT: Yes.

7 NOTE: The above-referred to documents
8 are received as Exhibit Number 4 and Exhibit
9 Number 5.

10 NOTE: Mr. Crumb enters the courtroom.

11 THE COURT: Do you swear that the
12 testimony you will give here today will be the
13 truth and the whole truth, so help you God?

14 MR. CRUMB: I do.

15 CHARLES WARNER CRUMB, a witness called by the
16 Plaintiff, first being duly sworn, is examined and
17 testifies as follows:

18 DIRECT EXAMINATION

19 BY MR. CULLER:

20 Q Would you state your name, please?

21 A Charles Warner Crumb, C-R-U-M-B.

22 Q Where do you reside?

23 A In Roanoke, Virginia.

24 Q Are you presently employed?

25 A No, sir.

1 Q When were you last employed?

2 A I served the Church for a year -- this
3 past June I finished up. I'm in my tenth year of
4 retirement, but I was filling in.

5 Q You were formerly an employee of
6 Virginia United Methodist Home?

7 A Yes, sir.

8 Q What was your job there?

9 A I was the administrator of the Homes in
10 Richmond, the Hermitage and the Snyder Homes.

11 Q For what years?

12 A 1962 to 1980.

13 Q And what were your duties as
14 administrator?

15 A Well, I employed and supervised the
16 staff as an ordained minister. I served as a chaplain as
17 well. I was involved heavily in admissions at that time
18 the administrators were. I did a lot of public relations
19 work representing the home in the Virginia conference and
20 the churches, dealt with the purveyors, helped to decide on
21 decorating the rooms, buying equipment, virtually the
22 purchasing agent for the facility.

23 Q What was the business of the Hermitage
24 and the Snyder Homes in 1971?

25 A We were carrying on the tradition that

1 was established by Dr. Vie, definitive pastor of the
2 facilities, to care for the elderly people, to provide
3 care, actually the best possible care we could at the least
4 cost we could possibly be involved in.

5 Q In 1971 who ran the homes? What was the
6 highest level that the decisions were made?

7 A In 1971 Dr. Vie was the administrator.
8 In 1972 he became the executive director, and I became the
9 administrator in '72. Dr. Vie worked very closely with the
10 corporate board that was representative of the different
11 communities, geographical areas of the State of Virginia,
12 and he had a small committee what was called the executive
13 committee that met monthly. Dr. Vie and the executive
14 committee made an awful lot of the decisions, and the
15 general board met, the corporate board met about once every
16 three months or maybe twice a year at that time.

17 Q Do you know whether or not the board was
18 paid?

19 A None whatsoever.

20 Q You were all volunteers?

21 A All volunteers, and they not only
22 volunteered as officers in making the decisions for the
23 management and operation of the home and basic decisions
24 for the services to the people of the area that became
25 residents, but many of them were business men who provided

1 tremendous assistance through their own offices. One
2 furniture man, for example, who lived in Hampton, delivered
3 all of the furniture that was ever needed to be bought for
4 these homes at his own cost, whatever it costs to bring the
5 furniture to his place in Hampton, and at that time they
6 put them all on the truck and hall them to Richmond.

7 Q Let me ask you, how were the homes, July
8 1, 1971, how was the Snyder Home physically different from
9 the way it was when you last saw it, which I could guess --
10 when did you last see the Snyder Home?

11 A It's been several years, but I don't
12 think there's been any physical change since I was the
13 administrator there. The Snyder Memorial Home was given
14 directly to the conference, to Dr. Vie's committee. That
15 was actually the first property the committee ever had in
16 my understanding of it, and it was just a three-story brick
17 building that was owned by the Snyder family, and at the
18 time that that property was given to Dr. Vie and the
19 community, the Snyders had already been using it for the
20 care of elderly people, and there were four or five people
21 were living in the Snyder Memorial Home at the expense of
22 the Snyder family, and it's my recollection and my
23 understanding that they paid no monthly maintenance at all.

24 When the property was given to the
25 Hermitage representative Dr. Vie and then began to be a

1 part of the program, those people stayed right on in the
2 Snyder Memorial Home and were cared for, and when the time
3 came that they needed more extensive care, they were moved
4 over to the Hermitage Home on Westwood Avenue where they
5 received continuing care regardless of what the need may
6 be, and they died there.

7 Q How is the Hermitage physically
8 different now than it was July 1, 1971?

9 A The only difference now is the extension
10 of the building in an easterly direction that we call the
11 Vie Healthcare Center. In other words, we added 115 beds
12 in that additional building that was added. That's the
13 only change physically, except the internal rearrangement
14 that was needed by the people.

15 Q I have to keep you focused on July 1,
16 1971. What was done with the revenue that the Hermitage
17 and the Snyder Homes created in 1971?

18 A When I got there in '72 --

19 Q '62?

20 A '62, excuse me, '62, and you're using
21 the year '71. I beg your pardon. I've gotten a decade of
22 difference here. Now the question is --

23 Q What was done with the revenue that the
24 Snyder Home and the Hermitage created? How did you spend
25 your money?

1 A We spent it taking care of the people
2 and that's the only way it was spent.

3 Q Was there any difference in the manner
4 in which you took care of people as between 1962 when you
5 got there and 1980 when you left?

6 A Not any difference in the philosophy.
7 Not any difference in the concern and care, but the
8 community aged, the people got older, all of their physical
9 and mental facilities were declining, just like life goes
10 on, and as these different needs surfaced, the more care
11 that they received, and there developed a certain number in
12 one category and some who needed other kinds of care, so
13 you got to the place where you were actually
14 departmentalizing the building in order to provide the best
15 possible care and humanely concern for those who didn't
16 need the specialized care, they were in more of a
17 residential situation.

18 Q What do you mean specialized care?

19 A Well, the loss of memory became a
20 community category. You've got people who were becoming
21 more and more inclined to forget, and that forgetfulness
22 not only dealt with memory, but it also had to deal with
23 their own personal care of themselves. They began to lose
24 some responsibility for their own personal care, own
25 personal responsibility.

1 Q Describe for His Honor what the
2 operation was like in July the 1st, 1971. What were you
3 doing for your people? What sort of care were you taking?

4 A Well, they would come into the home for
5 life care. At that time they were required to be
6 ambulatory, personally responsible for their own individual
7 needs, clothing, dressing themselves, and getting to and
8 from the dining room, and it was required and expected of
9 them that they would be social beings, that they would not
10 be having the nature of recluse or that they would be
11 uncomfortable in a communal situation, and so they would
12 come in and in nearly every instance they had the choice of
13 their room. You could offer a lady or a man a room and one
14 of them would say, I don't want to be on the first floor,
15 and they would wait until one was on the second or third,
16 and there were those who didn't want to be on the third
17 floor, they didn't like elevators, and they waited for the
18 first floor. They got a choice of rooms. It was a rare
19 situation in which arbitrarily they said this is the room
20 that is the best possible room for you, and after they got
21 in and we provided the three meals a day and we provided
22 physician services and we provided nursing care, the maids
23 looked after their rooms, they called it heavy cleaning
24 once a month, routine daily.

25 We went through all kinds of dietary

1 experiments with food service companies that would
2 guarantee you everything and couldn't produce anything
3 hardly. We tried to relate the dining experience to be
4 what we believe christians ought to be like at meal time,
5 and we had special diets that were being met.

6 By 1971 the services were moving rather
7 in a sophisticated way because life was changing, society
8 was changing.

9 Q Did you provide any spiritual care for
10 these people?

11 A In those days as the administrator of
12 the home, I accepted my appointment as a pastor there and I
13 would frequently say I'm not the administrator, I'm the
14 pastor in charge. So I was actually the chaplain to the
15 folks and I had religious services that I held regularly.
16 I always had a communion on Sunday. We had a communion in
17 the Snyder Home and in the Westwood Home, and by '71 we had
18 75 beds for nursing patients on the fourth floor and we
19 would take communion to them. If there came to be somebody
20 who had some real prolonged, serious needs for pastoral
21 care, then her pastor would take care of it, but basically
22 I was the chaplain, too.

23 Q Do you recall whether in and around 1971
24 the facilities were profitable?

25 A Well, in terms of profitable do you mean

1 from the paying of the patients or residents?

2 Q In the financial sense, not in a --

3 A Well, we were in a -- the income from
4 the residents was deficit, which is to say that
5 operationally, operational income was always in a deficit
6 situation.

7 Q How did you stay open?

8 A Through negotiated gifts, through church
9 offerings which amounted to as much as \$300,000 towards the
10 last two or three years that I was there. We had very,
11 very, very fine bequests. Dr. Bernard Vie went all over
12 the conference talking about what was being done, and he
13 was an established pastor himself before he ever became the
14 administrator, and he had been the pastor to some very,
15 very fine, believing, faithful people that were well to do,
16 and they made very generous gifts to support his work.
17 Some of the legacies that are still coming in are the
18 result of his ministry, and I carried on with him.

19 When I left the home to go into the
20 cabinet, and before I went to the Eastern Shore here in
21 Virginia, the last day I spent visiting a millionaire, and
22 I said, now I'm still interested in the home, and you are
23 too? Yes, we are. He had a prearranged life care arranged
24 with the home that I worked out with him and his legacy --
25 he died and never came into the home, but his legacy was in

1 excess of \$300,000 and while you get a real big one like
2 that, there are an awful lot of small ones that came in.
3 Right many of the people who lived in the home at that time
4 had the home in their wills and that might be a couple
5 thousand dollars.

6 Q Did the corporation at that time utilize
7 volunteers, the Hermitage and the Snyder?

8 A Yes, we did. One of the fine things
9 that Dr. Vie did was to establish what is called the
10 Hermitage guild all over the conference and every church
11 had a guild representative.

12 Q What did they do for the Hermitage and
13 Snyder?

14 A The local people who were as close as
15 Richmond and Petersburg and Ashland, Virginia, places like
16 that, they actually came into the home and had programs and
17 they had services that the people would need, reading to
18 some of those who were blind, helping them in many ways.
19 We had men come in who would help some of the more affluent
20 members of the home with their taxes. We still -- my
21 roommate still, at college, still goes there and helps some
22 of them out, and the board members themselves were doing
23 right much volunteer work, too, but the auxiliary that we
24 call the guild was very significant. We had people who
25 were coming in the home every week making flower

1 arrangements. We had one person who would adopt a certain
2 thing to do, and we had one lady that would look after the
3 alter every week and this kind of thing, and they would,
4 besides what little services they rendered, they had a
5 tremendous impact on the community of the elderly because
6 the people knew they were concerned about them and they
7 loved them and this kind of thing.

8 Q What was your role in admissions to the
9 Hermitage and Snyder Homes?

10 A Well, I was practically the director of
11 admissions really, I guess you might say, because all of
12 the applications that came from membership in the home came
13 to my desk, and Mrs. Cheely (phonetic) who started as a
14 secretary and then became an administrative assistant with
15 me, she and I worked very closely together on the
16 admissions work, and when the applications came in, we
17 immediately studied them to see the age of the lady, et
18 cetera, and worked from the institution of the application
19 and went from there.

20 Q How about finances? Did you admit
21 people who couldn't pay?

22 A Yes, sir.

23 Q Tell His Honor about how that was done?

24 A Well, we looked -- in the beginnings of
25 my ministry there, we used what is called an ordinary life

1 actuarial table, and every application brings in the name
2 of the applicant along with the applicant's birth, and the
3 first thing you do is, what is the age? If they are under
4 65 in those early years they were too young to come in. We
5 would tell them that we don't take them that young. Later
6 on we dropped it a little bit, but anyway, then you would
7 start with the actuarial table to determine how many years
8 of life expectancy there is to be expected ordinarily by
9 this person. If the monthly rate at that time was \$125,
10 you would multiply the monthly rate times the number of
11 months of the ordinary table of life expectancy, and then
12 you would come up with the obligation the home had
13 financially, that is the liability as compared to what can
14 this applicant pay, and you would work then from the assets
15 that were showing in the application.

16 Regardless what those assets were and
17 the income that was showing, and as closely as you could,
18 you would max the two together and you would work out a
19 contract, and then after having this all worked out you
20 would go to the admissions committee and you would show
21 this graph: Age, life expectancy, monthly rate times
22 number of years, so much money. Then you would show the
23 assets, and if their assets were less than what the life
24 expectancy chart called for. The admissions committee
25 would decide on the basis of the experience that we have

1 built together whether this application would be approved
2 or not, whether the present operation profile could stand
3 this much aid to be awarded or not, and in that way, we had
4 the admissions committee's agreement approval to do this or
5 that or the other.

6 Q During your tenure, how many people did
7 you turn down because they couldn't afford it?

8 A Not any. Not any.

9 Q None?

10 A None. During my 18 years we provided
11 care for 1,000 people.

12 Q Did you ever have some people that once
13 they got there they couldn't pay there bills?

14 A Yes, indeed.

15 Q What did you do?

16 A We kept the people.

17 Q You kept them?

18 A Yes, sir.

19 Q You didn't -- did you expel people
20 because they stopped paying?

21 A No, sir. Not one. Even if there was a
22 contract where the children were supposed to pick up pay
23 later, if they couldn't pay it, the residents still
24 received the care.

25 Q Is there any other thing you could add

1 to your testimony to try to show His Honor the benevolent
2 care you gave to the residents in and around 1971?

3 A Well, I think it's worthy of note that
4 besides the monetary money that was required to be found
5 through gifts, et cetera, pulling the income from the
6 residents and the gifts that you were able to put together,
7 it's worthy to note that beyond that material substance
8 there was a community of concern of staff that worked all
9 the way from the department heads all the way through the
10 nursing aides that gave tremendous emotional support to
11 these people, and beyond the immediate community of the
12 elderly who lived there, this facility was providing
13 unlimited services to the children and grandchildren, to
14 the nieces and nephews.

15 I took in one lady who was sharing a
16 room with an 18-year-old teenage girl. When a home opens
17 its doors to an elderly person, is it serving the elderly
18 person more because she's a resident, or are you serving
19 that 18-year-old girl more who now has the privacy of her
20 own room? I have taken women into that home over whom five
21 children were fighting and fussing, and I've seen after she
22 got into the home these children brought back into some
23 kind of a sense of respect and love for each other.

24 One of the things that my friends in the
25 ministry would say, how do you stand being in the home with

1 these old biddies? You know, Judge, there wasn't a biddy
2 among them. I mean, they were courageous. There was more
3 courage in some of those people than you would see on a
4 football field the way they lived with the handicaps they
5 had, and at the same time, you were serving their children
6 and grandchildren and nieces and nephews who were your age
7 at the time. It was a wonderful ministry beyond the home
8 and beyond these people that meant a lot to the community
9 that you couldn't put into dollars and cents.

10 Q Did you ever give -- about that dollars
11 and cents because I guess that's where I live -- did you
12 ever give spending money to your residents?

13 A Oh, yes. We guaranteed that anybody who
14 came into that home had spending money regardless of what
15 their situation was.

16 Q Did you pay any hospital bills?

17 A Paid the bills, yes, sir.

18 Q Did you bury any of your residents?

19 A Yes. The Richmond Home, the Hermitage
20 at Westwood and the Snyder Memorial Home, they still own
21 some unused lots. Dr. Vie and the committee before I ever
22 got there bought a whole plot of land in Forest Lawn
23 Cemetery, and this is a Hermitage section, and whenever
24 there was an indigent person or whenever there was a lady
25 or man whose family wouldn't claim him or her, we buried

1 him in the Hermitage lot at Forest Lawn.

2 Q Who did the services?

3 A I did many times. Oh, the Woody -- I
4 thought you meant the committal. The Woody Funeral Home,
5 Henry W. Woody, was a very devote and technical layman of
6 the church, and he and Dr. Vie were great friends, and when
7 Dr. Vie opened the home, Henry Woody came forward and he
8 said, any person who doesn't have a funeral bill, who
9 doesn't have the funeral funds I'll bury at my expense, and
10 whatever it costs, the merchandise the funeral directors
11 call it, that is the casket mostly, I'll let you have it at
12 cost. By the time I was there we were burying indigent men
13 and women for less than \$300 for a funeral including the
14 casket -- I mean including the vault and, of course, the
15 ground had already been bought by the committee, and we've
16 had other people learning about this who have given us
17 other burial lots, and in Mr. Smith's files apparently he's
18 got a file on Forest Lawn and he's got a grant of these
19 unused graves that are there waiting.

20 Q Do you ever have the public give you
21 food?

22 A Sir?

23 Q Did the public ever give you food?

24 A Yes, sir, they sure did.

25 Q Would you relate that experience to His

1 Honor, please?

2 A Dr. Vie established what was called a
3 harvest offering, and during the fall of the year in many
4 of our local churches, they would have harvest festivals
5 and the ladies would bring in their canned vegetables and
6 baskets of apples and sweet potatoes and things like this
7 and the fruits out of the field, and they would have a
8 festival in the local church and Dr. Vie would drive the
9 car, and I would drive either the pickup truck or my own
10 automobile with a trailer, and we would go to the festival
11 and we would have a great celebration and then we would
12 come back with the vehicles loaded down with those fruits
13 from the field, and they went right into the kitchen and
14 they were used, and we even had people as far away as the
15 Eastern Shore of Virginia who every fall of the year would
16 send us a whole truck load of sweet potatoes and we would
17 divide them with the children's home there on broad street.

18 MR. CULLER: Thank you.

19 CROSS-EXAMINATION

20 BY MS. MALLORY:

21 Q I guess I'm going to have to ask you to
22 repeat some of the things you said earlier. Before you
23 admitted residents or applicants for residency, you went to
24 visit them in their home, didn't you?

25 A Yes, ma'am, in every instance as far as

1 I can remember.

2 Q And what were you looking for, or what
3 were you looking at?

4 A Basically I was looking for qualified
5 people.

6 Q And did you look at whether or not they
7 were mobile and ambulatory?

8 A Yes, because this was a retirement home
9 and they were supposed to be able to walk.

10 Q And whether or not they could dress
11 themselves?

12 A Exactly. Yes.

13 Q Whether they were -- they could perform
14 the basics of hygiene?

15 A Exactly.

16 Q Whether they were social or anti-social?

17 A Yes, of course.

18 Q And basically whether they could take
19 care of themselves?

20 A Right, and if they wanted to come.

21 Q So your characterization of the
22 Hermitage during your tenure was, and I'll use your words,
23 a retirement home for active retirees?

24 A That's right. Yes, ma'am, but for the
25 life care.

1 MS. MALLORY: That's all I needed to
2 know. Thank you.

3 THE COURT: Anything else, Mr. Culler?

4 REDIRECT EXAMINATION

5 BY MR. CULLER:

6 Q I guess I'm confused. Were all of your
7 residents active retirees?

8 A When they entered they were. We had one
9 or two that I can remember, I think maybe three with one
10 that I admitted who had always lived at home with their
11 mothers, and there was a marginal condition of their social
12 ability, or their lack of ability to be social, but they
13 needed some kind of care, but they didn't need to be put
14 away. They could still relate to a community, but they
15 needed a little bit of support emotionally and in a
16 community in the family setting, and we had those two or
17 three like that who came.

18 Q You're speaking at the time of
19 admission?

20 A Exactly.

21 Q But you're caring for these people for
22 their entire lives and you had some that were bed bound?

23 A Yes, sir. All the way through.
24 Whatever their needs were we met them except for those who
25 were hurried off in an emergency situation to a hospital.

1 We carried them right on through until they went to heaven,
2 really. They did in the home.

3 RECROSS-EXAMINATION

4 BY MS. MALLORY:

5 Q Mr. Crumb, when you admitted people they
6 were able to walk in the home, weren't they?

7 A Yes.

8 MS. MALLORY: Thank you.

9 THE COURT: Mr. Crumb, you said what was
10 the age of eligibility requirements in 1971?

11 THE WITNESS: Sixty-five.

12 THE COURT: You had to be at least 65?

13 THE WITNESS: Yes, sir, but, except, as
14 I said, there were one or two who came with
15 their mothers who were not quite that old, but
16 they were, once again, I wouldn't know what term
17 you would want to use, but they were not insane
18 and they were socially responsible. They were
19 just sheltered all their life. One a man and
20 one a women, and then still another. When I got
21 there, there was one man, and then there was one
22 women with her mother, but then I took in a lady
23 and her daughter from Norfolk, Virginia, and
24 they are the only three at the moment. They
25 were younger than 65 at the time.

1 THE COURT: All right. Thank you
2 Reverend.

3 THE WITNESS: Thank you, sir.

4 THE COURT: You may step down.

5 We'll take a recess now for about half
6 an hour.

7 THE BAILIFF: The court will recess for
8 lunch.

9 NOTE: A luncheon recess is observed
10 after which time the hearing proceeds as
11 follows:

12 THE COURT: Do you swear that the
13 testimony you will give here today will be the
14 truth and the whole truth, so help you God?

15 MR. SMITH: Yes, sir.

16 CLINT SMITH, a witness called by the
17 Plaintiff, first being duly sworn, is examined and
18 testifies as follows:

19 DIRECT EXAMINATION

20 BY MR. CULLER:

21 Q Would you identify yourself?

22 A My name is Clint Smith.

23 Q How are you employed?

24 A I am the administrator at the Hermitage.

25 Q How long have you had that job?

1 A Seven years.

2 Q Briefly tell His Honor your duties. He
3 probably has an idea.

4 A Basically I'm responsible for the
5 Hermitage and the Snyder Home, employment of the employees,
6 the gate keeper for the residents who come in, their care
7 giver. I'm responsible for that role, and have a fiduciary
8 responsibility to the corporation.

9 Q What's the business of the Hermitage and
10 Snyder Homes? What's the business? What do you do there?

11 A The Hermitage is a continuing care
12 retirement community licensed by the Department of Social
13 Services and the Department of Health. The Snyder Home,
14 for which I'm also the administrator, is an adult care
15 residence licensed by the Department of Social Services.

16 Q How is an adult care residence different
17 from a home from the aged?

18 A You mean a retirement community?

19 Q Yes, sir.

20 A The adult care residence does not --

21 THE COURT: I think the question is the
22 difference from a home for the aged.

23 A Yes. The adult care residence does not
24 have a nursing home component. It's licensed either as an
25 independent or assisted living facility.

1 Q What are the names that the Department
2 of Social Services have previously given to the name, adult
3 care residence?

4 A Home for adults.

5 Q Prior to that?

6 A I'm not sure.

7 Q Would you describe the facility at 1600
8 Westwood Avenue?

9 A We're a four-story brick building,
10 housing approximately 260 residents, some of which are
11 independent, some of which need assistance, some of which
12 require 24-hour nursing care.

13 Q Could you describe the building on 31st
14 Street?

15 A The Snyder Memorial Home is a one-story
16 structure built around a three-story home. All of our
17 residents are housed on the first floor. There are 31
18 units in that facility.

19 THE COURT: How many residents do you
20 have is Snyder?

21 THE WITNESS: There are 31 units. There
22 are 27 residents there today.

23 Q Can you help us with the levels of care
24 and the condition of the people that you are caring for at
25 the Hermitage and Snyder Homes?

1 A Independent living means just that. You
2 are completely independent. You can take care of all of
3 your activities of daily living yourself. You can come and
4 go as you please. When you get to the point where you may
5 need some assistance in fastening fasteners or buttoning
6 buttons, maybe a little help getting out of the bed, but
7 once you're up and dressed, you can get around okay, we
8 provide that level of assistance without making the
9 resident move to another part of the facility.

10 When they get to the point where you
11 might need some assistance in getting too and from the
12 dining room, you might need some help in choosing which
13 clothes to wear, you may need some help in medication
14 administration, some help with your personal hygiene, this
15 is where we need to move you to another part of the
16 facility to where we were staffed to provide that level of
17 care.

18 When you get to the point where you need
19 24-hour nursing care, we then move you into the nursing
20 home component where we are staffed to provide that level
21 of care.

22 Q How many folks do you now have in
23 independent living at the Hermitage?

24 A There are probably 60, 65 who are
25 independent.

1 Q Assisted living one?

2 A Probably 30.

3 Q Assisted living two?

4 A Sixty-six.

5 Q And nursing care?

6 A Eighty-four.

7 Q Now, all the people that you have in
8 independent living, all of these people as independent as
9 you described, do you provide no services for them?

10 A Other than what's in the contract that
11 we provide. Housekeeping services, we provide food
12 service, we serve three meals a day plus a snack if they
13 would like it. We provide activities, we provide laundry
14 services for the linens. These are contractual things.

15 MR. CULLER: I point out to Your Honor
16 that the contract is in the back of these
17 disclosure documents to the extent that that's
18 of interest to you.

19 THE COURT: The contract that the Homes
20 enter into with each resident?

21 MR. CULLER: Yes, sir.

22 THE WITNESS: It's a corporate contract.

23 THE COURT: Just so I'll know, the
24 resident is the agreement?

25 MR. CULLER: Yes, sir.

1 Q Could you characterize that agreement
2 for His Honor? What do you promise to do? What does the
3 resident promise to do?

4 A Basically it spells out the fact that we
5 will provide whatever level of care you might need for the
6 rest of your life. That is a guarantee. If you are in
7 independent living and you have a stroke and you need
8 healthcare, you are guaranteed a bid in our healthcare
9 center.

10 We spell out all of the conditions about
11 the room, the services that are provided, the levels of
12 care that are provided. The resident in turn agrees to
13 abide by our designation of their level of care. Sometimes
14 that's a little difficult when they think they're
15 independent but they're beginning to need some services
16 that requires us to put them in a higher level, and there
17 is some hesitancy about going to healthcare. No one wants
18 to go there, really. They know that's the last stop, and
19 sometimes there's some reluctance to accept that, but in
20 the contract we are the final choice of that. If we see
21 that this is the level that they need, we need to work with
22 them and the family to come to that acceptance.

23 Q Why do people come to you for admission?

24 A Why? I guess for security.
25 Particularly someone who does not have family close by.

1 Someone they could call on to care for them when they need
 2 it. They look to us to provide whatever they might need in
 3 their life, whether it be activities, shopping trips, the
 4 things that make life enjoyable, or the basic necessities
 5 of life. Once they make that decision to come to the
 6 Hermitage or the Snyder Home, there is a certain amount of
 7 relief that the resident experiences when they know that
 8 regardless of what happens to them physically or mentally,
 9 somebody that they have come to know is going to care for
 10 them for the rest of there life.

11 Q What's the average age of an entrant?

12 A Eighty-five.

13 Q What's the average age of a resident?

14 A Eighty-nine.

15 THE COURT: Do you happen to know what
 16 the age of the oldest is?

17 THE WITNESS: 103, and she's fully
 18 independent.

19 THE COURT: Is that right?

20 THE WITNESS: We have another resident
 21 who is 102, and she's independent. We have nine
 22 residents over 100.

23 Q Does everybody who comes to these
 24 properties sign a continuing care life care contract?

25 A No. We have started offering an option

1 to those who do not see the entry fee as a good investment.
 2 We offer a lease agreement which is basically a 30-day
 3 lease. They can come and participate in all the activities
 4 and receive the same level of care, but there is not the
 5 guarantee of care, and we have about a third of our
 6 residents on that type of arrangement.

7 Q Why do you have an entrance fee at all?

8 A The entrance fee is designed to offset
 9 the cost of healthcare. It's a front-end cost. It's kind
 10 of a shared, risk sharing-type of arrangement where people
 11 come in and pay up front, and then the care is provided at
 12 the end at a less than cost basis.

13 Q If somebody comes in and pays the
 14 entrance fee and then passes away right away, have they
 15 lost all the money?

16 A If they come in and say three months
 17 after they move in they die of heart attack, our entry fee
 18 is based upon a refund of 30 months. The first day we earn
 19 10 percent of the entry fee and every month thereafter we
 20 earn three percent, so if they live there three months,
 21 their estate would get back, what, 81 percent of the entry
 22 fee, but after 30 months there's no refund.

23 Q Do you take people's property or houses
 24 or take all they have?

25 A No. Unfortunately the only people who

1 want to give you all they have are those who don't have
2 very much.

3 THE COURT: Did you say after 30 months
4 there's no return of the entry fee?

5 THE WITNESS: Thirty months, yes.

6 THE COURT: Thank you.

7 A Hmmm. I kind of lost my thoughts there.

8 Q The question had to do with taking
9 people's houses and property, taking all they have as the
10 entry fee.

11 A We will take a promissory note.
12 Sometimes if a person is experiencing some health problems
13 or they have had an incident in their life where they
14 question their ability to continue to live alone, in order
15 to get their house sold it may take four, five, six months,
16 and they really don't want to wait that long to move in, we
17 will take a promissory note on the future sale of the house
18 and let them go ahead and move in, deferring the payment of
19 the entry fee, but the 30 months starts the day they move
20 in, but we generally do not accept property in lieu of
21 payment.

22 Q I think we have in evidence, if we
23 haven't, His Honor has seen the present schedule of fees
24 and charges. Do you have a policy with regards to these
25 fees and charges besides you get them if you can?

1 A That's a published chart reported to the
2 insurance commission. We do not deviate from that.

3 Q You do not what?

4 A We do not deviate from that schedule.

5 Q What if somebody can't pay what do you
6 do?

7 A If a person moves in under a life care
8 contract, we use our own actuary data base now because we
9 have 49 years experience with longevity. We calculate
10 whether they have enough assets to cover their actuary life
11 expectancy. If we miscalculate and they outlive their
12 assets, it's through no fault of theirs, so we continue to
13 care for them. They told us how much money they had up
14 front, we did the calculations, it was our chart, we are
15 the ones who missed it. They outlive their assets, we feel
16 like there's some obligation there to continue our care
17 even though they may not be paying the full cost.

18 Q Is that, in fact, occurring?

19 A Yes.

20 Q How many people have you thrown out
21 because they ran out of money and can't pay?

22 A None.

23 Q How many people can't pay?

24 A Currently there are 24 who are paying
25 less than their cost of care.

1 Q How is that handled? Where does that
2 money come from to take care of it?

3 A Part of it comes from the Samaritan fund
4 part of it comes from the bequests, and the other income
5 that the corporation provides.

6 Q Do you take in people knowing that they
7 can't pay their cost of care?

8 A Yes. In looking at the actuarial data
9 that we collect, the financial projections that we make, if
10 a person has enough assets to cover their actuary life
11 expectancy, I sign the recommendation to the corporate
12 office that this person be approved. If our financial
13 profile shows that they may be a little short, then we look
14 to a family member who might become a guarantor and try to
15 encourage them to take responsibility for this person. If
16 there is no one, then we turn to the Samaritan fund to see
17 if there is enough money in the Samaritan fund to cover
18 this future cost of care, in addition to our current
19 unfunded benevolent care that we have inherited over the
20 years, but we know that there are future obligations out
21 there and we do admit people who we know will outlive their
22 assets probably very quickly.

23 Q Who makes the decision who gets the
24 money from the Samaritan fund?

25 A I make a recommendation to the corporate

1 office, it goes to Cheryl Duff, our controller. She
2 rechecks my figures and calculations, looks on my
3 recommendation, adds her comments and it goes to Dr. Fin
4 who reads our recommendations and makes the final decision.

5 Q Do you believe that you provide any
6 other benevolent care besides those who receive the direct
7 cash contribution from the Samaritan fund?

8 A I'm sorry. I didn't --

9 Q Does the Hermitage and Snyder Homes
10 provide any benevolent care besides those 24 who receive a
11 direct cash contribution from the Samaritan fund?

12 A I'm not sure what you're asking. I
13 don't think so.

14 Q If I get any heavier handed, I think I
15 would be leading.

16 THE COURT: Well, the question is, is
17 there any other coverage for persons who have
18 the inability to pay other than through the
19 Samaritan fund?

20 THE WITNESS: The Hermitage runs a
21 sizable deficit. Operational expenses exceed
22 our operating income, the corporation helps us
23 to do that. I don't really --

24 THE COURT: The corporation helps you
25 cover costs?

1 THE WITNESS: Cover our deficit.
 2 Requests and legacies help cover the deficit as
 3 well. I really don't see any difference between
 4 the Samaritan fund -- money coming directly from
 5 the Samaritan fund and support coming from the
 6 corporate officer or bequests and legacies to
 7 help us cover our expenses. There's just so
 8 many sources of revenue and we use them all to
 9 provide the care that our residents receive.
 10 Any moneys that any of the communities do
 11 generate in excess expenses goes to offset the
 12 expenses for the rate increases for the next
 13 year. The residents benefit. No one else does.

14 Q You have some capped contracts?

15 A Yes.

16 Q Those are contracts wherein there is no
 17 increase for inflation and cost of providing care?

18 A Correct.

19 Q Those contracts are instances wherein
 20 residents are receiving care far beyond the amount which
 21 they are paying each month?

22 A We have a lady who has a capped contract
 23 of \$400. She's in our healthcare center and the rates
 24 there are \$2,900. We only bill her \$400.

25 Q Do you have people that you bill that

1 don't pay that you don't get a contribution from the
2 Samaritan fund that you keep?

3 A We keep them, yes.

4 Q What do you have in accounts receivable
5 from folks who are in your home receiving care? Can you
6 give me some instances?

7 A Probably that figure is near half a
8 million dollars.

9 Q Can you pick a few that you know and
10 maybe give an initial for a last name and give an amount
11 for?

12 A There's Ms. Hall who we do receive a
13 small amount -- she does receive a small amount from social
14 security where we're the designated payee. We provide her
15 with \$50 a month in her resident account. That's hers to
16 do with whatever she wants. We pay her medicare
17 supplemental insurance. We pay her Richmond ambulance
18 service fee. We pay her dental bill out of that. There's
19 very little left for her cost of care, her meals, her
20 shelter, so we just write that off.

21 Q What's her tab? Do you keep a running
22 tab for Ms. Hall?

23 A Yes, and it's well over a hundred
24 thousand dollars now, and there are probably 10, 12 people
25 who are in a similar situation as Ms. Hall.

1 Q What other services do you provide for
2 the residents besides room and board?

3 A We provide weekly housekeeping, if they
4 need their bed made daily we do that, personal laundry,
5 activities, we pay all utilities except the telephone.

6 Q What sort of activities?

7 A The activity area is designed to provide
8 manipulative kinds of activities so they can keep their
9 small motor skills active. Entertainment, educational,
10 tours. We have a group that goes out to lunch every Friday
11 to some restaurant nearby. We have choristers, a group of
12 residents who like to sing. They go out and entertain
13 churches or civic groups, others that need some kind of
14 entertainment program. We have speakers come in, groups
15 come and speak to the Hermitage, put on programs. The
16 Kawanas (phonetic) have come on several occasions to
17 present their show to our residents after they have had it
18 at the Landmark. We have singers and dancers come in to
19 perform, church groups come in and perform. These are the
20 kinds of activities we provide. We also have a closed
21 circuit television system that goes into healthcare so if
22 residents of healthcare want to see what's going on but
23 they can't get to the Social Hall, they can visit via the
24 television.

25 Q How many Alzheimer's patients do you

1 have?

2 A Probably 35 altogether. We have two
3 units for Alzheimer's. One is in our assisted living area.
4 It's for early to mid-stage Alzheimer's. The second unit
5 is in our healthcare center, and it is for mid to late
6 stage.

7 Q Describe early to mid-stage, what kind
8 of disabilities?

9 A There's seven identifiable stages of
10 Alzheimer's, and I think we're all at the first stage,
11 that's forgetfulness, but they are progressive, they are
12 identifiable and these are accepted conditions of the
13 disease. When a person gets into the fifth stage,
14 sometimes they become combative, sometimes they become very
15 disruptive in their behavior. It's our call as to whether
16 we can best care for this person in the assisted living,
17 lower care area, or we need to move them to the more
18 intensive care area, but then stage six and seven are
19 pretty -- the people are less active. The seventh stage is
20 pretty much bed ridden and they need 24-hour nursing care.

21 Q Do you have a Hospice program at the
22 Hermitage?

23 A Yes. We are licensed by the Virginia
24 Hospice Association. We do provide Hospice care. This is
25 a program we've had for four years. It's been very

1 successful and well received by the people who have elected
2 to enter the program, and also by the families who have
3 survived the patient, because we do follow up with the
4 families after the patient dies.

5 Hospice is a condition that requires a
6 physician to say you have less than six months to live.
7 Physicians are a little reluctant to call that six months
8 out. They tend to prefer a closer deadline. We have
9 become concerned about the resident who has no identifiable
10 diagnosis. Their body is just wearing out. The doctors
11 will not place them in a Hospice setting because they can't
12 call, but if you've been around dying people very much you
13 understand kind of when a person is fading.

14 We have started developing a program
15 we're calling end of life care, and this is a place where
16 we see a person beginning to decline, has no possibility of
17 Hospice. We began to put a Hospice-type program in and,
18 this is where staff begins to concentrate on that
19 individual. My assistant and I visit two or three times a
20 week. The chaplain begins to go by every day. We begin to
21 have more contact as family members just paying some
22 special attention to this person that is now fading.

23 Q Do you have a chaplain?

24 A Yes, a full-time chaplain.

25 Q Do you have a chapel?

1 A We have a very large chapel. It seats
2 150 people.

3 Q Do you provide services?

4 A We have two services a week. One on
5 Sunday afternoon where we try to be ecumenical in the
6 people we ask in to provide that service, but then we have
7 a Wednesday fellowship in the evening after supper. We
8 have services in there for staff and for residents as well.
9 A lot of family members want to use our chapel as a
10 memorial service because a lot of the residents were
11 friends of the person who died and are unable to attend the
12 funeral. We have memorial services there.

13 Q Do you provide transportation services
14 for your residents?

15 A Yes. We currently provide
16 transportation to doctor, dentist appointments and back. A
17 lot of doctors' offices are required that someone be with
18 the resident. We also provide that service as well,
19 sending a certified nursing assistant to assist the
20 resident around the doctor's office if that's necessary.

21 Q How many volunteers help in what you're
22 doing?

23 A Oh, gosh. We have a very strong
24 volunteer program, and one of the things that I have said
25 to the volunteers is they put the icing on the cake. They

1 do the special things. For instance, if a resident has
 2 difficulty writing, but she can still sign her name or
 3 write a brief message, but the address on the envelope
 4 would not be legible for the post office automatic
 5 machines, volunteers will go by and address a half a dozen
 6 envelopes, and a resident can then sign the card, drop it
 7 in the envelope. If it's a birthday greeting and they put
 8 a check in it, they can do that, seal it and mail it,
 9 trying to maintain as much of a high level of independence
 10 as they can maintain.

11 If they need somebody to do some sewing
 12 to mend their clothes, volunteers do that. If they need to
 13 go shopping, we have volunteers who take people shopping
 14 for special occasions or just to get out. If somebody just
 15 wants a friend to come by we do that as well, but basically
 16 whatever the resident needs that staff is not providing,
 17 the volunteers come in and do. They seek out people who
 18 are becoming maybe a little reclusive. They pull them out
 19 of their rooms, get them into activities, take them around.
 20 They may just walk with them. They become their friend and
 21 provide that extra level of care.

22 Q Do you have a clothes shop?

23 A Yes. Our volunteers solicit clothing
 24 from their fellow church members. They bring them to the
 25 clothing room. They clean them, press them, price them,

1 sell them, and then whatever moneys are generated, the
2 volunteers chose a project that they want to fund around
3 the Hermitage.

4 Currently they are using some of that
5 money to pay the internet access charge for our residents'
6 computer. Our residents are on-line, and this is a recent
7 phenomenon in the retirement communities. Most people did
8 not believe retirees could use a computer. The first
9 e-mail message that was sent was sent by our 102-year-old
10 resident to her 75-year-old son on his birthday. We
11 generally get eight to ten e-mail messages a day. The
12 volunteers collect these, they distribute them to the
13 residents, they wait for a response if there is one, they
14 then take this back to the computer and the resident
15 volunteers send the e-mail messages. Anyone in the
16 community can send or receive e-mail messages.

17 Q How many different people do you have
18 involved in the volunteer program?

19 A There's probably 150 at the Hermitage
20 and 40, 50 at the Snyder.

21 Q Do you keep a record of how many
22 volunteer hours there are?

23 A Yes.

24 Q Can you tell His Honor?

25 A It runs in the neighborhood of 8 to

1 9,000 a year, 8 to 9,000 hours.

2 Q What medical services do you provide?

3 A We have a medical director, Dr. Ron
4 Lartz. He comes in twice a week, sees residents on a
5 schedule basis on Wednesday morning, and Monday mornings he
6 deals with emergencies that have come up, or whatever has
7 come up since Wednesday. His office is on-call 24 hours,
8 but he comes to the facility two mornings a week or as
9 needed. He provides whatever care, medical care or
10 direction may be needed for any of our residents, but if
11 the resident chooses to have someone other than Dr. Lartz
12 as their physician, then that physician and Dr. Lartz work
13 together for their care.

