

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	: Chapter 11
	: :
THE CHRISTIAN BROTHERS' INSTITUTE, <i>et al.</i>	: Case No.: 11-22820 (RDD)
	: :
Debtors.	: (Jointly Administered)
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ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 363 AND RULE 6004 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE (A) AUTHORIZING AND APPROVING SALE TO HARLEM VILLAGE ACADEMIES FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, (B) APPROVING THE PURCHASE AGREEMENT, AND (C) GRANTING RELATED RELIEF

Upon the motion, dated November 15, 2011 (the "Motion")¹ of The Christian Brothers' Institute, debtor and debtor in possession ("CBI" or the "Debtor"), for, among other things, the entry of an order pursuant to 11 U.S.C. §§ 105(a) and 363 and Rule 6004 of the Federal Rules of Bankruptcy Procedure (a) authorizing and approving the Sale of the property described therein to Harlem Village Academies, a New York not-for-profit corporation ("HVA"), or to another qualified bidder submitting a higher or otherwise better offer, free and clear of all liens, claims, encumbrances and interests, (b) approving the Purchase Agreement, and (c) granting related relief (collectively, the "Sale Relief"); and a hearing having been held on December 1, 2011 with respect to the Sale Procedures that the Debtor requested in the Motion (the "Bidding Procedures Hearing"); and after the conclusion of the Bidding Procedures Hearing, the Court having entered a Procedures Order [Docket No. 173], in which the Court, among other things, (i) approved certain auction and sale procedures (the "Sale Procedures"), (ii) scheduled a hearing on Motion's request for the Sale Relief, including the Debtor's request to approve a sale to the bidder(s) submitting the highest or otherwise best offer for the Premises as determined in accordance with

¹ Capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Motion.

the Sale Procedures, for January 6, 2012 (the “Sale Hearing”), and (iii) approved the Break-up Fee and Expense Reimbursement (as defined in the Purchase Agreement) to HVA; and the Debtor having determined that no other Qualified Bids were received by the Debtor and, accordingly, the Auction scheduled for January 5, 2012 (the “Auction”) having been cancelled; and such Notice of Cancellation of Auction having been filed by the Debtor with the Court on December 23, 2011 [Docket No. 196]; and the Court having held the Sale Hearing to consider the approval of the Sale of the Premises pursuant to the terms and conditions of the Purchase Agreement; and the Court having considered (i) the Motion, (ii) the Sale and the Purchase Agreement; (iii) the arguments of counsel made, and the evidence submitted, proffered or adduced, at the Sale Hearing, and (iv) the record in this Case, of which the Court took judicial notice at the Sale Hearing; and there being no opposition to the Motion, including to the Sale Relief; and the Court having determined that the relief requested in the Motion and the Sale to HVA in accordance with the Purchase Agreement and the provisions of this order (this “Order”) are in the best interests of the Debtor, its estate, its creditors and other parties in interest; and it appearing that reasonable and adequate notice of the Motion, the Procedures Order, the Sale and the Sale Hearing have been provided to all persons required to be served in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules and orders of this Court; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:²

² Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, as applicable.

A. The Court has jurisdiction over this matter and over the property of the Debtor, including the Premises to be sold, transferred and conveyed, pursuant to 28 U.S.C. §§ 157(a) and 1334(b) and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 10, 1984 (Ward, Acting C.J.).

B. The statutory predicates for the relief sought in the Motion and the basis for the approvals and authorizations herein are 11 U.S.C. §§ 105 and 363 and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure.

C. On April 28, 2011 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). Since the Petition Date, the Debtor has continued in possession and management of its business and property as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

D. The Sale Relief constitutes a sale of property of the Debtor's estate outside the ordinary course of business within the meaning of section 363(b) of the Bankruptcy Code.

E. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O).

