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**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
(Alexandria)

IN RE:

LOUDOUN HEIGHTS, L.L.C.

Debtor

Case No. 13-15588-BFK

Chapter 11

**OBJECTION OF LOUDOUN COUNTY, VIRGINIA,
TO CONFIRMATION OF DEBTOR'S FOURTH AMENDED CHAPTER 11 PLAN**

The COUNTY of LOUDOUN, VIRGINIA ("the County"), by counsel, objects to Debtor's Fourth Amended Chapter 11 Plan dated July 31, 2014 filed on August 1, 2014 (Document #208, the "Plan"), on the following grounds:

Preliminary Statement

1. Debtor is the record owner of six real properties within the County: The first five -identified by PINs 472-36-4047-000, 472-45-0316-000, 472-46-0191-000, 472-47-4146-000 and 472-48-5830-000- listed as the "166-Acre Property" in the Plan (altogether the "166-Acre Property"); and the sixth identified by PIN 507-17-3739-001 (the "313-Acre Parcel"). The County's real property taxes are deemed secured with first priority over any other lien or encumbrance pursuant to 11 U.S.C. §506 and VA. CODE §§58.1-3340. The County is an *ad valorem* real property tax creditor of the Debtor for 2012-2014 *ad valorem* real estate taxes on both the 166-Acre Property and the 313-Acre

Parcel (the “Real Estate Taxes”). The Real Estate Taxes accrued on January 1 of each year and were payable in two installments in June and December 5. Other real estate taxes on the 166-Acre Property and the 313-Acre Parcel will accrue during the term of the Plan.

2. The County timely filed its proof of claim on March 28, 2014 (“Claim #4”), but inadvertently included the 2014 Real Estate Taxes on the 166-Acre Property and the 313-Acre Parcel even though this chapter 11 bankruptcy petition was filed in 2013. The 2014 real estate taxes, which accrued on January 1, 2014, are post and not pre-petition taxes and should have not be included within the proof of claim. On August 7, 2014, the County amended its Claim #4 to exclude the 2014 Real Estate Taxes, which are post-petition taxes under 11 U.S.C. §§ 503 (b) and 507 (a)(2).

3. The ad valorem Real Estate Taxes are secured and the County is entitled to payment of penalty and interest on its secured tax claim, pursuant to 11 U.S.C. §§ 506 and 511, VA. CODE §58.1-3916, and LCCO §§ 860.02 and 860.03.

4. A summary of the pertinent Virginia and Loudoun County tax laws are attached as **Exhibit A**.

Objections to the Plan

5. As to pre-petition (through 2013) real property taxes on the 166-Acre Property and the 313-Acre Parcel:

a) Section III of the Plan describes the classification of claims and their treatment. Class 2 corresponds to Ad Valorem Taxes where proof of claim No. 4 filed by the County is expressly included therein. The County objects to confirmation because the County’s claim is listed as “priority” (Plan at page 14) when the County’s tax claim should have been listed as secured under 11 U.S.C. §§ 506, 511 and VA. CODE §§58.1-3340. The County’s secured tax claim should be

paid with interest at the rate of 10% per year pursuant to 11 U.S.C. §§ 506 and 511, VA. CODE §58.1-3916 and LCCO §§ 860.02 and 860.03.

b) Section III of the Plan states that the tax claim of the County (Proof of Claim No. 4 as amended) will be paid in full “*upon* sale of the Debtor’s property” or “within 10 days after such Claim is allowed by Final Order and *after* Settlement on the sale of Debtor’s property” if “any Unsecured Priority or General Unsecured tax claim in this class is Disputed”. The County objects to confirmation because the real estate taxes that are delinquent as of the date of settlement should be paid before or at settlement, not after, as the tax lien will remain on the real property conveyed until payment of the delinquent real estate taxes is received by the County.

6. As to pre-petition real property taxes on the 313-Acre Parcel: The Plan states that Debtor expect to sell the 313-Acre Parcel (Plan, Section VI), but it does not indicate a timeframe for such sale. Section IV (A) (3) of the Plan states that any sale, subject to Section 363(k) of the Code shall be free and clear of such liens, with such liens to attach to the proceeds of such sale up to the secured amount of the claim. Section I (B) of the Plan (Plan at page 5) states that Debtor “proposed donation or bargain sale of the 313-acre property to the Old Dominion Land Conservancy (“ODLC”) or some other I.R.C. Section 501(C)(3) charity. Plan at page 3 also indicates that Robert and Dee Leggett Foundation has “the right to repurchase this parcel from the Debtor for the amount of \$1.00” although apparently such foundation has stated that it has no interest in exercising this option. The County objects to confirmation because the County’s tax lien on the 313-Acre Parcel will be prejudiced as (i) the County will be paid only “upon” the sale of the 313-Acre Parcel and then only *after* and not at settlement, a sale that has not even been