14 Q How many nurses do you employ?

15 A We have seven RNs, 30, 31 LPNs, Licensed
16 Practical Nurses, and about 65 Certified Nursing
17 Assistants.

18 Q Is there any significant difference in
19 the way the Snyder Home and the Hermitage Home operate?

20 A Basically they are a facility that is
21 separated from the Hermitage by locality. They are on the
22 Southside, we're on the North Side, but together we operate
23 or we provide a lot of their auxiliary services. We do all
24 of their marketing for them. We do all of their
25 administrative work. Their staff just provides food,

1 shelter, housekeeping-types of things. They are an adult
2 care residence, and when someone comes to Snyder as
3 independent or needing assistance, and they get to the
4 point where they need healthcare, then their option is to
5 come to the Hermitage Healthcare Center, but if they get to
6 the point where the Snyder Home is -- the care that they
7 need is beyond the care that the Snyder can give, then they
8 must go somewhere. They can't just stay at Snyder forever.

9 Q Can you tell His Honor what Hermitage
10 and Snyder Homes do for the welfare of the residents in the
11 City of Richmond?

12 A Welfare of the residents --

13 Q In the City of Richmond? Why are you
14 entitled to a charitable deduction for being an asylum?

15 A I'm not sure what an asylum is, but if
16 it's a place of refuge, then the Hermitage and the Snyder
17 Home fall into that category, because we provide that. We
18 provide a sense of security once they get there, there
19 needs will be met. We try to encourage them to maintain
20 their independence as long as they can do it safely. They
21 understand this. When you really get down to it, they come
22 to us literally putting their life in our hands for as long
23 as they live. Even people on a lease agreement.

24 One of the reasons we started with a
25 lease agreement is we were seeing people who may have

1 taught school in the City of Richmond for 40 years, had an
2 apartment somewhere on Monument Avenue, did not have a
3 house to sell to generate the money to pay the entry fee,
4 but they had a good social security and a good income from
5 the school system. They could afford the lease payments.
6 Why should we deny them just because they didn't have the
7 entry fee? So we began to offer a lease agreement for
8 these types of individuals to come into a place where they
9 could receive the care.

10 MR. CULLER: No further questions.

11 MS. MALLORY: Your Honor, we're going to
12 waive cross-examination and reserve the witness
13 to call on.

14 THE COURT: All right.

15 MR. CULLER: Ms. Duff.

16 THE BAILIFF: Place your left hand on
17 the Bible, raise your right hand.

18 THE COURT: Do you swear that the
19 testimony you will give here today will be the
20 truth and the whole truth, so help you God?

21 MS. DUFF: I do.

22 CHERYL DUFF, a witness called by the
23 Plaintiff, first being duly sworn, is examined and
24 testifies as follows:

25 DIRECT EXAMINATION

1 BY MR. CULLER:

2 Q Would you state your name, please?

3 A Cheryl Duff.

4 Q How are you employed?

5 A I'm employed as a controller at Virginia
6 United Methodist Homes.

7 Q How long have you been so employed?

8 A I have been there for seven years.

9 Q What is your job as controller?

10 A My job encompasses the finances of
11 Virginia United Methodist Homes, maintaining the records of
12 all financial records.

13 Q You're the keeper of the records?

14 A Yes.

15 Q Does the Methodist Homes have a federal
16 tax exemption?

17 A Yes, we do.

18 Q On what basis?

19 A We're exempt under the IRS 501-C3.

20 Q Does that mean you're a charitable
21 corporation for the federal government income tax return
22 purposes?

23 A Yes, we are.

24 Q Does that mean you're nonprofit?

25 A Yes, we are.

1 Q As soon as I get the exhibits together,
2 I have a -- do you file Tax Return Form 990?

3 A Yes, we do.

4 Q What does that mean?

5 A That is the informational return that
6 the IRS requires for 501-C3 organizations.

7 Q I have here the returns from 1969 to
8 1970. Can you identify these? There may be a couple years
9 missing.

10 A Yes. These are those returns.

11 MR. CULLER: May I ask these be
12 introduced solely for the purpose of showing
13 they're nonprofit?

14 THE COURT: All right.

15 NOTE: The above-referred to documents
16 are marked as Exhibit Number 8.

17 Q Where does VUMH get it's income?

18 A The income is primarily derived from
19 monthly fees charged to the residents, entrance fees
20 charged to the residents upon admission. In some cases
21 you'll see they're referred to as founders fees. Some of
22 our income is derived from donations and bequests, and some
23 miscellaneous income from guests eating meals there and
24 gift shop, et cetera.

25 Q What do you do with the money?

1 A The money is primarily used to benefit
2 the residents.

3 Q Any individual profits? Do you pay
4 dividends of any kind?

5 A No. There are no stockholders.

6 Q When you say primarily you use to
7 benefit the residents, why did you qualify -- which
8 co-primaries?

9 A No. The income is solely used for
10 expenses associated with caring for the residents.

11 MR. CULLER: Your Honor, here's that
12 501-C3 application.

13 THE COURT: All these -- well, this, I
14 guess, you want to make an exhibit?

15 MR. CULLER: Yes, sir.

16 THE COURT: How about these financial
17 statements?

18 MR. CULLER: Yes, sir. I think if the
19 990s can be one exhibit, and I'm about to do the
20 financial statements.

21 THE COURT: All right.

22 NOTE: The above-referred to 501-C3
23 application is marked as Exhibit Number 6.

24 Q Did you get a tax bill from the City of
25 Richmond?

1 A Yes, we did. Several.

2 Q Did you pay them?

3 A Yes, we have.

4 Q These are the tax bills that you are
5 here to complain about, and your checks and payments for
6 those?

7 A Yes. These are the tax bills associated
8 with the real estate. There were some personal property
9 taxes.

10 Q I'm going to hand you this large stack
11 of papers, and I ask you to identify them.

12 NOTE: Documents are presented to
13 witness.

14 MR. CULLER: I ask that the checks and
15 bills be introduced into evidence.

16 THE COURT: Two of these are duplicates.

17 MR. CULLER: Do I have a duplicate up
18 there?

19 THE COURT: Two of these. I'll keep one
20 of them.

21 MR. CULLER: Now, there's three separate
22 checks. There should be. Do you have a check
23 for 112,000 odd dollars?

24 THE COURT: 112 -- I've got one here for
25 \$12,000.

1 MR. CULLER: There's 112 -- there should
2 be a \$12,000, a \$112, and a \$111.

3 THE COURT: Yes. These seem to be the
4 same.

5 MR. CULLER: You've got three?

6 THE COURT: I've got three. Yes.

7 NOTE: The above-referred to documents
8 are marked as Exhibit Number 7.

9 BY MR. CULLER:

10 Q Ms. Duff, can you identify that stack of
11 papers?

12 A Those are the audited financial
13 statements of the corporation from 1970 to 1997.

14 MR. CULLER: Your Honor, I ask that
15 these be introduced into evidence, can they be
16 as a unit?

17 THE COURT: These will be as a unit,
18 yes. The 990s we'll make 8, and the financial
19 records 9.

20 NOTE: The above-referred to financial
21 records are marked as Exhibit Number 9.

22 Q Ms. Duff, I'm going to ask you to focus
23 your attention on the 1997, May 31 year-end statement.

24 A Okay.

25 Q And turn from the front one, two, three,

1 four to the fifth page. I see an entry Total Operating
2 Revenues and Support. That may be self-explanatory, but
3 would you tell His Honor what that reflects?

4 THE COURT: Which page?

5 MR. CULLER: I was counting pages. For
6 you it may not be numbered. It's the one
7 beginning in the upper, left-hand corner,
8 Operating Revenues and Support.

9 THE COURT: Yes. I have that.

10 BY MR. CULLER:

11 Q What's an Operating Revenue and Support?

12 A Operating Revenues really consist of the
13 resident fees. Those were the fees charged to the
14 residents. The amortization of the income from the entry
15 fees and the ASEPA requires that we amortize these fees
16 over the life expectancy of the resident.

17 Q Stop for a moment and see if we can get
18 our arms around that concept, because we're going to see
19 something different as we go through these records?

20 A That's correct.

21 Q When an entrant gives a sizable entrance
22 fee, how is that currently described on these statements?

23 A The only portion that you see in income
24 is the portion -- well, say an entrant comes in and pays
25 \$250,000 entry fee. That entry fee is amortized over the

1 life expectancy, and let's just say it's ten years, so we
2 amortize that fee over a ten-year period. So the portion
3 goes in the current year is shown as income.

4 Q When did that start?

5 A That changed -- became effective I
6 believe in the '92 statements.

7 Q Now, on this same page is a total
8 operating expenses fee?

9 A Correct.

10 Q And there's a net change, a change in
11 net assets for operations. What does that mean?

12 A That's basically the loss from
13 operations of the corporation.

14 Q \$480,000?

15 A That's correct.

16 Q From this year?

17 A That's correct.

18 Q Would you describe for His Honor the
19 next entries and what they mean?

20 A Non-operating changes, basically how our
21 corporation makes up the loss from operations, and the
22 biggest item on this list is bequests and legacies. Those
23 are moneys that come in when people die and leave money to
24 us. There are some contributions to various programs.
25 There is a contribution from the Samaritan fund, some

1 investment income, gains on investments for this particular
2 year. There is a transfer from the temporarily restricted
3 to the unrestricted for equipment acquisitions which had to
4 do with the Cederfield facility.

5 Q Well, I see change in debt assets in
6 brackets \$1,407,899. What does that entry represent?

7 A Change in net assets, that is our loss,
8 our bottom line.

9 Q That wasn't made up by gifts or
10 contributions?

11 A That is correct.

12 Q That was green dollar cash loss?

13 A It's not necessarily cash loss, because
14 there are two items on the statements that are non-cash
15 items.

16 Q What are they?

17 A Those would be depreciation,
18 amortization, the last item was the operating expenses, the
19 \$4,499,560, and the amortization of the entry fees which is
20 in the income of \$5 million, one-sixty-five.

21 Q Just as though you have a \$4,500,000
22 expense that was in cash --

23 A That's correct.

24 Q -- do you have some outlays of cash that
25 aren't reflected as an expense?

1 A We do. The one thing you do not see on
2 our statement of activities is the capital replacement.

3 Q And I would ask you now to address your
4 attention to the '96 financial report, and counting from
5 the front page, one, two, three, four also page five.
6 Total Operating Revenues, i.e., money received from
7 residents, \$19,400,000; is that correct?

8 A Correct.

9 Q Total operating expenses, \$21,500,000?

10 A Correct.

11 Q Losses from operations, \$2,100,000?

12 A Correct.

13 Q How was that made up?

14 A It was made up of 620,000 from bequests
15 and legacies. About 500,000 in various contributions,
16 about 488,000 investment income. 1 million-five, that was
17 gains on investments, and then there was some interest
18 expense negating some of that.

19 Q So you lost \$2 million for running a
20 nursing home and a home for the aged?

21 A Correct.

22 Q You made that up with \$600,000 in gifts?

23 A Correct.

24 Q \$400,000 in cash contributions from
25 others?

1 A Correct.

2 Q And other investment income?

3 A Correct.

4 THE COURT: Why do you carry that
5 interest expense? It seems you ought to put it
6 up under operating expenses.

7 THE WITNESS: We're required to show it
8 as a non-operating expense.

9 THE COURT: What kind of an interest
10 expense is that?

11 THE WITNESS: That's interest on some
12 loans that we have on some bonds.

13 THE COURT: Why do you have it
14 bracketed, if the parentheses mean it's
15 negative?

16 THE WITNESS: That was funds that we
17 paid out.

18 THE COURT: All right.

19 BY MR. CULLER:

20 Q I'm going to ask you now to skip
21 backwards in time to the 1970 statement, June 9, 1970, and
22 if you could count from the back 11 pages, this page is
23 operating income.

24 MR. CULLER: Your Honor, it's the
25 operating income in this corner.

1 THE COURT: Yes. I've got it.

2 Q And what does this show, Ms. Duff?

3 A This shows for the Richmond facility
4 \$378,000 monthly fees from the residents. Some other fees
5 from the residents, some other miscellaneous income, for
6 total operating income it's 651,000. Operating expenses --

7 Q You turned over how many pages for that?
8 I suggest it's two pages over.

9 A Right. Basically all of the operating
10 expenses line item by line item that it took the care for
11 the residents. Continuing on the next page, personal
12 expenses of the corporation. It looks like that's for the
13 health area, for a loss of operation of 223,000 for the
14 Hermitage and Snyder combined.

15 Q Now, previous statements that we saw
16 were the entire corporation?

17 A That is correct.

18 Q And this year, for this year they have
19 the Richmond and Snyder Homes set out individually?

20 A Correct.

21 Q And in 1970 they had operating and loss
22 of \$223,000?

23 A That's correct.

24 Q Now, on that same page if we slide down
25 we'll see the words, other income, bequests and legacies,

1 and then you see founders fees?

2 A Correct.

3 Q Can you explain that entry?

4 A The founders fees are the entry fees
5 that were received in that year, and in 1970 they were
6 shown on the financial statements on a cash basis.

7 Q And they were not shown as an operating
8 income?

9 A Correct.

10 Q They were shown as other income?

11 A Correct.

12 Q And they were shown as completely earned
13 in the year received even though the resident had many
14 years to live?

15 A That's correct. They were shown in the
16 year received even though theoretically that's a prepaid
17 healthcare cost as recognized by the IRS, but they were
18 shown at the time until about 1992 as earned.

19 Q Now, for the corporation as a whole, if
20 you turn back one page I believe you'll find the total
21 operating income for the corporation being
22 two-million-sixty-one-odd-thousand dollars; is that
23 correct?

24 A On what page?

25 Q Back towards the front, one page from

1 where we were.

2 A Correct.

3 Q Is that correct?

4 A Yes. Correct.

5 Q And the expenses for entire corporation
6 for that one year -- let me suggest it's page 13.

7 A Yes, three-million-seven-fifty-two.

8 Q So \$1,690,000 --

9 A Correct.

10 Q -- operating loss of the entire
11 corporation? And how was that made up?

12 A That was made up -- bequests and
13 legacies made up \$165,000 of that. The founders fees which
14 were considered earned in the year received were \$656,000.
15 There were contributions through the churches of 170,000,
16 and some other miscellaneous incomes and interest on
17 investments for a total of a million two.

18 Q I will then address your attention to
19 the next one on the bottom, May 31, 1972. Did you have the
20 statement from May of 1971?

21 A No. That was one statement that we
22 could not locate.

23 Q This, I take it, would be the statement
24 that we include, July 1, 1971, sort of a crucial date
25 involved?

1 A Correct.

2 Q That would be the next one which starts
3 out with a letter --

4 THE COURT: I don't have that.

5 THE WITNESS: I don't have it either.

6 THE COURT: I have the fiscal year
7 ending '73.

8 MR. CULLER: Nobody has got a '72 but
9 me?

10 THE COURT: Well, wait a minute. This
11 one has -- what's the date of that letter there?

12 MR. CULLER: The date is May 30, 1972.

13 THE COURT: This is August 8, '73. I
14 don't think I have that one.

15 THE WITNESS: I don't have it either.

16 THE COURT: Well, why don't you examine
17 her on that, and you could provide that at a
18 later time.

19 BY MR. CULLER:

20 Q Can you tell His Honor what was the
21 income for the Hermitage and Snyder Homes from operations
22 in the year ended May 31, 1972?

23 A The total operating income from Richmond
24 and Snyder was \$771,600, operating expenses \$1,025,000 for
25 an operating loss of \$254,000. That operating loss was

1 made up about \$180,000 through either bequests, donations,
2 church contributions, that sort of thing. The 177,000 was
3 the founders fees, and then some interest income, that sort
4 of thing.

5 Q And the total corporation, how did it
6 do?

7 A The total corporation had an operating
8 income of \$2,348,000, expenses of \$3,297,000 for an
9 operating loss of \$948,000, of which that was recouped
10 through \$683,000 in founders fees, about \$400 -- 4 or \$500
11 in donations, bequests, other various contributions.

12 MR. CULLER: Your Honor, could I add
13 this document? This one has been highlighted by
14 me for my own use, and I don't want to corrupt
15 Your Honor.

16 THE COURT: All right.

17 NOTE: Document is handed to the Court.

18 Q Is there any way to tell on those
19 returns, those statements, how the Hermitage did separately
20 from the Snyder?

21 A No, there's not. The Snyder facility
22 was basically -- the Hermitage and Snyder were operated as
23 one facility for financial purposes.

24 Q Do you have any way now of being able to
25 make that distinction for those old years?

1 A No, I don't.

2 Q Do you have any way now to make a
3 separate distinction for the current years?

4 A Yes.

5 Q And I'm going to hand -- well, before I
6 have you do that, this is probably an improper question,
7 but all these financial reports from intervening years are
8 in evidence. Is there any comment that you think you can
9 make for his honor that would be helpful in characterizing,
10 comparing these intervening financial reports with the ones
11 we just described?

12 A No. It's basically the same story year
13 after year. We operate at a loss. We never have not
14 operated at a loss.

15 Q Hundreds of thousands of dollars?

16 A Hundreds, millions.

17 THE COURT: Each year?

18 THE WITNESS: Each year, yes.

19 Q I've just handed you a paper. Do you
20 recognize that paper?

21 A These are the internal financial
22 statements broken up by facility.

23 Q And you have the one in front of you for
24 the year ending May of '97?

25 A That's correct.

1 Q Now, these are records that you keep in
2 the ordinary course of business?

3 A Yes, we do.

4 Q You keep them on the computer, but these
5 are all ordinary records?

6 A That's correct.

7 Q Are you then able to show for the year
8 1997 the financial happening for the Snyder and the
9 Hermitage Home separately?

10 A Yes.

11 Q Would you describe for His Honor from
12 your records what that shows?

13 A On the second page here you have the
14 Hermitage at Richmond -- in Richmond broken out separately,
15 and then on the third page you have the Snyder facility.
16 Basically 1997 the Hermitage in Richmond loss from
17 operations was \$973,000. Bottom line loss was \$521,000.
18 The Snyder Home in 1997 from operations lost \$186,000.
19 Some of that are was recouped from other sources, but had a
20 bottom line loss of \$158,000.

21 Q I present you the same paper from 1996.
22 Would you review the same figures for His Honor?

23 A On the third page you have the Hermitage
24 in Richmond. In that year a loss from operations of
25 \$381,000 and a bottom line gain of \$476,000. There were

1 quite a few donations and that sort of thing. Founders
2 fees were not included as operating gains or losses in this
3 fiscal year. The Snyder facility had an operating loss of
4 \$139,000 and a bottom line loss of \$60,000.

5 Q I hand you the same papers for the year
6 '95.

7 A On the third page we had an operating
8 loss of \$290,000 and a bottom line gain of \$304,000. The
9 Snyder facility had a loss of \$131,000 from operations, and
10 a bottom line loss of \$90,000.

11 Q And the same records for the year 1994.

12 A Again on the third page this was the
13 Snyder first, the Snyder facility had an operating loss of
14 \$162,000 and a bottom line loss of 129,000. The Hermitage
15 had a loss from operations of \$229,000 and a bottom line
16 gain of \$783,000.

17 Q I want to hand you the same reports from
18 '93 and '92.

19 A On the second page the Snyder Home had a
20 loss from operations of \$70,000 and a bottom line loss of
21 \$44,000. On the next to the last page the Hermitage had a
22 loss from operations of \$261,000 and a bottom line gain of
23 \$377,000.

24 Q Ninety-three?

25 A That was '93. Ninety-two, on the second

1 page, the Hermitage had a loss from operations \$374,000 and
 2 bottom line gain of \$551,000. The Snyder Home in 1992 had
 3 a bottom line gain of \$12,000 or an excess from operations
 4 of \$12,000, and a bottom line gain of \$57,000. I will say
 5 that was the first year we broke the Snyder facility out as
 6 a separate facility on our financial statements, so some of
 7 the cross over between the Hermitage and the Snyder are
 8 probably not reflected accurately in the internal
 9 statements.

10 Q How do you do it? How do you stay in
 11 business?

12 A We basically stay in business from
 13 donations from our churches. We've stayed in business over
 14 the years through bequests, through peoples wills which is
 15 a form of charitable giving, but that is the way the
 16 organization has survived over the years.

17 Q Do you keep any records of charitable,
 18 direct tangible cash charitable assistance that you provide
 19 residents?

20 A Yes, we do.

21 Q Do you have those with you?

22 A Yes, I do.

23 Q By your records, how much charitable
 24 care did you provide in 1997?

25 A In 1997 -- well, actually --

1 THE COURT: What are you calling
2 charitable care? Care that is provided for
3 which this was compensated?

4 MR. CULLER: I was going to get her to
5 explain after we got the figure.

6 A The exact amount of cash contributions
7 from the Hermitage and Snyder in 1997 was \$453,000.

8 Q That's basically the operating loss?

9 A No. That was direct care -- direct
10 contributions to specific residents.

11 Q So did you make the bill -- you print up
12 the bill and then pay it yourself?

13 A Basically, yes.

14 Q Is there any, besides that \$400,000, is
15 there any other charitable care that you provide for your
16 residents?

17 A The Snyder facility the fact that we
18 operate the facility at a loss year after year, basically
19 all the residents are sharing in some sort of charitable
20 care from that. There are a number of things that you
21 don't see on the financial statements. The time from
22 volunteers, that if we didn't have those volunteers there,
23 we may have to expend in salaries, that sort of thing. So
24 there is some charitability there, but this is the direct
25 resident support for that particular year.

1 Q You participate in the splitting up of
2 the Samaritan funds?

3 A Yes, I do.

4 Q What are the considerations for who gets
5 how much direct cash assistance?

6 A Basically when a resident is admitted,
7 we run a financial projection on that resident based on the
8 assets they have. We determine approximately how long
9 their assets will live -- I mean they will live for their
10 assets. We then make some sort of determination on whether
11 we can afford as much care as they need, and then we set
12 aside so much of the Samaritan funds. We use the term
13 "designate" so much of the Samaritan fund income for that
14 particular resident.

15 Q Then you physically take a check and pay
16 yourself, or how is that -- how does that go?

17 A We don't give assistance to the resident
18 until they have basically depleted their funds first, but
19 we know when they come in when that's going to happen, and
20 we admit them knowing that they do not have enough funds
21 for their lifetime.

22 MR. CULLER: Your Honor, I have no
23 further questions.

24 MS. MALLORY: I'm going to waive cross
25 on this witness also.

1 THE COURT: All right. Thank you Ms.
2 Duff. You may step down.

3 MR. CULLER: That's the plaintiff's
4 case, Your Honor.

5 THE COURT: All right.

6 Ms. Mallory, are you ready to proceed?

7 MS. MALLORY: Yes, Your Honor. I'd like
8 to call Clint Smith.

9 THE COURT: All right.

10 NOTE: Mr. Smith enters the courtroom.

11 THE COURT: Mr. Smith, I remind you you
12 are still under oath.

13 CLINT SMITH, a witness called by the
14 Defendants, having been duly sworn, is examined and
15 testifies as follows:

16 DIRECT EXAMINATION

17 BY MS. MALLORY:

18 Q Mr. Smith, we heard you describe the
19 independent living and assisted living sections of the
20 Hermitage. Couldn't the residential sections of the
21 Hermitage, independent and assisted living sections be
22 characterized as essentially a retirement community like,
23 for example, Westminster Canterbury?

24 A In terms of the levels of care, yes.

25 Q Does the Department of Social Services

1 in regulating licensing the Hermitage require that the
2 residents in the independent living and assisted living
3 section be ambulatory?

4 A We are licensed to a Level 2 license
5 with the Department of Social Services. The entire adult
6 care residence is licensed as an assisted living facility.
7 It's my understanding that to be an assisted living
8 facility you must be able to participate in three or more
9 ADLs. Ambulatory is one of those. It is not necessary
10 that a person be ambulatory if they can participate in
11 three or more other ADLs.

12 Q Doesn't the DSS require that the
13 patient, the residents who are in the residential section
14 that is independent living and assisted living be capable
15 of getting to a fire exit on their own without assistance?

16 A Yes.

17 Q What are the types of financial assets
18 that you evaluate when you are considering an applicant for
19 admission?

20 A We have a financial statement that they
21 complete as a part of our application process. We look at
22 that application and if they put down the ownership of a
23 house, stocks, bonds, whatever, savings account, these are
24 the numbers that we look at.

25 Q Is that the typical kinds of assets that

1 an applicant would have that you're looking at, real
2 property, CDs, savings, stocks, bonds?

3 A Probably at the age that this person is,
4 they're not in the stocks and bonds market. They've
5 converted everything to CDs or savings accounts and their
6 home.

7 Q What's the purpose of requiring adequate
8 financial resources to be a resident of the Hermitage?

9 A I would think that would be a fiduciary
10 responsibility for all of the residents who currently live
11 there.

12 Q What is its purpose to you, the purpose
13 for the Hermitage of evaluating their assets and their
14 ability to pay for that care?

15 A To see if they have the money to pay for
16 their cost of care over their actuarial life expectancy.
17 Somebody has got to pay it, either the individual, the
18 government, family, church, somebody.

19 Q So in comparison to Mr. Crumbs testimony
20 about the way they admitted residents, your policy has
21 changed somewhat over the years, hasn't it?

22 A Yes, it has. I would say we've tried to
23 become more responsible in the way we admit people. We
24 want to be sure that the assets are there as well as we
25 can, that somebody is able to pay for this person. If we

1 see that they are not able to pay and there's no one
2 willing to step up and assume their responsibility, then we
3 turn to the Samaritan fund to see if we can fund that
4 benevolent care in the future, and in the past it was done
5 on a hope and a prayer. We were trying to develop the
6 process where we can fund benevolent care.

7 Q And isn't there a limit, a policy limit
8 that you and Cheryl have decided on as far as funding
9 monthly a particular resident?

10 A Generally it's around 5 or \$600 a month,
11 but that's not written in stone, that's not a policy. It's
12 just a general guideline that we have seen. People who
13 have limited assets generally run 4 or \$500 per month
14 short.

15 Q What's the range of monthly fees that
16 you currently charge from lowest to highest?

17 A From \$1,200 in a studio one independent
18 room to \$3,200 for a private healthcare room.

19 Q So even if you fund part of the
20 resident's care up to say, \$600, they've still got to come
21 up with \$600 to \$2,400?

22 A Theoretically, yes, but if we get to the
23 point where they have outlived there assets and they are
24 unable to come up with that we continue to care for them
25 even though they are unable to pay, even though we're

1 obligated for \$500 from the Samaritan fund. We don't throw
2 them out.

3 Q What is the range of entrance fee that
4 you charge currently?

5 A For a single room independent it's
6 \$55,000. For a couple moving into a three room unit it's
7 around 110.

8 Q An entrance fee is based on the value of
9 the unit the resident is getting, isn't it?

10 A It's based on their unit upon entry, but
11 the entry fee is designed to offset the cost of healthcare
12 once they get to that point. The actual cost of the rate,
13 the \$2,900 or \$3,200 is less than the actual cost of care
14 we deliver in that facility, and the entry fee is designed
15 to offset that.

16 Q Do you know of any instance in which a
17 resident was assisted from the Samaritan fund in paying
18 their entrance fee?

19 A I do not know of an incident for the
20 entry fee.

21 Q So in other words entry fees are not
22 waived or subsidized in anyway by the Samaritan fund?

23 A No.

24 Q When you are first, I guess, conversing
25 with an applicant to the home considering admission, don't

1 you advise them that they may need to sell large assets,
2 for example, real property, and preserve those assets for
3 the cost of their care?

4 A Yes.

5 Q And if you deem their assets to be
6 insufficient to cover the cost of their care over their
7 life at least as you estimate it on through your actuarial
8 information, then do you not also suggest that they get a
9 family member to sign a surety agreement --

10 A Yes.

11 Q -- to be responsible for the care. And
12 so the bottom line is essentially as often as possible you
13 try to make sure that the cost of care is covered
14 completely?

15 A As much as possible, yes.

16 Q And to the extent that, the way
17 Mr. Crumb testified this morning, that's entirely different
18 from the way they did it then?

19 A Yes.

20 Q But you have other types of payment
21 arrangements besides life care contracts, don't you?

22 A We have lease agreements, 30 day lease
23 that we utilize in our adult care residence. We also have
24 a daily range that we use in our healthcare center.

25 Q And aren't the monthly leases restricted

1 to basically use in the residential section, that is
2 independent living and assisted care?

3 A Yes. Daily rates are generally for
4 those people who need respite care or short term, maybe
5 less than a month, 23 weeks.

6 Q And are the people on monthly leases
7 eligible for assistance from the Samaritan funds?

8 A I do not believe we have extended the
9 Samaritan fund to the leaseholders, but I'm not sure about
10 that.

11 Q As far as the nurses home is concerned,
12 does the Hermitage accept medicare or medicaid?

13 A No, they are 100 percent private pay.

14 Q Can you tell me how much was budgeted
15 for the last fiscal year for capital expenditures for the
16 Hermitage?

17 A Probably \$225,000, somewhere in that
18 neighborhood.

19 Q And that's not included in your
20 operating budget? That's a separate budget?

21 A Correct.

22 Q And then how much was budgeted for
23 maintenance, which I think is in your operational budget?

24 A Gosh. Probably altogether \$80-\$100,000.
25 I'd have to look on the operating budget to tell you

1 exactly.

2 Q So the total budget for maintenance and
3 capital expenses are things like painting and putting in
4 new windows and things like that?

5 A Basically, yes. Plumbing, electrical.

6 Q About \$325,000?

7 A Yes.

8 Q I believe you told us during depositions
9 that last year you ended up with a substantial bottom line
10 deficit?

11 A Yes.

12 Q And also last year you replaced all the
13 windows in the Hermitage, didn't you?

14 A Yes.

15 Q How much did that cost?

16 A \$235,000.

17 Q And the board approved that before you
18 spent it, didn't they?

19 A Yes.

20 Q Because -- why?

21 A Because?

22 Q Why did they approve it? Because it
23 causes you to go over budget?

24 A I did not have that, that it extended my
25 capital budget, and I could not have done anything else the

1 rest of the year. So I needed to get board approval to
2 exceed the budget on that amount.

3 Q So any time you have to exceed for
4 maintenance and capital expenditures and things of that
5 nature, you have to get board approval?

6 A No. Just on the capital things. I need
7 Dot Fink to approve. Dot Fink determines whether it needs
8 to go to the board or not, and something that large we both
9 decided the board needed to know about it.

10 Q If there is an operating deficit, how is
11 it made up?

12 A For me part of the corporation -- the
13 corporation has funds that are available to it that are not
14 available to me as a facility.

15 Q So the corporation makes up the deficit?

16 A Yes.

17 Q If there were operating profits, where
18 would they go?

19 A We would use those to help reduce the
20 rates -- the percent of increase of rates for the next year
21 at the Hermitage.

22 Q They don't go to the corporation?

23 A Well, technically they probably do, but
24 they come back to us also.

25 Q I believe the testimony has been that

1 the corporation provides for people who seemingly don't
2 have enough assets. Were there ever any persons admitted
3 who shouldn't have been because their assets were not
4 sufficient to pay the cost of their care?

5 A Not that I know of. When you talk about
6 should not have been admitted, I don't know how to say
7 that. We don't discriminate. We don't -- we would like
8 for everybody to be able to pay their cost of care, and we
9 want to help as many people as we can.

10 THE COURT: Let me be clear on this
11 question. Essentially the question is, has
12 there ever been anybody admitted who could not
13 pay for the cost of care?

14 MS. MALLORY: I probably should have
15 said have there been because their assets --
16 don't have sufficient assets to pay for their
17 cost of care.

18 THE COURT: What was your answer?

19 THE WITNESS: I don't know how to answer
20 that. If a person has been admitted we care for
21 them. We don't analyze what they should or
22 shouldn't be later.

23 Q What I'm getting at is that your policy
24 as far as financial abilities to pay has changed since the
25 70's?

1 THE COURT: I thought you meant on
2 entry. If one applies for admission, and based
3 on projections their assets are not sufficient
4 to cover their cost --

5 THE WITNESS: We know that and we take
6 that.

7 THE COURT: You will?

8 THE WITNESS: Uh-huh.

9 THE COURT: That's your practice today?

10 THE WITNESS: If we see that we can
11 underwrite the cost, yes, sir.

12 BY MS. MALLORY:

13 Q How about historically speaking, maybe
14 back in the '80s or '70s, was it your practice then of the
15 corporation to take people who really --

16 A Well, there's some of the capped
17 contracts that were referred to earlier that I wish I
18 didn't have, but I have them and we're dealing with them.
19 We haven't asked the person to leave. There are only three
20 people in our facility that know about these capped
21 contracts individually. There's no difference in the
22 quality of care delivered to these people from persons paid
23 in full.

24 Q By not accepting medicare or medicaid,
25 are you restricting some individuals for being able to

1 apply to the nursing home/healthcare facility?

2 A Probably. We are not able to accept
3 someone who has no assets. We simply can't underwrite
4 that. Maybe we could change one or two individuals a year
5 to help like that, but then the 20 or 30 that we didn't
6 accept would have to be denied. So there are other
7 facilities that do accept medicaid. That's their choice.

8 Q And the segment of the population that
9 you're restricting would probably be characterized as poor?

10 A Yes.

11 THE COURT: As what?

12 MS. MALLORY: Poor.

13 A Yes.

14 Q You talked about how 3 percent of the
15 entrance fee is earned every month for 30 months you earn
16 10 percent at admission?

17 A Right.

18 Q And so if, for example, a resident was
19 admitted and they lived 30 months, or say 31 months, and
20 then they died, you wouldn't be refunding any of the money?

21 A Correct.

22 Q For example in the studio one where your
23 entrance fee is \$50,000 --

24 A It's \$55,000.

25 Q A year ago.

1 A Yes. That's an old sheet.

2 Q I'm using the \$50,750, but it's
3 approximate. On that entrance fee you would immediately
4 earn \$5,000 or approximately \$5,075, and then every month
5 thereafter in addition to the monthly fee you would earn
6 \$1522?

7 A Yes.

8 Q And that would be in addition to \$1185
9 that they are already paying?

10 A Yes, but Cheryl doesn't give us that
11 money. That's technically what the contract says, but
12 the -- I forget the designation county, the county rules
13 that we go by the entry fee is actually paid out over the
14 life of the individual.

15 Q But it's still coming out of the
16 resident's pocket, right?

17 A Right. It's not available to them after
18 30 months.

19 Q When you have asked people to sell their
20 assets, for example their house or real property, and it
21 takes a while, haven't you also taken a promissory note
22 from them to preserve your right to the money when it
23 finally gets sold?

24 A Yes.

25 Q Aren't there some people who are denied

1 admission to the home because they can't meet the financial
2 requirements shown in your schedule of needs?

3 A Yes.

4 Q And if a family member breaks a surety
5 agree that they sign with you, aren't they encouraged to
6 make other living arrangements for the resident?

7 A Yes.

8 Q A resident is admitted, under your
9 presumption that they have enough money to pay for their
10 cost of care, and they subsequently, I guess, you called it
11 outlive their assets. Before you dip into the Samaritan
12 fund, you're going to exhaust all of their resources first,
13 aren't you?

14 A Yes.

15 Q And you're going to try to contact their
16 family members to see if they will help out, right?

17 A Yes.

18 Q And if there's a surety agreement,
19 you're going to pursue that, too?

20 A Well, enforce that.

21 Q So you make sure all possible assets
22 that are available are exhausted before you give any
23 Samaritan fund assistance?

24 A Yes.

25 MS. MALLORY: That's all I have.

1 THE COURT: Mr. Culler?

2 CROSS-EXAMINATION

3 BY MR. CULLER:

4 Q You said something earlier about three
5 or more ADL. Can you explain that?

6 A Activities of daily living, bathing,
7 dressing, feeding yourself, toileting, walking -- the basic
8 activities of daily living.

9 Q Your entire building, except for the
10 nursing, is licensed assisted, not licensed independent?
11 It's licensed assisted, too?

12 A It's licensed as a Level 2 facility.

13 Q And for a person to have that -- to be
14 qualified for that level of care they must at least be able
15 to accomplish three or more activities of daily living?

16 A Correct.

17 Q Give us some examples of those things?

18 A Say a person needed, because of a stroke
19 they had some paralysis and they couldn't bathe themselves.
20 We'd provide that. That's one activity that they cannot
21 participate in. If they cannot dress themselves, if they
22 cannot choose the clothes they wish to wear, that's another
23 activity of daily living that they cannot do. If they need
24 some assistance in feeding themselves, cutting up their
25 meat, opening the milk container, the salad dressing

1 packet, even getting the food to their mouth if they need,
2 if they can't do that, that's an activity of daily living
3 that they cannot participate in.

4 Q Do you have an idea why a corporation
5 having an operating loss such as you do each year would pay
6 a quarter of a million dollars to fix your windows?

7 A We have to maintain the building for the
8 quality of the residents. The windows were needing to be
9 repainted. They contained lead paint. In order to satisfy
10 the EPA and for necessary things to make sure that lead
11 paint particles didn't get out into the atmosphere, the
12 cost of scraping, capturing the lead paint particles, and
13 recaulking and painting the windows almost was the amount
14 of replacing the windows. So this is when we thought about
15 we would not have to paint those replacement windows over
16 the 20-year life expectancy of these windows, so we're
17 actually saving money. So we thought it was a good
18 investment. The building must be maintained.

19 Q What's the \$225,000 in your budget this
20 year for capital expenditures?

21 A It's for things like repairing the sewer
22 lines that are 49 years old that now run under the
23 healthcare center, for painting and wallpapering some of
24 the hallways, repairing toilets, replacing air
25 conditioners. We put in two boilers, two new boilers which

1 are 43 years old. We replaced those. Just general
2 maintenance kind of things.

3 Q Is this all expenditures of money that
4 didn't appear on revenue expense statements, so this is in
5 addition to operating loss?

6 A Right.

7 Q Now, counsel showed if someone came in
8 and lived 31 months, that you would have earned -- whatever
9 it was, \$1,500 a month of that entrance fee, because no
10 refund would be paid the 31st month?

11 A Correct.

12 Q What would happen if someone came in and
13 spent 10 years in the nursing home? How does your entrance
14 fee come out on that case?

15 A Badly.

16 Q Basically the entrance fee is a mutually
17 shared risk between all the residents as to who's going to
18 live long and who is going to live short?

19 A Correct. The person who lives long
20 benefits. The person who lives short doesn't, but in risk
21 sharing the pool is there to cover.

22 Q And by definition, the monthly service
23 fee --

24 MS. MALLORY: Objection, Your Honor.

25 He's leading quite extensively.

1 THE COURT: Objection overruled.

2 Q By definition, your monthly service fee
3 is insufficient?

4 A To cover the cost of care, yes.

5 Q And on average with using the entrance
6 fees, you're only losing half a million dollars a year?

7 A Correct.

8 Q Why don't you give more care?

9 A We would if we could. The dollars are
10 just not there. We give as much as we can sustain. If we
11 gave more and it exceeded the bequest and other income, we
12 would be out of business, unable to pay our bills, pull up
13 the tent and go home.

14 MR. CULLER: No further questions.

15 THE COURT: Anything further? Redirect?

16 REDIRECT EXAMINATION

17 BY MS. MALLORY:

18 Q Mr. Smith, when you replaced the windows
19 last year, what kind of windows did you take out?

20 A They were steal framed, single paned,
21 painted with lead paint.

22 Q What did you replace them with?

23 A Aluminum, vinyl clad, double pane,
24 permeated replacement windows that tilted in and out.

25 Q Where do referrals for residents, people

1 referring come from? What types of places?

2 A Where do we get referrals?

3 MR. CULLER: Beyond the scope, Your
4 Honor.

5 THE COURT: I believe it is.

6 MS. MALLORY: No more questions.

7 THE COURT: Thank you, Mr. Smith. You
8 may step down.

9 MS. MALLORY: Cheryl Duff, Your Honor.

10 THE COURT: Ms. Duff, I'd like to remind
11 you you are still under oath. You are now being
12 called by the City. Please have a seat.

13 CHERYL DUFF, a witness called by the
14 Defendants, first being duly sworn, is examined and
15 testifies as follows:

16 DIRECT EXAMINATION

17 BY MS. MALLORY:

18 Q I believe earlier you talked about the
19 unrestricted asset portfolio -- I'm not sure of the exact
20 name -- of the corporation. Do you know what I'm talking
21 about?

22 A I have not talked about that today.

23 Q Maybe it was another witness, but the
24 corporation does have an unrestricted, I guess it's stocks,
25 portfolio?

1 A Correct.

2 Q How much money is in that investment
3 portfolio right now?

4 A At present unrestricted it's about
5 \$700,000 right now.

6 Q About how much was it two years ago?

7 A Two years ago about \$9 million.

8 THE COURT: \$9 million?

9 THE WITNESS: Yes.

10 Q What accounts for the difference between
11 two years ago and now?

12 A The corporation made a sizable equity
13 contribution to get the Hermitage at Cederfield off the
14 ground.

15 Q And that equity contribution was how
16 much?

17 A It was in the neighborhood of about \$9
18 million.

19 THE COURT: You're talking about the
20 Hermitage at Cederfield?

21 THE WITNESS: The Hermitage at
22 Cederfield.

23 THE COURT: What is that?

24 THE WITNESS: It's our newest facility
25 in Henrico County.

1 THE COURT: I noticed that on some of
2 these records, this one, for example, and it was
3 a Three Chopt address. I didn't know what that
4 meant until now. So there's another facility?