F. Venue of this case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

G. As evidenced by the affidavits of service previously filed with the Court, and based on the representations of counsel at the Sale Hearing: (i) due, proper, timely, adequate and sufficient notice of the Motion, the Procedures Order, the Auction, the Sale Hearing and the Sale has been provided in accordance with Bankruptcy Code §§ 102, 105 and 363 and Bankruptcy Rules 2002, 6004, 9008 and 9014 and in compliance with the Procedures Order; (ii) such notice

was good and sufficient, and appropriate under the particular circumstances; and (iii) no other or further notice of the Motion, the Auction, the Sale Hearing or the Sale is or shall be required.

H. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, through marketing efforts and a competitive sale process conducted in accordance with the Procedures Order, the Debtor, with its consultants and advisors conducted a thorough and adequate search for interested potential purchasers and afforded such interested potential purchasers a full, fair and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase the Premises.

I. The Sale process has been conducted fairly and openly in a manner reasonably calculated to produce the highest and best offer for the Premises under the circumstances and in compliance with the Procedures Order. The Debtor was free to deal with any party interested in acquiring the Premises, including after entry of the Procedures Order.

J. The Debtor and its professionals have complied in all respects with the Procedures Order.

K. The Debtor is the sole lawful owner of the Premises, as set forth in the Purchase Agreement, and, upon entry of this Order, has the legal power and authority to convey all of its right, title and interest therein and thereto.

L. The Debtor received no other Qualified Bids (other than that of HVA) for the Premises.

M. Upon entry of this Order, (i) the Debtor has full corporate power and authority to execute the Purchase Agreement and the Sale of the Premises has been duly and validly authorized, (ii) the Debtor has all of the corporate power and authority necessary to consummate

the Sale contemplated by the Purchase Agreement, (iii) the Debtor has taken all necessary corporate action necessary to authorize and approve the Sale, the Purchase Agreement and the consummation by the Debtor of the transaction contemplated thereby, and (iv) no consents or approvals, other than those expressly provided for in the Purchase Agreement, are required for the Debtor to consummate the Sale.

N. The relief requested in the Motion, including, without limitation, approval of the Sale of the Premises to HVA in accordance with the terms and conditions of the Purchase Agreement and this Order, is in the best interests of the Debtor, its creditors, its estate and all other parties in interest in this Case.

O. The Debtor has exercised sound business judgment in deciding, and has shown good and sufficient justification, to enter into the Purchase Agreement and to sell the Premises to the HVA pursuant to the Purchase Agreement. Entry into the Purchase Agreement and related documents and consummation of the Sale in accordance with the terms and conditions thereof constitute the Debtor's exercise of sound business judgment, and such acts are in the best interests of the Debtor, its estate, and all parties in interest, in that, without exclusion, (i) the Purchase Agreement was negotiated, proposed and entered into in good faith, from arm's-length bargaining positions as between Debtor and HVA, (ii) the Debtor was free to deal with any other party interested in acquiring the Premises; and (iii) the Debtor has provided adequate notice and an opportunity to be heard in connection with the Sale in its chapter 11 case.

P. A fair and reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein as well as the Sale has been afforded to all interested persons and entities, including (i) the Office of the United States Trustee for the Southern District of New York; (ii) counsel for HVA; (iii) counsel to the Committee; (iv) counsel to Country Bank; (v) all

other entities (or counsel therefor) known to have asserted any liens, claims or encumbrances in or upon the Premises; (vi) all federal, state and local regulatory or taxing authorities or recording offices that are reasonably known by CBI to have an interest in the relief requested by the Motion; (vii) all parties known by CBI to have expressed a *bona fide* interest in acquiring the Premises; (viii) the Internal Revenue Service; (ix) the United States Attorney's office; and (x) all entities who have filed a notice of appearance and request for service of papers in the Debtors' cases (collectively, the "Auction and Sale Notice Parties").

Q. As of the Closing, HVA will be a third party unrelated to the Debtor and not an "insider" of the Debtor, as that term is defined in Bankruptcy Code § 101, and no common identity of incorporators, directors or officers will exist between the Debtor and HVA.

R. The Debtor and HVA negotiated and entered into the Purchase Agreement in good faith, without collusion or fraud, and at arms' length within the meaning of Bankruptcy Code § 363(m). Neither the Debtor nor HVA engaged in any conduct that would cause or permit the Purchase Agreement, the consummation of the transactions contemplated thereby to be avoided, or costs of damages to be imposed under Bankruptcy Code § 363(n).