even scheduled yet; (ii) according to the Plan, the County will be paid out of the “sale proceeds” of the conveyance of the 313-Acre Parcel, sale proceeds that Debtor may never receive (should 313-Acre Parcel is converted to a park and its use is permanently restricted, or if the 313-Acre Parcel is donated or conveyed in a bargain sale to a charitable organization); (iii) if 313-Acre Parcel is donated or conveyed in a bargained sale, it is possible that there are no sale proceeds to distribute and that the only value of the 313-Acre Parcel is the Virginia Tax Credits that Debtor will receive, but on which the County has no lien; (iv) in this scenario, the County will be left with an unpaid, delinquent and potentially “unsecured” tax claim instead of the statutory secured status that corresponds to an ad valorem tax claim. Moreover, Section I (B) at page 5 of the Plan states that the money received by Debtor from the “bargain sale and/or the Virginia Tax Credits” will be available to the Unsecured Creditors, including M&T Bank’s Class 6, which may imply that unsecured creditors could potentially receive a more favorable treatment than a first priority secured creditor like the County.

7. Section III of the Plan –Class 1 – Administrative Costs, provides that “all Administrative Claims shall be paid in cash and in full (including accruals to date of payment) within thirty (30) days from the date of Settlement on the sale of Debtor’s property...if the claims have not been previously paid...”. The County states that if by the time of settlement there are post-petition real estate taxes on the properties being sold that remain unpaid, such taxes should be paid at or before settlement, and not after, with the tax lien remaining on the real properties until taxes are paid, unless the tax claim would transfer with the same first priority over the sale proceeds and/or the Virginia Tax Credits to be received by the Debtor, as the case may be.

WHEREFORE, the County respectfully requests that the Court denies confirmation

unless the Debtor addresses the foregoing objections; and for such other and further relief that the Court deems appropriate.

The COUNTY of LOUDOUN, VIRGINIA
By counsel

RON J. BROWN
COUNTY ATTORNEY

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CERTIFICATE OF MAILING

I certify that a copy of the foregoing objection was served on August 7, 2014 by ELECTRONIC MAIL through the Court's electronic filing system to the parties for whom electronic mail addresses are indicated below:

Frank Bredimus
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Counsel for Debtor

/s/ Belkys Escobar

EXHIBIT A

Summary Statement of Pertinent State and Local Tax Law

1. The County's *ad valorem* real estate taxes (if any) are fully secured pursuant to VA. CODE §58.1-3340 (1950, as amended) which states, in pertinent part: "There shall be a lien on real estate for the payment of taxes and levies assessed thereon prior to any other lien or encumbrance."

2. The County's *ad valorem* personal property taxes (if any) are fully secured pursuant to VA. CODE §58.1-3942 (1950, as amended) which states, in pertinent part:

" . . . Taxes specifically assessed either per item or in bulk against goods and chattels shall constitute a lien against the property so assessed and shall have priority over all security interests. . . . For purposes of this section, taxes specifically assessed in bulk means an assessment against the specific class of property. . . " [emphasis added]

3. Liability for *ad valorem* real estate taxes exists as of January 1st of each year pursuant to VA. CODE §58.1-3281 (1950, as amended) which states in pertinent part: "The beginning of the tax year for the assessment of taxes on real estate shall be January 1. . .".

4. Liability for *ad valorem* personal property taxes exists as of January 1st of each year pursuant to VA. CODE §58.1-3515 (1950, as amended) which states, in pertinent part: ". . . [T]angible personal property, machinery and tools and merchants' capital shall be returned for taxation as of January 1 of each year, which date shall be known as the effective date of assessment or the tax day."

5. Section 58.1-3916 of the Code of Virginia (1950, as amended) states, in pertinent part:

" . . . [T]he governing body of any county, city or town may . . . by ordinance establish due dates for the payment of local taxes; . . . may provide by ordinance **penalties for failure to file such applications and returns and for nonpayment in time**; may provide for **payment of interest** on delinquent taxes; and may provide for the recovery of reasonable attorney's or collection agency's fees. . . . **Interest may commence not earlier than the first day following the day such taxes are due by ordinance to be filed, at a rate not to exceed ten percent per year.** . . . No penalty for failure to file a return shall be greater than ten percent of the tax assessable on such return or ten dollars, whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax assessable. . . . penalty for failure to pay any tax may be assessed on the day after the first installment is due. **Any such penalty when so assessed shall become a part of the tax.** . . . " [emphasis added]

6. Section 860.01 of the Codified Ordinances of Loudoun County, Virginia ("L.C.C.ORD.") authorizes the payment of certain taxes in two installments: for real estate,

taxes are due on June 5 and December 5, annually; for tangible personal property, taxes are due on May 5 and October 5 annually. Business license taxes are due on or before March 1st of each year. L.C.C.ORD. Section 840.04; VA. CODE §58.1-3703.1(A)(2).

7. When taxes are not paid when due, Section 860.02 (L.C.C.ORD.) imposes a penalty of 10% of the unpaid tax, and provides that any such penalty when so assessed shall become a part of the tax.

8. When taxes are not paid when due, Section 860.03 (L.C.C.ORD.) imposes interest at the annual rate of ten percent on the total sum of such taxes owed, including any penalty applicable thereto, computed monthly for each calendar month.