5 THE WITNESS: There is a facility in
6 Henrico County that's been in operation for a
7 year.

8 THE COURT: So we have three area
9 facilities?

10 THE WITNESS: Correct.

11 MS. REID: Your Honor, that was the
12 designation. Remember the part of the statute
13 that Olen put into evidence earlier that shows
14 that it was by designation? That relates to the
15 new residence, so that's the Cederfield.

16 THE COURT: I see.

17 BY MS. MALLORY:

18 Q I believe you stated earlier that the
19 corporation has an operational deficit.

20 A Correct.

21 Q Where did the money in the portfolio
22 come from?

23 A Generally, as you might recall, in
24 several years we did have a bottom line gain in various
25 facilities through the years, and that is primarily from --

1 it's not from operations, it's from a variety of bequests,
2 donations, so forth, that have come through the years.
3 That generally is where that is accumulated through the
4 years, and gains and the investment portfolio. The
5 corporation has been in existence for 50 years.

6 Q So even though operationally you operate
7 at a loss, some of the charitable contributions that you
8 talked about earlier go into an investment portfolio as
9 well as into the Samaritan fund?

10 A If there is excess cash in that
11 particular year, yes.

12 Q And you said you put a \$9 million equity
13 contribution into building Cederfield?

14 A Correct.

15 Q How much did it cost to build
16 Cederfield?

17 A Construction cost was about \$62 million.

18 Q Where did the rest of the money come
19 from?

20 A Bonds.

21 Q Are those bonds that you have to pay
22 back or --

23 A Yes. They were issued through the IDA,
24 County of Henrico.

25 Q How long has Cederfield been open?

1 A One year in September.

2 Q How much of those bonds has been paid
3 back?

4 A Approximately \$36 million.

5 Q \$36 million in one year?

6 A Yes.

7 MS. MALLORY: May I approach the
8 witness, Your Honor?

9 THE COURT: Yes.

10 NOTE: Counsel approaches witness and
11 hands the witness a document.

12 Q Do you recognize this?

13 A Yes, I do. This is the fee schedule for
14 the Hermitage at Cederfield.

15 Q Could you give me the range of entrance
16 fees for the Hermitage at Cederfield?

17 A The entrance fees range from \$82,000 for
18 an A-1 apartment to \$272,000 for a type-3 cottage.

19 MR. CULLER: Your Honor, I object to the
20 relevance of going into the nature of the
21 operation --

22 MS. MALLORY: Your Honor --

23 MR. CULLER: -- in a different
24 jurisdiction. We're concerned here with the
25 manner in which these properties are operating,

1 and not how other properties are operating.

2 MS. MALLORY: Your Honor, Mr. Culler
3 opened the door when he started asking questions
4 about where money goes to from the whole
5 corporation and how it's spent, and he was
6 asking questions about they made statements it
7 was spent on continuing your mission and going
8 back to the residents, and this is one of the
9 places where their money went.

10 MR. CULLER: If you want to hear it
11 that's fine.

12 THE COURT: All right. I'll hear it.

13 BY MS. MALLORY:

14 Q It appears from the bottom section of
15 the fee schedule that there are some things at Cederfield
16 that aren't really like the rest of the facilities.
17 Cottages -- are these separate resident units?

18 A No.

19 Q Houses? Cottages?

20 A The cottages are free-standing units,
21 yes.

22 Q And what's the range of monthly fees for
23 Cederfield?

24 A The lowest for an A-1 studio is
25 fourteen-thirty-four. For a type three cottage it's

1 \$3,193, and their fees do not increase as they change level
2 of care.

3 Q Is any money from the Samaritan fund
4 being used at the Hermitage at Cederfield?

5 A The Hermitage at Cederfield does not
6 have a Samaritan fund.

7 MS. MALLORY: Thank you.

8 THE COURT: Anything else, Mr. Culler?

9 CROSS-EXAMINATION

10 BY MR. CULLER:

11 Q You might tell us how you were able to
12 pay back \$36 million in one year.

13 A That payback was from the entrance fees
14 that have come in through the entrance to the Hermitage at
15 Cederfield.

16 Q So you didn't escrow those? You had all
17 new members? You sold all the units and took the cash?

18 A That's correct, and that's how our debt
19 structure was designed for that facility.

20 Q Okay. Why did you build Cederfield?

21 A We built Cederfield because we assessed
22 a need in the community for larger living spaces. That was
23 what the market was demanding, and we felt we were there to
24 meet that need in the community.

25 Q Anybody at Cederfield use up any of

1 those Samaritan funds?

2 A Not at present, but it's only a year
3 old.

4 Q Does the Hermitage on Westwood Avenue
5 get more than it's fair share of the Samaritan fund?

6 A The Hermitage in Richmond on Westwood
7 Avenue uses about -- has about half the benevolencies of
8 the entire corporation.

9 Q Was it after the disclosure of all this
10 information about Cederfield, how it was going to operate,
11 was it after that was it all established that the
12 Legislature determined that Virginia United Methodist
13 Homes --

14 A Yes. That was not effective until
15 January. It's actually not effective until January 1, '98.

16 Q So with all these facts disclosed, the
17 Legislature determined that you were a charitable and
18 benevolent organization?

19 A Yes. The facility was operating and
20 built.

21 MR. CULLER: Nothing further.

22 MS. MALLORY: One question.

23 REDIRECT EXAMINATION

24 BY MS. MALLORY:

25 Q So of the \$36 million that you paid

1 back -- I'm sorry. You chose to pay back \$36 million in
2 the bond debt rather than offset the deficit at any of the
3 other bottom line showing an operational deficit at any of
4 the other facilities?

5 A That was a covenant in our bonds.

6 MS. MALLORY: Thank you.

7 THE COURT: Thank you, Ms. Duff. You
8 may stand down.

9 Is that all you have?

10 MS. MALLORY: Yes, Your Honor, it is.

11 THE COURT: Mr. Culler?

12 MR. CULLER: Nothing on rebuttal.

13 THE COURT: Are you ready to argue this?
14 Do you want a break first?

15 MR. CULLER: Well, I'm a little woozy,
16 but --

17 THE COURT: We can take a recess.

18 MR. CULLER: I'm at your pleasure. We
19 could -- does Your Honor have a 9:00 o'clock
20 docket tomorrow?

21 THE COURT: No, I don't. I wouldn't
22 oppose your having to come back if you wish to.

23 MR. CULLER: That would be fine with me.
24 I'm bushed, but I'll accommodate counsel.

25 THE COURT: Ms. Mallory, what's your

1 schedule like tomorrow morning?

2 MS. MALLORY: My schedule is free. 9:00
3 o'clock?

4 THE COURT: 9:00 o'clock is fine.

5 Let me ask you a few questions, is the
6 City's position that the -- I think you said
7 initially that it's the City's position that the
8 Hermitage and the Snyder Homes were not
9 charitable or asylums, if you will, within the
10 meaning of the law in 1971, nor are they now; is
11 that correct?

12 MS. MALLORY: That's correct.

13 THE COURT: Do you suggest that the
14 Virginia United Methodist Homes, Incorporated is
15 a profit enterprise?

16 MS. MALLORY: No, Your Honor.

17 THE COURT: And you're not suggesting
18 that any of the profits go to any one individual
19 or anything like that?

20 MS. MALLORY: No. We're not focussing
21 on that section, that particular phrasing. It's
22 a whole section. It's conducted not-for-profit
23 and operating exclusively as a charity, and
24 we're focussing on the operating exclusively as
25 a charity and the definition of asylum. I do

1 have to say that there is case law that says
2 whether or not the Hermitage or VUMH is 501-C3
3 is irrelevant to determining whether they should
4 be tax deductible for Virginia real estate
5 purposes.

6 THE COURT: So you're questioning
7 whether or not the operations are charitable?

8 MS. MALLORY: Yes. Exclusively operated
9 as a charity is the exact phrasing from the
10 statute.

11 THE COURT: So how far out would you
12 have to go to be a charity within the meaning
13 you have described through the definition? In
14 other words, certainly if all of the applicants
15 were admitted for free, it would be a charity.

16 MS. MALLORY: Well, I would have to get
17 into the case law, Your Honor, but basically it
18 says the facility or the organization must be
19 operated primarily, must have the dominant
20 purpose, the sole object as a charity, and I am
21 not arguing that they don't do some good works
22 or that they don't offer some charity, but
23 operating exclusively as a charity when they
24 exclude a whole segment of our society which you
25 would characterize as poor, you know, just the

1 fact that they will not accept medicare and
2 medicaid indicates that there is no way they
3 could be charity in the sense that they are --

4 THE COURT: I'm wondering, where do you
5 draw the line between, if you will, a pure
6 charity where admissions are open to anyone who
7 can't pay anything, and those persons who can
8 pay something, but for whom it has been
9 suggested that services are provided even for
10 those who can no longer pay?

11 MS. MALLORY: Well, but then the point
12 is the reason they can no longer pay is the
13 Hermitage has used up the assets they did have.
14 They weren't poor when they came in. They don't
15 get -- I don't know how to go into this without
16 going into my whole argument, which I'm sure you
17 don't want to hear right now, but it is -- I
18 know if we're talking about liberal construction
19 it's one thing, if we're taking about strict
20 construction it's another.

21 Under liberal construction it's up to
22 the Court, and it's not determined by
23 percentages, but at the same time you have to
24 look at the purpose for which the organization
25 was organized, and as I pointed out, or tried to

1 point out earlier, in the articles of
2 incorporation, really in 1960 they deleted the
3 words "needy" and "infirm" for the purposes
4 for which they were organized. They went from
5 being organized for the purpose of providing
6 help for the aged, infirm and needy to just
7 providing homes for the aged. They specifically
8 deleted those words, and that's important
9 because right here is their declaration of their
10 purpose to the entire world to follow the FCC.

11 THE COURT: I see. All right.

12 We'll see you in the morning.

13 MR. CULLER: Thank you.

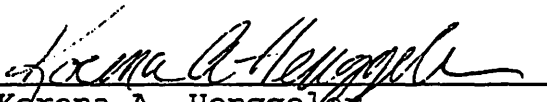
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15 HEARING CONCLUDED
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CERTIFICATE OF COURT REPORTER

I, Korena A. Henggeler, hereby certify that I, having been duly sworn, was the Court Reporter in the Circuit Court of the City of Richmond, Virginia, on October 30, 1997 at the time of the hearing herein.

I further certify that the foregoing transcript is a true and accurate record to the best of my ability of the testimony and other incidents of the hearing herein.

Given under my hand this 17th day of December, 1997.


Korena A. Henggeler

980498

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

JOHN MARSHALL COURTS BUILDING VIRGINIA
CLERK

REC'D
MAR 27 1998
RESOLUTIVE
RICHMOND, VIRGINIA

* * * * *
VIRGINIA UNITED METHODIST
HOME,

Plaintiff,

vs.

CITY OF RICHMOND,

Defendant.

* * * * *

COPY

VOLUME III

JUDGE: HONORABLE MELVIN R. HUGHES, JR.

DATE: OCTOBER 31, 1997

TIME: 9:30 A.M.

LOCATION: JOHN MARSHALL COURTS BUILDING
EIGHTH & MARSHALL
RICHMOND, VIRGINIA

REPORTED BY: MELISSA H. TUGGLE

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FEB 2 1998
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By *[Signature]* D.C.

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I N D E X

Argument By Mr. Culler	4, 66
Argument By Ms. Mallory	28
Judge's Ruling	74

E X H I B I T S

NONE

1 P R O C E E D I N G S

2 (Whereupon, the court reporter was
3 sworn in.)

4 THE COURT: Counsel, I wanted you to
5 look at the stipulations in the case, and the
6 file is available now, if you want that.

7 MS. MALLORY: I already got a copy of
8 it.

9 THE COURT: All right. Are you ready
10 to proceed?

11 MR. CULLER: Yes, Your Honor.

12 THE COURT: By the way, I didn't see
13 your memorandum in the file. I didn't see it
14 listed, but -- perhaps I overlooked it,
15 because it's sometime difficult to find
16 things in this file, but on examination of it
17 this morning, I didn't see it. The city's
18 brief is here in the file.

19 Do you have a copy of it?

20 MR. CULLER: Yes, sir.

21 THE COURT: The city's brief represents
22 that it was filed October 20th, and I may
23 have overlooked it, but I didn't see it.
24 There's no notation on the jacket of the file
25 the clerk makes, but I don't see it listed on

1 the file other than the witness list.

2 Do you need this now?

3 MR. CULLER: No, sir. I can fake it.

4 THE COURT: Okay. You can keep it if
5 you need it for your argument.

6 MR. CULLER: No, I don't need it. It's
7 for you.

8 THE COURT: All right.

9 MR. CULLER: We had to prove that
10 during tax years 1996 and '97 that we were
11 nonprofit; that we were charitable or using
12 the property exclusively as a charity; and
13 that we were an asylum.

14 THE COURT: Uh-huh.

15 MR. CULLER: That we were nonprofit is
16 now conceded.

17 Were we charitable? What does
18 "charitable" mean?

19 THE COURT: Uh-huh.

20 MR. CULLER: That depends upon whether
21 we need to apply new law or old law.

22 THE COURT: Uh-huh.

23 MR. CULLER: And whether or not we need
24 to apply new law or old law depends upon
25 whether we were exempt or entitled to be

1 exempt on July 1, 1971.

2 THE COURT: Uh-huh.

3 MR. CULLER: Now, the city would brush
4 aside the fact that on July 1, 1971, we were
5 charitable. They call us charitable, they
6 say it doesn't mean anything.

7 The city would brush aside the fact
8 that the legislature of Virginia on May --
9 March of 1996 said we were charitable. They
10 said that didn't mean anything. They said
11 that was dealing with something else, that
12 was dealing with a different project. But
13 the statute --

14 THE COURT: When you refer to "they,"
15 as the city?

16 MR. CULLER: Yes, sir.

17 But the statute says the organization
18 is benevolent and charitable, and that's the
19 matter of Virginia law.

20 If the legislature of 1971-'72, when
21 the constitution and the statutes were
22 passed, that said property exempt on 1971
23 shall continue to be exempt, and that's our
24 grandfather clause. And I've got for you a
25 portion of the constitutional debates in my

1 brief.

2 If those gentlemen knew that the tax
3 assessors had the power to frustrate the
4 grandfathering for every exempt organization,
5 no matter what it said in the constitution,
6 all they had to do is come in and say, "We
7 made a mistake," then nobody is
8 grandfathered. It didn't mean a thing.
9 Everybody can be called -- the Red Cross,
10 whatever, can be called upon to prove that
11 they were entitled to be exempt in 1971.

12 I suspect that those folks would say,
13 "That's not what we intended. What we
14 intended to say was people who were
15 considered exempt in 1971 shall be
16 continued -- shall continue to be exempt."

17 Well, what did it take to be charitable
18 on July 1, 1971? Did we have to provide
19 totally free care? Did we have to provide
20 any free care at all? The answer to those
21 questions is no.

22 I've cited six cases in my brief; just
23 read briefly from one. This is the Richmond
24 Memorial Hospital case: "The legal
25 interpretation of a phrase "not for profit,"

1 but exclusively as charities is not
2 controlled by free services of the entity on
3 board. Nonprofit hospitals which are devoted
4 to the care of the sick, which aid in
5 maintaining the public health and contribute
6 to the advancement of medical science, are
7 and should be regarded as charities, that the
8 hospital charge people who could afford to
9 pay."

10 And we didn't catch the Supreme Court
11 in one loose moment. That's not just one
12 case standing alone. There's case after
13 case. There's the Wise Hospital case.
14 There's the YMCA case. For goodness' sakes,
15 there's the Moose Lodge case; that's
16 charitable.

17 Now, the city can't get comfortable
18 with that. They can't believe it. They did
19 not deal with any of those cases in their
20 brief, and I challenge them to deal with them
21 now. They can't be dealt with.

22 Charity, they -- they want the Court to
23 believe that we need to be like the Salvation
24 Army, out on the corner with a pot and a
25 bell; and that unless you're totally

1 charitable, you don't come within this
2 constitutional provision, of what the Supreme
3 Court has told us time and time again that
4 that's not what's meant.

5 The test of charitableness is, is the
6 corporation organized and conducted to
7 perform some service of public good or
8 welfare? That's the United Giver's Fund
9 case. That's the Moose Lodge case. That's
10 the law.

11 Now, that's the question. That's the
12 question about charitableness. Is this
13 organization -- and you've heard the
14 testimony -- organized and conducted to
15 provide some public good or welfare?

16 Now, we presented a lot of evidence
17 about free care. Reverend Crumb said in his
18 tenure, which included 1971, they never
19 turned anybody away on account of finances.
20 We aren't able to say that now. I think all
21 that evidence was absolutely irrelevant. My
22 own evidence was irrelevant as to the issue
23 of charity. Now, it might be relevant to the
24 issue of asylumness; that we'll talk about in
25 a minute, or I'll talk about in a minute.

1 He took these folks in, in 1971. He
2 gave them spending money. He provided
3 shelter. He provided a home. He paid their
4 hospital bills. He buried them. I suggest
5 to Your Honor that that is ample evidence of
6 work as for the public good.

7 The city, I'm sure, will say, "Well, he
8 didn't take in everybody. You picked and
9 chose who you took in. That's not the public
10 good." And I submit to you that if we took
11 in only left-handed, Hispanic, unwed mothers
12 and picked and chose those, that that would
13 be work that's in the public good. We don't
14 have to throw our doors open to everybody in
15 order to operate to the public good.

16 Are we now charitable? Nobody pays
17 their cost of care. Everybody receives
18 benevolent care. The corporation has
19 operated for 49 years and never have they
20 charged enough money to pay for what they
21 give away. They only operate because -- and
22 only able to operate because the church and
23 benefactors have given tens and thousands and
24 hundreds of thousands of dollars to this
25 organization so that they can continue to do

1 their good work.

2 They're only able to perform the way
3 they perform because hundreds of volunteers
4 give their time to sew, to read, to help them
5 with crafts, to drive them to the doctors.
6 And all the evidence -- and I'm not going to
7 bore the Court with trying to repeat what all
8 the evidence was.

9 Now, the city will say we aren't
10 charitable because we don't take government
11 funds. They want to make a point that we
12 don't take Medicaid, and they wanted to make
13 a point that we make our folks be broke
14 before we give them aid. And, Your Honor,
15 that's exactly what Medicaid does.

16 Medicaid is not available to those who
17 have money. You have to spend down in order
18 to be entitled to the funds. We have to pick
19 and chose those folks to whom we can give
20 charity, and it happens to be the poor.

21 THE COURT: You can't say, though, that
22 any of the applicants that submit themselves
23 for admission to the facility are poor,
24 though, are they? You don't take in poor
25 people?

1 MR. CULLER: No, sir. I would say they
2 do not, and I think that's -- as I say,
3 that's not a requirement.

4 THE COURT: Uh-huh.

5 MR. CULLER: The proper requirement --
6 and I think we all have to fight just like --
7 sort of cinched in, Your Honor, if I may
8 become personal, there's a natural reaction
9 to the word "asylum." There's a natural
10 reaction to the word "charitable."

11 THE COURT: Uh-huh.

12 MR. CULLER: And I urge you not to go
13 on that gut instinct, but to read those
14 cases, because the entire history of our
15 court system has been to expand this term to
16 bring in a wide range of folks doing good
17 work and being entitled to the help of
18 government to continue to do those works by
19 having this exemption from taxation.

20 THE COURT: But it's a charity, you
21 say, because even though people who come
22 there may not be destitute or poor, but it's
23 a charity because the organization ends up
24 spending more for them than what they can pay
25 for?

1 MR. CULLER: No, sir. It's a charity
2 because it complies with the single test we
3 have: Is it organized and conducted to
4 perform some service of public good or
5 welfare? That's the test. And although we
6 do lots of good things, we do lots of things
7 for people who can't afford it.

8 THE COURT: Uh-huh.

9 MR. CULLER: That's not involved at all
10 in charitableness as it's used peculiarly in
11 the constitution --

12 THE COURT: Uh-huh.

13 MR. CULLER: -- and as it's been
14 construed in the Moose case.

15 THE COURT: So if I wanted to start a
16 newsletter, for example, and I started up a
17 nonprofit corporation to publish my
18 newsletter, and I wanted to do that for the
19 public good, would that be charitable?

20 MR. CULLER: No. Would it be
21 charitable -- you know, you probably wouldn't
22 get one of the other qualifications --

23 THE COURT: Uh-huh.

24 MR. CULLER: -- that is, be a hospital,
25 be an asylum, be a library. But, yeah, I

1 think civic organizations are charitable in
2 accordance with this test.

3 THE COURT: So a civic association
4 would -- in my example, I want to start a
5 nonprofit -- I want to start a publication of
6 a local newsletter. I may charge a nominal
7 fee for that newsletter, and if I did it
8 through a nonprofit corporation, that
9 would -- under that definition would be
10 charitable?

11 MR. CULLER: Under the 1971 definition
12 of charitable, I think it would be.

13 THE COURT: Uh-huh.

14 MR. CULLER: Now, under the new
15 definition of charitable, once the Supreme
16 Court -- once the constitution said, "From
17 now on, we're going to be strict construction
18 as to what charitable means."

19 THE COURT: Uh-huh.

20 MR. CULLER: And I think that's
21 precisely with the Westminster-Canterbury
22 case. That's about the only case that the
23 city can cite, and don't be misled that is
24 new law. That is strict construction.

25 THE COURT: I thought Westminster

1 wasn't created until after --

2 MR. CULLER: Precisely.

3 THE COURT: -- the facility didn't come
4 on a line -- I don't know what the date, but
5 I read the case.

6 MR. CULLER: Yes, sir.

7 In that case, two justices said that
8 Westminister-Canterbury -- who's been argued
9 to the Court is precisely like we are;
10 they're not exactly the same -- but two
11 justices thought they were charitable.

12 THE COURT: Uh-huh.

13 MR. CULLER: And the battles of the
14 Court said, "They're not so clearly
15 charitable" --

16 THE COURT: Uh-huh.

17 MR. CULLER: -- "that we can do it
18 ourselves. You need to go to the
19 legislature."

20 THE COURT: Uh-huh. I think you're
21 suggesting that that might be the case now
22 with -- post-'71, in accordance with the
23 present-day activities of the Hermitage.

24 MR. CULLER: Yes.

25 THE COURT: So it's clearly charitable

1 now --

2 MR. CULLER: Under strict
3 construction --

4 THE COURT: -- under strict
5 construction.

6 MR. CULLER: And I think that's what
7 the city is going to argue is what we did
8 with regards to Cedarfield --

9 THE COURT: Uh-huh.

10 MR. CULLER: -- which is exactly what
11 we did. We went to the legislature, rather
12 than go to the courthouse.

13 THE COURT: Uh-huh.

14 MR. CULLER: Here we don't have that
15 choice, although we are considered charitable
16 for 25 years.

17 THE COURT: Why didn't you have that
18 choice here? You could go to the legislature
19 in this instance, couldn't you?

20 MR. CULLER: I suppose we could in some
21 more benevolent geographic area, but I think
22 that would be fruitless in this situation.
23 We aren't required. We are clearly
24 charitable.

25 THE COURT: Uh-huh.

1 MR. CULLER: Now, the second prong of
2 this --

3 THE COURT: What do you mean by that?
4 Conceivably, you could ask the legislature
5 for an appropriate designation --

6 MR. CULLER: Yes, sir.

7 THE COURT: -- just as the legislature
8 has provided that designation for Cedarfield.

9 MR. CULLER: Yes, sir.

10 There are political realities, Your
11 Honor. The political realities is that takes
12 the approval of the locality.

13 THE COURT: Oh, I see. You may not
14 have that background out in Henrico. I don't
15 know.

16 MR. CULLER: Yes, sir.

17 I think we've shown that the -- the UMH
18 of Hermitage and Snyder Homes were charitable
19 under any case, under the performing act of
20 public good or welfare test in '71 and in the
21 relevant years, and very likely under even
22 the strict construction test, because as a
23 whole, the amount of charitable care given in
24 the Westminster-Canterbury cases as was set
25 forth in the facts of the case, that's much

1 less than is provided at the Hermitage.

2 But the second prong is an asylum.

3 What's an asylum? And I certainly wish I had
4 six cases to parade in front of Your Honor
5 for asylumness like we do have for
6 charitableness, but we don't have those
7 cases.

8 We do have a 59-year history between
9 the 1902 constitution and 1971, and a history
10 between '71 and 1996, when the city thought
11 maybe they had a better idea of what "asylum"
12 meant than they used to, and that history is
13 that my client was considered one. And I've
14 cited some law to Your Honor that the
15 application by administrators of government
16 is meaningful in determining what words mean.

17 THE COURT: Uh-huh.

18 MR. CULLER: I cited four or five cases
19 that were Civil War cases and had to do with
20 old soldiers homes. The general background
21 is that the government would create an old
22 soldiers' home for Civil War veterans. The
23 issue was whether they could vote when they
24 were in that institution. And generally
25 speaking, the statute said that you don't

1 establish a new place of residence when you
2 go to an asylum.

3 For that purpose, the courts either
4 said that these were or were not asylums.
5 That case -- those cases are fairly
6 irrelevant, but no more irrelevant than the
7 sole case that the city is able to cite, and
8 that's a Maryland zoning case.

9 THE COURT: Uh-huh.

10 MR. CULLER: In that case, they said a
11 nursing home wasn't an asylum. But you've
12 got to look at how it was being used or
13 wasn't being used in a tax-exemption case.
14 It was a restrictions and deeds that said you
15 can't build any asylums in this subdivision.

16 THE COURT: Uh-huh.

17 MR. CULLER: And along with saying you
18 couldn't build an asylum, it said you
19 couldn't build any pig sties, bone-boiling
20 establishments, spirituous, intoxicating malt
21 liquor, slaughterhouses, fertilizers, or
22 gunpowder.

23 THE COURT: Uh-huh.

24 MR. CULLER: I mean, it was clearly a
25 situation that they were not looking to the

1 kind of question that we were answering here.
2 They were looking to find obnoxious
3 activities. And the Court found that a
4 nursing home was not obnoxious activities, so
5 it wasn't prohibited under the term "asylum,"
6 as used in that very narrow setting.

7 How is the word "asylum" being used for
8 us? It's being used in conjunction with the
9 word "orphan." All the way through 1902,
10 through the change, through 1972 statutes,
11 it's always been "for orphans or other
12 asylums," and I urge the Court to believe
13 that that's included as to what kind of
14 institution they were talking about. We
15 cited in our briefs that asylum means a place
16 of refuge. It means sanctuary. Those are
17 dictionary phrases.

18 I point out to the Court that in the
19 Westminster-Canterbury case that the two
20 justices -- the only two who got to this
21 issue, said Westminster-Canterbury clearly
22 was an asylum. Two sentences, and they've
23 passed on, it was Justice Stevenson and
24 Justice Russell.

25 THE COURT: They were decided?

1 MR. CULLER: Sir?

2 THE COURT: They were decided?

3 MR. CULLER: Yes, sir. But the rest of
4 the Court never got to that issue. They went
5 off --

6 THE COURT: On the charity question.

7 MR. CULLER: -- on the charity, never
8 got to that issue. But we assume that if
9 they had wanted to talk about that issue,
10 they could have.

11 THE COURT: Uh-huh.

12 MR. CULLER: There is one contra, the
13 Attorney General opinion. They've cited it,
14 and it said Francis Marion Manor home wasn't
15 an asylum. That spends most of the time in
16 this opinion -- this is about a 1980 opinion.

17 THE COURT: What was the case again?

18 MR. CULLER: I'm sorry. These are
19 Attorney General opinions.

20 THE COURT: Okay.

21 MR. CULLER: I don't want to get the
22 Court to focus on Attorney General opinions.
23 I don't believe they've ever been cited by
24 the Supreme Court. But we've got three that
25 deal generally with the term "asylum."

1 THE COURT: Uh-huh.

2 MR. CULLER: The first one was the
3 Virginia Baptist Home in Culpeper, Virginia,
4 1960; and it was clearly a nursing home, a
5 home for the aged. The case, in fact,
6 involved -- the opinion involves the facts
7 that the Baptist home is existing. They had
8 198 acres they were farming. It was 198
9 acres to be tax-exempt also.

10 The opinion assumes that the Virginia
11 Baptist Home -- which I would urge the Court
12 to understand is a somewhat related activity
13 to the Virginia United Methodist Home -- was
14 indeed an asylum. That was assumed. Then
15 the question went off on the operation of the
16 farm, independent of whether the groceries
17 went -- did they go to the home or did they
18 go to the market.

19 Two years later, there was another
20 case, another request for an opinion in
21 Augusta County. These are all cited in our
22 briefs. It was a home for indigent widows
23 and maiden ladies, without any reference to
24 whether maiden ladies had to be indigent or
25 not.

1 The Attorney General said, "Yes,
2 clearly this is an asylum, entitled to
3 tax-exemption under the definition of
4 asylum."

5 Now, the 1980 opinion, the Attorney
6 General spent four pages deciding that a
7 nursing home wasn't a hospital; in two
8 paragraphs, deciding that a nursing home was
9 not an asylum. It cited the Maryland pig
10 farm fertilizer case as an example of -- it
11 clearly doesn't apply.

12 THE COURT: It's cited here. This
13 comes from the Attorney General opinion: "A
14 retreat, shelter, or institution for the
15 protection or relief of the unfortunate,
16 destitute, or poor."

17 MR. CULLER: Yes, sir.

18 We don't like to talk about our folks
19 as being the unfortunate, and I was trying to
20 get my witness to say that the Department of
21 Social Services have changed the name from
22 "home for the aged" to "home for adults" to
23 "adult care residence," but that's what we
24 do.

25 THE COURT: Uh-huh. What about this

1 one? "An institution for the protection" --
2 this is from Black's Law Dictionary.

3 MR. CULLER: Yes, sir.

4 THE COURT: "For the protection and
5 relief of unfortunates, as asylums for the
6 poor, for the detrimental or for the insane."

7 You think that people who are adjudged
8 sufficient enough to live independently and
9 who are ambulatory are necessarily
10 unfortunate?

11 MR. CULLER: Necessarily unfortunate?
12 No, I can't say that everybody who comes to
13 the home is necessarily unfortunate.

14 THE COURT: Uh-huh.

15 MR. CULLER: You heard the testimony as
16 to 60 Alzheimer's residents, 115 nursing home
17 beds. It's all part of a continuing
18 comprehensive plan to take care of the
19 elderly.

20 Do I want to say on the record that
21 being elderly is unfortunate? I guess I'll
22 say that; yes, sir, it's not such a good
23 thing.

24 THE COURT: Okay.

25 MR. CULLER: Do those folks --

1 THE COURT: Don't you think it rather
2 means that even though one may be aged and
3 afflicted, that that person or persons may
4 not be unfortunate? "Unfortunate" suggests
5 to me that they're a pauper or they're
6 poverty-stricken.

7 Certainly, one who has Alzheimer's or
8 has any number of medical problems with age,
9 I guess you could call that individual
10 unfortunate, but that's life. But the word
11 seems to connote to me something more than
12 being merely physically sick or aged.

13 You could have -- I don't know. I
14 can't think of any examples, but you could
15 have a very well-off individual who were
16 elderly and aged and who have old-age
17 problems. And I don't know if you would
18 characterize them -- while their condition is
19 unfortunate, I don't know if you call them an
20 unfortunate.

21 MR. CULLER: Well, are they going for a
22 place -- to a place of refuge and protection?

23 THE COURT: Uh-huh.

24 MR. CULLER: I think they are.

25 THE COURT: Uh-huh.

1 MR. CULLER: The long-time history of
2 the application of that term to include my
3 client, to include places like the Virginia
4 Baptist Home, to include places like the
5 unnamed litigant who was scheduled to be here
6 in this court in January, that's some
7 evidence of what that word ought to mean, and
8 the law is you that should look to those
9 things.

10 THE COURT: Is there any liberality if
11 you went to the construction of the word
12 "asylum" --

13 MR. CULLER: Absolutely.

14 THE COURT: -- as of 1971?

15 MR. CULLER: It's the liberal
16 construction to be applied to the entire
17 application of the law, not just the word
18 "charitable." Liberal construction is to be
19 applied to the word "asylum" too.

20 THE COURT: Uh-huh.

21 MR. CULLER: Just as it is to word
22 "hospital," as it is to YMCA and all the
23 other -- it's the entire section that is to
24 be liberally applied in order to give the
25 effect to a long-term policy of the state.

1 Now, the city has got a couple cases
2 that says taxation should be -- exemptions
3 from taxation should be strictly construed
4 around, and they cite the leading case on the
5 opposite side, the YMCA case. It says
6 exactly the opposite, that it's the duty of
7 the courts to -- it's the taxation of
8 charities is the exception, and exclusion is
9 a rule.

10 THE COURT: Uh-huh.

11 MR. CULLER: I ask the Court to
12 consider the testimony as to the kind of
13 people that we take care of. The average age
14 is --

15 THE COURT: Eighty-nine.

16 MR. CULLER: -- 89.

17 THE COURT: The average age of an
18 infirm is 85, I believe.

19 MR. CULLER: Yes, sir.

20 THE COURT: The old person is 103.

21 MR. CULLER: Yes, sir.

22 THE COURT: I think several people were
23 over the age of 100 or 100, I believe that
24 was the testimony from Ms. Smith.

25 MR. CULLER: We are not leasing rooms.

1 We're not -- we are providing care for people
2 who need it.

3 THE COURT: Uh-huh.

4 MR. CULLER: The constitution is in
5 place in order to provide benefits for
6 organizations who were doing this sort of
7 good works and to encourage them to continue.
8 And I submit to you that this is exactly the
9 kind of organization that the legislature and
10 the constitution intended to be encouraged
11 continually.

12 If you have no further questions, I'll
13 sit down.

14 THE COURT: Counsel, let me do this:
15 I'm going to retire for a few minutes and
16 read the plaintiff's brief. I read the
17 defendants. I'll read this and come right
18 back.

19 (Whereupon, a short recess was taken.)

20 THE COURT: All right. Ms. Mallory.

21 MS. MALLORY: Yes, sir.

22 Your Honor, I have some responses to
23 Mr. Culler's argument, but I think first I'll
24 probably just go over the law real quickly.
25 I'm sure that you already know what it is now

1 that you've read his brief and our brief.

2 THE COURT: Uh-huh.

3 MS. MALLORY: I'll hit some high
4 points. Section 183 of the 1902 constitution
5 is -- the paragraph that contains the
6 classification that they're talking about.

7 THE COURT: Uh-huh.

8 MS. MALLORY: The introductory
9 paragraph of that section says, "The
10 following properties and no others shall be
11 exempt from taxation," meaning that these
12 classifications should not be expanded; and
13 that was reinforced in 1971 with the 1971
14 constitution, when they forever set these
15 classifications in stone and said, "We don't
16 want the general assembly expanding this
17 classification."

18 Mr. Culler has argued that the city is
19 going to say a lot of things that I'm not
20 going to say. Mr. Culler wants you to focus
21 primarily on the charitable nature of the
22 institution. That is one prong of the test.
23 But asylum is the other prong on the test,
24 and if an organization is not one of those
25 entities named in the classification statute,

1 a hospital, an asylum, a YMCA, a reformatory,
2 if you don't meet that first prong, you never
3 get to the second prong. You have to meet
4 both. You have to be a named organization.

5 THE COURT: Uh-huh.

6 MS. MALLORY: A recent case, 1996 case,
7 Children, Incorporated, versus City of
8 Richmond, the Supreme Court said that. You
9 have to belong in one of those classes of
10 property.

11 Now, the burden of proof is clearly on
12 Mr. Culler to prove his case, to prove that
13 this property comes within those exemption
14 provisions. And under the section -- the
15 code section that he's suing under,
16 58.1-3984, it is his burden to prove that our
17 assessment of their property is erroneous.

18 In County of Henrico versus Management
19 Recruiters of Richmond, they said that a tax
20 assessment made by the proper authorities is
21 presumed to be correct and valid.

22 Moving on to the general rule, yes, the
23 general rule is, "Taxation is the rule and
24 the exemption is the exception." Lynchburg
25 YMCA said that.

1 And as a result, they also said that
2 the Supreme Court historically applies a
3 liberal interpretation to these pre-'71
4 properties; and that as to those properties
5 named in the statute, named in the
6 constitution, exemption becomes the rule.
7 But you have still have to meet the
8 requirements. You still have to be an
9 asylum, and you still have to be operated as
10 a charity, true. Under liberal construction,
11 that's correct; but if you don't fall into
12 that classification, then exemption is not
13 the rule.

14 The City of Petersburg case that I
15 cited in my brief from 1884 said, "The intent
16 of the legislature to confer an exemption
17 must be clear beyond a reasonable doubt." So
18 if the legislature didn't intend to confer an
19 exemption on homes for the aged and the '71
20 constitution doesn't want the classification
21 exemption to be expanded, if the Virginia
22 United Methodist Home doesn't clearly fall
23 into the category of asylum and operated
24 exclusively for a charity, then exemption
25 isn't the rule.

1 THE COURT: Don't you think these --
2 the legislature meant that the cutoff time
3 was '71? Everything before then that wasn't
4 exempt should remain exempt and --

5 MS. MALLORY: Almost.

6 THE COURT: Almost.

7 MS. MALLORY: I don't believe they
8 intended to exempt people who were not
9 entitled to an exemption.

10 THE COURT: Uh-huh.

11 MS. MALLORY: I don't think they would
12 say, "Well, we're going to" -- in 1971, we're
13 going to say, "Well, even if you weren't
14 entitled to the exemption, if -- but the
15 jurisdiction has made a mistake and exempted
16 you, we're holding them to that now and
17 forever and ever."

18 If you were entitled to an exemption
19 under the classification statute, yes, a
20 liberal interpretation follows institutions
21 that were in existence prior to '71.

22 THE COURT: Don't you think there is
23 some room to argue at least that the
24 petitions that were expanded in 1971 as to
25 these two facilities were probably leaning

1 towards more -- leaning more towards granting
2 the exemption under those conditions than
3 they do now?

4 MS. MALLORY: Leaning more toward
5 granting the exemption?

6 THE COURT: Well, given the liberal
7 construction, don't you think the conditions
8 that existed in '71 probably leaned more to
9 the exemption, allowing the exemption, than
10 they do under the conditions that exist today
11 at the facility?

12 MS. MALLORY: I would say that they
13 were probably giving out more charitable care
14 in that -- in that time period.

15 THE COURT: Uh-huh.

16 MS. MALLORY: I would certainly agree
17 that after hearing Mr. Crumb's testimony,
18 that seems clear, but that's not --

19 THE COURT: Whether it's clear to you
20 as it is to me -- it's clear to me that that
21 were -- there was more charity involved in
22 '71, I think Crump -- or Crumb?

23 MR. CULLER: Crumb.

24 THE COURT: Crumb. Crumb's testimony
25 than what might exist today.

1 MS. MALLORY: That's true. However,
2 Mr. Crumb also acknowledged, as far as the
3 asylum argument is concerned, that their
4 intent in the 1970s was to have a retirement
5 community for active retirees. That was his
6 quote. And he said yes, that's true.

7 THE COURT: Uh-huh.

8 MS. MALLORY: A retirement community is
9 not an asylum --

10 THE COURT: Uh-huh.

11 MS. MALLORY: -- he said. And he
12 visited people, and if they weren't mobile or
13 ambulatory --

14 THE COURT: Uh-huh.

15 MS. MALLORY: -- they didn't get in.
16 You know, he didn't want people that weren't
17 active. They wanted them to be independent.
18 I mean, that's what I got from his testimony.

19 And he also said something else. When
20 Mr. Culler was questioning him about, "Don't
21 your people get sick over time and don't they
22 eventually end up being bedridden," et
23 cetera, et cetera, Mr. Crumb said, "They
24 didn't need to be committed," which to me --
25 that's the first thing I thought of was an

1 asylum, you know, committed, asylum. I mean,
2 I think he was making a point -- you know,
3 his gut reactions to the word "asylum" may
4 have been the same as yours.

5 THE COURT: Uh-huh.

6 MS. MALLORY: They weren't that type of
7 institution. They weren't the type of
8 institution you would commit somebody to or
9 that these people weren't capable of taking
10 care of themselves on their own. They wanted
11 to be in a retirement community. It was a
12 lifestyle choice, not a lack of choice where
13 they have nowhere else to go, which is what
14 asylum seems to connote. It's people like
15 orphans, the poor, insane, deaf and dumb, who
16 are kind of at the mercy of society, at
17 least -- you know, during the time period
18 that we're talking in the 1902 constitution,
19 you know, 1948, in that time period.