S. HVA is a good faith purchaser under Bankruptcy Code § 363(m), and as such is entitled to the protections of Bankruptcy Code § 363(m).

T. The sale process conducted by the Debtor and its retained advisors was open, fair and reasonable, conducted in good faith and free of collusion, and in compliance with the Sale Procedures. The outcome of such Auction was not the result of collusive or otherwise unlawful conduct on the part of HVA or any other third party.

U. The offer of HVA for the Premises is the highest and best offer received by the Debtor after a period in which third parties had sufficient opportunity to seek information and

enter into discussions or negotiations with the Debtor and their retained advisors concerning a sale of the Premises. The Purchase Price (as defined in the Purchase Agreement) is fair and reasonable, and constitutes reasonably equivalent value and fair consideration for the Premises under the Bankruptcy Code and other applicable law.

V. Not selling the Premises free and clear of all claims, encumbrances and interests would adversely impact the Debtor's estate, and a sale of the Premises other than one free and clear of all Interests or Claims (as defined below) would be of substantially less benefit to the Debtor's estate.

W. The Debtor may sell the Premises free and clear of all Interests or Claims because, in each case, one or more of the standards set forth in Bankruptcy Code §§ 363(f)(1)-(5) has been satisfied.

X. The Sale of the Premises by the Debtor to HVA pursuant to the Purchase Agreement (i) is or will be legal and a valid and effective transfer of the Premises to HVA and (ii) vests or will vest HVA with all right, title and interest of the Debtor in the Premises on the closing of the Sale free and clear of any Interests or Claims pursuant to Bankruptcy Code §§ 105, 363(b) and 363(f), including any claims arising any theory of successor liability.

Y. There were no objections by any holders of Interests or Claims that have not been resolved by the terms of this Order, or otherwise overruled or withdrawn, and all such parties are deemed to have consented to the Motion and Sale Relief pursuant to Bankruptcy Code § 363(f)(2).

Z. There is cause to lift the stays contemplated by Bankruptcy Rule 6004(h).

AA. All findings of fact and conclusions of law made or announced by the Court at the Sale Hearing or in the Procedures Order are incorporated herein; and it is therefore

ORDERED, ADJUDGED AND DECREED THAT:

1. The Sale Relief requested in the Motion is GRANTED in the manner and to the extent set forth below, and the Sale Relief and all other transactions contemplated under the Purchase Agreement are hereby approved.

2. Pursuant to Bankruptcy Code §§ 105(a), 363(b), 363(f) and 363(m), the Sale and the Purchase Agreement and the transaction contemplated thereby are hereby approved and authorized.

3. Pursuant to Bankruptcy Code § 363(b), the Debtor is authorized to and directed to take any and all actions necessary or appropriate to (a) to sell the Premises to HVA and consummate the Sale in accordance with and subject to the terms and conditions of the Purchase Agreement, and to transfer and assign all right, title and interest (including common law rights) to all property to be conveyed in accordance with and subject to the terms and conditions of the Purchase Agreement, and (b) execute and deliver, and is empowered to perform under, consummate and implement, the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement. Notwithstanding anything herein to the contrary, neither Debtor nor HVA shall have any obligation to proceed with the Closing of the Purchase Agreement until all conditions precedent to its respective obligations to do so as set forth in the Purchase Agreement have been satisfied or waived in accordance therewith.

4. The consideration provided by HVA for the Acquired Assets under the Purchase Agreement is fair and reasonable and shall be deemed for all purposes to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law. The Sale may not be avoided, or costs or damages imposed on or awarded against any party in

interest in these bankruptcy cases under section 363(n), or any other provision, of the Bankruptcy Code.