20 The meaning then is somewhat different
21 than probably what we think of it now. But,
22 you know, orphans and poor people and, you
23 know, deaf and dumb, blind, or insane people
24 were at the mercy of society. They were
25 either mentally or physically or financially

1 in a way incapacitated and had nowhere else
2 to turn to.

3 That's not the case here. This is a
4 lifestyle choice to move into a certain
5 place, it still is. But that was -- that was
6 their intent in the 70s.

7 Westminster-Canterbury, although under
8 strict construction, the Supreme Court did
9 say that only those organization providing
10 housing for the elderly clearly qualifies
11 under the classification statute, they're
12 entitled to an exemption at the hands of the
13 taxing authorities.

14 The important point -- part of that is
15 at the hands of the tax authorities. The
16 city's hands, the city's taxing authority
17 hands, are bound by the stricture of
18 exempting classification -- classification
19 exemptions, I'm sorry. We have to stay
20 within the bounds of that law, and that's
21 what we're trying to do.

22 And if it's beyond our authority, under
23 the law that we've been given, to grant
24 somebody an exemption, the general assembly
25 can do it, because they're not bound by the

1 strictures. They're bound by Section 6 of
2 the current constitution that gives them
3 authority to designate people, designate
4 organizations tax-exempt, and they've done it
5 a number of times.

6 Interestingly, in, you know, the
7 section on designation, the list of
8 organizations that have been designated by
9 the general assembly to be tax-exempt,
10 Mr. Culler brought up the Virginia Baptist
11 Home Attorney General opinion. Virginia
12 Baptist home has been designated tax-exempt.
13 The Beth Sholom home, Sunnyside Presbyterian,
14 Virginia Lutheran Homes, Virginia Methodist
15 Home, probably -- you know, it would seem
16 appropriate that Virginia Methodist Home,
17 United Methodist Home, could go that route
18 too. They've certainly gone that route with
19 Cedarfield, so it's not precluded that they
20 do that.

21 And if we -- if you find -- I mean, if
22 you're in doubt or, you know, if the evidence
23 is maybe too close to call, you can send it
24 to the general assembly. You can say, you
25 know, "There's nothing clear here." If the

1 general assembly wants them to be tax-exempt,
2 they can make them tax-exempt. They made
3 Cedarfield tax-exempt. You know, if
4 Cedarfield can get tax-exemption, the
5 Hermitage should not have a problem.

6 There are Attorney General opinions
7 that say that homes for adults or adult-care
8 homes are not within the classification of
9 asylum. Mr. Culler is correct; we don't have
10 any case law on the subject. All we do have
11 is how the Attorney General stands.

12 But, of course, Attorney General is,
13 you know, the chief law enforcement officer
14 for the state, and their opinions are
15 certainly given some -- I would say
16 deference -- but are given consideration,
17 because they have all of these resources to
18 research these things at their disposal. The
19 Attorney General who decided the Blitz versus
20 Belvedere case and also cited Black's Law
21 Dictionary.

22 THE COURT: Uh-huh.

23 MS. MALLORY: In that opinion, the
24 Attorney General said, "An asylum is a
25 retreat or a shelter or an institution for

1 the protection or relief of the unfortunate,
2 destitute, or afflicted."

3 Mr. Culler said he doesn't want to use
4 the word "unfortunate" about the people in
5 the Hermitage. Well, then maybe the reason
6 he doesn't want to use that term is because
7 he can't.

8 The Attorney General also said the term
9 has been frequently applied to Alzheimer's --

10 THE COURT: Do we have to focus on the
11 condition of these people when they enter the
12 facility and not pay attention to how they
13 come to be after they remain?

14 MS. MALLORY: No. We don't have to
15 focus on them at entry, but I will point
16 out -- I was going to get to this later, but
17 certainly I can bring it up now. If we're
18 about to talk about the nursing home, the
19 health-care center, that was built in 1976.
20 It's post-'71 property. It's not
21 grandfathered, and strict construction
22 applies. And under Westminister-Canterbury,
23 nursing home, at least that portion, should
24 not be tax-exempt.

25 So what we're left with -- I mean,

1 certainly the nursing home can't be
2 charitable. They don't take Medicare and
3 Medicaid. Mr. Smith said it's paid through
4 all private sources, entirely paid through
5 private sources. So the strict construction
6 which applies to the nursing home and the
7 Supreme Court --

8 THE COURT: What about Mr. Crumb's
9 testimony about burying folks who couldn't
10 afford to be buried, burying those
11 individuals who couldn't afford their own
12 funeral expenses?

13 MS. MALLORY: That would be during --

14 THE COURT: During his time.

15 MS. MALLORY: -- Mr. Crumb's tenure in
16 the -- going back to the '70s?

17 THE COURT: Right. You're at the
18 charity question now, but --

19 MS. MALLORY: Right.

20 THE COURT: -- with respect to asylum,
21 though, I mean, wouldn't you expect that
22 people who couldn't afford that or didn't
23 have the means or whatever to provide for
24 their burial might by then truly be an
25 asylum?

1 MS. MALLORY: Possibly, but we don't
2 have a clear definition of asylum. That's
3 sort of the problem.

4 THE COURT: Well, you've got a
5 definition you just read.

6 MS. MALLORY: Right. I mean, it says
7 several things. It says -- it throws in
8 possibly almhouses, which is to suggest that
9 they were poor, the unfortunate, or the
10 afflicted, which might suggest that they were
11 sick or disabled or, you know, one of our
12 more current terms.

13 THE COURT: Uh-huh.

14 MS. MALLORY: That they were insane or
15 blind or deaf or dumb.

16 THE COURT: Uh-huh.

17 MS. MALLORY: There's -- I cited in the
18 1891 edition Black's Law Dictionary in my
19 brief, that says the same thing.

20 "Unfortunate" means an asylum for the poor,
21 the deaf, the dumb, the insane, orphans. As
22 I said, that connotes people who can't turn
23 to anybody else in society.

24 THE COURT: Uh-huh.

25 MS. MALLORY: Although Mr. Crumb

1 suggested that there were such people in the
2 institution in the Hermitage at that time, we
3 don't really know the time period and we
4 don't know if it's pre-'71, post-'71, whether
5 they should be grandfathering. Do you see
6 what I'm saying?

7 THE COURT: Uh-huh.

8 MS. MALLORY: Because he didn't -- I
9 mean, he said, "Yeah, we did that," but he
10 didn't say when they did it precisely. Was
11 it, you know, on or before July 1st, 1971.
12 You know, it's a long time ago; that would be
13 tough to remember.

14 THE COURT: Uh-huh.

15 MS. MALLORY: You know, at some point,
16 they institute the entrance fee and monthly
17 fee program. You know, that's when they
18 started moving away from being charitable.

19 THE COURT: Uh-huh.

20 MS. MALLORY: And being an asylum as
21 well, not because of the fees. But like I
22 said, if you look at now -- I mean, the year
23 that's in issue in this case is 1996. That's
24 the year we're -- they were put back on the
25 tax rolls, which is, you know, a year ago.

1 All right.

2 The nursing home part is post-'71, the
3 strict construction. You take that off, what
4 is the residential section, independent
5 living, according to Mr. Smith, people who
6 are completely independent and assisted
7 living, one and two.

8 He also admitted that the Department of
9 Social Services, which regulates that section
10 of the Hermitage requires those people to be
11 ambulatory. How afflicted, how unfortunate,
12 how disabled can they be? I mean, at least
13 the independent section is more like a
14 retirement community, Mr. Smith said that as
15 well. He said it could be characterized,
16 that section of the nursing home -- and I did
17 restrict it to that section -- could be
18 characterized as a retirement community, like
19 Westminster-Canterbury.

20 THE COURT: Are you suggesting that
21 perhaps the tax could be proportionate?

22 MS. MALLORY: That's a possibility. We
23 suggested that to Mr. Culler as a --

24 THE COURT: Settlement offer.

25 MS. MALLORY: Yes. I stopped, because

1 I wasn't sure if I was supposed to bring that
2 up.

3 THE COURT: That's why I gave it you.

4 MS. MALLORY: I'm sorry. I got there,
5 and I said -- I'm not supposed to say that.
6 I'm sorry. I really didn't mean to do that.

7 But the year that's in issue,
8 obviously, is '96. What's important about
9 '71 is the grandfathering thing. All right.
10 But the city is still saying, all right, if
11 you're convinced they were an asylum in '71,
12 if you're convinced that they were charitable
13 to the extent that they deserve to be
14 grandfathered, that they were entitled to the
15 tax-exemption, look again in '96. Even under
16 liberal construction, they're not an asylum
17 anymore, and they're certainly not as
18 charitable as they used to be.

19 And as you pointed out to Mr. Culler,
20 poor people can't get in. Mr. Smith said
21 their lowest entrance fee for life-care
22 contacts is \$55,000 up front. That's before
23 you pay them anything monthly. And if you're
24 on a monthly lease, you're not entitled to
25 help from the Samaritan fund. He said that

1 as well. It's also in our stipulations.

2 Also in our stipulations is the fact
3 that 25 percent of the people in the
4 residential section of the Hermitage are on
5 monthly leases. Twenty-five percent of the
6 people there are not entitled to charitable
7 help from the Hermitage. If you knock off
8 the nursing home, knock off the 25 percent
9 there on monthly leases, who if they stop
10 paying their lease will be asked to relocate,
11 that's also in the stipulation, and who won't
12 get help from the Samaritan fund. Knock out
13 the people that are independent, completely
14 independent because they're not afflicted,
15 they're not unfortunate, they're not
16 destitute, they're not an asylum. Now what's
17 left? Not a lot.

18 If you want to talk about the Snyder,
19 the majority of the people at the Snyder are
20 on monthly leases. That's in our
21 stipulations. Only six people at Snyder are
22 on the life-care contracts.

23 In our stipulations, it's a fact that
24 no one at Snyder is receiving help from the
25 Samaritan Fund now, not in the future. Now,

1 the year right now, in this time period that
2 we're talking about, nobody at Snyder is
3 getting charitable help from the Hermitage.
4 That's a completely separate property.

5 And that right there -- you know, and
6 the fact that they don't even have a
7 health-care section over there; all they have
8 is independent living and assisted living.
9 Not an asylum, not charitable, even under
10 liberal construction.

11 So what I'm saying is, you know, we
12 would argue that they weren't necessarily an
13 asylum in 1971, but if you're convinced that
14 they are and you're convinced they were
15 charitable in '71, even if you apply liberal
16 construction in 1996, Snyder is not exempt.
17 The nursing home of Hermitage is not exempt.
18 The --

19 THE COURT: Snyder is not exempt under
20 liberal construction for what reason again?

21 MS. MALLORY: Because they're not
22 giving any charitable assistance to anybody
23 at Snyder. The monthly lease people, the
24 people on monthly leases --

25 THE COURT: Well, that's currently.

1 But what is the evidence that charity was
2 given at Snyder in '71?

3 MS. MALLORY: That's what I'm saying.
4 If you say, "All right. They're
5 grandfathered in '71" --

6 THE COURT: Uh-huh.

7 MS. MALLORY: -- and then you suddenly
8 jump to '96 is when we made the determination
9 that they should be back on tax rolls --

10 THE COURT: Uh-huh.

11 MS. MALLORY: -- and you look at them
12 again under liberal construction, are they
13 still meeting asylum and charitable, even
14 under liberal construction you should say no,
15 because nobody is receiving any help --

16 THE COURT: Uh-huh.

17 MS. MALLORY: -- in '96. Nobody --
18 everybody over there is independent living.

19 THE COURT: I thought the analysis was
20 to look at what conditions were in 1971 to
21 determine whether or not they were then
22 charitable or an asylum.

23 MS. MALLORY: Right.

24 THE COURT: And if they were, they're
25 exempt.

1 MS. MALLORY: At that time, but they
2 have to continue to meet those requirements
3 under liberal construction. That's --

4 THE COURT: So the grandfather doesn't
5 apply?

6 MS. MALLORY: That's what the
7 grandfather clause does. If they were exempt
8 in '71 --

9 THE COURT: Uh-huh.

10 MS. MALLORY: -- that means they are
11 entitled to liberal construction.

12 THE COURT: Uh-huh.

13 MS. MALLORY: From 1971 forward, it's
14 strict construction.

15 THE COURT: Uh-huh.

16 MS. MALLORY: That's what -- that's the
17 significance of 1971.

18 THE COURT: What are you arguing, then?
19 That under the conditions that exist at
20 Snyder today, even given a liberal
21 construction --

22 MS. MALLORY: Right.

23 THE COURT: -- they're not entitled to
24 it?

25 MS. MALLORY: Right.

202

1 THE COURT: I see.

2 MS. MALLORY: And because the Hermitage
3 is after 1971, it was built in '76, you have
4 to apply strict construction to that.

5 THE COURT: I thought the Hermitage --
6 that's when the nursing facility was built.

7 MS. MALLORY: In '76. That section,
8 the health-care center --

9 THE COURT: All right.

10 MS. MALLORY: 115 beds of --

11 THE COURT: Well, the Hermitage was
12 there before the '70s.

13 MS. MALLORY: Right. No. That was.
14 But the property -- the health-care center
15 didn't exist in '71 --

16 THE COURT: Uh-huh.

17 MS. MALLORY: -- and couldn't be
18 grandfathered, because it wasn't there. It
19 didn't exist in that sense. And the property
20 itself is what we -- receives the exemption.

21 THE COURT: Uh-huh.

22 MS. MALLORY: And the property wasn't
23 there to be grandfathered, so they have to
24 apply strict construction to just the
25 health-care -- at least the health-care

1 section.

2 THE COURT: Uh-huh. You still argue
3 that Snyder has no entitlement because
4 there's no charity there today?

5 MS. MALLORY: And because they're not
6 entitled in the sense of -- you know, they
7 don't protect the destitute or the
8 unfortunate. They're doing -- you know, all
9 they have there is independent and assisted
10 living. They don't have a health-care --
11 they don't have -- the really sick people
12 from Snyder get sent to Hermitage's
13 health-care center. So that's -- all they
14 have is that residential section.

15 THE COURT: Uh-huh.

16 MS. MALLORY: And that's like a
17 retirement community. It's independent
18 living. It's assisted living. They need a
19 little help. I think -- I might be wrong. I
20 think the example Mr. Smith used were, "They
21 might need a little help getting to the
22 dining room; they might need a little help
23 getting dressed in the morning." I can't
24 remember all of them; but, you know, he put
25 it in those terms. They need some

1 assistance, but they still have to be
2 ambulatory. They have to be able to get to
3 an exit, a fire exit without assistance.
4 That's what the --

5 THE COURT: You don't see a place for
6 people like that as a place for a refuge?

7 MS. MALLORY: Oh, the refuge. Well,
8 Mr. Culler quoted you a phrase from the
9 dictionary, I believe is how he said it. And
10 he didn't quote you the last half of that
11 phrase.

12 This is my copy of the 1891 Black's
13 Dictionary. This is also in the 1990 copy of
14 the Black's Dictionary: "A sanctuary or
15 place of refuge and protection where
16 criminals and debtors found shelter."

17 That's the second half of that sentence
18 he didn't happen to mention.

19 THE COURT: What? Read that again.

20 MS. MALLORY: "A sanctuary or place of
21 refuge and protection where criminals and
22 debtors found shelter or protection from the
23 hands of justice," like a political refugee
24 who's seeking asylum, a criminal seeking
25 asylum in a church, a debtor seeking asylum

205

1 from his creditors. That's the second half
2 of the sentence.

3 THE COURT: Okay.

4 MS. MALLORY: And then at the last --
5 the last part of that is, third definition,
6 "An institution for the protection and relief
7 of the fortunates -- unfortunates as asylum
8 for the poor."

9 That would be the section that I quoted
10 in my brief.

11 THE COURT: All right.

12 MS. MALLORY: Not the selective
13 quoting --

14 THE COURT: Uh-huh.

15 MS. MALLORY: -- of the top section.

16 The legislative history in the 1971
17 constitution might be helpful in determining
18 whether "asylum" includes home for the aged,
19 not just Attorney General's opinion. The
20 1969 commission on the constitution revision,
21 one of the changes that they proposed in the
22 classes of exempt property is the addition of
23 homes for the aged.

24 They must not have thought they were
25 already included in the asylum, because they

1 wouldn't have needed to add it, would they?
2 And they didn't make that change. And if
3 they had, the Hermitage would clearly have
4 been tax-exempt. And that history, that
5 legislative history of the '71 constitution
6 is cited in the 1986 -- I'm sorry, 1987
7 Attorney General's opinion.

8 Mr. Culler quoted United Giver's Fund.
9 That property considered to be -- I'm sorry.
10 That's the wrong section.

11 Okay. Organized -- "Organizations
12 conducted to perform some service of public
13 good or welfare." That's from United Givers
14 Fund. The very next sentence of United
15 Givers Fund, "Charitable means liberal and
16 benefactions to the poor."

17 There are a lot of, as you pointed out,
18 organizations or entities that perform some
19 service of public good or welfare, but
20 they're aren't all exempt, and charity isn't
21 the only test. And there are plenty of
22 501C3's that pay real estate taxes. That is
23 not the test either.

24 The parameters of federal tax law that
25 exempt 501C3 corporations are different than

1 the parameters that are contained in our
2 constitution and in our code. And if 501C3
3 meant you had an automatic exemption,
4 Manassas law would have been automatically
5 exempt, but they weren't. They went ahead
6 and analyzed them under the classification
7 provisions.

8 So just because Virginia United
9 Methodist home is recognized by the general
10 assembly to receive benevolent and charitable
11 under 501C3 exemption, which is where those
12 words come from, doesn't mean we can. The
13 city can't do that, because our case law and
14 the history of this tax-exemption
15 classification says we can't.

16 The general assembly can and they often
17 do. We do rely heavily on
18 Westminster-Canterbury, and I do realize
19 that it is a strict construction case, but it
20 is at least applicable to the health-care
21 center, that section of the Hermitage.

22 And, in addition, it is the only case
23 that we have got homes for the elderly, so
24 the analysis is there, even if we have to
25 switch from strict construction to liberal

1 construction and look at some of the same
2 things.

3 THE COURT: Uh-huh. Why was it
4 necessary to have any testimony from
5 Mr. Crumb? I mean --

6 MS. MALLORY: To determine whether or
7 not they should be entitled to liberal
8 construction as being exempt in '71.

9 THE COURT: So I -- the Court has to
10 make a number of determinations. Do I have
11 to first determine whether in 1971 they were
12 entitled to an exemption --

13 MS. MALLORY: Yes.

14 THE COURT: -- based on the conditions
15 that existed then?

16 MS. MALLORY: Yes.

17 THE COURT: And then if they did --

18 MS. MALLORY: Yes.

19 THE COURT: -- with the liberality of
20 construction, then look at the circumstances
21 that exist today --

22 MS. MALLORY: Exactly.

23 THE COURT: -- under liberal
24 construction?

25 MS. MALLORY: Correct. And if for some

1 reason you decide that they weren't entitled
2 to the tax-exemption, then you need to apply
3 strict construction to the '96 determination
4 of their tax record. That's how that goes.
5 You know, 1971 --

6 THE COURT: What was the testimony --
7 evidence about Snyder in '71 with respect to
8 charity? Wasn't there evidence --

9 MS. MALLORY: I don't recall the -- I
10 don't recall there was a differentiation
11 between talk about Hermitage and Snyder. I
12 mean, they may have mentioned that they kind
13 of ran together. I mean, I don't remember --

14 THE COURT: Well, let me say this: I
15 think at the outset of your comments, I'll
16 use the word "concede," you conceded there
17 was more charity in '71 than there is now.

18 MS. MALLORY: I don't concede they were
19 charitable, but there was more charity.

20 THE COURT: Sure. And that would apply
21 to both facilities, wouldn't it?

22 MS. MALLORY: I guess that would depend
23 on opinion, whether there was evidence
24 sufficient to support each facility
25 individually. See, we're not exempting

1 Virginia United Methodist Homes here. The
2 whole Virginia United Methodist Home
3 Corporation does not exist in the City of
4 Richmond.

5 THE COURT: I know. But we're doing
6 Snyder --

7 MS. MALLORY: So I would submit that
8 there would have to be separate evidence to
9 support each institution; that each
10 institution separately and independently has
11 to meet that two-prong test.

12 THE COURT: Uh-huh.

13 MS. MALLORY: So you have to do the
14 analysis for each facility. So when you hit
15 '71, what your decision there is determines
16 what happens in '96.

17 THE COURT: Mr. Crumb was describing
18 his activity as it related to both, wasn't
19 he?

20 MS. MALLORY: I thought he meant the
21 administrator for the Hermitage, at least
22 Mr. Smith, is also the administrator for
23 Snyder.

24 THE COURT: I'm talking about Crumb.

25 MS. MALLORY: Yes. I think it was that

1 way then too; that they began kind of sister
2 facilities, even though they're actually on
3 separate tax parcels. In fact, they're
4 across the river from each other.

5 But I mean, he did not -- I don't
6 recall that he delineated, "We did this at
7 Snyder. We did this at Hermitage." I
8 thought it was a general discussion of the
9 type of things that went on, presumably, at
10 both facilities; but, you know, I don't know
11 that it was at both facilities.

12 THE COURT: All right.

13 MS. MALLORY: As I said,
14 Westminister-Canterbury, although it is
15 strict construction -- and if you use that
16 case, you would have to look at it in a
17 liberal construction light -- is the only
18 case that deals with homes for the elderly.

19 THE COURT: Westminister.

20 MS. MALLORY: Right.

21 One of the big points in Westminister
22 that really has nothing to do with liberal or
23 strict construction is Westminister's
24 articles of incorporation.

25 Westminister's articles stated that the

1 corporation was organized exclusively for
2 charitable purposes, although that's not
3 conclusive in the case, you know, at least
4 the corporation presented to the public, to
5 the SCC and anybody who wanted to go look up
6 these articles, "This is what we intended to
7 do." Those words are not in Virginia United
8 Methodist Home's articles, anywhere, at any
9 time.

10 The purposes for which they were
11 organized in 1945 and all of their articles
12 are stipulated to in our stipulation of fact.
13 In 1945 they said, "Our purpose is homes for
14 the aged, needy and infirm." In 1961, they
15 deleted the words "needy and infirm," their
16 choice, their purpose, their corporation.
17 They took that out, and I'm pretty sure it
18 was a conscious decision, because they had to
19 file new articles. They made a choice about
20 what their purpose was going to be.

21 A lot of the evidence that came up
22 yesterday that Mr. Culler brought out is
23 irrelevant to whether Hermitage is an asylum
24 or charitable. It sounds nice. They do nice
25 things. It's nice that they took in -- take

1 in needy people. It's nice that they don't
2 kick them out after they run out of money.
3 Are they liberal in benefactions to the poor?

4 United Givers Fund also said that
5 charity had to be your dominant purpose, your
6 primary, if not sole, object. That's not the
7 case in 1996. It is not their sole object.
8 It is not their dominant purpose. And I'm
9 using pre-'71 case law and pulling it to '96.
10 It's liberal construction.

11 And the same case that he cited that
12 says "to do some public -- service of public
13 good or public welfare." That's a very
14 general definition and not very helpful,
15 because what service to the public or service
16 to -- you know, the public welfare is, it's a
17 little hard to pin down, which is why United
18 Givers Fund went on to say these other things
19 about charity.

20 And to be honest, the Hermitage's -- I
21 don't want to call it charity, but their --
22 what they call their charitable, benevolent
23 fees, et cetera, are not given to the general
24 public. They're given to people that come in
25 the home, who had assets when they came into

1 the home, whose assets are now depleted.

2 Their benevolence, quote/unquote, is
3 given to a very select group of people, not
4 the people on monthly leases, not the people
5 at Snyder, but a very select few people,
6 select number of -- I said few, because it is
7 75 percent of the people in residency, but
8 that's all it's available to. That's not
9 necessarily who they give it to.

10 And even if they let you in, on entry,
11 even if they say you don't have to pay the
12 full monthly fee, there's a limit on how much
13 they're going to help you, and you've got to
14 be able to come up with -- you know, the
15 better of their monthly fee, \$1200 or
16 whatever. They're not letting you in for
17 free.

18 They -- Mr. Culler admitted, they don't
19 let poor people in. And, I mean, I'm sorry,
20 but if -- I'm not quite -- I'm not quite
21 clear on how taking in aged, middle-income,
22 and upper-income people is helping the public
23 good or the public welfare. They're not the
24 people who are out on the streets who really
25 need help.

215

1 I mean, the Hermitage is taking these
2 people out of nice homes, you know. These
3 people own stocks and bonds and CDs, and
4 they're not the ones who really need help.
5 That's not public welfare or the public good.
6 That's not the people they're taking in. And
7 the people they're helping after they get
8 there are the same middle-income people.

9 Some of the evidence talked about
10 capped contracts, the limits on how much the
11 Hermitage will subsidize, people outliving
12 their assets and supporting them, what they
13 do with their money. Those are business
14 decisions that they make, because bottom
15 line, Virginia United Methodist Home is a
16 corporation. They are a business and these
17 are business decisions.

18 When you decide to take somebody in
19 from day one and subsidize their care at \$600
20 a month or \$500 a month, it's a business
21 decision to do that. When you try to
22 calculate how long somebody is going to live
23 so that you can calculate how much money you
24 need from them to pay for their care, if you
25 miscalculate, that's just an error in

1 business judgment. You made a mistake.

2 And the Hermitage is the first company
3 I've ever met that says, "When we make a
4 business error, we should call that charity."
5 They make a decision where to put their
6 money. They made a decision to put some of
7 the charitable donations, bequests, and
8 legacies into an investment portfolio and
9 build Cedarfield. That's a business
10 decision.

11 The entrance fees, the monthly fees,
12 are business decisions, and that way, the
13 Hermitage and Virginia United Methodist Home
14 has changed since the '70s and the '60s when
15 they first started. They were first run by
16 ministers of the church. They're now run by
17 an independent board of directors who make
18 business decisions for the parent
19 corporation.

20 The bottom line is
21 Westminster-Canterbury said that there is
22 some doubt as to whether a home for the
23 elderly, or anyone, really, falls into a
24 classification provision. This is
25 specifically why the general assembly

217

1 reserved itself the authority to grant
2 designation. They have another route. This
3 is not their -- the end of their line. They
4 can go get designation from the general
5 assembly.

6 And plenty of other homes for the
7 elderly have since the 1970s, and probably
8 earlier than that -- no. I'm sorry. It
9 couldn't be earlier than that, because it
10 started with the Virginia constitution, but
11 people exactly like Mr. Culler was referring
12 to in that Attorney General's opinion, like
13 Virginia Baptist Homes. He said they were
14 clearly exempt. That's not what that
15 Attorney General opinion said.

16 What it said is, we're not dealing with
17 that issue. You've already exempted them.
18 Now we're dealing with this farm property to
19 decide whether or not they're making a profit
20 from it. They made a statement like all of
21 their money -- I don't even know. I believe
22 it was all of their money goes back into the
23 home and you've already exempted them, so the
24 Attorney General said, "I'm not going to deal
25 with that." But Virginia Baptist Home is

1 exempt by designation.

2 There are too many homes for the
3 elderly that, just like the Hermitage,
4 they're exempt by designation. That means
5 that basically other localities weren't
6 willing to exempt under the classification
7 either. I mean, Virginia Baptist Homes
8 clearly existed before '71, so they do have
9 an alternative route.

10 THE COURT: With respect to the nursing
11 facility at the Hermitage, the one that
12 didn't come into place until '76, I think,
13 isn't there some evidence that there's
14 charity there?

15 MS. MALLORY: You mean the people that
16 won't take Medicaid or Medicare?

17 THE COURT: Right. But I think the
18 testimony was that they don't put anyone out
19 if their money runs out; or if there's no
20 more private sources, they wouldn't deny or
21 continue services. Was that the evidence?

22 MS. MALLORY: They're life-care
23 contract people in the nursing home as far as
24 I know. There's also daily-rate people in
25 the nursing home.

1 THE COURT: Uh-huh.

2 MS. MALLORY: I don't know that they
3 specified, you know, which part of the
4 Hermitage they were in, as far as granting
5 them funds from the Samaritan funds. I just
6 know you don't get Medicare. You can't go in
7 there and have Medicare or Medicaid.

8 I mean, that's not -- in the sense that
9 a charity is liberal in benefactions to the
10 poor and they charge -- I think the fee
11 schedule says about \$3,000 a month or in that
12 range of two to \$3,000 a month, and you can't
13 use Medicaid or Medicare and it's all
14 private-funded. I'm not sure quite how
15 charitable that is, but it still has to be
16 under strict construction.

17 THE COURT: All right.

18 MS. MALLORY: So the city would ask
19 that you dismiss the plaintiff's case.

20 MR. CULLER: Your Honor, who is liberal
21 in their benefactions of the poor? Those
22 nursing homes that call on the federal
23 government to pay them under Medicaid, or
24 those nursing homes that continue to care for
25 their indigents with no pay?

1 THE COURT: Was that the evidence here
2 as to the Hermitage?

3 MR. CULLER: Yes, sir.

4 THE COURT: That in those cases
5 where -- at the nursing facility at the
6 Hermitage where for some reason or another
7 payment cannot be made for the upkeep of
8 those individuals, Samaritan funding or other
9 sources kick in?

10 MR. CULLER: Yes, sir.

11 And counsel wants to keep harping on
12 the Samaritan funds as though that was our
13 only source of benevolent care. And as I've
14 shown you, you've got the entire corporation
15 at every level, for the monthlies, for people
16 in hospice, for the people who are daily
17 rate; everybody receives services at a cost
18 of the corporation that are only paid for by
19 gifts from others.

20 THE COURT: Uh-huh.

21 MR. CULLER: She cited the --

22 THE COURT: Well, let me ask you this:
23 There are some charity at the Hermitage with
24 that nursing facility.

25 MR. CULLER: Absolutely.

1 THE COURT: But they're not all the
2 charity.

3 MR. CULLER: Under which definition?

4 THE COURT: Under the exclusive
5 charitable.

6 MR. CULLER: Liberal or strict?

7 THE COURT: Liberal.

8 MR. CULLER: Oh, well, I flung out
9 there my cases and said, "There they are.
10 Take a swing at them."

11 THE COURT: I'm suggesting --

12 MR. CULLER: Charity, organized and
13 conducted to perform some public service.
14 She never laid a glove on that, Your Honor.
15 That's the Richmond Memorial Hospital case.
16 She wants to keep coming back to it. It
17 means "free," and I've cited those cases that
18 say "free" has nothing to do with charity,
19 the way we're talking about.

20 So if somehow we could draw back into
21 that kind of natural assumption because of
22 the way it's ordinarily used, but that's not
23 how it's used by the Supreme Court or the way
24 it's continuously used, this section of the
25 constitution.

1 THE COURT: Uh-huh.

2 MR. CULLER: Now, she cited the YMCA
3 case.

4 THE COURT: What about this division
5 between the facility as it existed in '71 and
6 the facility as it exists now? Keeping in
7 mind that the nursing part didn't come into
8 play, is there some room here for the court
9 to proportionate it?

10 MR. CULLER: No. That issue came up in
11 United Givers Fund case. The city taxed the
12 entire Branch House on Monument Avenue, and
13 then at trial or appeal said, "Okay, well,
14 maybe you're using some of that for
15 charitable purposes, but you're renting out
16 this space."

17 THE COURT: Uh-huh.

18 MR. CULLER: And we are testing a tax
19 assessment. If we show one charitable break,
20 then the whole assessment falls. If the
21 Court rules, I believe, in favor of Methodist
22 Homes today, we'll be back next year with
23 strict construction on the nursing home.

24 THE COURT: Uh-huh.

25 MR. CULLER: But because they put it

1 all together and they've assessed it all, the
2 Court doesn't have the power -- you don't
3 have any evidence about value. I don't know
4 how you could possibly -- if you had the
5 authority to proportion the tax assessment, I
6 don't know how you can go about doing that.
7 I think the entire assessment has got to
8 fall.

9 THE COURT: Uh-huh. All right.

10 MR. CULLER: She cited the YMCA case as
11 a case that showed strict construction.

12 THE COURT: Let me ask you this: What
13 about Snyder? Is there evidence -- there's
14 no evidence that there's charity in Snyder by
15 way of taxing the Samaritan fund?

16 MR. CULLER: Presently?

17 THE COURT: Presently.

18 MR. CULLER: In 1996 that's true.
19 There's evidence that it loses \$150,000 a
20 year and it continually loses money, and
21 these folks have continued to operate. And
22 they're doing that not for profit, but
23 they're doing that for a charity fund.
24 They're doing that in order to perform an
25 operation that's of public good.

1 THE COURT: All right.

2 MR. CULLER: The YMCA case said this:
3 It's insisted by the Commonwealth that the
4 provisions of Section 483 of the constitution
5 must receive a strict construction.

6 The general rule is provisions
7 exempting property from tax -- from taxation
8 must be strictly construed, dot, dot, dot.
9 But as a policy of the state, it's always
10 been to exempt property of the character
11 mentioned and described in Section 183; it
12 should not be construed the same degree of
13 strictness that applies to the provisions of
14 making the exemptions contrary to the policy
15 of the state, since as to such property,
16 exemption is the rule and taxation is the
17 exception. That case does not stand for the
18 proposition it was cited.

19 "Asylum" means several things.
20 Everyone has gone to the dictionary and
21 pulled out bits and pieces of an asylum or as
22 a refuge from the political arrests as it
23 was -- the word was used in the Middle Ages.

24 I think in the period of time we're
25 talking about, in the context of orphanages,

1 why would the government consider protection
2 of the young in an orphanage an exempt
3 asylum, but not the elderly? What would the
4 other asylums mean?

5 If we had an insane asylum that charged
6 fees, would it not be an asylum?
7 Charitableness has nothing to do with
8 asylumness except as to the extent that we
9 provide protection.

10 The city keeps wanting to say, "Well,
11 they've got this other option. They've got
12 this designation now." What is the
13 grandfather clause about that? What is
14 property presently exempted? Why should we
15 have to go to the legislature when
16 specifically there was an intent on the part
17 of those folks framing the constitution and
18 of the general assembly in the first and
19 second sessions after that constitution went
20 into effect to make sure that we didn't have
21 to go to the general assembly?

22 They included the grandfather clause to
23 protect us, to keep us from having to do
24 that, to ensure us against the potentiality
25 that folks might change their mind about what

1 was right and what was wrong later on. We
2 were grandfathered.

3 The city cited several Attorney General
4 opinions and said that they said that nursing
5 homes aren't asylums. There aren't several
6 of those. There's one. There's two that
7 says that they are.

8 Business decisions; we're bad, we're
9 not an asylum? We're not charitable, because
10 we make business decisions? That's what I
11 heard.

12 Now, the Richmond Memorial Hospital and
13 the Wise County Hospital, they probably make
14 a lot of decisions about how they're going to
15 have to charge people to keep their doors
16 open, and I suspect that they're business
17 decisions, but those two institutions were
18 found to be charitable.

19 An asylum is a place -- I thought we
20 almost had the concession that we were
21 charitable in 1971. Now, I'll have to admit
22 that the degree -- the degree of freeness is
23 less today than as it was in 1971.

24 THE COURT: Freeness?

25 MR. CULLER: Freeness.

1 The amount --

2 THE COURT: Wait a minute.

3 MR. CULLER: Yes, sir.

4 THE COURT: Your questioning would
5 agree that somehow things are different these
6 days.

7 MR. CULLER: Nothing. Prices are up,
8 if you haven't read the papers.

9 That is a fact, but that's not the fact
10 that carries today. You need to look at our
11 organization today, what it is we're about
12 and what we're doing, and determine whether
13 or not we're organized and conducted to
14 perform some public good or service.

15 But she finally got my witness, "Yes,
16 it's a retirement community." Then and now,
17 nobody comes to Hermitage who's not in homes,
18 because they want to. They're coming there
19 to grow old and die, and those are
20 unfortunate facts.

21 THE COURT: Well, Counsel, there's been
22 interesting issues in this case. I think
23 that under the applicable rules, if the
24 activities of this facility were to be
25 determined based on the rule of strict

1 construction, I'll --
2 Westminster-Canterbury, these facilities, in
3 my opinion, failed with respect to their
4 entitlement to tax-exemption.

5 However, we know that these facilities
6 were in place before 1971. The Court finds
7 that they were exempt then, of course, and
8 have been up until 1996. And by the
9 evidence, they were exempt in 1971 and,
10 therefore, are entitled to liberal
11 construction, as I understand the applicable
12 rule.

13 I think under that instruction, based
14 on the activities that have been described by
15 this evidence in this case, they're exempt,
16 and the Court so finds.

17 Mr. Culler, can you get with counsel
18 for the city and devise an order for that?

19 MR. CULLER: Yes, sir.

20 THE COURT: And the Court notes the
21 city's exceptions.

22 MR. CULLER: Yes, sir.

23 THE COURT: Thank you very much.
24
25

1 STATE OF VIRGINIA)

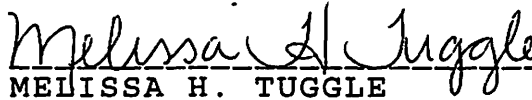
2 CITY OF RICHMOND)

3
4 C E R T I F I C A T E

5 I, MELISSA H. TUGGLE, having been duly
6 sworn do hereby certify that I was the court
7 reporter in the circuit court of the County of
8 Chesterfield at the time of the hearing herein.

9 I further certify that the foregoing
10 transcript is, to the best of my ability, a true
11 and correct transcript of the proceedings herein.

12 Given under my hand this 21st day of
13 November, 1997.

14
15 
16 MELISSA H. TUGGLE
17 COURT REPORTER
18
19
20
21
22
23
24
25

VIRGINIA :

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND
Civil Division

VIRGINIA UNITED METHODIST HOMES, INC.
t/a THE HERMITAGE IN RICHMOND,

Plaintiff,

v.

Case No. *h B 1865-4*

CITY OF RICHMOND,

Defendant.

FINAL ORDER

On October 30, 1997, came the parties, in person and by counsel upon the Amended Motion for Judgment, the responsive pleadings filed thereto and certain pretrial motions of the defendant.

The defendant, having filed its Objection to *Amicus Curie* Brief filed by Eastern Star Home of Virginia and giving Notice of the hearing, was heard in argument. Charles W. Hundley, appearing on behalf of Eastern Star Home of Virginia, was heard in reply.

The defendant was heard on its Motion to Exclude certain witness. On consideration of the arguments of counsel it is Ordered that the defendant be given leave to depose the witnesses Warner Crumb and Sarah Cheely prior to the commencement of trial. Whereupon the beginning of trial was deferred and the defendant deposed the two witnesses.

The defendant was heard on its Motion that the plaintiff's evidence be restricted to proof that the plaintiff is entitled to tax exemption for the property in question for reason that the property is used as an "asylum" within the provisions of Section 58.1-3606(5) of the Code of Virginia. Upon consideration of the arguments of counsel, the Motion is was sustained and the evidence of the plaintiff was accordingly restricted.

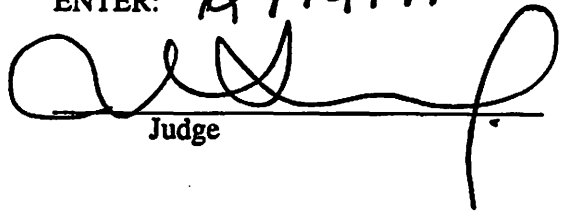
Whereupon, the parties having agreed to a trial by the Court and without a jury, the Court proceeded to hear the evidence in the case and the arguments of counsel.

Upon consideration whereof, the Court doth find that as of July 1, 1971 the properties located at 1600 Westwood Avenue and 310 West 31st Street, Richmond, Virginia were exempt and

entitled to be exempt from local real estate taxation for reason that they were then actually and exclusively occupied and used by Virginia United Methodist Homes, Inc. for nonprofit purposes and used exclusively as charities as asylums under the law then applicable and consequently under the provision of Section 58.1-3606B of the Code of Virginia, the rules of construction then applicable are to be applied in determining any exemptions that might be applied to the properties under the Constitution of 1971. Applying these rule of construction, the Court further finds that for the years 1996 and 1997, the properties belonged to and were actually and exclusively used and occupied by Virginia United Methodist Homes, Inc. and used as asylums for nonprofit purposes exclusively as charities and thus under the provisions of Section 58.1-3606(5) of the Code of Virginia the Court doth ORDER that the assessments of the two aforementioned properties for the year 1996 and 1997 is erroneous and that the properties were exempt from local taxation of real estate for the years 1996 and 1997 by virtue of Section 58.1-3608(5) of the Code of Virginia as that statute is made applicable to the properties by Section 58.1-3606(B). It is further ordered that the plaintiff shall have judgment against the defendant in the amount of \$236,319.20 on account of real estate taxes heretofore paid, and its costs incurred herein, together with interest and the legal rate from the date of this judgment, all of to which the defendant did except for the reasons set forth in the record.

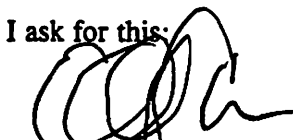
ENTER:

12/12/97



Judge

I ask for this:



E. Olen Culler (VSB#5365)
Gayle, Boyles & Culler
Dale Building - Suite 203
1504 Santa Rosa Road
Richmond, VA 23288
(804) 288-1231
Counsel for Plaintiff

Seen:

Elizabeth Butterworth Stutts
Elizabeth Butterworth Stutts
Assistant City Attorney
City Attorney's Office
1900 East Broad Street
Room 300
Richmond, VA 23219
Counsel for Defendant

and objected to for the reasons stated on
the record and for the
reasons stated in
the pre-trial motions
and for those stated
in the attached
Memorandum of
Objection:
(CBS)

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND
John Marshall Courts Building

VIRGINIA UNITED METHODIST HOMES, INC.

Plaintiff,

v.

Case No. LB-1865-4

CITY OF RICHMOND,

Defendant.

MEMORANDUM OF OBJECTIONS TO FINAL ORDER

On October 30-31, 1997 came the parties, in person and by counsel, for a hearing upon the Amended Motion for Judgment, the responsive pleadings filed thereto and certain pretrial motions of the defendant.

As to the pretrial motions, the City had filed an Objection and Motion to Strike the Amicus Brief filed by Eastern Star Home of Virginia ("Eastern Star"). There was no final ruling on this matter.

The City had also filed a Motion to Exclude certain witnesses. The Court granted the City leave to depose the plaintiff's witnesses Warner Crumb and Sara Cheely immediately prior to commencement of trial.

Then, the Court heard evidence in the case and arguments of counsel. Upon consideration whereof, the Court ruled in favor of plaintiff, finding the facilities owned by plaintiff known as The Hermitage in Richmond and Snyder Memorial Home ("Facilities") tax exempt by classification based on Virginia Code §§ 58.1-3606(A)(5) and 58.1-3606(B).

The City states the following objections to the Court's decision and final order in this case:

1. The Court did not rule on Defendant's Objection and Motion to Strike the Amicus Brief filed by Eastern Star Home of Virginia. The Court further, in hearing the arguments of the City and Eastern Star Home on the City's Motion to Strike, permitted Eastern Star Home's counsel to argue the substance of his amicus brief over the City's objection rather than restricting the Eastern Star Home's counsel to argument on the propriety of filing an amicus brief at the trial court level and without leave of court or written consent of all counsel as required by Virginia Supreme Court Rule 5:30.

2. The Court did not grant the City's Motion to Exclude certain witnesses who were not disclosed pursuant to the City's interrogatory requesting the identity of persons knowledgeable about plaintiff's case. And although plaintiff identified these

individuals on his witness list, plaintiff failed to exchange his witness list on the date agreed to in the pretrial order conference and order. Instead the Court granted the City leave to depose the witnesses, restricting the time allowed for depositions to one and one-half hours total for two witnesses. As a result, the City was prejudiced in its preparation of its cross-examination of these witnesses, as the depositions occurred immediately prior to trial.

3. The Court, in its final ruling in this case, determined that the entire Hermitage facility was entitled to be exempt based on the "grandfather clause" as set forth in Virginia Code § 58.1-3606(B) and its provisions for a liberal rule of statutory construction for pre-1971 property. However, a portion of the Hermitage facility was not entitled to the benefit of the "grandfather clause" and liberal construction. For the "grandfather clause" and liberal construction to be applicable to property, the property must have actually existed on or prior to July 1, 1971 as per Virginia Code § 58.1-3606(B). The portion of the Hermitage facility known as the Via Health Care Center was not constructed prior to July 1, 1971 and therefore, was not entitled to the benefit of the liberal construction afforded by the "grandfather clause."

4. The Court made no findings of fact on which its ruling was based. Specifically, the Court made no findings of fact on the issue of whether each facility was an asylum in 1971 and whether each facility was operated exclusively as a charity in 1971. Without such findings of fact, there was no basis for the Court's finding that each facility was exempt by classification on July 1, 1971 and therefore was entitled to an exemption based on the "grandfather clause." Furthermore, the Court made no findings of fact on the issue of whether each facility was an asylum in 1996 and whether each facility was operated exclusively as a charity in 1996. Without such findings of fact, there was no basis for the Court's finding that each facility had been operated continuously as an asylum and as a charity and therefore was still entitled to exemption by classification in 1996 based on the "grandfather clause."

5. In its ruling, the Court did not examine The Hermitage in Richmond and Snyder Memorial Home individually to determine if each one met the requirements for tax exemption by classification under Virginia Code § 58.1-3606(A)(5). Nor did the Court treat The Hermitage in Richmond and Snyder Memorial Home as separate tax parcels. As exemptions are granted to property rather than to the owner of property, each piece or parcel of property must

individually and separately exhibit the requirements for obtaining exemption under the law to be accorded exempt status.

6. The Court took judicial notice of the General Assembly's exemption by **designation** of another facility owned by plaintiff which is not located in the City of Richmond. Said facility was designated as tax exempt in 1997, a year after the year in issue in this case, 1996. Furthermore, the General Assembly, in exempting property by designation, is not restricted by statutory requirements, such as those found in Virginia Code § 58.1-3606, but rather is guided by law embodied in Article X of the Virginia Constitution.

This is not an all-inclusive recitation of all the objections raised at trial by the City. The City reserves the right to raise additional issues on appeal.

WHEREFORE, for the reasons above, the City objects to the Court's pretrial and final rulings in this case.

CITY OF RICHMOND

By: Debra Mallory

Jan T. Reid
Elizabeth Butterworth Stutts
Assistant City Attorneys
Debra L. Mallory
Special Counsel
City Attorney's Office

900 East Broad Street, Room 300
Richmond, Virginia 23219
(804) 780-7940
Counsel for defendant

Assignments of Error:

The trial court erred as a matter of law in holding that the entire Hermitage facility was exempt under the "grandfather clause."

The trial court erred as a matter of law in holding that the residential living section of The Hermitage in Richmond is an asylum pursuant to Virginia Code Section 58.1-3606(A) (5).

The trial court erred as a matter of law in holding that The Hermitage in Richmond is conducted exclusively as a charity pursuant to Virginia Code section 58.1-3606(A) (5).

The trial court erred as a matter of law in holding that Snyder Memorial Home is an asylum pursuant to Virginia Code section 58.1-3606(A) (5).

The trial court erred as a matter of law in holding that Snyder Memorial Home is conducted exclusively as a charity pursuant to Virginia Code section 58.1-3606(A) (5).

The trial court erred as a matter of law in failing to treat The Hermitage in Richmond and Snyder Memorial Home as separate tax parcels, that is the court failed to consider whether each facility separately and independently met the requirements of Virginia Code Section 58.1-3606(A) (5).

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF THE STATE CORPORATION COMMISSION

City of Richmond, **15th** *day of October, 1945.*

The accompanying certificate for incorporation of an association stated by the applicants to be for charitable or benevolent or literary purposes on which no charter fee is required by law, having been presented to the State Corporation Commission by

John Paul Tyler, William Archer Wright, P. M. Hank, Bernard S. Via, H. A. Haden, Frank S. Richeson and L. D. Wingfield,

and the Hon.-----**Brockenbrough Lamb**-----, Judge of the -----**Chancery**----- Court of -----**City of Richmond,**----- having certified that the said persons signing said certificate are of good moral character and suitable and proper persons to be incorporated for the purposes therein set forth, and that the said certificate has been signed and acknowledged by said applicants in accordance with law, the State Corporation Commission having examined said certificate, now declares that the said applicants have complied with the requirements of law, and have entitled themselves to a charter, and it is therefore ordered that the said **applicants**

and their associates and successors be, and they are hereby, made and created a body politic and corporate under and by the name of

Virginia Methodist Home for the Aged, Incorporated,

upon the terms and conditions, and for the purposes set forth in said certificate, with all the powers and privileges conferred upon charitable and benevolent or literary corporations and subject to all the conditions and restrictions imposed by law.

And said certificate, with this order, is hereby ordered to be admitted to record.

Attest:

W. W. Anderson
Clerk of the Commission.

Harry B. Apperson
Chairman.

COMMONWEALTH OF VIRGINIA.

OFFICE OF STATE CORPORATION COMMISSION.

In the CITY OF RICHMOND, the **15th** day of **October**, 19**45**.

The foregoing charter of **Virginia Methodist Home for the Aged, Incorporated,**

was this day received and duly admitted to record in this office and is hereby certified to the Clerk of the

Chancery

Court of

City of Richmond

according to law.

241

STATE CORPORATION COMMISSION,

Harry B. Apperson

Attest:

W. W. Carlinson
Clerk of the Commission.

VIRGINIA

In the Clerk's Office of the Chancery Court of Richmond the 28th
day of November 1945.

The foregoing charter and certificate of the State Corporation Commission thereon was received, duly admitted to record, duly spread, and is now certified to the Clerk of the State Corporation Commission.

Teste:

W. H. [unclear]

Clerk.

CERTIFICATE OF INCORPORATION FOR A NON-STOCK AND NON-PROFIT CORPORATION

**TO THE HONORABLE
THE STATE CORPORATION COMMISSION OF VIRGINIA
RICHMOND, VIRGINIA**

This is to certify that we, the undersigned, desire to and hereby associate ourselves to establish a corporation under and by virtue of Chapter 151 of the Code of Virginia of 1942 and Acts Amendatory thereto, in which no capital stock is required or to be issued and in which no profit is to be shared, for the purposes and under the corporate name hereinafter mentioned and to that end do by this our certificate set forth as follows:

1. The name of the corporation is to be

VIRGINIA METHODIST HOME FOR THE AGED, INCORPORATED.

2. The principal office of the said corporation is to be located in the Methodist Building in the City of Richmond, Virginia.

3. The purposes for which the said corporation is formed are as follows:

- (a) To establish a home or homes for the aged and infirm and needy persons, both laymen and ministers who are members or adherents of the Methodist Church within the territory defined in the By-laws of the corporation, and such other aged, infirm and needy persons as may be selected by the Board of Trustees, as hereinafter set forth, and to care for and provide a home for such aged, infirm and needy persons.
- (b) To take and to hold by gift, purchase, grant, devise or bequest any property, real, personal or mixed, trusts, premiums, annuities and other forms of income.
- (c) To have full power to manage, control, invest, sell, assign, pledge, encumber and re-invest any property, real, personal or mixed, trusts, premiums, annuities and other forms of income, in forms of investment, legal for investment in trust funds and fiduciary accounts at the time such investment may be made.
- (d) To use the income and profits, or any part of the principal, except in such cases where the donors specify that only the interest or income be used, either or both, from any property, real, personal or mixed, trusts, premiums, annuities, and other forms of income, solely for the benefit, support and maintenance of the infirm and needy persons as outlined in Section (a) above.

4. The maximum number of trustees shall be thirty (30) and the minimum seven (7), who are to manage the affairs of the corporation. The said trustees and their successors are to be elected at the annual meeting of the Board of Trustees and their terms of office are to be prescribed by the by-laws of the corporation. All vacancies are to be filled by the vote of the remaining trustees of the corporation. The trustees must be either lay members or effective ministers of The Virginia Annual Conference of the Methodist Church.

5. The names and residences of the trustees who are to manage the affairs of the said corporation for the first year of its existence, together with the names and residences of the President and Secretary of the corporation, are as follows:

TRUSTEES

<u>Name</u>	<u>Residence</u>
Rev. John Paul Tyler	Portsmouth, Virginia
Rev. William Archer Wright	Richmond, Virginia
Rev. P. M. Hank	Richmond, Virginia
Rev. Bernard S. Via	Charlottesville, Virginia
Mr. H. A. Haden	Charlottesville, Virginia
Mr. Frank S. Richeson	Richmond, Virginia
Mr. L. D. Wingfield	Richmond, Virginia

OFFICERS

<u>Name</u>	<u>Office</u>	<u>Residence</u>
John Paul Tyler	President	Portsmouth, Virginia
Bernard S. Via	Secretary and Treasurer	Charlottesville, Virginia

6. The period for the duration of the said corporation is unlimited.

7. The amount of real estate to which the holdings of the said corporation are at any one time to be limited is fifteen hundred (1,500) acres.

8. The Board of Trustees shall have full power and authority to make suitable by-laws for the regulation of the business and affairs of the corporation.

the 27 day of Sept, 1945.

John Paul Tyler (SEAL)

William Archer Wright (SEAL)

P. M. Hank (SEAL)

Bernard S. Davis (SEAL)

1. C. S. S. S. (SEAL)

Frank S. Peterson (SEAL)

L. L. Wingfield (SEAL)

STATE OF VIRGINIA

City of Portsmouth, to-wit:

County of Norfolk

I, B. P. S. S., a notary public in and for the County and state
aforesaid, whose notarial commission expires on the 10 day of Sept, 1947, do
hereby certify that John Paul Tyler, whose name is signed to the writing above,
bearing the date on the 27 day of Sept, 1945, has acknowledged the same
before me in my County aforesaid.

GIVEN under my hand this the 27 day of Sept, 1945.

B. P. S. S.
Notary Public

STATE OF VIRGINIA

City of Richmond, to-wit:

I, H. S. B. S., a notary public in and for the city and state
aforesaid, whose notarial commission expires on the 23 day of July, 1946, do
hereby certify that William Archer Wright, whose name is signed to the writing
above, bearing date on the 27 day of Sept, 1945, has acknowledged the
same before me in my city aforesaid.

GIVEN under my hand this the 10 day of October, 1945.

245 H. S. B. S.
Notary Public

STATE OF VIRGINIA
City of Richmond, to-wit:

I, H. S. Booth, a notary public in and for the city and state
aforesaid, whose notarial commission expires on the 13th day of July,
1946, do hereby certify that P. M. Hank, whose name is signed to the
writing above, bearing date on the 27th day of Sept., 1945, has
acknowledged the same before me in my city aforesaid.

GIVEN under my hand this the 3rd day of Oct., 1945.

H. S. Booth
Notary Public

STATE OF VIRGINIA
~~City of Charlottesville~~, to-wit:
County of Albemarle

I, M. A. Early, a notary public in and for the County and state
aforesaid, whose notarial commission expires on the 17 day of May,
1949, do hereby certify that Bernard S. Via, whose name is signed to the
writing above, bearing date on the 27 day of Sept, 1945, has
acknowledged the same before me in my County aforesaid.

GIVEN under my hand this the 1st day of Oct, 1945.

M. A. Early
Notary Public

STATE OF VIRGINIA
~~City of Charlottesville~~, to-wit:
County of Albemarle

I, M. A. Early, a notary public in and for the County and state
aforesaid, whose notarial commission expires on the 17 day of May,
1949, do hereby certify that H. A. Haden, whose name is signed to the writing
above, bearing date on the 27 day of Sept, 1945, has acknowledged
the same before me in my County aforesaid.

GIVEN under my hand this the 1st day of October, 1945.

M. A. Early
Notary Public

STATE OF VIRGINIA
City of Richmond, to-wit:

I, H. S. Booth, a notary public in and for the city and
state aforesaid, whose notarial commission expires on the 23 day of
July, 1946, do hereby certify that Frank S. Richeson, whose name
is signed to the writing above, bearing date on the 27 day of Sept.,
1945, has acknowledged the same before me in my city aforesaid.

GIVEN under my hand this the 18 day of Oct., 1945.

H. S. Booth
Notary Public

STATE OF VIRGINIA
City of Richmond, to-wit:

I, H. S. Booth, a notary public in and for the city and
state aforesaid, whose notarial commission expires on the 23 day of
July, 1946, do hereby certify that L. D. Wingfield, whose name
is signed to the writing above, bearing date on the 27 day of Sept.,
1945, has acknowledged the same before me in my city aforesaid.

GIVEN under my hand this the 18 day of Oct., 1945.

H. S. Booth
Notary Public

VIRGINIA:

In the Chancery Court of the City of Richmond:

The foregoing certificate of incorporation of Virginia Methodist Home for the Aged, Inc. ^{organized.} was presented to me *W. C. Lamm*, Judge of the Chancery Court of the City of Richmond, in term time, and having been examined by me, I thereupon ascertain and certify hereon that the persons signing and acknowledging the foregoing certificate are of good moral character and suitable and proper persons to be incorporated for the purposes set forth in the said certificate of incorporation, and I further certify that the said certificate of incorporation is, in my opinion, signed and acknowledged in accordance with the requirements of Chapter 151 of Virginia Code, for such cases made and provided.

GIVEN under my hand this *15th* day of *October*, 1945.

W. C. Lamm
Judge

ARTICLES OF AMENDMENT OF
VIRGINIA METHODIST HOME FOR THE AGED, INCORPORATED

(A) The name of the corporation is Virginia Methodist Home for the Aged, Incorporated.

(B) The proposed amendments to the Articles of Incorporation are:

1. Paragraph 1 shall be amended so as to read:

"The name of the corporation is to be
HERMITAGE METHODIST HOMES OF VIRGINIA, INC."

2. Sub-paragraphs (a) and (d) of paragraph 3 shall be amended so as to read:

"(a) To establish a home or homes for aging persons who are members or adherents of the Methodist Church, within the territory defined in the By-Laws of the corporation, and such other aging persons as may be selected by the Board of Trustees, as hereinafter set forth, and to care for and provide a home for such aging persons."

"(d) To use the income or any part of the principal except in such cases where the donors specify that only the interest or income be used, either or both, from any property, real, personal or mixed, trusts, premiums, annuities, and other

forms of income, solely for the benefit, support and maintenance of the persons as outlined in Section (a) above."

3. Paragraph 4 shall be amended so as to ^{change the} read: last sentence to read as follows:
~~"The maximum number of Trustees shall be thirty (30)~~
and the minimum seven (7) who are to manage the affairs of the corporation. The said Trustees and their successors are to be elected at the annual meeting of the Board of Trustees and their terms of office are to be prescribed by the By-Law; of the corporation. All vacancies are to be filled by the vote of the remaining Trustees of ~~the corporation.~~ The Trustees must be either lay members or ministers of the Virginia Conference of the Methodist Church.

4. Paragraph 7 shall be eliminated.

(C) There are no members of the corporation. At a meeting of the Board of Trustees of the corporation held on the 21st day of April, ¹⁹⁶⁰ 1960, the foregoing amendments were adopted and each received a vote of a majority of the Trustees in office.

VIRGINIA METHODIST HOME FOR THE
AGED, INCORPORATED

By 

President

Attest:

STATE OF VIRGINIA

NOT OF Richard, to-wit:

Subscribed and sworn to before me this 9th day
of February, 1961.

Mary Opal Thomas
Notary Public
my commission expires
July 15, 1964

**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

AT RICHMOND, February 16, 1961

The accompanying articles having been delivered to the State Corporation Commission on behalf of

Virginia Methodist Home for the Aged, Incorporated (changing name to
Hermitage Methodist Homes of Virginia, Inc.)

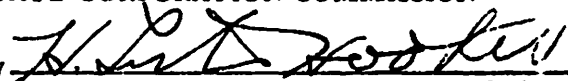
and the Commission having found that the articles comply with the requirements of law and that all required fees have been paid, it is

ORDERED that this **CERTIFICATE OF AMENDMENT**

be issued, and that this order, together with the articles, be admitted to record in the office of the Commission; and that the corporation have the authority conferred on it by law in accordance with the articles, subject to the conditions and restrictions imposed by law.

STATE CORPORATION COMMISSION

By


Chairman

ARTICLES OF AMENDMENT
OF THE ARTICLES OF INCORPORATION OF
HERMITAGE METHODIST HOMES OF VIRGINIA, INC.

1. On July 14, 1965, the board of trustees of the corporation, by a two-thirds vote of the directors in office, adopted the following amendments of its articles of incorporation:

- a. Paragraph 1 shall be amended so as to read:

/ "The name of the corporation is to be Virginia Methodist Homes, Inc."

- b. Delete paragraph 2 of the articles of incorporation.

- c. Change the first sentence of paragraph 4 to provide that:

"There shall be thirty-two (32) trustees who are to manage the affairs of the corporation and this number shall not be changed except by amendment of the articles of incorporation."

2. There are no members of the corporation.

Executed in the name of the corporation by its president and its secretary who declare under the penalties of perjury that the facts stated therein are true.

Dated August 3, 1965.

HERMITAGE METHODIST HOMES OF VIRGINIA, INC.

By [Signature]
President

and [Signature]
Secretary

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, August 13, 1965

The accompanying articles having been delivered to the State Corporation Commission on behalf of

Hermitage Methodist Homes of Virginia, Inc. (changing name to
Virginia Methodist Homes, Inc.)

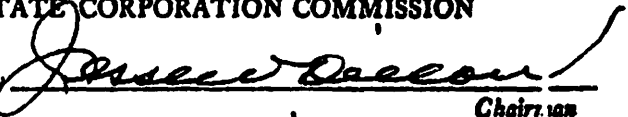
and the Commission having found that the articles comply with the requirements of law and that all required fees have
been paid, it is

ORDERED that this **CERTIFICATE OF AMENDMENT**

be issued, and that this order, together with the articles, be admitted to record in the office of the Commission; and that
the corporation have the authority conferred on it by law in accordance with the articles, subject to the conditions and
restrictions imposed by law.

STATE CORPORATION COMMISSION

By


Chairman

ARTICLES OF MERGER
OF
ROANOKE METHODIST HOME, INCORPORATED
INTO
VIRGINIA METHODIST HOMES, INC. ~~REDACTED~~

1. The Plan of Merger is as follows:

(a) Roanoke Methodist Home, Incorporated, shall upon the issuance of a Certificate of Merger by the State Corporation Commission of Virginia, the date of which Certificate shall be the effective date of the merger, be merged into Virginia Methodist Homes, Inc. ~~REDACTED~~, hereinafter designated as the surviving corporation.

(b) The surviving corporation shall take title to and have ownership of all of the assets, both real and personal, of Roanoke Methodist Home, Incorporated, and the surviving corporation shall assume all of the debts and liabilities of the said Roanoke Methodist Home, Incorporated.

(c) No changes in the Articles of Incorporation of the surviving corporation will be effected by the merger.

2. (a) As to Roanoke Methodist Home, Incorporated, this corporation has no members. Its Board of Directors met on the 15th day of March, 1967, at which meeting the foregoing Plan of Merger was adopted by a vote of the majority of the Directors in office.

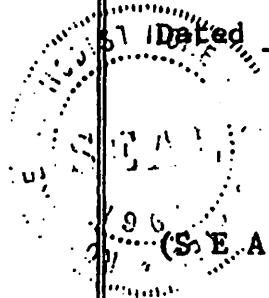
(b) As to Virginia Methodist Homes, Inc. ~~REDACTED~~,
255
this corporation has no members, its Board of Directors met

on the 16th day of March, 1967, at which meeting the foregoing Plan of Merger was adopted by vote of the majority of the Directors in office.

Dated March 16, 1967

ROANOKE METHODIST HOME INCORPORATED

By A. R. Porterfield
President



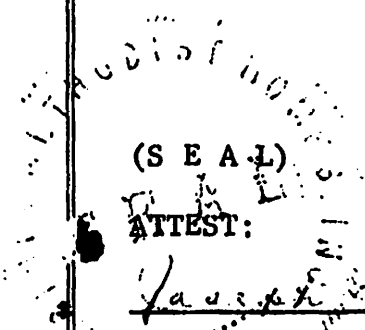
(S E A L)

ATTEST:

R. Marvin White

VIRGINIA METHODIST HOMES, INC. ~~CHARTERED 1958~~

By J. R. [Signature]
President



(S E A L)

ATTEST:

J. R. [Signature]

STATE OF VIRGINIA)
CITY OF ROANOKE)

To-wit:

Affidavit

✓ This day appeared before me, the undersigned Notary Public, A. R. Porterfield, who made oath that he is an officer of Roanoke Methodist Home, Incorporated, to-wit, its President, and that the statements made in the above Articles of Merger, insofar as they pertain to Roanoke Methodist Home, Incorporated, are true to the best of his knowledge and belief.

A. R. Porterfield
A. R. Porterfield, President of Roanoke Methodist Home, Incorporated

ROANOKE METHODIST HOME, INCORPORATED

By

A. R. Porterfield
President

ATTEST:

A. R. Porterfield

VIRGINIA METHODIST HOMES, INC. ~~INCORPORATED~~

By

A. R. Porterfield
President

(S E A L)

ATTEST:

Joseph B. Porterfield

STATE OF VIRGINIA)

CITY OF ROANOKE)

To-wit:

Affidavit

✓ This day appeared before me, the undersigned Notary Public, A. R. Porterfield, who made oath that he is an officer of Roanoke Methodist Home, Incorporated, to-wit, its President, and that the statements made in the above Articles of Merger, insofar as they pertain to Roanoke Methodist Home, Incorporated, are true to the best of his knowledge and belief.

A. R. Porterfield
A. R. Porterfield, President of Roanoke Methodist Home, Incorporated

SUBSCRIBED AND SWORN to before me this 10th day of


June, 1967.

Joseph B. Porterfield
Notary Public

My commission expires:

STATE OF VIRGINIA)
) To-wit: Affidavit
CITY OF RICHMOND)

This day appeared before me, the undersigned Notary Public, W. Roland Walker, who made oath that he is an officer of Virginia Methodist Homes, Incorporated, to-wit, its President, and that the statements made in the above Articles of Merger, insofar as they pertain to Virginia Methodist Homes, Inc., ~~are true~~, are true to the best of his knowledge and belief.

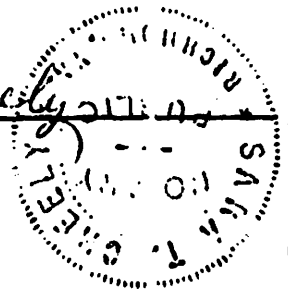

W. Roland Walker, President of Virginia Methodist Homes, Inc. ~~are true~~

SUBSCRIBED AND SWORN to before me this 16th day of March, 1967.


Notary Public

My commission expires:

9-4-68



AT RICHMOND,

May 11, 1967

The accompanying articles having been delivered to the State Corporation Commission on behalf of

Roanoke Methodist Home, Incorporated, a Va. corp.

Virginia Methodist Homes, Inc., a Va. corp.

and the Commission having found that the articles comply with the requirements of law and that all required fees have been paid, it is

ORDERED that this CERTIFICATE OF MERGER be issued, and that this order, together with the articles, be admitted to record in the office of the Commission; and that

Roanoke Methodist Home, Incorporated

be merged into

Virginia Methodist Homes, Inc.

The surviving corporation, which shall continue to be a corporation existing under the laws of the State of

Virginia

with the corporate name

Virginia Methodist Homes, Inc.

and that the separate existence of the corporations parties to the plan of merger, except the surviving corporation, shall cease.

STATE CORPORATION COMMISSION

By

H. A. Hooten

Chairman

VIRGINIA:

In the Clerk's Office of the Hustings Court of the City of Roanoke.

The foregoing certificate (including the accompanying articles) has been duly recorded in my office this 18th day of May, 1967 and is now returned to the State Corporation Commission by certified mail.

Walter E. Carter, Jr.
Deputy Clerk

ARTICLES OF AMENDMENT
of the Articles of Incorporation of
VIRGINIA METHODIST HOMES, INC.

1973,

1. On January 18th, /in a meeting, the board of trustees of the corporation, by a vote of at least two-thirds of the trustees in office, adopted the following proposed amendment of its articles of incorporation:

a. Paragraph 1 shall be amended so as to read:

"The name of the corporation is to be VIRGINIA
UNITED METHODIST HOMES, INC."

2. There are no members of the corporation.

Executed in the name of the corporation by its president and secretary
who declare under the penalties of perjury that the facts stated therein are true.

Dated January 18th, , 1973.

VIRGINIA METHODIST HOMES, INC.

by Richard F. Peme
President

and Lauford A. Lifford
Secretary

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND,
February 12, 1973

The accompanying articles having been delivered to the State Corporation Commission on behalf of

Virginia Methodist Homes, Inc. (chg. name to:
Virginia United Methodist Homes, Inc.)

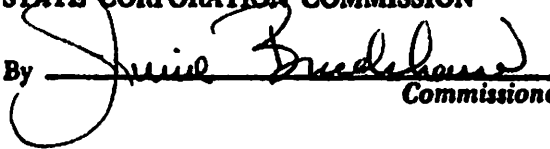
and the Commission having found that the articles comply with the requirements of law and that all required fees have been paid, it is

ORDERED that this **CERTIFICATE OF** **AMENDMENT**

be issued, and that this order, together with the articles, be admitted to record in the office of the Commission; and that the corporation have the authority conferred on it by law in accordance with the articles, subject to the conditions and restrictions imposed by law.

STATE CORPORATION COMMISSION

By


Commissioner

ARTICLES OF AMENDMENT
OF THE ARTICLES OF INCORPORATION OF
VIRGINIA UNITED METHODIST HOMES, INC.

1. On January 29, 1976, in a meeting, the Board of Directors of the corporation found that the following proposed amendment of its Articles of Incorporation was in the best interest of the corporation and, by a two-thirds vote of the directors in office, adopted the following proposed amendment of its Articles of Incorporation:

a. Paragraph 7 of the Articles of Incorporation which was deleted pursuant to a Certificate of Amendment issued on February 16, 1961 shall be reinstated and shall read as follows:

7. In the event of a dissolution of the corporation, all of its assets shall be considered as dedicated to an exempt purpose, within the meaning of #501(c) (3) of the Internal Revenue Code of the United States of 1954, as at any time amended and such assets shall be distributed to the Virginia Conference of the United Methodist Church or its successor or successors or such other exempt organization provided that at such time the Virginia Conference of the United Methodist Church, its successor or successors, or other exempt organization shall qualify as an organization or organizations described in the aforesaid section of the Internal Revenue Code. The choice of such organization or organizations to which such distribution is to be made shall be made by the Board of Directors of the corporation upon the vote of a majority of the directors in office. All references herein to revisions of the Internal Revenue Code of 1954 shall be deemed to include statutes which succeed such provisions.

2. There are no members of the corporation.

Executed in the name of the corporation by its president and its secretary who declare under the penalties of perjury that the facts stated herein are true.

Dated: January 29, 1976.

VIRGINIA UNITED METHODIST HOMES, INC.

By *Virginia C. Kipp*
President

and *Edward B. Harris*
Secretary

**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

**AT RICHMOND,
February 24, 1976**

The accompanying articles having been delivered to the State Corporation Commission on behalf of

Virginia United Methodist Homes, Inc.

and the Commission having found that the articles comply with the requirements of law and that all required fees have been paid, it is

ORDERED that this **CERTIFICATE OF AMENDMENT**

be issued, and that this order, together with the articles, be admitted to record in the office of the Commission; and that the corporation have the authority conferred on it by law in accordance with the articles, subject to the conditions and restrictions imposed by law.

STATE CORPORATION COMMISSION

By

Thomas P. Hammett
Commissioner

ARTICLES OF AMENDMENT OF
THE ARTICLES OF INCORPORATION OF
VIRGINIA UNITED METHODIST HOMES, INC.

1. On April 26, 1979, in a meeting the Board of Directors of the Corporation found that the following proposed amendments of its Articles of Incorporation were in the best interests of the Corporation and by a two-thirds vote of the Directors in office adopted the following proposed amendments to its Articles of Incorporation.

a. Paragraph 4 of the Articles of Incorporation is changed to read as follows:

4. The number of Directors shall be established by the By-Laws of the Corporation and in no event shall be less than three. Directors may be referred to as Trustees of the Corporation. The Trustees may be either lay members or ministers of the Virginia Conference of the United Methodist Church. The Corporation is to have no members.

b. The Articles of Incorporation are amended by adding the following paragraph 10:

10. In addition to all the powers enumerated in the Virginia Nonstock Corporation Act, the Corporation shall have the power to borrow money for any purpose of the Corporation and to issue bonds, debentures, debenture stock, notes or other obligations therefor, and to secure the same by pledge or mortgage of the whole or any part of the property of the Corporation, real or personal, or to issue bonds, debentures, debenture stock, notes or other obligations without any such security.

2. There are no members of the Corporation.

Executed in the name of the Corporation by its President and its secretary who declare under the penalties of perjury that the facts stated herein are true.

Dated: April 26, 1979

VIRGINIA UNITED METHODIST HCMES, INC.

By

R. H. Thompson
President

— (SEAL)

ATTEST:

Carole M. Thompson
Secretary

**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

**AT RICHMOND,
June 19, 1979**

The accompanying articles having been delivered to the State Corporation Commission on behalf of
— Virginia United Methodist Homes, Inc.

and the Commission having found that the articles comply with the requirements of law and that all required fees have been paid, it is

ORDERED that this **CERTIFICATE OF AMENDMENT**

be issued, and that this order, together with the articles, be admitted to record in the office of the Commission; and that the corporation have the authority conferred on it by law in accordance with the articles, subject to the conditions and restrictions imposed by law.

STATE CORPORATION COMMISSION

By

Thomas P. Harwood, Jr.
Commissioner

ARTICLES OF AMENDMENT

OF

VIRGINIA UNITED METHODIST HOMES, INC.

Virginia United Methodist Homes, Inc., pursuant to Section 13.1-888 of the Code of Virginia, hereby submits its Articles of Amendment to the Restated Articles of Incorporation of Virginia United Methodist Homes, Inc., and, states as follows:

1. The name of the corporation is Virginia United Methodist Homes, Inc.
2. The text of the amendment is:

Article 8 b. is deleted in its entirety and in its place is substituted the following:

Notwithstanding the provisions of subparagraph 8(a), no indemnification shall be made in any action, suit or proceeding referred to in that subparagraph by or in the right of the Corporation to procure a judgment in its favor in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for a knowing violation of criminal law or willful misconduct in the performance of his duties.

3. The amendment was adopted at a meeting of the Board of Directors held on September 21, 1994.
4. As the corporation has no members, member action was not required to approve the amendment.

Date: Oct 1, 1994

 (SEAL)
Wm. Jeryl Pink, President
of Virginia United Methodist Homes, Inc.

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

October 17, 1994

The State Corporation Commission has found the accompanying
articles submitted on behalf of

VIRGINIA UNITED METHODIST HOMES, INC.

to comply with the requirements of law, and confirms payment of
all related fees.

Therefore, it is ORDERED that this

CERTIFICATE OF AMENDMENT

be issued and admitted to record with the articles of amendment in
the Office of the Clerk of the Commission, effective October 17,
1994 at 11:12 AM.

The corporation is granted the authority conferred on it by law in
accordance with the articles, subject to the conditions and
restrictions imposed by law.

STATE CORPORATION COMMISSION

By



Commissioner

AMENACPT
CIS20436
94-10-11-0104

ARTICLES OF MERGER

Virginia United Methodist Homes, Inc., a Virginia non-stock corporation, pursuant to CC 5110 1-
Section 13.1 -896 hereby issues its Articles of Merger, merging into this corporation Lydia H (C 1825 5
Roper Home, a Virginia non-stock corporation.

1. The Plan of Merger is as follows:

PLAN OF MERGER

*THIS PLAN is a Plan of Merger, bearing date of May 1, 1997, between
VIRGINIA UNITED METHODIST HOMES, INC., a Virginia non-stock corporation
("VUMH"), and LYDIA H. ROPER HOME, a Virginia non-stock corporation,
("Roper");*

W-I-T-N-E-S-S-T-H

RECITALS

- A. *VUMH is a Virginia non-stock corporation, engaged in the practice of
enhancing the lives of the aging by providing continuing care communities, and homes
for the aging within the Commonwealth of Virginia.*
- B. *Roper is a Virginia non-stock corporation, formerly directly engaged in
the practice of enhancing the lives of the aged, but presently engaged in providing assets
and income to other institutions which are directly engaged in advancing the interests of
the aging.*
- C. *The two corporations which to merge and VUMH shall be the surviving
corporation and Roper shall be the merging corporation.*
- D. *In accordance with the provisions of Article 11 of Chapter 9 of Title 13.1
of the Code of Virginia, the parties do herein set forth their plan of merger.*

PLAN

- 1 *Lydia H. Roper, a Virginia non-stock corporation, shall merge into
Virginia United Methodist Homes, Inc. and the surviving corporation shall be named
Virginia United Methodist Homes, Inc.*



2. Neither of the corporations having members with voting rights, the merger is conditioned upon the approval of this plan of merger by a majority of the members of the Board of Directors of each of the two corporations.

3. Subsequent to the merger, VUMH shall be the owner of all of the property, contract rights, and other benefits of which Roper was the owner prior to the merger.

4. Subsequent to the merger, VUMH shall be responsible for all debts, liabilities and other obligations of which Roper was obligated prior to the merger.

5. The merger shall be effective on May 30, 1997 at 11.59 p.m., subject to the approval of the State Corporation Commission of the Commonwealth of Virginia.

6. This Plan of Merger may be amended or abandoned by the Boards of Directors of the two corporations at any time prior to the issuance of the Certificate of Merger by the State Corporation Commission of the Commonwealth of Virginia.

2. This corporation has no members. The Plan of Merger was approved by the Board of Directors of Virginia United Methodist Homes, Inc. at a meeting held on May 14, 1997, the Plan of Merger then receiving an affirmative vote of a majority of the directors in office.

3. Lydia H. Roper Home has no members. The Plan of Merger was approved by the Board of Directors of Lydia H. Roper Home at a meeting held on May 14, 1997, the Plan of Merger then receiving an affirmative vote of the majority of directors then in office.

Date: May 14, 1997

VIRGINIA UNITED METHODIST HOMES, INC.

By


President

051787 - 0

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

May 27, 1997

The State Corporation Commission finds the accompanying articles submitted on behalf of

VIRGINIA UNITED METHODIST HOMES, INC.

to comply with the requirements of law. Therefore, it is ORDERED that this

CERTIFICATE OF MERGER

be issued and admitted to record with the articles in the office of the Clerk of the Commission. Each of the following:

LYDIA H. ROPER HOME

is merged into VIRGINIA UNITED METHODIST HOMES, INC., which continues to exist under the laws of VIRGINIA with the name VIRGINIA UNITED METHODIST HOMES, INC.. The existence of each non-surviving entity ceases, according to the plan of merger.

The certificate is effective on May 30, 1997 at 11:00 AM.

STATE CORPORATION COMMISSION

By



Commissioner

MERGACPT
CIS20317
97-05-27-0507

RESTATEMENT OF ARTICLES OF INCORPORATION
OF VIRGINIA UNITED METHODIST HOMES, INC.

1. The name of the corporation is VIRGINIA UNITED METHODIST HOMES, INC.

2. The Corporation is to have no members.

3. The number of Directors shall be established by the By-Laws of the Corporation. All corporate powers shall be exercised by and under the authority of, and the business of the Corporation managed under the direction of the Board of Directors. The President of the Corporation shall be elected by the Board of Directors. Each Chairman of each Regional Advisory Committee shall be a Director. All other Directors shall be elected by the Board of Directors. The President and each Chairman of each Regional Advisory Committee shall be elected annually and the remaining Directors shall be divided into three groups with each group containing one third (1/3) of the remaining Directors. The term of the Directors in the first group shall expire at the first annual meeting after their election. The term of the Directors in the second group shall expire at the second annual meeting after their election. The term of the Directors in the third group shall expire at the third annual meeting after their election. At each annual meeting held thereafter the remaining Directors shall be elected for a term of three (3) years to succeed those whose terms expire.

4. The purposes of the said Corporation are as follows:

a. To establish a home or homes for aging persons within the territory defined in the By-Laws of the Corporation.

b. To foster spiritual, emotional, and physical well-being and to

provide quality care for the elderly in a stimulating, safe, secure, and supportive environment that is designed to enhance independent living within the framework of a Christian commitment.

c. To take and to hold by gift, purchase, grant, devise or bequest any property, real, personal or mixed, trusts, premiums, annuities and other forms of income.

d. To have full power to manage, control, invest, sell, assign, pledge, encumber and reinvest any property, real, personal or mixed, trusts, premiums, annuities and other forms of income, in forms of investment legal for investment in trust funds and fiduciary accounts, at the time such investment may be made

5. The Board of Directors shall have full power and authority to make by-laws for the regulation of the business and affairs of the Corporation.

6. In the event of a dissolution of the corporation, all of its assets shall be considered as dedicated to an exempt purpose, within the meaning of Section 501(c) (3) of the Internal Revenue Code of the United States of 1954, as at any time amended, and such assets shall be distributed to the Virginia Conference of the United Methodist Church or its successor or successors. All references herein to revisions of the Internal Revenue Code of 1954 shall be deemed to include statutes which succeed such provisions.

7. The following provisions are made to allow for the indemnification of officers and Directors of the Corporation:

a. The Corporation shall indemnify each Director or officer who was or is a party or is threatened to be made a party to any threatened, pending

or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative (including an action or suit by or in the right of the Corporation to procure a judgment in its favor) by reason of the fact that he is or was a Director or officer, or is or was serving at the request of the Corporation in any capacity for another corporation, partnership, joint venture, trust or other entity, against judgments, fines, amounts paid in settlement, and expenses (including attorneys' fees) actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe his — conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner he believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

b. Notwithstanding the provisions of subparagraph 7 (a), no indemnification shall be made in any action, suit or proceeding referred to in that subparagraph by or in the right of the Corporation to procure a judgment in its favor in respect to any claim, issue or matter as to which such person shall have been finally adjudged to be liable for gross negligence or willful misconduct in the performance of his duty to the Corporation unless, and only to the extent that, the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in

view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification.

c. To the extent that a Director or officer has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subparagraph 7(a) or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

d. Any indemnification under subparagraphs 7(a) and (b) (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Director or officer is proper in the circumstances because he has met the applicable standard of conduct set forth in subparagraphs 7(a) and (b). Such determination shall be made (1) by the Board of Directors, by a majority vote of a quorum thereof consisting of Directors who were not parties to such action, suit or proceeding; or (2) if such quorum is not obtainable, or, even if obtainable, a majority of disinterested Directors so directs; or (3) by independent legal counsel in a written opinion. If the determination is to be made by the Directors, they may rely, as to all questions of law, on the advice of independent counsel. Any person seeking indemnification may apply to a court, before or after any determination by the Directors, independent legal counsel, for a determination that he is entitled to indemnification because he has met the standard of conduct specified in subparagraphs 7(a) and (b).

e. Expenses (including attorneys' fees) incurred in defending an action, suit or proceeding, whether civil, criminal, administrative,

arbitrative or investigative, shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized in the manner provided in subparagraph 7(d), upon receipt of an undertaking by or on behalf of the Director or officer to repay such amount unless it ultimately shall be determined that he is entitled to be indemnified by the Corporation as authorized above.

f. The Board of Directors is hereby empowered to cause the Corporation to indemnify or contract in advance to indemnify employees and agents who are not officers or Directors of this Corporation to the fullest extent permitted by law applicable at the time the indemnification is granted or the contract to indemnify is made.

g. The Corporation may purchase and maintain insurance to indemnify it against the whole or any portion of the liability imposed upon it in accordance with the above and may also purchase and maintain insurance on behalf of any person who is or was a Director, officer or employee of the Corporation as a Director, officer or employee of another corporation, partnership, joint venture, trust or other entity, against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Corporation would have the power to indemnify him under the provisions of the above.

h. Every reference herein to Director, officer or employee shall include former Directors, officers and employees of the Corporation or one of its subsidiaries and his heirs, executors and administrators or other personal representatives. The indemnification hereby provided and provided hereafter pursuant to the power hereby conferred on the Board of Directors shall not be

exclusive of any other indemnification to which any Director, officer or employee may be entitled, including any right under any policies of insurance that may be purchased and maintained by the Corporation or others, with respect to claims, issues or matters in relation to which the Corporation would not have the power to indemnify each Director, officer or employee under the provisions of the above.

DATED this 31st day of January, 1986.

VIRGINIA UNITED METHODIST HOMES, INC.

By Don M. Thompson, President

CERTIFICATE

The Restatement of Articles of Incorporation of Virginia United Methodist Homes, Inc. contains amendments which do not require member approval and the Board of Directors of the corporation did on January 16, 1986, unanimously adopt the Restatement of Articles of Incorporation, which are attached.

Dated this 31st day of January, 1986.

VIRGINIA UNITED METHODIST HOMES, INC.

By Wm. Jeryl Fink
Wm. Jeryl Fink,
Executive Vice President

051787

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

RICHMOND, April 1, 1986

The accompanying articles having been delivered to the State Corporation
Commission on behalf of

VIRGINIA UNITED METHODIST HOMES, INC.

and the Commission having found that the articles comply with the requirements of
law and that all required fees have been paid, it is

ORDERED that this CERTIFICATE OF RESTATEMENT

be issued, and that this order, together with the articles, be admitted to record in
the office of the Commission; and that the corporation have the authority conferred
on it by law in accordance with the articles, subject to the conditions and
restrictions imposed by law, effective April 1, 1986 .

STATE CORPORATION COMMISSION

By


Commissioner

RESTATED ARTICLES OF INCORPORATION OF
VIRGINIA UNITED METHODIST HOMES, INC.

Virginia United Methodist Homes, Inc., a Virginia non-stock corporation, pursuant to Section 13.1-803 of the Code of Virginia, hereby submits its Restated Articles of Amendment to the Articles of Incorporation.

1. The name of the Corporation is Virginia United Methodist Homes, Inc.

2. The Corporation is to have no members.

3. The number of directors shall be established by the By-laws of the Corporation. All corporate powers shall be exercised by and under the authority of, and the business of the Corporation managed under the direction of the Board of Directors. Directors shall be elected in accordance with the By-laws of the Corporation. The terms of directors shall be set forth in the By-laws, and may provide for staggered terms. Any vacancy on the Board of Directors shall be filled in accordance with the By-laws of the Corporation.

4. The Registered Agent shall be E. Olen Culler, Esquire, a resident of the Commonwealth of Virginia and a member of the Virginia State Bar. The address of the registered office is Suite 203 Dale Building, 1504 Santa Rosa Road, Richmond, Virginia 23229.

5. The purposes of the said Corporation are as follows:

- a. To establish a home or homes for the aging persons within the territory defined in the By-laws of the Corporation.

- b. To provide facilities, services and programs to enhance the quality of life for older persons.
- c. To take and to hold by gift, purchase, grant, devise or bequest any property, real, personal, or mixed, trusts, premiums, annuities and other forms of income.
- d. To have full power to manage, control, invest, sell, assign, pledge, encumber and reinvest any property, real, personal or mixed, trusts, premiums, annuities and other forms of income, in forms of investment legal for investment in trust funds and fiduciary accounts, at the time such investment may be made.

6. The Board of Directors shall have full power and authority to make by-laws for the regulations of the business and affairs of the Corporation.

7. In the event of a dissolution of the Corporation, all of its assets shall be considered as dedicated to an exempt purpose, within the meaning of Section 501(c)(3) of the Internal Revenue Code of the United States of 1954, as at any time amended, and such assets shall be distributed to the Virginia Conference of the United Methodist Church or its successor or successors. All references herein to revision of the Internal Revenue Code of 1954 shall be deemed to include statutes which succeed such provision.

8. The following provisions are made to allow for the indemnification of officers and directors of the Corporation.

- a. The Corporation shall indemnify each director or officer who was or in a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (including an action or suit by or in the right of the Corporation to procure a judgment in its favor) by reason of the fact that he is or was a director or officer, or is or was serving at the request of the Corporation in any capacity for another corporation, partnership, joint venture, trust or other entity, against judgments, fines, amounts paid in settlement, and expenses (including attorneys' fees) actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe this conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner he believed to be in or not opposed to the best interests of the Corporation.

the best interests of the Corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

- b. Notwithstanding the provisions of subparagraph 8(a), no indemnification shall be made in any action, suit or proceeding referred to in that subparagraph by or in the right of the Corporation to procure a judgment in its favor in respect to any claim, issue or matter as to which such person shall have been finally adjudged to liable for gross negligence or willful misconduct in the performance of his duty to the Corporation unless, and only to the extent that, the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification.

- c. To the extent that a director or officer has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subparagraph 8(a) or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

- d. Any indemnification under subparagraphs 8(a) and (b) (unless ordered by court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Director or Officer is proper in the circumstances because he has met the applicable standard of conduct set forth in subparagraphs 8(a) and (b). Such determination shall be made (1) by the Board of Directors, by a majority vote of a quorum thereof consisting of directors who were not parties to such action, suit or proceeding; or (2) if such quorum is not obtainable, or even if obtainable, a majority of disinterested directors so directs; or (3) by independent legal counsel in a written opinion. If the determination is to be made by the Directors, they shall rely, as to all questions of law, on the advice of independent counsel. Any person seeking indemnification may apply to a court, before or after any determination by the Directors, independent legal counsel, for a determination that he is entitled to indemnification because he has met the standard of conduct specified in subparagraph 8(a) and (b).
- e. Expenses (including attorneys' fees) incurred in defending an action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative, shall be paid by the Corporation in advance of the

final disposition of such action, suit or proceeding as authorized in the manner provided in subparagraph 8(d), upon receipt of an undertaking by or on behalf of the Director or Officer to repay such amount unless it ultimately shall be determined that he is entitled to be indemnified by the Corporation as authorized above.

f. The Board of Directors is hereby empowered to cause the Corporation to indemnify or contract in advance to indemnify employees and agents who are not officers or directors of this Corporation to the fullest extent permitted by law applicable at the time the indemnification is granted or the contract to indemnify is made.

g. The Corporation may purchase and maintain insurance to indemnify it against the whole or any portion of the liability imposed upon it in accordance with the above and may also purchase and maintain insurance on behalf of any person who is or was a director, officer, or employee of the Corporation or a director, officer or employee of another corporation, partnership, joint venture, trust or other entity, against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Corporation would have the power to indemnify him under the provisions of the above.

h. Every reference herein to director, officer or employee shall include former directors, officers and employees of the Corporation or one of its subsidiaries and his heirs, executors and administrators or other personal representatives. The indemnification hereby provided and provided hereafter pursuant to the power hereby conferred on the Board of Directors shall not be exclusive of any other indemnification of insurance that may be purchased and maintained by the Corporation or others, with respect to claims, issues or matters in relation to which the Corporation would not have the power to indemnify each director, officer or employee under the provisions of the above.

The amendment of the Articles of Incorporation was adopted on January 19, 1994, by a unanimous vote of the Trustees of the corporation without member action, there being no members and that member action was not required.

Date: Jan 31, 1994

John F. Pink
John F. Pink, President

CERTIFICATE

The Restatement of Articles of Incorporation of Virginia United Methodist Homes, Inc. contains amendments which do not require member approval and the Board of Directors of the corporation did on January 19, 1994, unanimously adopt the Restatement of Articles of Incorporation which are attached.

Dated this 31st day of January, 1994.

VIRGINIA UNITED METHODIST HOMES, INC.

BY: W. D. [Signature]
Sec. [Signature], President

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

March 24, 1994

The State Corporation Commission has found the accompanying
articles submitted on behalf of

VIRGINIA UNITED METHODIST HOMES, INC.

to comply with the requirements of law, and confirms payment of
all related fees.

Therefore, it is ORDERED that this

CERTIFICATE OF RESTATEMENT

be issued and admitted to record with the articles of amendment in
the Office of the Clerk of the Commission, effective March 24,
1994 at 09:59 AM.

The corporation is granted the authority conferred on it by law in
accordance with the articles, subject to the conditions and
restrictions imposed by law.

STATE CORPORATION COMMISSION

By

[Signature]
Commissioner

A TRUE COPY
TESTE:

[Signature]

William J. [unclear]
Clerk of the Commission

AMENACPT
C1820436
94-03-24-0501

Commonwealth of Virginia



State Corporation Commission

I Certify the Following from the Records of the Commission:

THE FOREGOING IS A TRUE COPY OF ALL CHARTER DOCUMENTS ON FILE
IN THIS OFFICE FOR VIRGINIA UNITED METHODIST HOMES, INC.

Nothing more is hereby certified.



Signed and Sealed at Richmond
on this Date: October 23, 1997

William J. Bridge

William J. Bridge, Clerk of the Commission

Virginia United Methodist Homes, Inc.

a Continuing Care Provider
7113 Three Chopt Road, Suite 300
Richmond, Virginia 23226

Disclosure Statement For:

The Hermitage in Richmond
1600 Westwood Avenue
Richmond, Virginia 23227

Roanoke United Methodist Home
1009 Old Country Club Road, N.W.
Roanoke, Virginia 24017

Snyder Memorial Home
310 West 31st Street
Richmond, Virginia 23225

Hermitage on the Eastern Shore
23610 North Street
Onancock, Virginia 23417

Hermitage in Northern Virginia
5000 Fairbanks Avenue
Alexandria, Virginia 22311

Lydia H. Roper Home
127 East 40th Street
Norfolk, Virginia 23504

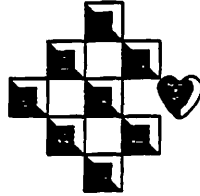
Separate Disclosure Statement Available For:

The Hermitage at Cedarfield
Cedarfield Information Center
7113 Three Chopt Road, Suite 201
Richmond, Virginia 23226

1995-96

This is a disclosure statement intended to comply with the provisions of Section 38.2-4900 through 38.2-4904 of the Code of Virginia of 1950, as amended. The filing of this disclosure statement with the State Corporation Commission of Virginia does not constitute approval, recommendation or endorsement of the facility by the State Corporation Commission.

Virginia United Methodist Homes, Inc.



ACKNOWLEDGEMENT OF RECEIPT

I have received one (1) copy of the Continuing Care Facility Disclosure Statement.

Date

Signature

☐ **THE HERMITAGE IN RICHMOND**

1600 Westwood Avenue
Richmond, Virginia 23227

Adjunct

☐ **SNYDER MEMORIAL HOME**

310 West 31st Street
Richmond, Virginia 23225

☐ **ROANOKE UNITED METHODIST
HOME**

1009 Old Country Club Road, N.W.
Roanoke, Virginia 24017

☐ **HERMITAGE ON THE EASTERN SHORE**

North Street Extended
Onancock, Virginia 23417

☐ **LYDIA H. ROPER HOME**

127 East 40th Street
Norfolk, Virginia 23504

☐ **HERMITAGE IN NORTHERN VIRGINIA**

5000 Fairbanks Avenue
Alexandria, Virginia 22311

VIRGINIA UNITED METHODIST HOMES, INC.

DISCLOSURE STATEMENT

1995 - 1996

TABLE OF CONTENTS

	Page
Continuing Care Provider	1
Officers and Directors	1
Business Experience	4
Acquisition of Goods and Services	5
Criminal and Civil Proceedings	5
Ownership of Real Property	5
Location and Description of Real Property	5
Affiliations with Religious, Charitable or Other Non-profit Organizations	6
Facility Services and Fees	7
Roanoke United Methodist Home	8
Lydia H. Roper Home	10
Hermitage on the Eastern Shore	12
Hermitage in Northern Virginia	14
The Hermitage in Richmond, Adjunct: Snyder Memorial Home	20
The Hermitage at Cedarfield	24
Reserve Funding	25
Certified Financial Statement	25
Pro Forma Statement	25
Explanation of Material Differences	25
Admission of New Residents	26
Access to Facility and Services By Non-Residents	27
Procedure By Which a Resident May File a Complaint or Disclose Any Concern ...	27
Financial Report, May 31, 1995	29
Pro Forma Statement of Revenue and Expenses, May 1996	49
Continuing Care Contract	53
Certificate of Entrance	67
Surety Agreement	71

CONTINUING CARE PROVIDER

The continuing care provider is Virginia United Methodist Homes, Inc. (VUMH). VUMH is a Virginia non-stock corporation with its business address at *7113 Three Chopt Road, Suite 300, Richmond, Virginia 23226*. VUMH offers continuing care at six facilities in Virginia:

Roanoke United Methodist Home
1009 Old Country Club Road, NW
Roanoke, Virginia 24017

Lydia H. Roper Home
127 E. 40th Street
Norfolk, Virginia 23504

Hermitage on the Eastern Shore
23610 North Street
Onancock, Virginia 23417

Hermitage in Northern Virginia
5000 Fairbanks Avenue
Alexandria, Virginia 22311

The Hermitage in Richmond
1600 Westwood Avenue
Richmond, Virginia 23227

ADJUNCT:

Snyder Memorial Home
310 West 31st Street
Richmond, Virginia 23225

The Hermitage at Cedarfield
VUMH has acquired 90 acres± on the south line of Three Chopt Road in Henrico County, Virginia, just west of its intersection with Gaskins Road. VUMH is constructing a facility named The Hermitage at Cedarfield at this location. Occupancy is planned to commence in 1996.

OFFICERS, DIRECTORS, TRUSTEES, MANAGING AND GENERAL PARTNERS, AND CERTAIN PERSONS WHO HOLD EQUITY OR BENEFICIAL INTERESTS

The names and business addresses of the officers of VUMH are:

Wm. Jeryl Fink, President
7113 Three Chopt Road, Suite 300
Richmond, Virginia 23226

William F. LaVecchia, Chairman
303 Burnwick Road
Richmond, Virginia 23227

James E. Hodges, Jr., Vice Chairman
11834 Canon Boulevard, Suite I-4
Newport News, Virginia 23606

Ray W. Chamberlain, Jr., Secretary
4016 West Broad Street
Richmond, Virginia 23230

Jan H. Cashion, Treasurer
3225 Gallows Road
Fairfax, Virginia 22037

The names and addresses of the directors of VUMH are:

Robert M. Attack
4435 Waterfront Drive
Glen Allen, Virginia 23060

Jeannie P. Baliles
4307 Custis Road
Richmond, Virginia 23235

James H. Boice, Jr.
5 Mount Prospect Avenue
Onancock, Virginia 23417

Otis L. Brown
600 E. Laburnum Avenue
Richmond, Virginia 23222

Jan H. Cashion
3225 Gallows Road
Fairfax, Virginia 22037

Ray W. Chamberlain, Jr.
4016 West Broad Street
Richmond, Virginia 23230

Thomas R. Dunkum
6100 Courthouse Road
Chesterfield, Virginia 23832

John S. DeVerter
1902 Braeburn Drive
Salem, Virginia 24153

Wm. Jeryl Fink
7113 Three Chopt Road, Suite 300
Richmond, Virginia 23226

James E. Hodges, Jr.
11834 Canon Boulevard, Suite I-4
Newport News, Virginia 23606
203 Taylor Street
Salem, Virginia 24153

William F. LaVecchia
303 Burnwick Road
Richmond, Virginia 23227

Henry M. Rogers, Jr.
1475 Harmott Avenue
Norfolk, Virginia 23509

George E. Saunders
6905 Gilbert Street
Springfield, Virginia 22150

Marjorie S. Williams
20931 Lock Court
Sterling, Virginia 20165

VUMH has no trustees, no managing nor general partners. No person has a ten percent (10%) or greater equity or beneficial interest in VUMH.

VUMH has no members.

The Directors of VUMH are elected as follows:

- * nominated by a nominating committee of the Board of Directors
- * elected by the Board of Directors

BUSINESS EXPERIENCE OF; ACQUISITION OF GOODS AND SERVICES FROM; AND CRIMINAL, CIVIL AND REGULATORY PROCEEDINGS AGAINST THE PROVIDER; ITS OFFICERS, DIRECTORS, TRUSTEES, MANAGING AND GENERAL PARTNERS; CERTAIN PERSONS WHO HOLD EQUITY OR BENEFICIAL INTERESTS; AND THE MANAGEMENT

A. BUSINESS EXPERIENCE

VUMH has engaged in the management of the facility at 1600 Westwood Avenue, Richmond, Virginia and at 310 West 31st Street, Richmond, Virginia since 1949; the facility at 5000 Fairbanks Avenue, Alexandria, Virginia since 1962; the facility at 127 East 40th Street, Norfolk, Virginia since 1963; the facility at 1009 Old Country Club Road, N.W., Roanoke, Virginia since 1964; the facility at 23610 North Street, Onancock, Virginia since 1966. VUMH is constructing a new facility in western Henrico County, Virginia, to operate under the name of The Hermitage at Cedarfield.

The experience in the operation or management of similar facilities by the Directors and Officers of VUMH is as follows:

<u>Director</u>	<u>Member of Board Since</u>
Robert M. Atack	1995
Jeannie P. Baliles	1990
James H. Boice	1994
Otis L. Brown	1994
Jan H. Cashion	1992
Ray W. Chamberlain, Jr.	1990
John S. DeVerter	1992
Thomas R. Dunkum	1993
Wm. Jeryl Fink	1984
James E. Hodges, Jr.	1991
Thomas L. Joyce	1995
William F. LaVecchia	1992
Henry M. Rogers, Jr.	1992
George E. Saunders	1994
Marjorie S. Williams	1994
<u>Officer</u>	<u>Experience</u>
Wm. Jeryl Fink	President since 1986 Executive Vice President 1984-1986
William F. LaVecchia	Chairman since 1994 Member of the Board 1992
James E. Hodges, Jr.	Vice Chairman since 1995 Member of the Board 1991
Ray W. Chamberlain, Jr.	Secretary since 1992 Member of the Board 1990
Jan H. Cashion	Treasurer since 1995 Member of the Board 1992

B. ACQUISITION OF GOODS AND SERVICES

Neither VUMH nor any of its officers or directors has any interest, indirectly or directly, in any professional services, firm, association, foundation, trust, partnership, or other legal entity which is intended to or will or may provide goods, leases or services to VUMH of a value of \$500.00 or more within any year.

C. CRIMINAL AND CIVIL PROCEEDINGS

Neither VUMH nor any of its officers or directors:

(1) has been convicted of a felony or pleaded nolo contendere to a felony charge, or been held liable or enjoined in a civil action by final judgment if the felony or civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property; or

(2) is subject to an injunctive or restrictive order of a court of record, or within the past five years had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, arising out of or relating to business activity or health care, including, without limitation, actions affecting a license to operate a foster care facility, nursing home, retirement home, home for the aged or facility registered under this chapter or similar laws in another state; or

(3) is currently the subject of any state or federal prosecution, or administrative investigation involving allegations of fraud, embezzlement, fraudulent conversion, or misappropriation of property.

OWNERSHIP OF REAL PROPERTY

The real property on which VUMH's six continuing care facilities are located is titled in the name of Virginia United Methodist Homes, Inc.

LOCATION AND DESCRIPTION OF REAL PROPERTY

A. THE HERMITAGE IN RICHMOND

The real property is located at *1600 Westwood Avenue, Richmond, Virginia*, and consists of a four-story brick building containing the residential area, the Health Care Center, a chapel, social hall, dining room and other amenities. Although licensed for a greater occupancy, the residential area has a planned maximum of 184 units. The Health Care Center is licensed for 115 beds.

B. SNYDER MEMORIAL HOME

The real property is located at *310 West 31st Street, Richmond, Virginia*, and consists of a one story brick building. Although licensed for a greater occupancy, the residential area has a planned maximum of 31 units. There is no Health Care Center.

C. HERMITAGE IN NORTHERN VIRGINIA

The real property is located at *5000 Fairbanks Avenue, Alexandria, Virginia*, and consists of two buildings attached by an underground walkway. The residential building is licensed for 152 adults. It is an eight-story building with a penthouse and contains administrative offices, chapel, social hall, dining room and other support service offices. The Health Care Center is a six-story building licensed for 121 beds, and contains administrative and therapy offices.

D. LYDIA H. ROPER HOME

The real property is located at *127 East 40th Street, Norfolk, Virginia*, and consists of a three-story brick building. The residential area is licensed for 27 adults. There is no Health Care Center.

E. ROANOKE UNITED METHODIST HOME

The real property is located at *1009 Old Country Club Road N.W., Roanoke, Virginia*, and consists of four apartment buildings, a single-family dwelling and a three-story masonry main complex. The buildings contain a chapel, social hall, dining room and other amenities. Although licensed for a greater occupancy, the main complex has a planned maximum of 74 units. The Health Care Center is licensed for 40 beds.

F. HERMITAGE ON THE EASTERN SHORE

The real property is located at *23610 North Street, Onancock, Virginia*, and consists of a one-story brick building. The building contains a chapel, library, social hall, dining room and other amenities. Although licensed for a greater occupancy, the residential area has a planned maximum of 67 units. The Health Care Center is licensed for 35 beds.

G. THE HERMITAGE AT CEDARFIELD (UNDER CONSTRUCTION)

The real property upon which The Hermitage at Cedarfield is being constructed consists of 90 ± acres on the south line of Three Chopt Road in Henrico County, Virginia, just west of its intersection with Gaskins Road. It is proposed that the community will contain 311 independent living units, 60 health care beds, 43 assisted living units and 23 Alzheimer's and related disorders units. Completion is planned for 1996.

AFFILIATIONS WITH RELIGIOUS, CHARITABLE OR OTHER NONPROFIT ORGANIZATIONS; TAX STATUS OF PROVIDER

A. VUMH is not subject to the control of the Virginia Annual Conference of the United Methodist Church. Neither the Virginia Annual Conference of the United Methodist Church, the United Methodist Association of Health and Welfare Ministries, the Department of Health and Welfare Ministries of the Board of Global Ministries of the United Methodist Church, nor the United Methodist Church is, nor will be, responsible for the financial or contractual obligations of VUMH. Likewise, VUMH is not, and will not be, responsible for the financial or contractual obligations of the Virginia Annual Conference of the United Methodist Church, the United Methodist Association of Health and Welfare Ministries, the Department of Health and Welfare Ministries of the Board of Global Ministries of the United Methodist Church or the United Methodist Church.

B. VUMH is exempt from the payment of federal income tax under the provisions of Section 501(c)(3) of the Federal Internal Revenue Code.

Virginia United Methodist Homes, Inc.
FACILITY SERVICES AND FEES

ROANOKE UNITED METHODIST HOME

A. SERVICES PROVIDED UNDER CONTINUING CARE CONTRACTS

Independent Living: Residents of Roanoke United Methodist Home apartments receive those services listed in Sections B2 and B3(a) of the attached Contract while all other Residents receive those services listed in Sections B1 and B3(a) thereof, all at no extra charge.

Assisted Living: A Resident receives assisted living at an extra charge when the facility's interdisciplinary care team (which typically includes a registered nurse, physician, dietician, social worker, activity coordinator and other facility staff members) determines that the Resident needs intervention to maintain independence, help recognizing self-care limitations, nursing assistance and nurse intervention on a regular basis, assistance on a regular basis to compensate for limitations, all in accordance with the requirements of the Standards and Regulations for Licensed Adult Care Residences promulgated by the Virginia Department of Social Services. Residents in assisted living receive aid in dressing and self-care, assistance in attending meals, increased assistance in housekeeping and increased monitoring of personal status.

Health Care: A Resident receives health care at an extra charge and is admitted to the Health Care Center when the facility's interdisciplinary care team determines that the Resident is in need of nursing care. Residents receiving health care receive services varying with their needs, from nursing attention to total nursing bed care, in accordance with the Rules and Regulations for Licensed Nursing Homes promulgated by the Virginia Department of Health.

The following optional services are available to Residents at an extra charge:

Apartments	Catered Independence	Assisted Living	Health Care
Beautician/Barber	Bathing	Beautician/Barber	Aqua Pads
Cable Television	Beautician/Barber	Cable Television	Beautician/Barber
Dental Care	Cable Television	Dental Care	Dental Care
Dry Cleaning	Dental Care	Dry Cleaning	Guest Meals
Electricity	Dry Cleaning	Guest Meals	Laboratory/Phlebotomy
Guest Meals	Guest Meals	Hearing Aids	Medical Supplies
Housekeeping	Laboratory	Laboratory	Occupational Therapy
Laboratory	Pharmacy	Medical Supplies	Oxygen
Pharmacy	Physical Therapy	Occupational Therapy	Personal Laundry
Podiatrist	Podiatrist	Pharmacy	Pharmacy
Store	Store	Physical Therapy	Physical Therapy
Telephone	Telephone	Podiatrist	Podiatrist
		Speech Therapy	Private Duty Nurse
		Store	Special Mattresses
		Telephone	Speech Therapy
		Walker	Telephone
		Wheelchair	Walker
			Wheelchair

B. FEES REQUIRED OF RESIDENTS

Residents of this facility pay a one-time entrance fee at the time of admission, which fee cannot be increased after admission. Entrance Fees are not escrowed and may be used in the payment of operating costs. See Sections E1, I, J and M of the attached Contract for more information concerning entrance fees, including refunds of entrance fees.

Monthly fees are charged, the amount of which is dependent upon the level of care and the lodging assigned. See Sections E2, I, L and M of the attached Contract for other information concerning monthly fees, including refunds of monthly fees and finance charges for late payments. On occasion, if a Resident's current income does not meet VUMH's income requirements, a Resident may be required to deposit monies as security for the payment of future monthly fees.

VUMH reserves the right to increase the monthly fees so as to cause the fees from time to time to reflect increases in the cost of care. However, there are no limitations on the amount of, or frequency of, increases of the monthly fees.

The fees at Roanoke United Methodist Home are:

	Monthly Fee	Entrance Fee Traditional Plan	Entrance Fee Guaranteed Refund Plan
Resident	\$1,040.00	\$42,500.00	\$ 65,000.00
Apartment - 1-Bedroom	360.00	45,000.00	70,000.00
Apartment - 2-Bedroom - Private	460.00	75,000.00	115,400.00
Resident - 2-Room Suite - Private	1,300.00	53,125.00	87,660.00
Resident - 2-Room Suite (Semi-Private)	1,560.00	63,750.00	105,660.00
Apartment - 2 Bedroom - Double	460.00	75,000.00	115,400.00
Asst Lvg - Semi-Private	1,550.00	42,500.00 each	N/A
Asst Lvg - Semi-Private (Daily)	65.00	N/A	N/A
Asst Lvg - Private	1,995.00	42,500.00	N/A
Asst Lvg - Private (Daily)	85.00	N/A	N/A
Health Care - Semi-Private	2,350.00	42,500.00	N/A
Health Care - Semi-Private (Daily)	98.00	N/A	N/A

Over the last five years, the frequency and average dollar amount of increase in monthly fees at Roanoke United Methodist Home has been:

Frequency	Average Dollar Amount of Increase			
	Apartment	Resident	Assisted Living	Health Care
91-92 annual	\$20	\$40	\$ 85	\$110
92-93 annual	15	45	100	100
93-94 annual	15	0	20	100
94-95 annual	10	20	30	50
95-96 annual	10	45	70	150

Note: Historically, these changes have occurred in June of each year.

LYDIA H. ROPER HOME

A. SERVICES PROVIDED UNDER CONTINUING CARE CONTRACTS

Lydia H. Roper Home no longer accepts applications for Continuing Care Contracts. The services provided under existing Continuing Care Contracts are dependent on each individual Contract and vary from Contract to Contract.

Residential Care: The services provided for residential care are generally:

- a. Room
- b. Board
- c. Assistance with bathing, dressing, administering medication and activity programs
- d. Linen and laundry
- e. Transportation to doctors and banks, within a five-mile radius of the Lydia H. Roper Home

Health care is not provided at Lydia H. Roper Home. Residents with Continuing Care Contracts who need care beyond the level authorized for Homes for Adults are transferred to The Hermitage in Richmond or Hermitage on the Eastern Shore. In these facilities they receive, at an extra charge, the services provided to health care Residents, varying from nursing attention to total bed care. See the attached Contract for a further explanation of the services presently provided to persons receiving health care at The Hermitage in Richmond and Hermitage on the Eastern Shore.

The following optional service is available at an extra charge:

Transportation to doctors and banks, when the distance exceeds a five-mile radius from Lydia H. Roper Home.

B. FEES REQUIRED OF RESIDENTS

Residents with Continuing Care Contracts paid a one-time entrance fee at the time of admission, which cannot be increased after admission. The entrance fee is not escrowed and may be used in the payment of operating costs. See Sections E1, I, J and M of the attached Contract for more information concerning entrance fees, including information concerning the return of entrance fees.

Monthly fees are charged, the amount of which is dependent upon the lodging assigned. See Sections E2, L and M of the attached Contract for other information concerning monthly fees, including finance charges for late payments. On occasion, if a Resident's current income does not meet VUMH's income requirements, a Resident may be required to deposit monies as security for the payment of future monthly fees.

VUMH reserves the right to increase the monthly fees so as to cause the fees from time to time to reflect increases in the cost of care. However, there are no limitations on the amount of, or frequency of, increases of the monthly fees.

The fees at Lydia H. Roper Home are:

Room/Class	Description	Monthly Fee
A	Large room with private full bath	\$1,195.00
B	Large or medium room with semi-private full bath, 2nd or 3rd floor	1,145.00
C	Large room with half bath, 1st floor	1,145.00
D	Medium room with no bath, with 2 or more windows	950.00
E	Medium room with 1 window	887.00
F	Small room with 1 dormer window	782.00
G	Very small room with 1 dormer window	725.00

Class A:	Room 100 (1)
Class B:	Rooms 201, 202, 209, 210, 213, 214, 301, 302 (8)
Class C:	Rooms 101, 102, 103 (3)
Class D:	Rooms 205, 206, 207, 304, 309 (5)
Class E:	Rooms 203, 204, 208, 211, 212 (5)
Class F:	Rooms 305, 306, 307, 308 (4)
Class G:	Room 303 (1)

Over the last five years, the frequency and average dollar amount of increase in monthly fees at the Lydia H. Roper Home has been:

Frequency	Average Dollar Amount of Increase Per Resident
91-92 annual	\$30
92-93 annual	28
93-94 annual	30
94-95 annual	20
95-96 annual	45

Note: Historically, these changes have occurred in June of each year.

HERMITAGE ON THE EASTERN SHORE

A. SERVICES PROVIDED UNDER CONTINUING CARE CONTRACTS

Independent Living: A Resident receives those services listed in Sections B 1 and B 3(a) of the attached Contract at no extra charge.

Assisted Living: A Resident receives assisted living at an extra charge when the facility's interdisciplinary care team (which typically includes a registered nurse, physician, dietician, social worker, activity coordinator and other facility staff members) determines that the Resident needs intervention to maintain independence, help recognizing self-care limitations, nursing assistance and nurse intervention on a regular basis, assistance to compensate for limitations on a regular basis, all in accordance with the requirements of the Standards and Regulations for Licensed Adult Care Residences promulgated by the Virginia Department of Social Services. Residents in assisted living receive aid in dressing and self-care, assistance in attending meals, increased assistance in housekeeping and increased monitoring of personal status.

Health Care: A Resident receives health care at an extra charge and is admitted to the Health Care Center when the facility's interdisciplinary care team determines that the Resident is in need of nursing care. Residents receiving health care receive services varying with their needs from nursing attention to total nursing bed care in accordance with the Rules and Regulations for Licensed Nursing Homes promulgated by the Virginia Department of Health.

The following optional services are available to Residents at an extra charge:

- Beautician/Barber
- Dental Care
- Dry Cleaning
- Guest Meals
- Guest Room
- Hearing Aid
- Medical Supplies
- Medical Transportation - Toll
- Personal Laundry (independent Residents only)
- Pharmacy
- Physical Therapy
- Podiatrist
- Psychologist
- Store
- Telephone
- Whirlpool Baths (independent Residents only)

B. FEES REQUIRED OF RESIDENTS

Residents of this facility pay a one-time entrance fee at the time of admission, which fee cannot be increased after admission. The Entrance Fees are not escrowed and may be used in the payment of operating costs. See Sections E1, I, J and M of the attached Contract for more information concerning entrance fees, including refunds of entrance fees. Monthly fees are charged, the amount of which is dependent upon the level of care and the lodging assigned. See Sections E2, L and M of the attached Contract for other information concerning monthly fees, including refunds of monthly fees and finance

charges for late payments. On occasion, if a Resident's current income does not meet VUMH's income specifications, a Resident may be required to deposit monies as security for the payment of future monthly fees.

VUMH reserves the right to increase the monthly fees so as to cause the fees from time to time to reflect increases in the cost of care. However, there are no limitations on the amount of, or frequency of, increases of the monthly fees. The fees at Hermitage on the Eastern Shore are:

	Monthly Fee	Entrance Fee Traditional Plan	Entrance Fee Guaranteed Refund Plan
Resident - Studio	\$1,090.00	\$43,500.00	\$ 72,000.00
Resident - Studio (Rental)	1,685.00	N/A	N/A
Resident - Apt. B2, B3, B5, E5 (1)	1,625.00	69,500.00	115,000.00
Resident - Apt. B2, B3, B5, E5 (2)	2,080.00	83,000.00	136,950.00
Resident - Apt. B1, B4 (1)	1,635.00	70,500.00	116,000.00
Resident - Apt. B1, B4 (2)	2,100.00	83,500.00	137,800.00
Resident - Apt. B6, C16, F4, F5 (1)	1,645.00	71,000.00	117,150.00
Resident - Apt. B6, C16, F4, F5 (2)	2,120.00	84,000.00	138,600.00
Resident - 3 Room Apt. I, Single	1,850.00	96,000.00	153,600.00
Resident - 3 Room Apt. I, Double	2,350.00	109,000.00	174,400.00
Resident - 3 Room Apt. III, Single	1,870.00	98,000.00	156,800.00
Resident - 3 Room Apt. III, Double	2,390.00	111,000.00	177,600.00
Asst Lvg - Studio	1,680.00	43,500.00	N/A
Asst Lvg - Studio (Rental) - Private	2,255.00	N/A	N/A
Asst Lvg - Studio (Rental) - Semi-Private	1,975.00	N/A	N/A
Asst Lvg - Apt. B2, B3, B5 (1)	2,225.00	69,500.00	N/A
Asst Lvg - Apt. B2, B3, B5 (2)	3,360.00	83,000.00	N/A
Asst Lvg - Apt. B1, B4 (1)	2,235.00	70,500.00	N/A
Asst Lvg - Apt. B1, B4 (2)	3,380.00	83,500.00	N/A
Asst Lvg - Apt. B6, C16 (1)	2,245.00	71,000.00	N/A
Asst Lvg - Apt. B6, C16 (2)	3,400.00	84,000.00	N/A
Asst Lvg II - Private	1,850.00	43,500.00	N/A
Asst Lvg II - Private (Rental)	2,425.00	N/A	N/A
Health Care - Nursing Bed	2,205.00	43,500.00	N/A
Health Care - Private	2,350.00	43,500.00	N/A
Health Care - Daily - Nursing Bed	95.00	N/A	N/A
Health Care - Daily - Private	105.00	N/A	N/A

Over the last five years, the frequency and average dollar amount of increase in monthly fees at Hermitage on the Eastern Shore has been:

Frequency	Average Dollar Amount of Increase				
	Resident Studio	Resident Private Apt.	Resident Semi-Private Apt.	Assisted Living	Health Care
91-92 annual	\$45	\$55	\$45	\$ 90	\$150
92-93 annual	40	60	40	100	80
93-94 annual	30	45	30	45	60
94-95 annual	20	30	20	35	40
95-96 annual	25	40	50	80	100

Note: Historically, these changes have occurred in June of each year.

HERMITAGE IN NORTHERN VIRGINIA

A. SERVICES PROVIDED UNDER CONTINUING CARE CONTRACTS

Independent Living: A Resident receives those services listed in Sections B1 and B3(a) of the attached Contract at no extra charge.

Assisted Living: A Resident receives assisted living at an extra charge (unless the Resident is admitted under a Standard Contract) when the facility's interdisciplinary care team (which typically includes a registered nurse, physician, dietician, social worker, activity coordinator and other facility staff members) determines that the Resident needs intervention to maintain independence, help recognizing self-care limitations, nursing assistance and nurse intervention on a regular basis, assistance to compensate for limitations on a regular basis, all in accordance with the requirements of the Standards and Regulations for Licensed Adult Care Residences promulgated by the Virginia Department of Social Services. Residents in assisted living receive aid in dressing and self-care, assistance in attending meals, increased assistance in housekeeping and increased monitoring of personal status.

Health Care: A Resident receives health care at an extra charge (unless the Resident is admitted under a Standard Contract) and is admitted to the Health Care Center when the facility's interdisciplinary care team determines that the Resident is in need of nursing care. Residents receiving health care receive services varying with their needs from nursing attention to total nursing bed care in accordance with the Rules and Regulations for Licensed Nursing Homes promulgated by the Virginia Department of Health.

Residents admitted under a Standard Contract receive the services listed above at no additional charge.

The following optional services are available to Residents at an extra charge:

- Beautician/Barber
- Cable Television (installation and monthly fees)
- Dry Cleaning
- Guest Meals
- Guest Room
- Laboratory
- Medications
- Medical Supplies and Services Incident to the Care of the Resident
(Prosthetic Devices, Incontinence Care Products, Syringes, Sutures, Enema Products, etc.)
- Newspapers, Magazines and Other Personal Reading Material
- Personal Laundry
- Personal Physician (fees)
- Physical Therapy
- Private Duty Nurses (Health Care Center)
- Psychologist
- Store
- Telephone (installation and monthly fees)
- Transportation
- X-rays

B. FEES REQUIRED OF RESIDENTS

Residents of this facility pay a one-time entrance fee at the time of admission, which fee cannot be increased after admission. Entrance Fees are not escrowed and may be used in the payment of operating costs. See Sections E1, I, J and M of the attached Contract for more information concerning entrance fees, including refunds of entrance fees.

Monthly fees are charged, the amount of which is dependent upon the level of care and the lodging assigned, unless the Resident is admitted under a Standard Contract. See Sections E2, L and M of the attached Contract for other information concerning monthly fees, including refunds of monthly fees and finance charges for late payments. On occasion, if a Resident's current income does not meet VUMH's income requirements, a Resident may be required to deposit monies as security for the payment of future monthly fees.

Residents admitted under a Standard Contract pay the Standard Contract monthly fee without regard to the level of care afforded them.

VUMH reserves the right to increase the monthly fees so as to cause the fees from time to time to reflect increases in the cost of care. However, there are no limitations on the amount of, or frequency of, increases of the monthly fees.

The fees at Hermitage in Northern Virginia are:

	Monthly Fee	Entrance Fee Traditional Plan	Entrance Fee Guaranteed Refund Plan
Resident - 1 Room	\$1,138.00	\$ 40,000.00	\$ 66,000.00
Resident - 2 Rooms (A) Private	1,558.00	95,500.00	157,600.00
Resident - 2 Rooms (A) Double	2,019.00	110,500.00	182,300.00
Resident - 2 Rooms (B) Private	1,568.00	98,500.00	163,500.00
Resident - 2 Rooms (B) Double	2,030.00	113,000.00	186,500.00
Resident - 2 Rooms (C) Private	1,599.00	100,000.00	165,000.00
Resident - 2 Rooms (C) Double	2,060.00	115,000.00	189,700.00
Resident - 3 Rooms (D) Single	1,811.00	112,500.00	180,000.00
Resident - 3 Rooms (D) Double	2,378.00	131,000.00	216,200.00
Asst Lvg - 1 Room	2,050.00	62,000.00	N/A
Asst Lvg - 1 Room (Lease)	2,761.00	N/A	N/A
Asst Lvg - 2 Rooms (A) Private	2,388.00	95,500.00	N/A
Asst Lvg - 2 Rooms (A) Private (Lease)	3,210.00	N/A	N/A
Asst Lvg - 2 Rooms (B) Private	2,399.00	98,500.00	N/A
Asst Lvg - 2 Rooms (B) Private (Lease)	3,220.00	N/A	N/A
Asst Lvg - 2 Rooms (C) Private	2,429.00	100,000.00	N/A
Asst Lvg - 2 Rooms (C) Private (Lease)	3,261.00	N/A	N/A
Asst Lvg - 2 Rooms (A) D1	1,435.00 each	55,250.00 each	N/A
Asst Lvg - 2 Rooms (B) D1	1,445.00 each	56,500.00 each	N/A
Asst Lvg - 2 Rooms (C) D1	1,461.00 each	57,500.00 each	N/A
Asst Lvg - 2 Rooms (A) D2	1,876.00 each	55,250.00 each	N/A
Asst Lvg - 2 Rooms (A) D2 (Lease)	2,232.00 each	N/A	N/A
Asst Lvg - 2 Rooms (B) D2	1,881.00 each	56,500.00 each	N/A
Asst Lvg - 2 Rooms (B) D2 (Lease)	2,528.00 each	N/A	N/A
Asst Lvg - 2 Rooms (C) D2	1,896.00 each	57,500.00 each	N/A
Asst Lvg - 2 Rooms (C) D2 (Lease)	2,538.00 each	N/A	N/A
Health Care - Private Deluxe	3,019.00	65,000.00	N/A
Health Care - Private	2,819.00	65,000.00	N/A
Health Care - Semi-Private	2,593.00	65,000.00	N/A
Health Care - Private Daily Deluxe	164.00	N/A	N/A
Health Care - Private Daily	144.00	N/A	N/A
Health Care - Semi-Private Daily	133.00	N/A	N/A

D1 - Denotes double occupancy, one person receiving assisted living.
D2 - Denotes double occupancy, two people receiving assisted living.

Over the last five years, the frequency and average dollar amount of increase in monthly fees for Traditional and Guaranteed Refund Plans at Hermitage in Northern Virginia has been:

Frequency	Average Dollar Amount of Increase				
	Resident Studio	Resident Private Apt.	Resident Semi-Private Apt.	Assisted Living	Health Care
91-92 annual	\$55	\$90	\$45	\$70	\$175
92-93 annual	40	50	45	70	175
93-94 annual	35	35	30	50	150
94-95 annual	45	80	60	80	120
95-96 annual	28	38	49	50	69

Note: Historically, these changes have occurred in June of each year.

The fees under the Modified Plan are:

	Modified Plan Monthly Fee	Modified Plan Entrance Fee
Resident - 1 Room	\$ N/A	\$ N/A
Resident - 2 Rooms (A) Private	2,025.00	66,500.00
Resident - 2 Rooms (A) Double	2,625.00	84,500.00
Resident - 2 Rooms (B) Private	2,040.00	68,500.00
Resident - 2 Rooms (B) Double	2,640.00	86,500.00
Resident - 2 Rooms (C) Private	2,080.00	70,000.00
Resident - 2 Rooms (C) Double	2,680.00	88,000.00
Resident - 3 Rooms (D) Private	2,360.00	80,000.00
Resident - 3 Rooms (D) Double	2,960.00	98,000.00
Asst Lvg - 1 Room	N/A	N/A
Asst Lvg - 2 Rooms (A) Private	2,488.00	66,500.00
Asst Lvg - 2 Rooms (B) Private	2,499.00	68,500.00
Asst Lvg - 2 Rooms (C) Private	2,529.00	70,000.00
Asst Lvg - 2 Rooms (A) D1	3,088.00	84,500.00
Asst Lvg - 2 Rooms (B) D1	3,099.00	86,500.00
Asst Lvg - 2 Rooms (C) D1	3,129.00	88,000.00
Asst Lvg - 2 Rooms (A) D2	3,852.00	84,500.00
Asst Lvg - 2 Rooms (B) D2	3,862.00	86,500.00
Asst Lvg - 2 Rooms (C) D2	3,892.00	88,000.00
Health Care - Private Deluxe	3,419.00	N/A
Health Care - Private	3,219.00	N/A
Health Care - Semi-Private	2,993.00	N/A

D1 - Denotes double occupancy, one person receiving assisted living.

D2 - Denotes double occupancy, two people receiving assisted living.

1995-96 is the first year that the Modified Plan has been offered and a five year comparison of rate changes cannot be made.

The fees under the Standard Plan are:

	Monthly Fee	Standard Plan Entrance Fee
Resident - 1 Room	\$ 1,325.00	\$ 65,000.00
Resident - 2 Rooms (A) Private	1,725.00	115,000.00
Resident - 2 Rooms (A) Double	2,625.00	130,000.00
Resident - 2 Rooms (B) Private	1,735.00	118,000.00
Resident - 2 Rooms (B) Double	2,635.00	133,000.00
Resident - 2 Rooms (C) Private	1,765.00	119,500.00
Resident - 2 Rooms (C) Double	2,665.00	134,500.00
Resident - 3 Rooms (D) Private	1,975.00	160,000.00
Resident - 3 Rooms (D) Double	2,875.00	175,000.00
Asst Lvg - 1 Room	Included	N/A
Asst Lvg - 2 Rooms (A) Private	Included	N/A
Asst Lvg - 2 Rooms (B) Private	Included	N/A
Asst Lvg - 2 Rooms (C) Private	Included	N/A
Asst Lvg - 2 Rooms (A) D1	Included	N/A
Asst Lvg - 2 Rooms (B) D1	Included	N/A
Asst Lvg - 2 Rooms (C) D1	Included	N/A
Asst Lvg - 2 Rooms (A) D2	Included	N/A
Asst Lvg - 2 Rooms (B) D2	Included	N/A
Asst Lvg - 2 Rooms (C) D2	Included	N/A
Health Care - Private Deluxe	Included	N/A
Health Care - Private	Included	N/A
Health Care - Semi-Private	Included	N/A

D1 - Denotes double occupancy, one person receiving assisted living.

D2 - Denotes double occupancy, two people receiving assisted living.

1995-96 is the first year that the Standard Plan has been offered and a five year comparison of rate changes cannot be made.

In addition to the rates described above, Hermitage in Northern Virginia offers a few independent living apartments for rent without guarantee of life care. At present, the rates for these rooms are:

Resident One Room	Monthly Fee	Entrance Fee
Apt. G-14	\$ 900.00	N/A
Apt. G-18	900.00	N/A
Apt. G-22	900.00	N/A
Apt. G-26	900.00	N/A
Apt. G-31	1,300.00	N/A
Apt. G-34	1,300.00	N/A

THE HERMITAGE IN RICHMOND
ADJUNCT: SNYDER MEMORIAL HOME

A. SERVICES PROVIDED UNDER CONTINUING CARE CONTRACTS

Independent Living: A Resident receives those services listed in Sections B 1 and B 3(a) of the attached Contract at no extra charge.

Assisted Living: A Resident receives assisted living at an extra charge when the facility's interdisciplinary care team (which typically includes a registered nurse, physician, dietician, social worker, activity coordinator and other facility staff members) determines that the Resident needs intervention to maintain independence, help in recognizing self-care limitations and assistance on a regular basis in compensating for limitations, all in accordance with the requirements of the Standards and Regulations for Licensed Adult Care Residences promulgated by the Virginia Department of Social Services. Residents in assisted living - level I receive aid in dressing and self-care, assistance with medications, assistance in attending meals and with personal laundry. In addition to the services provided in level I, Residents in assisted living - level II receive increased aid with housekeeping, increased assistance with reminders and orientation as to time and place and increased monitoring of personal status. On-site 24-hour nursing assistance is available in each unit.

Health Care: A Resident receives health care at an extra charge and is admitted to the Health Care Center when the facility's interdisciplinary care team finds that the Resident is in need of nursing care. Residents receiving health care receive services varying with their needs from nursing attention to total nursing bed care in accordance with the Rules and Regulations for Licensed Nursing Homes promulgated by the Virginia Department of Health. Health care for these facilities is available only at The Hermitage in Richmond, 1600 Westwood Avenue. Life care Residents of Snyder Memorial Home in need of health care are transferred to the Westwood Avenue facility.

The following optional services are available to Residents at an extra charge:

- Beautician/Barber
- Cable Television (installation and monthly fees)
- Dental Care
- Dry Cleaning (not available at Snyder Memorial Home)
- Guest Meals
- Guest Room
- Laboratory
- Medications
- Medical Supplies and Services Incident to the Care of the Resident
(Prosthetic Devices, Incontinence Care Products, Syringes, Sutures, Enema Products, etc.)
- Occupational and Speech Therapy
- Oxygen
- Personal Laundry (independent Residents only)
- Personal Physician/Specialist Fees
- Private Duty Nurse
- Store
- Telephone (installation and monthly fees)
- X-rays

B. FEES REQUIRED OF RESIDENTS

Residents of these facilities pay a one-time entrance fee at the time of admission, which fee cannot be increased after admission. Entrance Fees are not escrowed and may be used in the payment of operating costs. See Sections E1, I, J and M of the attached Contract for more information concerning entrance fees, including refunds of entrance fees.

Monthly fees are charged, the amount of which is dependent upon the level of care and the lodging assigned. See Sections E2, L and M of the attached Contract for other information concerning monthly fees, including refunds of monthly fees and finance charges for late payments. On occasion, if a Resident's current income does not meet VUMH's income requirements, a Resident may be required to deposit monies as security for the payment of future monthly fees.

VUMH reserves the right to increase the monthly fees so as to cause the fees from time to time to reflect increases in the cost of care. However, there are no limitations on the amount of, or frequency of, increases of the monthly fees.

The fees at The Hermitage and Snyder Memorial Home are:

Monthly Fee	Traditional Plan	Entrance Fee Plan	Entrance Fee Guaranteed Refund
RICHMOND			
Resident - 1 Room Private (Half bath)	\$1,156.00	\$ 49,500.00	\$ 80,000.00
Resident - 1 Room Private (Full bath)	1,182.00	49,500.00	80,000.00
Resident - 1 Room Private (Lease)	1,485.00	N/A	N/A
Resident - 2 Room Private	1,688.00	75,500.00	120,500.00
Resident - 2 Room Double	1,156.00 each	87,500.00	141,000.00
Resident - 3 Room Double	1,266.00 each	107,250.00	175,500.00
Resident - 2 Room Private (Lease)	2,153.00 each	N/A	N/A
Resident - 2 Room Double (Lease)	1,515.00 each	N/A	N/A
Resident - 3 Room Double (Lease)	1,618.00 each	N/A	N/A
Asst Lvg - 1 Room Private	1,523.00	49,500.00	N/A
Asst Lvg - 2 Room Private	2,059.00	75,500.00	N/A
Asst Lvg - 1 Room Private (Lease)	1,943.00	N/A	N/A
Asst Lvg II - 1 Room Private	1,881.00	49,500	N/A
Asst Lvg II - 1 Room Private (Lease)	2,279.00	N/A	N/A
Asst Lvg II - 1 Room Semi-Private	1,565.00 each	24,750.00 each	N/A
Asst Lvg II - 1 Room Semi-Private (Lease)	1,996.00 each	N/A	N/A
Health Care - Semi-Private	2,711.00	24,750.00 each	N/A
Health Care - Private	2,979.00	49,500.00	N/A
Health Care - Semi-Private Daily	99.00	N/A	N/A
Health Care - Private Daily	135.00	N/A	N/A
SNYDER			
Resident - Private	\$1,074.00	\$40,000.00	\$66,000.00
Resident (Monthly)	1,248.00	N/A	N/A
Asst Lvg - Private	1,634.00	40,000.00	N/A
Asst Lvg (Monthly)	1,810.00	N/A	N/A

In addition to the standard rooms described, The Hermitage in Richmond offers a few smaller dormer rooms and corner rooms with limited floor space (designated as "A" or "D" rooms) and larger rooms with full baths and full walk-in closets (designated as "B" rooms). At present, the fees for these rooms are:

Room	Monthly Fee	Entrance Fee	Entrance Fee
		Traditional Plan	Guaranteed Refund Plan
A 401, 404, 406, 407-410	\$ 665.00	N/A	N/A
A 402	1,131.00	\$32,500.00	\$52,500.00
A 403	1,131.00	34,500.00	56,000.00
A 405	1,131.00	29,000.00	47,000.00
B 203-207	1,182.00	54,500.00	88,000.00
D 116, 216, 316	1,131.00	39,500.00	60,500.00
D 402	1,131.00	32,500.00	52,500.00
E 403	1,182.00	54,500.00	88,000.00

Over the last five years, the frequency and average dollar amount of increase in monthly fees at The Hermitage and Snyder Memorial Home has been:

Frequency	Average Dollar Amount of Increase				
	Resident	Assisted Living		Health Care	
		Semi-Private	Private	Semi-Private	Private
91-92 annual	\$35	\$ 0	\$ 80	\$115	\$245
92-93 annual	42	100	75	110	155
93-94 annual	28	30	40	60	119
94-95 annual	30	37	45	110	66
95-96 annual	28	38	46	66	73

Note: Historically, these changes have occurred in June of each year.

THE HERMITAGE AT CEDARFIELD

A PROPOSED FACILITY (UNDER CONSTRUCTION)

A. SERVICES PROVIDED UNDER RESIDENCY AGREEMENT

The services provided under the residency agreement for The Hermitage at Cedarfield differ substantially from those facilities for which this Disclosure Statement is provided. Reference should be made to the separate Disclosure Statement for The Hermitage at Cedarfield.

B. FEES REQUIRED OF RESIDENTS

The fees required for Residents at The Hermitage at Cedarfield differ substantially from those facilities for which this Disclosure Statement is provided. Reference should be made to the separate Disclosure Statement for The Hermitage at Cedarfield.

Over the last five years, the frequency and average dollar amount of increase in monthly fees at The Hermitage at Cedarfield has been:

Frequency			Average Dollar Amount of Increase		
	Apartment	Cottage	Assisted Living	Special Care	Health Care
91-92 annual			No Fees Charged or Announced		
92-93 annual			No Fees Charged or Announced		
93-94 annual	\$65	\$ 90	No Increase	No Increase	No Increase
94-95 annual	No Increase	120	No Increase	No Increase	No Increase
95-96 annual	No Increase	120	No Increase	No Increase	No Increase

RESERVE FUNDING

VUMH follows the fund method of accounting. See Note 1 of the notes to the financial statements for the years ended May 31, 1995 and 1994, made a part of this statement for information concerning the accounting treatment of entrance fees, unearned income from life care Residents, and certain annuities sold by VUMH. Annually, VUMH revalues the liability to annuitants by referring to commonly used mortality tables. By agreement, the money placed in the Samaritan Fund for the facilities of VUMH may be restricted to the benefit of the individual facility.

CERTIFIED FINANCIAL STATEMENTS

Attached are certified financial statements of VUMH including the balance sheets, statements of revenue and expenses, and changes in fund balances and statement of cash flows for the two most recent fiscal years.

PRO FORMA STATEMENT OF REVENUE AND EXPENSES

Attached is the pro forma statement of revenue and expenses for VUMH for the current fiscal year. The pro forma statement of revenue and expenses is developed as a part of VUMH's annual budgeting process. Expected revenue from monthly fees is estimated at the current level of occupancy. Revenue from bequests and legacies is conservatively estimated as compared to the average of the past five years' actual experience. Revenue from entrance fees is amortized over the estimated life of the Resident, in accordance with guidelines established by the American Institute of Certified Public Accountants (AICPA).

Personnel expenses represent present staffing and anticipated changes at present cost levels with a scheduled cost of living increase for the year. Food, medical and other service costs are based on past experience with increases for inflation. Buildings and grounds costs reflect the average increase of the past five years' experience.

In addition, the major assumptions upon which the pro forma statement is based include maintaining current occupancy and the absence of material, unanticipated change in the cost of food, services, energy and other basic requirements beyond a 3% allowance for inflation. The budget anticipates no substantial change in the rate of interest.

EXPLANATION OF MATERIAL DIFFERENCES BETWEEN PRIOR FISCAL YEAR'S PRO FORMA REVENUE STATEMENT AND THE ACTUAL RESULTS OF OPERATIONS DURING THE PRIOR FISCAL YEAR

The actual results of operations for the fiscal year ended May 31, 1995 compared favorably with the outcome projected in the prior fiscal year's pro forma statement of revenue and expenses; the actual excess of revenue over expense was \$1,123,834 compared with a projected excess of \$4,320. Generally, the actual statement of revenue and expense for the year just ended shows few material variations from the pro forma statement; however, several noteworthy variances warrant discussion.

Operating revenue fell below projections by \$548,239 due to a decrease in the census during the year, and a reclassification of some income from operating revenue to non-operating revenue.

Operating expenses were within .5% of the estimated projections; however, two departments had notable variances.

Nursing services exceeded projections by \$338,997. The older and more frail population of the homes required additional nursing staff. Also, the transition of several rooms from independent living to assisted living required staffing changes.

Administrative services fell below projections by \$284,040. Several positions that were planned during the budget process were eliminated in an effort to control costs.

Non-operating gains were \$1,752,028 more than was anticipated in the pro forma statement. The components of this favorable outcome were diverse:

Revenue from bequests and legacies exceeded expectations by \$955,680. This revenue category is unpredictable by its nature and, therefore, is estimated at a conservative level.

Realized gains from sale of investments contributed \$540,671 in additional revenue in 1995. This revenue category is also unpredictable and is estimated at a conservative level for budgeting purposes.

ADMISSION OF NEW RESIDENTS

A. Independent Living

1. At the time of admission to independent living, the applicant must meet VUMH's standards for living independently as a Resident. These standards are:
 - a. exhibiting the ability to exit the building
 - b. securing the approval of the applicant's physician and the facility's interdisciplinary team
2. The applicant must demonstrate the ability to meet the cost of care.
3. VUMH may refuse an application on the basis that approval of the application may interfere with the providing of the proper level of care to present Residents.

B. Assisted Living

1. Direct admission to assisted living is limited to the availability of space. At the time of admission to assisted living, the applicant must provide information in order that the facility may determine the level of care the applicant requires.
2. The applicant must secure the approval of the applicant's physician and the facility's interdisciplinary team.
3. The applicant must demonstrate the ability to meet the cost of care.
4. VUMH may refuse an application on the basis that approval of the application may interfere with the providing of the proper level of care to present Residents.

C. Health Care

1. Direct admission to the Health Care Center is limited to the availability of beds. At the time of admission to the health care center the applicant must provide information in order that the facility may determine the level of care the applicant requires.
2. The applicant must secure the approval of the applicant's physician and the facility's interdisciplinary team.
3. The applicant must demonstrate the ability to meet the cost of care.
4. VUMH may refuse an application on the basis that approval of the application may interfere with the providing of the proper level of care to present Residents.

ACCESS TO FACILITY AND SERVICES BY NON-RESIDENTS

VUMH does not offer its services to non-residents. Invited guests may visit for the day by registration.

PROCEDURE BY WHICH A RESIDENT MAY FILE A COMPLAINT OR DISCLOSE ANY CONCERN

A Resident may file a complaint or disclose any concern, in writing, as follows:

1. The complaint or concern should first be submitted in writing to the appropriate department director, who will provide a written response within fifteen (15) days.
2. In the event the Resident's complaint or concern is not resolved to the Resident's satisfaction by the department director within such fifteen (15) day period, the Resident may submit the complaint or concern in writing to the administrator who will provide a written response within fifteen (15) days.
3. In the event the Resident's complaint or concern is not resolved to the Resident's satisfaction by the administrator within such fifteen (15) day period, the Resident may submit the complaint or concern to the appropriate ombudsman.

Virginia United Methodist Homes, Inc.

FINANCIAL REPORT

May 31, 1995

INDEPENDENT AUDITORS' REPORT

To the Board of Directors
Virginia United Methodist Homes, Inc.
Richmond, Virginia

We have audited the accompanying balance sheets of Virginia United Methodist Homes, Inc., as of May 31, 1995 and 1994, and the related statements of revenues and expenses of general funds, changes in fund balances, and cash flows of general funds for the years then ended. These financial statements are the responsibility of the Corporation's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Virginia United Methodist Homes, Inc., as of May 31, 1995 and 1994, and the results of its operations and its cash flows for the years then ended in conformity with generally accepted accounting principles.

Mitchell, Wiggins & Company

Richmond, Virginia
July 14, 1995

Virginia United Methodist Homes, Inc.
BALANCE SHEETS
May 31, 1995 and 1994

<u>ASSETS</u>	<u>1995</u>	<u>1994</u>
<u>GENERAL FUNDS</u>		
<u>CURRENT ASSETS</u>		
Cash and cash equivalents	\$ 1,140,147	\$ 1,347,398
Short-term investments, escrow deposits	9,369,993	7,973,766
Accounts receivable:		
Residents, less allowance for uncollectible accounts 1995 \$1,642,046; 1994 \$1,763,360	358,712	301,696
Other	73,334	30,000
Promissory notes, residents	447,110	136,500
Accrued income receivable	90,359	179,826
Prepaid expenses	513,648	360,610
<u>Total current assets</u>	\$ 11,993,303	\$ 10,329,796
<u>ASSETS WHOSE USE IS LIMITED</u>		
Investments held under bond indenture agreement by trustee	\$ 49,666,466	\$ 73,251,918
Investments held in escrow to secure deposits	9,369,993	7,973,766
Investments held in reserve for refundable entrance fees	1,405,000	1,405,000
Investments held in reserve for contingencies	786,989	619,847
<u>Total assets whose use is limited</u>	\$ 61,228,448	\$ 83,250,531
Less assets whose use is limited and that are required for current liabilities	9,369,993	7,973,766
<u>Noncurrent assets whose use is limited</u>	\$ 51,858,455	\$ 75,276,765
<u>INVESTMENTS AND OTHER ASSETS</u>		
Investments, portfolio	\$ 5,093,152	\$ 4,600,557
Other investments	1,721,072	176,185
Notes receivable, mortgages	71,377	82,865
Deferred development costs	3,593,593	2,540,976
Bond issuance costs	3,652,275	3,665,900
	\$ 14,131,469	\$ 11,066,483

	<u>1995</u>	<u>1994</u>
<u>PROPERTY AND EQUIPMENT, NET</u>	\$ 44,346,516	\$ 16,297,608
	<u>\$ 122,329,743</u>	<u>\$ 112,970,652</u>
<u>DONOR-RESTRICTED FUNDS</u>		
<u>SPECIFIC-PURPOSE FUNDS</u>		
Cash and cash equivalents	\$ 69,227	\$ 52,648
Certificates of deposit	1,000	1,000
Due from General Funds	<u>126,904</u>	<u>156,636</u>
	<u>\$ 197,131</u>	<u>\$ 210,284</u>
<u>SAMARITAN FUND</u>		
Investments, portfolio	<u>\$ 1,859,814</u>	<u>\$ 1,858,250</u>

See Notes to Financial Statements.

<u>LIABILITIES AND FUND BALANCES</u>		<u>1995</u>	<u>1994</u>
<u>GENERAL FUNDS</u>			
<u>CURRENT LIABILITIES</u>			
Current maturities of long-term debt	\$	57,248	\$ —
Accounts payable		5,404,377	1,349,049
Due to Specific-Purpose Funds		126,904	156,636
Accrued expenses:			
Salaries and wages		438,252	374,700
Vacation		356,557	310,228
Interest		3,897	96,983
Other		70,593	61,476
Variable rate accounts		304,281	390,383
Deposits, prospective members		10,441,690	8,273,766
Builders' bonds payable		170,900	183,315
<u>Total current liabilities</u>	\$	<u>17,374,699</u>	\$ <u>11,196,536</u>
<u>LONG-TERM LIABILITIES</u>			
Annuity bonds payable	\$	51,131	\$ 54,061
Notes payable, bank		2,208,696	—
Bonds payable		81,800,000	81,800,000
Refundable fees		2,848,046	3,342,953
Deferred revenue, entrance fees		11,424,515	11,212,458
	\$	<u>98,332,388</u>	\$ <u>96,409,472</u>
<u>FUND BALANCE</u>			
Designated by board for future use	\$	786,989	\$ 619,847
Unrestricted		5,835,667	4,744,797
	\$	<u>6,622,656</u>	\$ <u>5,364,644</u>
	\$	<u>122,329,743</u>	\$ <u>112,970,652</u>
<u>DONOR-RESTRICTED FUNDS</u>			
<u>SPECIFIC-PURPOSE FUNDS</u>			
Residents' funds on deposit	\$	67,128	\$ 50,701
Fund balance		130,003	159,583
	\$	<u>197,131</u>	\$ <u>210,284</u>
<u>SAMARITAN FUND</u>			
Fund balance	\$	<u>1,859,814</u>	\$ <u>1,858,250</u>

Virginia United Methodist Homes, Inc.
STATEMENTS OF REVENUES AND EXPENSES OF GENERAL FUNDS
Years Ended May 31, 1995 and 1994

	<u>1995</u>	<u>1994</u>
<u>REVENUES</u>		
Residents' fees, including amortization of deferred revenue from entrance fees 1995 \$3,270,329; 1994 \$2,930,531	\$ 18,267,813	\$ 17,397,606
Ancillary service revenue, net	67,751	107,143
Other operating revenue	314,999	371,684
<u>Total revenues</u>	<u>\$ 18,650,563</u>	<u>\$ 17,876,433</u>
<u>EXPENSES</u>		
Nursing services	\$ 7,016,803	\$ 6,780,549
Dining services	3,860,170	3,857,972
Administrative services	3,430,935	3,589,198
Building and fiscal services	2,550,529	2,210,360
Housekeeping services	1,356,186	1,311,008
Resident services	607,810	610,401
General overhead expense	467,701	450,594
Depreciation and amortization	1,054,032	1,023,025
<u>Total expenses</u>	<u>\$ 20,344,166</u>	<u>\$ 19,833,107</u>
<u>Loss from operations</u>	<u>\$ 1,693,603</u>	<u>\$ 1,956,674</u>
<u>NONOPERATING GAINS (LOSSES)</u>		
Bequests and legacies	\$ 1,355,680	\$ 1,883,647
Contributions, Capital Campaign, net of expenses	245,093	287,738
Contributions, Samaritan Fund	376,129	266,222
Interest and dividends on investments	315,272	327,536
Gain on securities transactions	366,048	236,798
Income on investments whose use is limited:		
Interest and dividends	89,160	72,392
Gain on securities transactions	174,623	84,010
Interest expense	(104,568)	(18,120)
<u>Total nonoperating gains</u>	<u>\$ 2,817,437</u>	<u>\$ 3,140,223</u>
<u>Revenues and gains in excess of expenses and losses</u>	<u>\$ 1,123,834</u>	<u>\$ 1,183,549</u>

See Notes to Financial Statements.

Virginia United Methodist Homes, Inc.
STATEMENTS OF CHANGES IN FUND BALANCES
Years Ended May 31, 1995 and 1994

	<u>1995</u>	<u>1994</u>
<u>GENERAL FUNDS</u>		
Balance, beginning	\$ 5,364,644	\$ 4,161,392
Revenue and gains in excess of expenses and losses	1,123,834	1,183,549
Transfer from Specific-Purpose Funds for property and equipment acquisitions	<u>134,178</u>	<u>19,703</u>
Balance, ending	<u>\$ 6,622,656</u>	<u>\$ 5,364,644</u>

DONOR-RESTRICTED FUNDS

SPECIFIC-PURPOSE FUNDS

Balance, beginning	\$ 159,583	\$ 159,582
Additions:		
Contributions	128,651	48,206
Interest earned	193	61
Deductions:		
Resident services	(22,760)	(28,563)
Transfer to General Fund for property and equipment acquisitions	(134,178)	(19,703)
Transfer to Samaritan Fund	<u>(1,486)</u>	<u>-</u>
Balance, ending	<u>\$ 130,003</u>	<u>\$ 159,583</u>

SAMARITAN FUND

Balance, beginning	\$ 1,858,250	\$ 1,857,433
Additions:		
Contributions	293,062	248,517
Interest earned	93,114	79,552
Gain on securities transactions	64,394	41,243
Transfer from Specific-Purpose Funds	1,486	-
Deductions:		
Administrative expenses	(56,703)	(68,272)
Resident support	(17,660)	(34,001)
Transfer to General Fund for benevolent care	<u>(376,129)</u>	<u>(266,222)</u>
Balance, ending	<u>\$ 1,859,814</u>	<u>\$ 1,858,250</u>

See Notes to Financial Statements.

Virginia United Methodist Homes, Inc.
STATEMENTS OF CASH FLOWS OF GENERAL FUNDS
Years Ended May 31, 1995 and 1994

	<u>1995</u>	<u>1994</u>
<u>CASH FLOWS FROM OPERATING ACTIVITIES</u>		
<u>AND NONOPERATING GAINS AND LOSSES</u>		
Revenue and gains in excess of expenses and losses	\$ 1,123,834	\$ 1,183,549
Adjustments to reconcile revenue and gains in excess of expenses and losses to net cash provided by (used in) operating activities and nonoperating gains and losses:		
Depreciation and amortization	1,054,032	1,023,025
Amortization of entrance fees	(3,270,329)	(2,930,531)
Adjustment of present value of annuity bonds payable	(2,930)	(21,451)
Amortization of discount on long-term investment securities	-	(2,001)
Gain on securities transactions	(605,064)	(320,808)
(Gain) loss on disposal of equipment	(2,452)	6,685
Accrued interest added to notes receivable mortgages	-	(120)
Changes in operating assets and liabilities:		
(Increase) decrease in assets:		
Accounts receivable	(100,350)	(60,042)
Promissory notes, residents	(310,610)	10,100
Accrued income receivable	89,467	(104,681)
Prepaid expenses	(153,038)	(246,079)
Increase (decrease) in liabilities:		
Accounts payable	4,055,328	701,916
Accrued expenses	25,912	183,252
<u>Net cash provided by (used in)</u>		
<u>operating activities and non-</u>		
<u>operating gains and losses</u>	<u>\$ 1,903,800</u>	<u>\$ (577,186)</u>

Virginia United Methodist Homes, Inc.
STATEMENTS OF CASH FLOWS OF GENERAL FUNDS
(Continued)

	1995	1994
<u>CASH FLOWS FROM INVESTING ACTIVITIES</u>		
Proceeds, investment portfolio securities sales	\$ 3,671,891	\$ 3,304,081
Proceeds, sales of equipment	2,452	16,318
Principal payments received on installment notes receivable from mortgages	11,584	20,184
Disbursement on note receivable, mortgages	(96)	(15,000)
Purchase of investments, portfolio	(3,899,422)	(3,746,657)
Withdrawal from investment portfolio	340,000	1,362,672
Purchase of other investments	(1,544,887)	(113,796)
Purchase of property and equipment	(29,102,940)	(3,157,344)
Purchase of short-term investments, escrow deposits	(1,396,227)	(7,973,766)
Refunds (disbursements), bond issuance costs	13,625	(3,665,900)
Disbursements, deferred development costs	(1,052,617)	(1,321,414)
(Increase) decrease in investments held under bond indenture agreement by trustee	23,585,452	(73,251,918)
Increase in investments held in reserve for contingencies	(167,142)	(157,753)
Increase in investments held in reserve for refundable entrance fees	-	(133,190)
Transfer to General Fund for property and equipment acquisition	134,178	19,703
<u>Net cash (used in) investing activities</u>	<u>\$ (9,404,149)</u>	<u>\$ (88,813,780)</u>
<u>CASH FLOWS FROM FINANCING ACTIVITIES</u>		
Proceeds, bond payable	\$ -	\$ 81,800,000
Proceeds from long-term borrowings	2,300,000	-
Decrease in due from other funds	-	97,728
Decrease in due to other funds	(29,732)	(1,073)
Proceeds from entrance fees	4,090,625	3,696,408
Refunds of entrance fees	(1,103,146)	(545,293)
Proceeds, deposits, prospective residents	2,167,924	7,972,766
Payments on note payable	(34,056)	(3,059,194)
Payments on variable rate accounts	(86,102)	(108,537)
Principal payments on builders' bonds	(12,415)	(2,990)
<u>Net cash provided by financing activities</u>	<u>\$ 7,293,098</u>	<u>\$ 89,849,815</u>
<u>Net increase (decrease) in cash and cash equivalents</u>	<u>\$ (207,251)</u>	<u>\$ 458,849</u>
Cash and cash equivalents:		
Beginning	1,347,398	888,549
Ending	<u><u>\$ 1,140,147</u></u>	<u><u>\$ 1,347,398</u></u>

Virginia United Methodist Homes, Inc.
STATEMENTS OF CASH FLOWS OF GENERAL FUNDS
(Continued)

	<u>1995</u>	<u>1994</u>
<u>SUPPLEMENTAL DISCLOSURES OF CASH FLOW</u> <u>INFORMATION</u>		
Cash payments for interest	<u>\$ 197,654</u>	<u>\$ 18,964</u>

See Notes to Financial Statements.

Virginia United Methodist Homes, Inc.

NOTES TO FINANCIAL STATEMENTS

May 31, 1995 and 1994

Note 1. Nature of Reporting Entity and Significant Accounting Policies

Nature of reporting entity:

Virginia United Methodist Homes, Inc., is a not-for-profit, tax-exempt entity organized under the laws of the Commonwealth of Virginia for the purpose of providing quality care for the elderly in the Commonwealth of Virginia.

A summary of the Corporation's significant accounting policies follows:

Cash and cash equivalents:

For purposes of reporting the statements of cash flows, the Corporation includes all unrestricted general fund cash accounts, which are not subject to withdrawal restrictions or penalties, and all highly liquid debt instruments with a maturity of three months or less as cash and cash equivalents on the accompanying balance sheets.

Allowance for uncollectible accounts:

The allowance for uncollectible accounts is established through a provision for uncollectible accounts charged to expense. The allowance represents an amount which, in management's judgment, will be adequate to absorb probable losses on existing accounts that may become uncollectible. Management's judgment in determining the adequacy of the allowance is based on evaluations of the collectibility of individual accounts receivable. Accounts receivable are charged against the allowance when deemed to be uncollectible. Subsequent recoveries are added to the allowance.

Assets whose use is limited:

Assets whose use is limited consist of the following:

Assets restricted by a bond indenture agreement which may be expended only in connection with the construction of The Hermitage at Cedarfield continuing care retirement facility.

Assets restricted by escrow agreements to secure deposits made by prospective Residents of the Cedarfield facility.

Assets set aside by the Board of Directors for refundable entrance fees and other contingencies, over which the Board retains control and may, at its discretion, subsequently be used for other purposes.

Note 1. (Continued)

Investments and investment income:

Investments are recorded at cost or, if donated, at fair market value at the date of the gift. Investment income is recognized when earned. Investment income and gains (losses) from general fund investments are reported as nonoperating gains (losses). Investment income and gains (losses) on investments of donor-restricted funds are added to (subtracted from) the appropriate donor-restricted fund balance.

Property and equipment:

Property and equipment acquisitions are recorded at cost or, if donated, at fair market value at the date of the gift. Depreciation is computed using the straight-line method over the estimated useful lives of the assets. Maintenance and repairs are charged to expense when incurred.

Annuity bonds payable:

The present value of annuities sold is recorded as a liability which is adjusted annually to its current present value.

Entrance fees:

Fees paid by a Resident upon entering into a Continuing Care Contract, net of the portion thereof that is refundable to the Resident, are recorded as deferred revenue and are amortized to income using the straight-line method over the estimated remaining life expectancy of the resident.

Obligation to provide future services:

The Corporation annually calculates the present value of the net cost of future services and use of facilities to be provided to current residents, and compares that amount with the balance of deferred revenue from entrance fees. If the present value of the net cost of future services and use of facilities exceeds the deferred revenue from entrance fees, a liability is recorded (obligation to provide future services and use of facilities) with the corresponding charge to income. The obligation is discounted based on the expected long-term rate of return of invested funds.

Income taxes:

The Corporation is a not-for-profit entity as described in Section 501(c)(3) of the Internal Revenue Code and is exempt from federal income taxes on related income pursuant to Section 501(a) of the Code.

Statements of revenues and expenses of general funds:

For purposes of display, transactions deemed by management to be ongoing, major or central to the provision of continuing care services are reported as revenues and expenses. Peripheral or incidental transactions are reported as gains and losses.

Note 1. (Continued)

Bequests and legacies:

Bequests and legacies are recognized as income when received.

Donor-restricted funds:

Donor-restricted funds are used to differentiate resources, the use of which is restricted by donors or grantors, from resources of general funds on which donors or grantors place no restriction or that arise as a result of the operations of the Corporation for its stated purposes. Restricted gifts and other restricted resources are recorded as additions to the appropriate restricted fund when received and expenditures are recorded as deductions from the fund balance when incurred.

Resources restricted by donors for property and equipment replacement and expansion are added to the general fund balance to the extent expended within the period.

The Samaritan Fund represents resources which have been provided to partially defray the cost of administering care to those persons who are otherwise unable to provide such monies on their own behalf.

Accounting pronouncements:

In June, 1993, the Financial Accounting Standards Board issued Statements No. 116, "Accounting for Contributions Received and Contributions Made" and No. 117, "Financial Statements of Not-for-Profit Organizations". These Statements are effective for fiscal years beginning after December 15, 1994 and will be adopted by the Corporation for the year ended May 31, 1996. Statement No. 116 changes the way organizations account for contributions, including pledges. Statement No. 117 modifies the format in which not-for-profit organizations present financial information in their financial statements. The Corporation does not anticipate that adopting these new accounting pronouncements will have a material effect on their financial statements.

Reclassifications:

Various items in the statement of revenues and expenses of the general fund for the year ended May 31, 1994 have been reclassified, with no effect on revenues and gains in excess of expenses and losses, to be consistent with the classifications adopted for the year ended May 31, 1995.

Note 2. Concentrations of Credit Risk

The Corporation routinely grants credit to the Residents of its continuing care retirement communities, all of which are located in the Commonwealth of Virginia. In addition, the Corporation has checking accounts, certificates of deposit, money market mutual funds, and a short-term investment at a financial institution which are not fully insured by the FDIC. The short-term investment, in the form of a repurchase agreement, is secured by an individual U.S. Government security owned by the financial institution. The checking accounts and certificates of deposit are insured to the FDIC limit of \$100,000 per financial institution. At May 31, 1995, the Corporation had cash balances in a financial institution in excess of the amounts insured by the FDIC.

Note 3. Investments

Investments, portfolio and investments held in reserve represent amounts managed for the Corporation by outside parties.

Investments consist of the following:

	<u>May 31, 1995</u>			
	<u>Cost</u>	<u>Gross Un- realized Gains</u>	<u>Gross Un- realized Losses</u>	<u>Estimated Market Value</u>
Cash/money market fund	\$ 3,697,553	\$ -	\$ -	\$ 3,697,553
Guaranteed investment contracts	49,666,466	-	-	49,666,466
Mutual funds	1,209,237	-	(16,374)	1,192,863
Bonds	2,223,180	42,327	-	2,265,507
Corporate stocks	<u>3,318,192</u>	<u>1,001,943</u>	-	<u>4,320,135</u>
	<u>\$60,114,628</u>	<u>\$ 1,044,270</u>	<u>\$ (16,374)</u>	<u>\$61,142,524</u>

	<u>May 31, 1994</u>			
	<u>Cost</u>	<u>Gross Un- realized Gains</u>	<u>Gross Un- realized Losses</u>	<u>Estimated Market Value</u>
Cash/money market fund	\$ 1,393,957	\$ -	\$ -	\$ 1,393,957
Guaranteed investment contracts	73,251,919	-	-	73,251,919
Mutual funds	1,150,478	-	(27,932)	1,122,546
Bonds	2,534,227	14,112	(97,691)	2,450,648
Corporate stocks	<u>3,404,991</u>	<u>1,172,676</u>	<u>(149,269)</u>	<u>4,428,398</u>
	<u>\$81,735,572</u>	<u>\$1,186,788</u>	<u>\$(274,892)</u>	<u>\$82,647,468</u>

These investments are shown on the balance sheets as follows:

	<u>1995</u>	<u>1994</u>
General Fund:		
Assets whose use is limited	\$ 51,858,455	\$ 75,276,765
Investments, portfolio	5,093,152	4,600,557
Other investments	1,303,207	-
Samaritan Fund	<u>1,859,814</u>	<u>1,858,250</u>
	<u>\$ 60,114,628</u>	<u>\$ 81,735,572</u>

Note 4. The Hermitage at Cedarfield

In April 1993, the Corporation purchased approximately 77 acres of land in Henrico County, Virginia, on which to construct a continuing care retirement facility. The estimated cost of construction of this facility was \$67,000,000. As of May 31, 1995, the project was approximately 50% complete. The Corporation anticipates a construction cost overrun in a substantial amount. The exact amount of the construction overrun is unknown at this time. It is presently anticipated that the construction cost overrun will be funded from certain funds created at the time of the bond closing, the Corporation's cash reserves, or from additional bank borrowings. The rate and terms of any additional bank borrowings are unknown at this time.

• The purchase price of the land and other costs related to its acquisition and development totaled \$33,003,967 and have been included in property and equipment on the accompanying financial statements.

As of May, 31, 1995, \$3,593,593 had been expended for various marketing, legal, and other development costs associated with this project. These costs have been reflected on the accompanying balance sheets as deferred development costs.

Note 5. Property and Equipment

A summary of property and equipment at May 31, 1995 and 1994, consists of the following:

	<u>1995</u>	<u>1994</u>
Land and landscaping	\$ 3,606,984	\$ 3,487,014
Buildings	17,433,837	16,904,303
Furniture and equipment	5,622,103	5,185,718
Leasehold improvements	51,200	51,200
Capital projects in process	<u>31,094,656</u>	<u>3,259,790</u>
	\$ 57,808,780	\$ 28,888,025
Less accumulated depreciation	<u>(13,462,264)</u>	<u>(12,590,417)</u>
	<u>\$ 44,346,516</u>	<u>\$ 16,297,608</u>

Note 6. Variable Rate Accounts

The Corporation, as an alternate financing source, agreed to accept funds from Residents and others as investments. Interest is credited to the account at the average yield for 90-day U.S. Treasury Bills in the four weekly auctions preceding the first day of the month. New accounts are no longer being accepted.

Note 7. Builders' Bonds

The builders' bonds bear interest at 5.5% per annum and matured five years from the date of issuance. All builders' bonds have passed their original maturity, and are being held pending disposition instructions from their owners. Interest continues to be paid on these bonds. The total amount of interest expense incurred for these bonds during the years ended May 31, 1995 and 1994, was \$9,548 and \$9,705, respectively.

Note 8. Long-Term Debt

Long-term debt consists of the following:

	<u>1995</u>	<u>1994</u>
First Union National Bank of Virginia, five-year loan, secured by trust income, payments of \$71,891, due quarterly with an interest rate of 9.4%	<u>\$2,265,944</u>	<u>\$ -</u>
Totals shown on balance sheets as:		
Amounts due currently	\$ 57,248	\$ -
Amounts not due currently	<u>2,208,696</u>	<u>-</u>
	<u>\$2,265,944</u>	<u>\$ -</u>

As of May 31, 1995, the aggregate annual maturities of long-term debt are as follows:

May 31, 1996	\$ 57,248
May 31, 1997	82,809
May 31, 1998	90,872
May 31, 1999	99,720
May 31, 2000	<u>1,935,295</u>
	<u>\$2,265,944</u>

Note 9. Bonds Payable

During May 1994, the Corporation entered into a loan agreement with the Industrial Development Authority of Henrico County, Virginia, to borrow the proceeds of the Authority's \$81,800,000 Variable Rate Demand Health Facility Revenue Bonds (The Hermitage at Cedarfield), Series 1994. The loan agreement provides for rates of interest and payments of principal identical to those in the Series 1994 Bonds. The primary purpose of this loan is to provide funds to acquire, construct, equip and furnish a continuing care retirement facility located in Henrico County, Virginia. Loan proceeds will also be used to fund capitalized interest and a Debt Service Reserve Fund and to pay certain costs associated with the issuance of the Bonds. The Bonds and related loan call for a variable interest rate determined by the Remarketing Agent to enable the Bonds to be sold at a price of par. At May 31, 1995, the interest rate was 5.12% per annum.

The loan is secured by an irrevocable direct pay letter of credit in the initial amount of \$82,848,833 issued by NationsBank of Virginia, N.A. The letter of credit expires in May 1999. Amounts drawn under the letter of credit bear interest at the prime rate plus 1% per annum. The letter of credit is secured by a first deed of trust on all real property owned by the Corporation and a security agreement on certain of its personal property.

Due to the letter of credit, the Bonds are considered to mature in 1999, and accordingly, have been classified as long-term liabilities on the accompanying financial statements.

Note 10. Lydia H. Roper Trust

The Corporation received \$116,444 and \$112,228 from the Lydia H. Roper Trust during the years ended May 31, 1995 and 1994, respectively. The trust agreement requires that these funds be used to finance the operating expenses of the Lydia H. Roper Home, Norfolk, Virginia. The trust agreement also states that should the name of the Lydia H. Roper Home be changed, the income from the trust will cease.

Note 11. Employee Retirement Plan

The Corporation has a retirement plan for those employees who meet the eligibility requirements set forth in the plan. Substantially all the Corporation's full-time employees are eligible to participate. Contributions to the plan are determined each year by the Board of Directors. For the year ended May 31, 1995, the Corporation contributed an amount equal to six percent of the basic annual compensation of the eligible employees. The total retirement expense for the year ended May 31, 1995 and 1994, was \$489,933 and \$495,021, respectively.

Note 12. Commitments and Contingencies

The Corporation entered into various long term lease agreements for office facilities. Following is a schedule of future minimum rental payments required under this lease agreement:

<u>Year</u>	<u>Amount</u>
May 31, 1996	\$ 86,659
May 31, 1997	68,656
May 31, 1998	<u>11,498</u>
	<u>\$ 166,813</u>

The total rental expense for the years ended May 31, 1995 and 1994, amounted to \$119,088 and \$112,409, of which \$54,373 and \$49,677 has been capitalized as deferred development costs, respectively.

Virginia United Methodist Homes, Inc.

PRO FORMA STATEMENT

Virginia United Methodist Homes, Inc.
PRO FORMA STATEMENT OF REVENUES AND EXPENSES
AND CHANGES IN FUND BALANCES
Year Ending May 31 1996

	<u>1996</u>
<u>REVENUES</u>	
Residents' fees, including amortization of deferred revenue from entrance fees of \$2,834,960	\$ 18,789,757
Ancillary service revenue, net	108,972
Other operating revenue	<u>715,450</u>
<u>Total revenues</u>	<u>\$ 19,614,179</u>
<u>EXPENSES</u>	
Nursing services	\$ 6,976,142
Dining services	4,021,892
Administrative services	3,886,885
Building and fiscal services	2,340,876
Housekeeping services	1,366,048
Resident services	637,577
General overhead expense	652,050
Depreciation and amortization	<u>1,086,085</u>
<u>Total expenses</u>	<u>\$ 20,967,555</u>
<u>Loss from operations</u>	\$ (1,353,376)
<u>NONOPERATING GAINS (LOSSES)</u>	
Bequests and legacies, church contributions, etc.	\$ 1,002,500
Interest and dividends on investments	392,100
Interest expense	<u>(37,186)</u>
<u>Total nonoperating gains (losses)</u>	<u>\$ 1,357,414</u>
<u>Revenues and gains in excess of expenses and losses</u>	<u><u>\$ 4,039</u></u>

Virginia United Methodist Homes, Inc.

CONTINUING CARE CONTRACT

October, 1995

VIRGINIA UNITED METHODIST HOMES, INC.

CONTINUING CARE CONTRACT

This Agreement is entered into by and between VIRGINIA UNITED METHODIST HOMES, INC., a Virginia not-for-profit corporation (hereinafter "VUMH") and _____ (hereinafter, "the Resident") and shall be effective on _____, 19____.

RECITALS:

1. VUMH has been licensed by the Commonwealth of Virginia to operate continuing care retirement facilities.
2. The Resident wishes to be accepted in one of the facilities of VUMH and VUMH has agreed to provide care for the Resident as set forth herein.

Now therefore, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

A. LODGING

The Resident shall have a personal, non-assignable right to reside in the lodging now assigned or such other lodging as may be assigned at the sole discretion of VUMH, subject to removal only as hereinafter provided. The lodging assigned to the Resident is:

Facility

Apartment/Room Number

The Resident has made a Deposit of \$ _____ to hold the lodging through _____ (date), the expected occupancy date. The Deposit will be applied to the Resident's Entrance Fee at occupancy. If occupancy does not occur by the expected occupancy date, the Contract is rescinded or terminated for one of the reasons set forth in Sections I. or J., VUMH may retain the Deposit.

B. SERVICES PROVIDED BY VUMH

VUMH agrees to provide the Resident with care and services to the extent enumerated in this section, so long as the Resident carries out his obligations under this Contract.

1. FOR ALL RESIDENTS EXCEPT RESIDENTS OF ROANOKE UNITED METHODIST HOME COUNTRY CLUB APARTMENTS

- a. Meals. VUMH shall provide the Resident with three (3) meals a day, served only in areas designated by VUMH. Special diets will be provided upon approval of VUMH.
- b. Lodging Services. VUMH shall provide water, heat, electricity, air conditioning, sewage and trash removal for the Resident's lodging, subject, however, to the availability of such services to VUMH.

-
- c. Congregate Areas. The Resident shall have the use in common with other Residents of the indoor and outdoor social and recreational areas.
 - d. Linen. VUMH shall provide the Resident with bed linens and bath towels in accordance with its normal schedule.
 - e. Laundry. Laundry services shall be provided for the bed linens and bath towels furnished by VUMH. Washers and dryers are available for Residents' use.
 - f. Housekeeping. The Resident shall maintain the lodging in a safe, orderly, and sanitary condition. VUMH shall provide cleaning.
 - g. Activities. VUMH shall regularly provide recreational and religious activities.

2. FOR RESIDENTS OF ROANOKE UNITED METHODIST HOME COUNTRY CLUB APARTMENTS

- a. Dining Room. The Resident shall be entitled to use the dining room at the central complex of the Roanoke United Methodist Home (hereinafter the "main residence") at the regular guest rates, provided that reservations are made in advance in accordance with the policies of the main residence.
- b. Lodging Services. VUMH shall provide water and sewage service and trash removal at no additional charge to the Resident. The Resident shall be responsible for all charges for electricity or any other utility used in the lodging and shall pay promptly when due any such charges and any deposit required for such utilities. The Resident further agrees to have installed and maintained, at the Resident's expense, telephone service in the lodging.
- c. Activities. The Resident is entitled and encouraged to participate in planned activities of the facility and to use the activities facilities of the main residence jointly with other Residents. The services of a social worker, activities coordinator and other staff are available at no extra charge.
- d. Appliances. VUMH shall furnish the lodging with one electric stove, one electric refrigerator, one electric clothes washer, one electric clothes dryer and one garbage disposal unit (hereinafter the "appliances"), except one-bedroom lodging Residents shall have access to a clothes washer and clothes dryer jointly with other Residents. VUMH shall maintain these appliances in good working order and reserves the right to exchange from time to time any of these appliances for other makes or models as it sees fit. The Resident is responsible for any injury or damage done to the lodging or to the appliances by the Resident, his invitees, or any occupant or other person whom the Resident permits to be in or about the lodging, reasonable wear and tear excepted.

The Resident has examined the apartment and the appliances and is satisfied that they are in good condition. The Resident agrees that no alteration, additions or changes may be made in the apartment or the appliances without the prior written consent of VUMH.

3. FOR ALL RESIDENTS

- a. Independent Living. A Resident resides in the independent living area when the facility's Interdisciplinary Care Team (which typically includes an registered nurse, dietician, social worker, director of Resident Services, activity coordinator and other facility staff members) determines that the Resident does not require assistance in maintaining himself in the Resident area.

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- b. Assisted Living. A Resident receives assisted living care when the facility's Interdisciplinary Care Team determines that the Resident needs intervention to maintain some level of independence. Residents assigned to the assisted living unit receive assistance with one or more of the following services: dressing and self-care, personal hygiene, assistance in attending meals, increased assistance in housekeeping, increased monitoring of personal status, and availability of nursing staff at all times.
 - c. Health Care. A Resident is admitted to the Health Care Center when the facility's Interdisciplinary Care Team determines that the Resident is in need of nursing care. Residents assigned to the Health Care Center receive nursing care according to their needs, in compliance with the Rules and Regulations for Licensed Nursing Homes promulgated by the Virginia Department of Health.

NOTE: Residents of the Snyder Memorial Home in need of nursing care are transferred to the Health Care Center at The Hermitage in Richmond. The Hermitage in Richmond provides two levels of assisted living care. Residents in assisted living-level I receive assistance in dressing and self-care, assistance with medications, and assistance with personal laundry. In addition to the services provided in level I, Residents in assisted living-level II receive added services outlined in B3.b, above.

C. ADDITIONAL PROVISIONS APPLICABLE ONLY TO RESIDENTS OF ROANOKE UNITED METHODIST HOME COUNTRY CLUB APARTMENTS

If this Contract is for residency in a Roanoke United Methodist Home Country Club Apartments, the following provision shall also apply:

- 1. Care of Lodging. The Resident shall pay the expense of replacing all glass broken and shall replace all keys lost or broken and shall maintain the lodging in such condition, order and repair as the lodging is now in or may be put in during the term, reasonable wear and tear and damage by fire or other unavoidable casualty excepted. The Resident shall not attach any article of permanent character or any sign containing writing or painting to any window, floor, ceiling or wall without the prior written consent of VUMH.
- 2. Prohibited Purposes. The Resident shall not permit to be kept or used in the lodging any flammable substances, firearms or explosives. The Resident shall not permit the lodging to be used for any unlawful purpose nor for any purpose which will increase the insurance rate or which will disturb the other Residents of the building or the inhabitants of the neighborhood.
- 3. Voluntary Transfers. The Resident has paid in full the Entrance Fee as set forth in Section E.1 hereof. If transferred to the main complex, the Resident shall not be required to pay an additional Entrance Fee but shall thereafter pay the Monthly Fees and other charges then in effect and as they may change from time to time in accordance with the provision of this Contract. In the event of such a transfer, the Resident shall be entitled to the benefits and service afforded Residents of the main residence in accordance with the provision of this Contract.

D. CHANGE IN ACCOMMODATIONS FOR ALL RESIDENTS

1. Within the Facility. The Resident agrees that VUMH shall have the right to transfer the Resident, with or without the Resident's consent, to such other lodging as deemed necessary at the sole discretion of VUMH, including that area of the facility where he can receive assisted living care or health care, as described in Section B above, when the facility's Interdisciplinary Care Team determines that such care is needed. It is understood that any such transfer may result in more than one person occupying the same room.

If the transfer is on a temporary basis, the transfer shall not terminate the Resident's rights or obligations under this Contract. If, in the opinion of VUMH, the transfer is permanent, the Resident agrees to release his previously assigned lodging according to the provisions of this Contract.

2. Outside of the Facility. When the Resident suffers any disability for which the facility is not permitted to provide care within the requirements of the law or when his presence is deemed detrimental to the health or peace of the other Residents or when the facility's Interdisciplinary Care Team determines such action to be in the best interest of the Resident, VUMH shall, after consultation with the family or responsible party, if any, have the authority to transfer the Resident to an institution, public or private, suitable for such care. Said consultation shall take place prior to transfer unless medically contraindicated.

After being admitted to such other institution, the Resident shall not reside in any VUMH facility again without VUMH's consent, which consent shall not be unreasonably withheld. See Section K of this Contract for other provisions concerning the right of occupancy.

E. FEES

The Resident agrees to pay the following fees to VUMH:

1. Entrance Fee. The Resident shall pay to VUMH before entrance to the facility an Entrance Fee as set forth in either a., b., c. or d. below (Resident shall select one option by initialing the appropriate space). The Resident's Entrance Fee shall not be changed and there shall be no restrictions on VUMH's use of the Entrance Fee except as specifically provided herein. (All options may not be available at all locations).

- _____ a. A TRADITIONAL ENTRANCE FEE IN THE AMOUNT OF _____.
Of this amount VUMH shall earn ten percent (10%) (not refundable in whole or part) upon the date of the Resident's entrance to the facility. VUMH shall earn three percent (3%) of the total Entrance Fee on the first day of each calendar month thereafter until this Contract is terminated, pursuant to the specific provisions hereof, and the Resident physically vacates the facility (hereinafter the "date of withdrawal"). VUMH shall receive all interest, dividends and other income related to the Entrance Fee. After such termination, the unearned portion of the Entrance Fee, if any, shall be refunded, without interest, to the Resident if then alive or to the Resident's estate if the Resident is then deceased. VUMH shall earn a pro rata portion of the Entrance Fee for the month of termination, as determined from the first day of the month through and including the date of withdrawal or death of the Resident. Any such refund shall be paid within ninety (90) days from the date of withdrawal or death of the Resident.

b. A GUARANTEED REFUND ENTRANCE FEE IN THE AMOUNT OF _____.

[This option is available to Residents admitted to Independent Living who have not reached age 85 as of the date of this contract.] Of this amount VUMH shall earn the entire non-refundable portion upon the Resident's entrance into the facility. The portion earned at entrance is set forth below:

<u>Entry Age</u>	<u>Percent Earned At Entrance</u>
65-69	25%
70-74	35%
75-79	40%
80-84	50%

The remaining percent of the balance of the Entrance Fee shall be held by VUMH. VUMH shall receive all interest, dividends and other income related to the Entrance Fee.

After the termination of this Contract, pursuant to the specific provisions hereof, the remaining percent of the balance of the Entrance Fee shall be refunded, without interest, to the Resident if then alive or to the Resident's estate if the Resident is then deceased. Any such refund shall be paid within ninety (90) days from the date of withdrawal or death of the Resident.

c. A STANDARD PLAN ENTRANCE FEE IN THE AMOUNT OF _____.

Refunds are calculated and paid in the same manner as with the Traditional Entrance Fee Plan.

d. A MODIFIED PLAN ENTRANCE FEE IN THE AMOUNT OF _____.

Refunds are calculated and paid in the same manner as with the Traditional Entrance Fee Plan.

2. Monthly Fee. The Resident shall pay A MONTHLY FEE IN THE INITIAL AMOUNT OF \$_____; which initial amount may increase as hereinafter provided (hereinafter the "Monthly Fee").

Unless the Resident is admitted under the Standard Plan, the amount of the Monthly Fee is determined by the level of care afforded the Resident. The Resident's Monthly Fee for any period during which the Resident receives assisted living care in the residential portion of the facility, as such care is described in Section B.3.b. above, shall be equal to the Assisted Living Fee for that facility for the Resident's plan as published in the VUMH's Monthly Fee Schedule in effect at the time such services are provided. The Assisted Living Fee shall be charged pro rata to the number of days such services are provided.

Unless the Resident is admitted under the Standard Plan, when the Resident receives nursing care in the Health Care Center, as described in Section B.8.c. above, either on a permanent basis or on a temporary basis for more than thirty (30) days in any one calendar year, the Resident's Monthly Fee shall be equal to the Health Care Fee for that facility as published in VUMH's Monthly Fee Schedule for the Resident's plan in effect at the time such services are provided. The Health Care Fee shall be charged pro rata to the number of days such services are provided, except that, for nursing care received on a temporary basis, the Health Care Fee shall be charged pro rata to the number of days in excess of thirty (30) days that such services are provided in any one calendar year. The determination of whether such services are provided on a permanent or temporary basis shall be made by the facility's Interdisciplinary Care Team.

Residents admitted under the Standard Plan pay a level monthly fee without regard to the level of services provided. The Standard Plan monthly fee shall be that in the VUMH Monthly Fee Schedule in effect at the time that the services are provided.

Residents admitted under the Modified Plan pay a lower than Traditional Entrance Fee but higher monthly fees. The Modified Plan monthly fee shall be that in effect in the VUMH Monthly Fee Schedule at the time services are provided.

VUMH may adjust the fees, without restriction as to frequency or amount, in order to bring income more closely in line with the cost of operation and the Resident agrees to pay such adjusted fees. VUMH shall give the Resident thirty (30) days' advance notice of any change in fees.

VUMH shall not provide the Resident with any credit or refund for any period prior to the date of withdrawal during which the lodging is not occupied or for any meals missed. The Monthly Fee is due and payable, in advance, on the first day of each calendar month (hereinafter the "due date"). The first Monthly Fee payment shall be due upon the Resident's entrance to the facility in an amount prorated from the date of entrance through the end of that month. For each Monthly Fee payment which has not been paid in full within thirty (30) days after the due date, the Resident agrees to pay, as a FINANCE CHARGE, an amount equal to one and one-half percent (1.5%) of the Monthly Fee (18% ANNUAL PERCENTAGE RATE). This FINANCE CHARGE shall continue to accrue, on a per diem basis, at that same rate, from the due date until the Monthly Fee is paid in full.

After termination of this Contract, pursuant to the specific provisions hereof, the Resident shall receive a refund of a pro rata portion of the Monthly Fee paid for the month of withdrawal or death of the Resident, as determined from the date of withdrawal or death through the end of such month. Any such refund shall be paid within ninety (90) days from the date of withdrawal or death of the Resident.

F. ADDITIONAL EXPENSES

While the monthly fee covers the cost of the Resident's room and board and nursing services, it does not cover the cost of medical care, such as hospitalization, professional medical services by an attending physician, drugs, medical supplies, medical equipment and transportation incident to medical care. The Resident is encouraged to carry adequate health insurance to cover these health related expenses.

No private duty nurse or companion shall be employed without prior approval of the facility's administrator.

The Resident shall pay all charges for hospitalization and other related costs.

G. INDEBTEDNESS OF THE RESIDENT

VUMH shall not be liable or responsible for any expenses incurred or debt or obligation of any kind contracted by the Resident on his own account.

H. REPRESENTATIONS

The application, financial statements and physician's statements of the Resident submitted to VUMH are incorporated in this Contract by this reference and made a part hereof and all statements contained therein are deemed to be accurate representations by the Resident and the surety or sureties, if any, as of the date

made. The Resident covenants and represents that there have been no material changes in the information provided since the date thereof.

VUMH has the right to require, and the Resident agrees to provide, additional current, accurate information from time to time updating data furnished at admission.

I. RESCISSION OF CONTRACT WITHOUT CAUSE

The Resident has the right to rescind this Contract, without penalty or forfeiture, within seven (7) days after executing this Contract. The Resident shall not be required to move into the lodging before the expiration of the seven (7) day period.

J. RESCISSION OF CONTRACT BEFORE OCCUPANCY BY REASON OF DEATH, ILLNESS, INJURY OR INCAPACITY

If the Resident dies before moving into the facility or is precluded through illness, injury or incapacity from becoming a Resident under the terms of this Contract, this Contract is automatically rescinded and Resident or his legal representative shall receive a full refund of all money paid to VUMH, except for those costs specifically incurred by VUMH at the request of the Resident and set forth in writing in a separate addendum, signed by both parties to this Contract.

K. TERMINATION OF THE CONTRACT AFTER OCCUPANCY

This Contract may only be terminated as set forth in this section K and, upon any such termination, all rights and duties of the parties hereunder shall cease except that the provisions of Sections C, E, O, Q, R and W hereof shall survive any such termination.

1. TERMINATION BY THE RESIDENT

The Resident shall have the right at any time to terminate this Contract voluntarily by written notice to VUMH at least thirty (30) days in advance.

It is understood and agreed that transfer of the Resident to a hospital or other institution does not constitute voluntary termination under this Contract.

2. TERMINATION BY VUMH

VUMH shall not terminate this Contract except for Good Cause. Good Cause is defined as (i) a determination by VUMH that the Resident is a danger to himself or others; (ii) non-payment of fees; (iii) repeated conduct by the Resident that interferes with other Residents' quiet enjoyment of the facility; (iv) a material misrepresentation made intentionally or recklessly by the Resident or the surety or sureties, if any, in the application for residency, the financial statements or physician statements, or related materials, regarding information which, if accurately provided, would have resulted in either a failure of the applicant to qualify for residency or a material increase in the cost of providing the care and services provided under this Contract; or (v) a material breach by the Resident of the terms and conditions of the Contract. VUMH shall not terminate this Contract until it has given the Resident written notice at least thirty (30) days in advance, setting forth the grounds for termination and a reasonable period of time for the Resident to cure any breach.

3. DEATH

The death of the Resident shall terminate this Contract.

L. CHANGE OF SHARED ACCOMMODATIONS

If this is an agreement for shared accommodations the following shall apply:

In the event one Resident shall cease to occupy the shared accommodations lodging by reason of death, permanent transfer to a higher level of care, voluntary or involuntary termination or for any other cause, the remaining Resident may, upon the mutual agreement of the remaining Resident and VUMH, retain the lodging and thereafter, commencing on the first of the month next following the termination of the shared accommodations, pay as his Monthly Fee the then prevailing rate for such lodging as published in VUMH's Monthly Fee schedule in effect for such facility. If the remaining Resident or VUMH determines that the Resident should not retain the same lodging, the Resident shall have the first right to obtain a single accommodation lodging at the facility as it becomes available and, upon the change of lodging, shall pay, pro rata to the number of days of occupancy, the Monthly Fees allocable to the single accommodation lodging.

M. MARRIAGE OF THE RESIDENT

Marriage of the Resident after admission to the facility causes no change in the relationship of the parties to this Contract or in the fees charged. The spouse of a Resident must follow ordinary procedures if admission to the facility is desired and, if admitted to shared accommodations, shall pay the Entrance Fee and Monthly Fees charged for the shared accommodations lodging as such may change from time to time in accordance with the provisions of this Contract.

N. POLICIES OF VUMH

The Resident agrees to abide by the rules, regulations and policies of VUMH now in existence and as they may be changed from time to time.

O. DISPOSITION OF PROPERTY

In the event of the Resident's death or permanent transfer inside or outside of the facility or the termination of this Contract, all personal property of the Resident shall be removed within seven (7) days thereof. If after that seven (7) day period such property is not removed, VUMH shall have the right to remove the property from the lodging and/or the facility and shall have a lien therein for the actual cost of storing, insuring, transporting and preserving the property, such costs not to be less than fifty dollars (\$50.00) per month. Notwithstanding the foregoing, in the event the Resident's lodging is in the Health Care center at the time of the Resident's death or permanent transfer of the termination of this Contract, VUMH shall have the right to remove all personal property of the Resident from the lodging and/or facility immediately thereupon, and VUMH shall have a lien therein for the actual cost of storing, insuring and preserving the property thereafter, such costs not to be less than fifty dollars (\$50.00) per month.

P. RIGHT OF ENTRY

The Resident agrees to give VUMH and its authorized employees and agents the right of entry into the Resident's lodging at all reasonable times for inspection, maintenance and housekeeping purposes and at any time for emergencies.

Q. LOSS OR DAMAGE TO PROPERTY OR PERSON

1. VUMH shall not be responsible for the loss or damage of any property belonging to the Resident caused by theft, normal maintenance, housekeeping activities or for any other cause not occasioned by the active negligence of VUMH.
2. The Resident agrees that neither VUMH nor any member of its staff or Board of Directors shall be liable for death or injury not caused by VUMH's active negligence.
3. The Resident agrees to indemnify and hold harmless VUMH and its agents from and against any and all claims, demands, actions and causes of action (including any costs and attorney's fees), whether from injury to person, loss of life or damage to property, occurring in or about the Resident's lodging or anywhere else in the facility not caused by VUMH's active negligence.

R. FINANCIAL ASSISTANCE

1. Financial assistance is hereby defined as any amount by which the Entrance Fee paid by the Resident is less than the amount paid by others admitted to the facility at the time to occupy comparable lodging and any amount by which the Monthly Fees paid by the Resident are in the aggregate less than those paid by other Residents occupying comparable lodging and paying the listed schedule of Monthly Fees over the same period of time and any sums paid to or on behalf of the Resident from the Samaritan Fund for Benevolent Care or any similar fund or funds created for this purpose. However, the Resident hereby acknowledges that VUMH is under no duty to provide any such financial assistance and that nothing in this Contract should be construed so as to create any such duty or any right for the Resident to receive such assistance.
2. VUMH's ability to assist those requiring financial assistance is predicated on the receipt of gifts made by others. Accordingly, VUMH shall review the financial status of recipients periodically to ascertain an appropriate level of continuing assistance and VUMH's ability to provide this assistance. Should the financial condition of the recipient improve, he shall forthwith report such changes to VUMH and will agree to review his status with VUMH to determine his continuing need for financial assistance in order to allow VUMH to extend such help to others.
3. If the Resident receives financial assistance in whole or in part from VUMH, he further agrees that, upon his death, his estate shall be liable to VUMH as a first lien in an amount equal to the difference between the sums actually paid by him to VUMH and the ordinary cost of care rendered to him by VUMH as represented by its customary charges, and that he will not make any gift of real or personal property in contemplation of or subsequent to the execution of this Contract which would diminish the value of his estate subject to VUMH's claim.

The Resident also agrees to execute upon VUMH's request any instruments which VUMH may deem necessary to secure its claim for repayment of financial assistance rendered to the Resident.

S. APPLICATION FOR BENEFITS

VUMH shall not be responsible for the cost of any medical services to the extent that benefits are payable for such services under private health insurance, Medicare or similar legislation, whether federal or state, now or hereafter enacted. Such services which can be compensated for in whole or in part by such sources are excluded from the services that VUMH agrees to provide without charge. The Resident shall, upon request, take such action and execute such forms as are necessary to secure payment to VUMH for these services.

T. PRESERVATION OF ASSETS

When VUMH, in its sole discretion, determines that the continued management by the Resident of his assets may place the Resident in need of financial assistance from VUMH, or if the management of the Resident's property may place the Resident in jeopardy of not meeting his financial responsibilities to VUMH, the Resident agrees that VUMH shall have the right to require the Resident to make arrangements for the preservation and management of his property by a third party (or parties) including but not limited to the execution and funding of a trust agreement for the Resident's behalf.

U. INCAPACITY

Prior to admission, the Resident shall make arrangements whereby his financial affairs will be managed by a third party if the Resident becomes incapacitated. Before being admitted to the facility, the Resident shall provide VUMH with the name of the third party and other information related thereto.

If the Resident becomes incapacitated, VUMH shall be informed when the third party has assumed responsibility for managing the Resident's financial affairs.

V. GENDER

The use of the singular pronoun in this Contract shall include the plural and the use of the masculine pronoun shall include the feminine.

W. BINDING EFFECT

This Contract shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns except the Resident shall not have the right to transfer or assign any occupancy right, in whole or in part, nor to transfer or assign this Contract or any part hereof.

X. MISCELLANEOUS

This Contract constitutes the entire agreement between the parties and no waiver or modification of any of the terms or conditions hereof shall be valid unless reduced to writing and attached as a Special Provision to this Contract and signed by all parties hereto.

Y. GOVERNING LAW

This Contract shall be governed, in all respects, in accordance with the laws of the Commonwealth of Virginia.

Z. SPECIAL PROVISIONS

All special provisions must meet with the prior approval of the President of VUMH.

IN WITNESS WHEREOF, VUMH and the Resident have executed this Contract to be effective as written above.

The Resident attests he has read and understood this Contract and has been given the opportunity to discuss any features of this Contract that may have been unclear.

DATE OF EXECUTION: _____

VIRGINIA UNITED METHODIST HOMES, INC.

By: _____
Administrator

Resident

Virginia United Methodist Homes, Inc.

CERTIFICATE OF ENTRANCE

VIRGINIA UNITED METHODIST HOMES, INC.

CERTIFICATE OF ENTRANCE

This Certificate of Entrance, executed by _____ (the "Resident") and Virginia United Methodist Homes, Inc. ("VUMH") this _____ day of _____, 19____, evidences that
• the Resident entered the VUMH facility known as _____
on the date hereof pursuant to that certain Continuing Care Contract made and entered into between the Resident and VUMH (the "parties").

The parties acknowledge and agree that this date shall be considered the date of Resident's entrance to the facility for all purposes contemplated in the Continuing Care Contract.

WITNESS the following signatures:

Resident's Signature

Type Resident's Name

VIRGINIA UNITED METHODIST HOMES, INC.

By: _____
Name

Title

Virginia United Methodist Homes, Inc.

SURETY AGREEMENT

VIRGINIA UNITED METHODIST HOMES, INC.

SURETY AGREEMENT

Name of Resident

Facility

In consideration of Virginia United Methodist Homes, Inc. (VUMH) agreeing to accept the Resident under the terms and conditions set forth in the above Contract, I/we, the undersigned, do hereby jointly and severally enter ourselves as sureties of the above Contract and unconditionally promise and agree to pay to VUMH all fees required to be paid to VUMH in accordance with that Contract (a copy of which I/we have received), hereby expressly consenting and agreeing to all the terms, conditions and provisions thereof.

I/We hereby covenant and represent that the information contained in the personal financial statements I/we have provided VUMH is accurate as of the date made and that there have been no material changes in the information provided therein. I/We hereby agree to provide VUMH with updated personal financial statements upon VUMH's request. I/We hereby acknowledge that VUMH has substantially been induced by the information contained therein and that any material misstatements made therein shall constitute good cause for VUMH to terminate the foregoing Contract.

I/We hereby expressly agree that notice to the Resident shall be deemed sufficient notice to each of us for all purposes, and hereby bind our executors, administrators, heirs and assigns to all matters agreed to herein.

WITNESS the following signatures as of this _____ day of _____, 19____:

_____ Surety

_____ Surety

_____ Surety

_____ Surety

THE HERMITAGE IN RICHMOND
ADJUNCT: SNYDER MEMORIAL HOME

A. SERVICES PROVIDED UNDER CONTINUING CARE CONTRACTS

Independent Living: A Resident receives those services listed in Sections B 1 and B 3(a) of the attached Contract at no extra charge.

Assisted Living: A Resident receives assisted living at an extra charge when the facility's interdisciplinary care team (which typically includes a registered nurse, physician, dietician, social worker, activity coordinator and other facility staff members) determines that the Resident needs intervention to maintain independence, help in recognizing self-care limitations and assistance on a regular basis in compensating for limitations, all in accordance with the requirements of the Standards and Regulations for Licensed Adult Care Residences promulgated by the Virginia Department of Social Services. Residents in assisted living - level I receive aid in dressing and self-care, assistance with medications, assistance in attending meals and with personal laundry. In addition to the services provided in level I, Residents in assisted living - level II receive increased aid with housekeeping, increased assistance with reminders and orientation as to time and place and increased monitoring of personal status. On-site 24-hour nursing assistance is available in each unit.

Health Care: A Resident receives health care at an extra charge and is admitted to the Health Care Center when the facility's interdisciplinary care team finds that the Resident is in need of nursing care. Residents receiving health care receive services varying with their needs from nursing attention to total nursing bed care in accordance with the Rules and Regulations for Licensed Nursing Homes promulgated by the Virginia Department of Health. Health care for these facilities is available only at The Hermitage in Richmond, 1600 Westwood Avenue. Life care Residents of Snyder Memorial Home in need of health care are transferred to the Westwood Avenue facility.

The following optional services are available to Residents at an extra charge:

- Beautician/Barber
- Cable Television (installation and monthly fees)
- Dental Care
- Dry Cleaning (not available at Snyder Memorial Home)
- Guest Meals
- Guest Room
- Laboratory
- Medications
- Medical Supplies and Services Incident to the Care of the Resident
(Prosthetic Devices, Incontinence Care Products, Syringes, Sutures, Enema Products, etc.)
- Occupational and Speech Therapy
- Oxygen
- Personal Laundry (independent Residents only)
- Personal Physician/Specialist Fees
- Private Duty Nurse
- Store
- Telephone (installation and monthly fees)
- X-rays

B. FEES REQUIRED OF RESIDENTS

Residents of these facilities pay a one-time entrance fee at the time of admission, which fee cannot be increased after admission. Entrance Fees are not escrowed and may be used in the payment of operating costs. See Sections E1, I, J and M of the attached Contract for more information concerning entrance fees, including refunds of entrance fees.

Monthly fees are charged, the amount of which is dependent upon the level of care and the lodging assigned. See Sections E2, L and M of the attached Contract for other information concerning monthly fees, including refunds of monthly fees and finance charges for late payments. On occasion, if a Resident's current income does not meet VUMH's income requirements, a Resident may be required to deposit monies as security for the payment of future monthly fees.

VUMH reserves the right to increase the monthly fees so as to cause the fees from time to time to reflect increases in the cost of care. However, there are no limitations on the amount of, or frequency of, increases of the monthly fees.

The fees at The Hermitage and Snyder Memorial Home are:

Monthly Fee	Traditional Plan	Entrance Fee Plan	Entrance Fee Guaranteed Refund
RICHMOND			
Resident - 1 Room Private (Half bath)	\$1,156.00	\$ 49,500.00	\$ 80,000.00
Resident - 1 Room Private (Full bath)	1,182.00	49,500.00	80,000.00
Resident - 1 Room Private (Lease)	1,485.00	N/A	N/A
Resident - 2 Room Private	1,688.00	75,500.00	120,500.00
Resident - 2 Room Double	1,156.00 each	87,500.00	141,000.00
Resident - 3 Room Double	1,266.00 each	107,250.00	175,500.00
Resident - 2 Room Private (Lease)	2,153.00 each	N/A	N/A
Resident - 2 Room Double (Lease)	1,515.00 each	N/A	N/A
Resident - 3 Room Double (Lease)	1,618.00 each	N/A	N/A
Asst Lvg - 1 Room Private	1,523.00	49,500.00	N/A
Asst Lvg - 2 Room Private	2,059.00	75,500.00	N/A
Asst Lvg - 1 Room Private (Lease)	1,943.00	N/A	N/A
Asst Lvg II - 1 Room Private	1,881.00	49,500	N/A
Asst Lvg II - 1 Room Private (Lease)	2,279.00	N/A	N/A
Asst Lvg II - 1 Room Semi-Private	1,565.00 each	24,750.00 each	N/A
Asst Lvg II - 1 Room Semi-Private (Lease)	1,996.00 each	N/A	N/A
Health Care - Semi-Private	2,711.00	24,750.00 each	N/A
Health Care - Private	2,979.00	49,500.00	N/A
Health Care - Semi-Private Daily	99.00	N/A	N/A
Health Care - Private Daily	135.00	N/A	N/A
SNYDER			
Resident - Private	\$1,074.00	\$40,000.00	\$66,000.00
Resident (Monthly)	1,248.00	N/A	N/A
Asst Lvg - Private	1,634.00	40,000.00	N/A
Asst Lvg (Monthly)	1,810.00	N/A	N/A

In addition to the standard rooms described, The Hermitage in Richmond offers a few smaller dormer rooms and corner rooms with limited floor space (designated as "A" or "D" rooms) and larger rooms with full baths and full walk-in closets (designated as "B" rooms). At present, the fees for these rooms are:

Room	Monthly Fee	Entrance Fee	Entrance Fee
		Traditional Plan	Guaranteed Refund Plan
A 401, 404, 406, 407-410	\$ 665.00	N/A	N/A
A 402	1,131.00	\$32,500.00	\$52,500.00
A 403	1,131.00	34,500.00	56,000.00
A 405	1,131.00	29,000.00	47,000.00
B 203-207	1,182.00	54,500.00	88,000.00
D 116, 216, 316	1,131.00	39,500.00	60,500.00
D 402	1,131.00	32,500.00	52,500.00
E 403	1,182.00	54,500.00	88,000.00

Over the last five years, the frequency and average dollar amount of increase in monthly fees at The Hermitage and Snyder Memorial Home has been:

Frequency	Average Dollar Amount of Increase				
	Resident	Assisted Living		Health Care	
		Semi-Private	Private	Semi-Private	Private
91-92 annual	\$35	\$ 0	\$ 80	\$115	\$245
92-93 annual	42	100	75	110	155
93-94 annual	28	30	40	60	119
94-95 annual	30	37	45	110	66
95-96 annual	28	38	46	66	73

Note: Historically, these changes have occurred in June of each year.