5. Pursuant to Bankruptcy Code §§ 363(b) and 363(f), upon the Closing, and except as otherwise expressly provided in the Purchase Agreement, the Premises shall be transferred to HVA free and clear of all mortgages, restrictions, hypothecations, charges, indentures, loan agreements, instruments, leases, licenses, options, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens (including, without limitation, mechanics', materialmen's and other consensual and nonconsensual liens and statutory liens), judgments, demands, encumbrances, rights of first refusal, offsets, contracts, recoupment, rights of recovery, claims for reimbursement, contribution, indemnity, exoneration, products liability, alter-ego, tax, decrees of any Court or foreign or domestic governmental entity (to the extent permitted by law), or charges of any kind or nature, if any, including (without limitation) any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, debts arising in any way in connection with any agreements, acts or failures to act, of the Debtor or any of the Debtor's predecessors or affiliates, claims (as that term is defined in the Bankruptcy Code), obligations, liabilities, demands, guaranties, options, rights, contractual or other commitments, restrictions, interests and matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or noncontingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of this bankruptcy case, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under doctrines of successor liability, other than Permitted Exceptions

(collectively and as such pertains to the Premises, the “Interests or Claims”), with all such Interests or Claims to attach to the cash proceeds in the order of their priority, with the same validity, force and effect that they now have as against the Premises, subject to any claims and defenses that the Debtor may possess with respect thereto. Nothing herein shall prohibit Country Bank, the holder of the first mortgage on the Premises, from seeking a further order of this Court directing the Debtor to fully satisfy Country Bank’s mortgage from the sale proceeds. Unless otherwise agreed to in writing between the Debtor, the Committee and Country Bank, or until otherwise ordered by this Court, all net sale proceeds shall be maintained in a segregated account at a New York money center bank.

6. Following the Closing, no holder of any Interests or Claims against the Debtor or in the Premises shall, and any such holder is hereby enjoined from taking any actions to, interfere with HVA’s title to or use and enjoyment of the Premises based on or related to such Interests or Claims.

7. The sale, transfer, assignment and delivery of the Premises shall not be subject to any Interests or Claims, and all Interests or Claims of any kind or nature whatsoever shall be and hereby are released, terminated and discharged as to HVA and the Premises, and shall attach only to the net proceeds of the Sale in their order of priority. All persons holding Interests or Claims against the Premises of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing such Interests or Claims of any kind or nature whatsoever against HVA, its property, its successors and assigns, its affiliates or the Premises, with respect to any Interests or Claims that such person or entity had, has or may have against or in the Debtor, its estate or the Premises.

8. Except as expressly provided in the Purchase Agreement and this Order, HVA is not assuming, nor shall it or any of its affiliates be liable or responsible, as a successor or otherwise, for, any liabilities, debts, or obligations of the Debtor in any way whatsoever relating to or arising from Debtor's ownership, possession or use of the Premises prior to the consummation of the transaction contemplated by the Purchase Agreement, or any liabilities calculable by reference to the Debtor or any of its operations or the Premises, or relating to continuing or other conditions existing on or prior to the Closing, which liabilities, debts and obligations, if any, are hereby extinguished against HVA or any affiliate of HVA insofar as they may give rise to liability, successor liability or otherwise, against HVA or any such affiliate.

9. The transfer of the Premises to HVA pursuant to the Purchase Agreement does not require any consents other than as specifically provided for in the Purchase Agreement and constitutes a legal, valid and effective transfer of the Premises, and shall vest HVA with all right, title and interest of the Debtor in and to the Premises free and clear of all Interests or Claims of any kind or nature whatsoever.

10. On the Closing and pursuant to the terms of the Purchase Agreement, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of all of the Premises or a bill of sale transferring good and marketable title in the Premises to HVA.

11. HVA is hereby authorized in connection with the consummation of the transaction contemplated by the Purchase Agreement to allocate the Premises among its affiliates, designees, assignee, and/or successors in a manner as it, in its sole discretion, deems appropriate and to assign, lease, license, transfer or otherwise dispose of any part or all of the Premises to such affiliates, designee, assignee, and/or successors with all of the rights and

protections accorded under this Order and the Purchase Agreement, and the Debtor shall cooperate with and take all action reasonably requested by HVA to effectuate any of the foregoing, as long as any allocation does not relieve HVA of its obligations to close as provided in the Purchase Agreement.

12. If any person or entity that has filed financing statements, mortgages, mechanics' liens, *lis pendens* or other documents or agreements evidencing Interests or Claims against or in the Premises shall not have delivered to the Debtor prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfactions, releases of all Interests or Claims that the person or entity has with respect to the Premises, or otherwise, HVA is hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Premises.

13. Except as otherwise provided in the Purchase Agreement, on the Closing Date, each of the Debtor's creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release their respective Interests or Claims against the Premises, if any, as may have been recorded or may otherwise exist.

14. Each and every filing agent, registrar, filing officer, title agent, title company, recorder of mortgages, recorder of deeds, registrar of deeds, administrative agency or unit, governmental department or unit, secretary of state, federal, state or local official, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title, is hereby directed to accept any and all documents and instruments necessary and appropriate, including a certified copy of this

Order, to consummate the transaction contemplated in the Purchase Agreement (including, without limitation, striking all recorded Interests or Claims).

15. The transaction contemplated by the Purchase Agreement have been bargained for and undertaken by HVA and the Debtor at arms' length, without collusion and in good faith within the meaning of Bankruptcy Code § 363(m). The consideration provided by HVA for the Premises under the Purchase Agreement is fair and reasonable and shall be deemed for all purposes to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law. HVA and the Debtor have not engaged in any conduct that would cause or permit the Purchase Agreement to be avoided. HVA is a buyer in good faith as the term is used in Bankruptcy Code § 363(m) and upon the granting of this Order by this Court with respect to the Purchase Agreement, HVA shall be entitled to the protection of Bankruptcy Code § 363(m). Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale, unless such authorization is duly stayed pending such appeal. The transactions contemplated by the Purchase Agreement may not be avoided, or costs or damages imposed on or awarded against any party in interest in these bankruptcy cases under Bankruptcy Code § 363(n), or any other provisions of the Bankruptcy Code.

16. The Debtor and its officers, employees and agents are authorized to execute such documents and do such acts as are necessary or desirable to carry out and consummate the transaction contemplated by the terms and conditions of the Purchase Agreement and this Order, without further Order of this Court.

17. This Order and the Purchase Agreement shall be binding in all respects upon all creditors (whether known or unknown) of the Debtor, all successors and assigns of HVA, the

Debtor and its affiliates and subsidiaries and its estate, all other parties in interest, and any subsequent trustees appointed in the Debtor's Chapter 11 Case or upon a conversion to Chapter 7 under the Bankruptcy Code and shall not be subject to rejection or avoidance.

18. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation and enforcement of this Order.

19. The failure specifically to include or to reference any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement, be authorized and approved in its entirety.

20. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate.

21. To the extent applicable, the automatic stay pursuant to Bankruptcy Code § 362 is hereby lifted with respect to the Debtor to the extent necessary, without further order of the Court, (a) to allow HVA to give the Debtor any notice provided for or contemplated in the Purchase Agreement, and (b) to allow HVA to take any and all actions contemplated or permitted by the Purchase Agreement.

22. Nothing contained in any order entered in the Debtor's bankruptcy case subsequent to entry of this Order, nor in any Chapter 11 plan confirmed in the Debtor's bankruptcy case, shall conflict with or derogate from the provisions of the Purchase Agreement or the terms of this Order.

23. The provisions of this Order are nonseverable and mutually dependent.

24. To the extent permitted by Bankruptcy Code § 525, no governmental unit may revoke or suspend any permit relating to the operation of the Premises sold, transferred or conveyed to HVA on account of the filing or pendency of the Debtor's Chapter 11 Case or the consummation of the Sale.

25. In the event of any inconsistency between this Order, on the one hand, and the Purchase Agreement or other documents related to the Sale, on the other hand, the terms of this Order shall control.

26. This Court shall retain exclusive jurisdiction to enforce the terms and provisions of this Order, the Procedures Order and the Purchase Agreement in all respects and to decide any disputes arising between the Debtor and HVA.

27. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry.

Dated: White Plains, New York
January 9, 2012

/s/Robert D. Drain
HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE