

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT  
HARTFORD DIVISION**

In re:

THE NORWICH ROMAN CATHOLIC  
DIOCESAN CORPORATION,<sup>1</sup>

Debtor.

Chapter 11

Case No: 21-20687 (JJT)

April 5, 2023

**DEBTOR’S MOTION FOR ENTRY OF (I) ORDER (A) APPROVING SALE  
PROCEDURES FOR THE SALE OF CERTAIN PROPERTY, INCLUDING ALL  
IMPROVEMENTS THEREON IN MONTVILLE, CONNECTICUT, (B) SCHEDULING  
AN AUCTION AND A SALE HEARING RELATED THERETO, (C) AUTHORIZING  
AND APPROVING THE FORM OF PURCHASE AND SALE AGREEMENT; AND (D)  
APPROVING THE FORM OF NOTICE OF THE AUCTION AND SALE HEARING;  
AND (II) ORDER (A) APPROVING SUCH SALE OF THE PROPERTY FREE AND  
CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS; AND  
(B) RELATED RELIEF**

The Norwich Roman Catholic Diocesan Corporation, debtor and debtor-in-possession (the “Debtor” or “Diocese”), by and through its undersigned counsel, hereby moves (the “Sale Motion”) for entry of: (I) an order (the “Sale Procedures Order”) substantially in the form attached hereto as **Exhibit 1** (a) approving the Sale Procedures substantially in the form attached as **Schedule A** to the proposed Sale Procedures Order (the “Sale Procedures”) for the sale of certain real property, and all improvements thereon, comprised of 113.19 acres of developed land located at 1593 Route 32, Montville, Connecticut (the “Property”), (b) scheduling an auction and a sale hearing related thereto, (c) authorizing and approving the form of purchase and sale agreement (the “Form PSA”), and (d) approving the form of notice of the auction and sale hearing; and (II) an order (the “Sale Order”) (a) authorizing the sale of the Property to a prevailing bidder at an

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<sup>1</sup> The Debtor in this chapter 11 case is The Norwich Roman Catholic Diocesan Corporation, a/k/a The Roman Catholic Diocese of Norwich. The last four digits of the Debtor’s federal tax identification number are 7373.

auction, free and clear of any and all liens, claims, encumbrances and other interests; approving the form and manner of the notice of auction and sale hearing, (b) approving certain procedures related to the assumption and assignment of executory contracts and unexpired leases, and (c) certain related relief. In support of the Sale Motion, the Debtor respectfully provides as follows:

**I. JURISDICTION AND VENUE**

1. The United States Bankruptcy Court for the District of Connecticut (the “Court”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.

4. The statutory basis for the relief sought herein is sections 105, 363, 365, 1123(b) and 1146 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9014 and 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 6004-1, 6004-2, 6004-3, 9014-1 and 9019-1 of the Connecticut Local Rules of Bankruptcy Procedure (the “Local Rules”).

**II. BACKGROUND**

5. On July 15, 2021 (the “Petition Date”), the Debtor commenced the above-captioned chapter 11 case (the “Chapter 11 Case”) by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

6. The Debtor continues to operate and manage its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. The Debtor filed for relief under chapter 11 of the Bankruptcy Code to, among other things, oversee a fair and equitable distribution of its unrestricted assets to its creditors,

which include survivors of alleged sexual abuse, while at the same time allowing the Debtor to continue to support its religious, charitable and humanitarian mission.

8. On July 29, 2021, the Office of the United States Trustee (the “U.S. Trustee”) appointed the Committee pursuant to section 1102(a)(1) of the Bankruptcy Code.

9. The factual background relating to the Debtor’s commencement of the Chapter 11 Case is set forth in detail in the *Declaration of Reverend Peter J. Langevin Regarding the Diocese’s Assets and Operations and In Support of the Chapter 11 Petition and First Day Pleadings* [Dkt. No. 12] (the “First Day Declaration”).

10. The St. Bernard’s School of Montville, Inc. (the “School”) leases the Property from the Diocese pursuant to a month-to-month lease arrangement.

11. The Diocese is seeking to sell the Property at auction in connection with a plan of reorganization to help create a pool of cash to fund a trust that will make distributions to individuals who have asserted claims for alleged sexual abuse against the Diocese (the “Survivors”).

12. Prior to filing this Motion, the Diocese has engaged in negotiations with two potential purchasers interested in obtaining the Property: Thames River Acquisition, LLC ( “Thames River”) and Saints Country, LLC (“Saints Country”, and, collectively with Thames River, the “Interested Purchasers”). As discussed in greater detail in Section IV below, the Diocese engaged in negotiations with the Interested Purchasers regarding the terms and conditions of written sale agreements and a new written lease with the School (the “School Lease”), pursuant to which the respective Interested Purchasers would (i) agree to purchase and the Diocese would agree to sell (subject to Court approval) the Property free and clear of all liens, claims, encumbrances and interests; and (ii) enter into the School Lease with the School.

### III. SUMMARY OF RELIEF SOUGHT

13. The Diocese seeks entry of the Sale Procedures Order, the proposed form of which is attached hereto as **Exhibit 1**:

- a. authorizing and approving the Sale Procedures attached to the Sale Procedures Order in connection with the sale of the Property;
- b. approving the form and manner of notice attached to the Sale Procedures Order attached to the Sale Procedures Order as **Schedule B** (the “Sale Notice”) related to the auction (the “Auction”) and sale hearing (the “Sale Hearing”) with respect to the sale of the Property free and clear of liens, claims, encumbrances, and other interests (the “Sale”);
- c. scheduling the Auction and Sale Hearing; and
- d. granting related relief.

14. In addition to continuing negotiating with the Interested Purchasers, on or about the date of the Sale Motion, the Debtor and its professionals will begin utilizing [www.bkassets.com](http://www.bkassets.com) to preview the essential terms of the Sale Notice under the website’s “On Sale Soon” portal. The Debtor will publish the Sale Notice in the *New London Day* and with the media outlets controlled by New England Business Media, LLC (NEBM), a leading provider of regional business (including real estate) news and information in Hartford and New Haven, Connecticut. Additionally, the Sale Notice will be posted with [www.bkassets.com](http://www.bkassets.com) after its approval. Additionally, the sale of the Property has received extensive press coverage in the *New London Day* and the *Boston Globe* after news of the Interested Purchasers and the Sale of the Property found its way to these press outlets.

15. After the Auction, Debtor will seek the entry of an order, in a form that will be submitted to the Court in advance thereof (the “Sale Order”):

- a. authorizing and approving the Sale of the Property to the Successful Bidder (as defined in the Sale Procedures) on the terms substantially set forth in the Successful Bid (as defined in the Sale Procedures);

- b. authorizing and approving the Sale of the Property free and clear of liens, claims, encumbrances, and other interests to the extent set forth in the Successful Bid; and
- c. granting related relief.

#### **IV THE PROPERTY AND PROPOSED SALE**

##### **A. The School and Property**

16. Founded in 1967, the School is a Roman Catholic co-educational college preparatory school for grades 6 through 12 located in Montville, Connecticut. It is co-sponsored by the Diocese and the Xaverian Brothers and welcomes students of all faith backgrounds who value academic excellence, personal and spiritual growth, and a commitment to community.

17. The Property consists of a 113-acre site on Route 32 that is improved with the 155,865 square foot School, an 800 square foot detached garage and two 80 square foot sheds. Besides the improvements, the Property has a significant amount of woodlands and clearings for fields, lawns and parking.

##### **B. Negotiations with Thames River**

18. In September 2022, the Debtor received an unsolicited letter of intent (“Thames River LOI”) from an attorney acting on behalf of an unidentified private entity interested in purchasing the Property. The Thames River LOI contemplated, and counsel for the unidentified potential purchaser insisted, that the sale of the Property be effectuated through a private sale for \$6 million that was not subject to higher and better offers (the “Private Sale”).

19. The unidentified potential purchaser, Thames River, thereafter incorporated as a Connecticut limited liability company in December 2022, three months after the Thames River LOI.

20. The Thames River LOI and subsequent negotiations with Thames River reflected an interest in entering into the School Lease.

21. In or around December 2022 through early February 2023, attorneys for the Debtor, Thames River and the School negotiated the terms of the Private Sale, including the terms of the School Lease; however, those discussions collapsed after an impasse arose related to certain deal terms, including the terms related to the School Lease.

22. Since February 23, 2023—and after the *New London Day* wrote an article about Saints Country’s (discussed in Section IV.C, below) interest in purchasing the Property and entering into the School Lease—Thames River resurfaced with an increased bid, which included a willingness to expose the increased bid to higher and better offers through the Sale Procedures and auction.<sup>2</sup>

### **C. Negotiations with the Saints Country**

23. On or about January 27, 2023, Saints Country submitted its unsolicited letter of intent (“Saints LOI”) which provided, among other things, that Saints Country would purchase the Property for \$6 million. Subsequent discussions with Saints Country that ensued revealed that Saints Country was a consortium of the School’s alumni and certain entities that were devoted to continuing the School’s Catholic education mission. In addition to disclosing the names and

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<sup>2</sup> Thames River has not yet identified its principals or their intended use of the Property after acquisition. Under Canon Law, when certain Diocesan property is to be sold, including in this instance the sale of the Property, the Bishop of the Diocese is required to obtain the consent of the Holy See prior to consummating the transaction. See Canon Law, Cans. 1290-1298. The approval process requires the identity “of any parties in interest in the property..., with a description of their interest; ... [and] an assessment of the effect that the alienation of this property will have on the [Diocese’s] ability to carry on its ministry or perform its apostolic activities....” *Church Finance Handbook* (1999); pp 256-7; see also Cans. 1290-1298. Recently, Thames River has agreed to identify its principals and the source of funds to close the transaction upon the execution of a confidentiality agreement. In an effort to comply with Canon Law, the Diocese has also insisted on disclosure of Thames River’s intended use of the Property.

identities of all individuals, trusts and entities with an interest in Saints Country, its counsel shared proof of financial capacity to close.

24. Subsequent discussions with Saints Country also revealed its desire to enter into the School Lease and willingness to expose the Property to higher and better offers through the Sale Procedures and auction.

25. Saints Country's interest in the Property and desire to continue the School has garnered extensive press coverage in the *New London Day*, as well as additional coverage in the *Boston Globe*.

**D. Decision to File the Sale Motion.**

26. After discussions with the Interested Purchasers during March 2023, and after consulting with the Committee, the Debtor determined in the exercise of its business judgment to file the Motion.

**V. THE PROPOSED SALE TIMELINE**

27. The Debtor proposes the following timeline in connection the Sale Procedures Order:

<b>Proposed Hearing Date on the Sale Motion</b>	<b>April 14, 2023</b>
<b>Delivery of Sale Notice</b>	<b>April 17, 2023</b>
<b>Bid Deadline</b>	<b>May 1, 2023 at 4:00 p.m. (ET)</b>
<b>Auction</b>	<b>May 5, 2023</b>
<b>Date for Debtor to File and Serve Notice of Auction Results with respect to Successful Bidder (if applicable and Auction held)</b>	<b>May 8, 2023</b>
<b>Objection to Sale</b>	<b>TBD</b>
<b>Sale Hearing</b>	<b>Week of May 8, 2023</b>

## VI. SUMMARY OF THE SALE PROCEDURES

28. In order to ensure that the maximum potential value for the Property is obtained, the Debtor seeks entry of the Sale Procedures Order and approval of the Sale Procedures. The Sale Procedures are annexed as **Schedule A** to the Sale Procedures Order and are incorporated herein by reference.

### A. **Local Rule 6004-2 Summary**

29. The following chart summarizes the key terms and conditions of the proposed Sale, including terms contained in the form of Purchase and Sale Agreement (the “Form PSA”) attached hereto as **Exhibit 2**.

Heading	Summary Description
<b>Assets to Be Sold</b>	Approximately 113.19 acres and the improvements thereon, commonly known as 1593 Route 32, Montville, Connecticut.
<b>Known Lien Holders</b>	None
<b>Qualification of Bidders</b>	<p>To be eligible to participate in the Auction, each offer, solicitation or proposal (each, a “<u>Bid</u>”), and each party submitting such a Bid (each, a “<u>Bidder</u>”), must be determined by the Debtor to satisfy each of the following conditions:</p> <ol style="list-style-type: none"> <li>1. Corporate Authority. Written evidence reasonably acceptable to the Debtor demonstrating appropriate corporate authorization to consummate the Sale; <i>provided, however</i>, that, if the Bidder is an entity specially formed for the purpose of acquiring the Property at the Auction, then the Bidder must furnish written evidence reasonably acceptable to the Debtor regarding the identity of the principal(s) of the Bidder and proof of the approval of the transaction by the equity holder(s) of such Bidder. <i>See</i> Sale Procedures, § III(B)(3).</li> </ol>



	<p>2. <b>Proof of Financial Ability to Perform.</b> Written evidence that the Debtor reasonably concludes demonstrates that the Bidder has the necessary financial ability to close the Sale. <i>Id.</i> at § III(B)(4).</p>
<b>Qualified Bids/Good Faith Deposit</b>	<p>Each Bid must be determined by the Debtor to satisfy each of the following conditions:</p> <ol style="list-style-type: none"> <li>1. <b><u>Deadline:</u></b> All Bids must be received by no later than <b>May 1, 2023 at 4:00 p.m. (ET)</b>. <i>Id.</i> at § III(B)(9).</li> <li>2. <b><u>Deposit:</u></b> Each Bid must be accompanied by a cash deposit to a non-interest-bearing escrow account to be identified by the Debtor in an amount equal to ten percent (10.0%) of the proposed purchase price in the Bid (the “<b><u>Deposit</u></b>”). <i>Id.</i> at § III(B)(1).</li> <li>3. <b><u>Form of Bid:</u></b> A Bid: <ol style="list-style-type: none"> <li>a. must include a cover letter outlining the primary terms of the Bid, any affiliation or connection to the Debtor, any Committee members, including any insiders or affiliates of the foregoing. <i>Id.</i> at § III(B)(2).</li> <li>b. must include a purchase and sale agreement marked up against the Form PSA, pursuant to which the Bidder proposes to effectuate the Sale. <i>Id.</i></li> <li>c. must include a School Lease marked up against the form lease provided by the Debtor. <i>Id.</i></li> <li>d. must include written evidence reasonably acceptable to the Debtor reflecting the Bidder’s intended use of the Property and that the Bidder shall include in the Form PSA representations and warranties disclosing such use. <i>Id.</i> at § III(B)(4) (c).</li> <li>e. may not be conditioned on obtaining financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy in all material respects at the Closing of specified representations and warranties. <i>Id.</i> at § III(B)(5).</li> <li>f. must be irrevocable until the closing of the Auction; <i>provided, however,</i> that if such Bid is</li> </ol> </li> </ol>

	<p>accepted as the Successful Bid or the Backup Bid (as defined in the Sale Procedures), such Bid shall continue to remain irrevocable, subject to the terms and conditions of the Sale Procedures. <i>Id.</i> at § III(B)(6).</p> <p>g. must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, substantial contribution claim, or any other similar form of compensation. <i>Id.</i> at § III(B)(7).</p> <p>h. must propose a purchase price equal to or greater than \$6.5 million. <i>Id.</i> at § III(B)(8).</p> <p>The Debtor shall evaluate all Bids to determine whether such Bid(s) maximizes the value of the Debtor's estate as a whole, and the Debtor may waive any of the above requirements, in its sole discretion, for good cause shown.</p>
<b>Modification of Auction Procedures</b>	<p>The Debtor reserves its right, in its reasonable business judgment in a manner consistent with its fiduciary duties that will best promote the goals of the bidding process, to modify these Sale Procedures or impose, at or prior to the Auction, additional customary terms and conditions on the sale of the Property, including, without limitation: (a) extending the deadline set forth in these Sale Procedures; (b) adjourning the Auction at the Auction and/or adjourning the Sale Hearing in open court without further notice; (c) reopening the Auction to consider further Bids or Overbids; (d) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction (e.g., the amount of time to make subsequent Overbids, whether a non-conforming Bid constitutes a Qualified Bid); (e) canceling the Auction; and (f) rejecting any or all Bids or Qualified Bids. <i>Id.</i> at § VIII.</p>
<b>Backup Bidder Provisions</b>	<p>The Backup Bidder shall be required to keep its initial Bid (or if the Backup Bidder submitted one or more overbids at the Auction, its final overbid) (the "<u>Backup Bid</u>") open and irrevocable until the later of twenty five (25) days after entry of the Sale Order (the "<u>Outside Backup Date</u>") or the closing of the transaction with the Successful Bidder.</p> <p>Following entry of the Sale Order, if the Successful Bidder fails to consummate an approved transaction because of a</p>

	<p>breach or failure to perform on the part of such Successful Bidder, the Debtor may designate the Backup Bidder to be the new Successful Bidder, and the Debtor will be authorized, but not required, to consummate the transaction with the Backup Bidder without further order of the Bankruptcy Court. In such case, the defaulting Successful Bidder's Deposit, if any, shall be forfeited to the Debtor's estate.</p> <p>The closing date to consummate the transaction with the Backup Bidder shall be no later than ten (10) calendar days after the date that the Debtor provides notice to the Backup Bidder that the Successful Bidder failed to consummate a sale and that the Debtor desires to consummate the transaction with the Backup Bidder. The Deposit, if any, of the Backup Bidder shall be held by the Debtor until the earlier of two (2) business days after (a) the closing of the Sale with the Successful Bidder and (b) the Outside Backup Date; <i>provided, however</i>, that in the event the Successful Bidder does not consummate the Sale the Debtor provides notice to the Backup Bidder, the Backup Bidder's Deposit shall be held until the closing of the transaction with the Backup Bidder. If the Backup Bidder fails to consummate a transaction in accordance with the above conditions and timeframe, the Deposit of the Backup Bidder shall be forfeited to the Debtor's estate. <i>See Id.</i>, at § IV(D).</p>
<b>Credit Bidding</b>	None
<b>Free and Clear of School's Interest in Property</b>	St. Bernard's School of Montville, Inc. claims an interest in the property pursuant to a leasehold interest in the Property, and for improvements made to the Property for the School. The Sale Motion contemplates selling the Property free and clear of the School's interest in the Property, if any.
<b>Tax Exemption</b>	The Debtor is a tax-exempt entity; however, the sale should be declared exempt from taxes under section 1146(a) of the Bankruptcy Code insofar as the sale of the Property is being effectuated pursuant to a joint chapter 11 plan.

**B. Form and Manner of Sale Notice**

34. On or within two business days after entry of the Sale Procedures Order, the Debtor will cause the Sale Notice (attached to the proposed Sale Procedures Order as **Schedule B**) to be served on the following parties: (a) the Office of the United States Trustee; (b) counsel to the Committee; (c) counsel to the School; (d) the School; (e) all parties who have expressed a written interest in the Property; (f) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or interest in the Property; (g) the Internal Revenue Service; (h) all other applicable state and local taxing authorities; (i) all other parties listed on the Debtor's creditor matrix; and (j) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002 to Bankruptcy Rule 2002.

35. The Debtor and its professionals will begin utilizing [www.bkassets.com](http://www.bkassets.com) to preview the essential term of the Sale Notice under the website's "On Sale Soon" portal at or about the time the Sale Motion is filed. The Debtor will also publish the Sale Notice in the New London Day and with the media outlets controlled by New England Business Media, LLC (NEBM), a leading provider of regional business (including real estate) news and information in Hartford and New Haven, Connecticut and with [www.bkassets.com](http://www.bkassets.com).

**C. The Auction**

36. It is anticipated based upon ongoing conversations with the Interested Purchasers that each intends to submit a Qualified Bid (as defined in the Sale Procedures). So long as Qualified Bids are submitted by the Interested Purchasers, and others, on or before the Bid Deadline (**May 1, 2023 at 4:00 p.m. (ET)**), the Debtor respectfully requests the authority to conduct the Auction on **May 5, 2023** to select the Successful Bid. In making this determination, the Debtor will take into account any factors the Debtor reasonably deems relevant to the value of

the Qualified Bid to the Debtor's estate, including, without limitation: (a) the amount and nature of the consideration; (b) the ability of the Qualified Bidder (as defined in the Sale Procedures) to close the Sale; (c) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (d) any purchase price adjustments; (e) the impact of the transaction on any actual or potential litigation; and (f) the intended use of the Property; and (g) the net consideration to be received by the Debtor's estate (collectively, the "Bid Assessment Criteria"). If no Qualified Bid is received by the Bid Deadline, the Debtor may determine not to conduct the Auction.

**F. The Sale Hearing**

37. The Debtor intends to present the Successful Bid and the Backup Bid, for approval by the Court pursuant to the provisions of sections 105, 363, and 365 of the Bankruptcy Code at the Sale Hearing to be scheduled by the Court. The Debtor respectfully requests that any such Sale Hearing be scheduled during the week of **May 8, 2023**. The Debtor further requests that any objections to the proposed sale be filed and served no later than two days prior to the any hearing scheduled by the Court (the "Sale Objection Deadline"). At the Sale Hearing, the Debtor intends to seek the approval of the Sale of the property free and clear of all liens, claims, encumbrances, or any other interests.

**VII. THE SALE PROCEDURES ORDER SHOULD BE ENTERED**

**A. The Sale Procedures Should Be Approved**

38. The Sale Procedures, which are relatively standard for the sale of assets in chapter 11 cases, will ensure that the Debtor's estate receives the greatest benefit available from the sale of the Property. The Sale Procedures have been structured to attract the Interested Purchasers to submit Qualified Bids and participate in the Auction. The Debtor submits that the Sale Procedures

are reasonably designed to ensure that the Debtor's estate receives the maximum benefit available from the sale of the Property, and therefore warrant Court approval.

**B. The Auction and Sale Hearing Notice Should be Approved**

39. Pursuant to Bankruptcy Rules 2002(c) and 6004, the Debtor is required to give 21 days' notice of any proposed sale of property not in the ordinary course of business. Bankruptcy Rule 2002(c) further provides that such notice must include the time and place of any auction, a sale hearing, and the time fixed for objections to the sale. The Sale Notice sets forth all the information a potential bidder and any other party in interest should require about the bidding process for the Property, including: notice of the Sale Procedures and information on how to obtain a copy of the Sale Procedures; the Bid Deadline; the time, date, and location of the Auction; and the time, date and location of the Sale Hearing.

40. The Debtor submits that the Sale Notice as proposed complies with Bankruptcy Rule 2002 and Local Bankruptcy Rules 6004-1 and 6004-02 and constitutes good and adequate notice of the sale and the proceedings with respect thereto. Because the Debtor is providing notice of the Sale Motion, the Sale Procedures and the Auction to all Notice Parties, the Debtor submits that the notice requirements of Bankruptcy Rules 2002(2) and 6004 are satisfied. The Debtor respectfully requests that the Court approve the Auction and Sale Notice and the notice procedures proposed above.

**VII. THE SALE ORDER SHOULD BE ENTERED**

**A. Sales Outside the Ordinary Course of Business**

41. Section 363(b) of the Bankruptcy Code and Rule 6004 of the Bankruptcy Rules govern the sale of assets outside the ordinary course of business. Section 363(b)(1) provides, in relevant part, that a debtor-in-possession may, after notice and hearing, "use, sell or lease, other than in the ordinary course of business, property of the estate." See 11 U.S.C. § 363(b)(1) and (f). A

debtor in possession is given these rights by section 1107(a) of the Bankruptcy Code. *See* 11 U.S.C. §1107(a). Moreover, section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. §105(a).

42. The terms of such sale are generally within the sound discretion of the Debtor. *See In re Ionosphere Clubs, Inc.*, 100 B.R. 670 (Bankr. S.D.N.Y. 1989) (sale of Debtors’ airline shuttle assets approved where representing the exercise of independent good faith and non-coerced business judgment by the Debtors, the Debtors articulated a compelling business reason for the sale and represented fair value).

43. As recognized by the Second Circuit in *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d. Cir. 1983), a court may approve a section 363 application after expressly determining from the evidence presented at the hearing that a good business reason exists to grant such application.

44. Bankruptcy Rule 6004(f)(1) further provides that sales of property outside the ordinary course may be conducted by private sale or public auction. *See* Fed. R. Bankr. P. 6004(f)(1). Generally, a bankruptcy court has wide latitude in approving a sale of estate assets not in the ordinary course of business under section 363(b). *See generally In re Bakalis*, 220 B.R. 525, 531 (Bankr. E.D.N.Y. 1998). Each proposed sale must merely be examined from its own facts to determine whether the proposed sale is justified with detailed factual findings being made in support thereof.

**B. The Proposed Sale of the Property Represents a Sound Exercise of the Debtor’s Business Judgment**

45. Courts have uniformly held that approval of a proposed sale of property pursuant to section 363(b) of the Bankruptcy Code is appropriate if a court finds that the transaction

represents a reasonable business judgment on the part of the debtor. *See, e.g., In re Chateaugay Corp.*, 973 F.2d 141 (2d Cir. 1992); *Comm. of Equity Sec. Holders v. Lionel Corp (In re Lionel Corp.)*, 772 F.2d 1063, 1071 (2d Cir. 1983). *See also Official Comm. of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993), quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985) (“the business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interest of the company,’” which has continued applicability in bankruptcy).

46. Courts generally show great deference to a debtor in possession’s decisions when applying the business judgment standard. *See In re Global Crossing, Ltd.*, 295 B.R. 726, 744 n.58 (Bankr. S.D.N.Y. 2003) (“[T]he Court does not believe that it is appropriate for a bankruptcy court to substitute its own business judgment for that of the [d]ebtors and its advisors, so long as they have satisfied the requirements articulated in the caselaw.”). Deference is inappropriate only if such business judgment is “so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.” *Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.)*, 756 F.2d 1043, 1047 (4<sup>th</sup> Cir. 1985). *See also In re Integrated Res., Inc.*, 147 B.R. at 656 (there is a strong presumption “that in making a business decision[,] the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company”).

47. A sound business purpose for the sale of a debtor’s assets outside the ordinary course of business may be found where such a sale is necessary to preserve the value of assets for the estate, its creditors or interest holders. *See, e.g., In re Lionel Corp.*, 722 F.2d at 1071. In fact,



the paramount goal in any proposed sale of property is to maximize the proceeds received by the estate. *See Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *In re Integrated Res., Inc.*, 147 B.R. at 659 (“It is a well-established principle of bankruptcy law that the . . . [debtor’s] duty with respect to such sales is to obtain the highest price or greater overall benefit possible for the estate.”) (quoting *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)).

48. Courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy sales. *See In re Integrated Res.*, 147 B.R. at 659 (such procedures are created to “encourage bidding and to maximize the value of the Debtor’s assets”); *In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) (“court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates”).

49. The Diocese submits that the proposed sale of the Property pursuant to the Sale Procedures satisfies the “sound business reason test” and represents a prudent and proper exercise of its business judgment. The Diocese believes that a prompt public sale of the Property through the Sale Procedures is the best method by which it can obtain the best price for the Property and provide the Interested Parties, as well as any other potential purchasers, with accurate and reasonable notice of the proposed sale. The Sale Procedures will allow the Diocese to conduct the Auction in a controlled, fair and open fashion that will encourage participation by financially capable bidders who demonstrate the ability to close a transaction, thereby increasing the likelihood that the Diocese will receive the best possible consideration for the Property. The Sale

Procedures also will enable the Diocese to undertake the Auction process in an expeditious manner, which the Diocese believes is essential to maintaining and maximizing the value of its estate and confirming the Plan.

50. Moreover, as set forth hereafter, accurate and reasonable notice will be provided to the Interested Parties, parties who previously indicated an interest in the Property, and to all creditors and other parties in interest in compliance with the Bankruptcy Code and the Bankruptcy Rules.

51. The Debtor further submits that the sale process pursuant to the Sale Procedures provides a feasible alternative to the private sale initially advocated by Thames River. As such, the Debtor submits that the sale of the Property offers the greatest benefit to the estate is within the sound business judgment of the Debtor.

52. As contemplated, a Sale of the Property is consistent with the both the Diocese Plan and Committee Plan and will provide a source of funding to compensate Survivors.

53. Based on the foregoing, the sale of the Property is justified by sound business reasons and is in the best interests of the Diocese and its estate. Accordingly, pursuant to section 363(b) of the Bankruptcy Code, the Diocese requests that the Court approve the sale of the Property to the Successful Bidder in accordance with the executed Form PSA and the form of the Form PSA.

#### **VIII. The Property Should be Sold Free and Clear of Liens**

54. At the Sale Hearing, the Diocese intends to seek entry of the Sale Order approving the sale of the Property free and clear of all liens and interests, including free and clear of the School's leasehold interest, if any. Pursuant to the Sale Order, the Diocese will sell the Property free and clear of all liens to the fullest extent possible pursuant to section 363(f) of the Bankruptcy Code. In addition, the Sale Order will have findings that the sale is not a fraudulent conveyance.

55. Under section 363(f) of the Bankruptcy Code, a debtor may sell property under the Bankruptcy Code free and clear of liens, claims and encumbrances, provided that: (i) applicable non-bankruptcy law permits the sale of the property free and clear of such interests; (ii) the entity holding the lien, claim, interest or encumbrance consents to the sale; (iii) the interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on the property; (iv) the interest is in bona fide dispute; or (v) the entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of its interest. 11 U.S.C. § 363(f). *See In re Smart World Tech., LLC*, 423 F.3d 166, 169 n.3 (2d Cir. 2005) (Section 363 permits sales of assets free and clear of claims and interests. It thus allows purchasers to acquire assets without any accompanying liabilities.); *In re Dundee Equity Corp.*, No. 89-B-10233, 1992 WL 53743, at \*3 (Bankr. S.D.N.Y. Mar. 6, 1992) (“Section 363(f) is in disjunctive, such that the sale of the interest concerned may occur if any one of the conditions of § 363(f) have been met”).

56. In accordance with the provisions of the Form PSA and section 363(f), the Debtor requests that it be authorized to conduct the Sale free and clear of all liens, claims, interests and encumbrances.

57. Besides the School’s leasehold interest in the Property, if any, the Diocese is unaware of any (a) liens, encumbrances or interests, or (b) “claims” as defined in section 101(5) of the Bankruptcy Code that have been asserted against the Property. The Diocese maintains that the Property may be sold free and clear of any such lien (in the event the Court finds that a lien has been asserted against the Property) or interest pursuant to section 363(f)(4) because any debt owed pursuant to any such purported interest is in bona fide dispute. All parties holding liens or interests, if any, on the Property will be provided notice of the proposed Sale and shall be granted an opportunity to object to the relief requested in this Motion and any such entity that does not object

to the sale shall be deemed to have consented. *See, e.g., Futuresource LLC v. Reuters, Ltd.*, 312 F.3d 281, 285-86 (7th Cir. 2002) (standing for the proposition that the lack of an objection to a proposed sale of assets counts as consent); *Hargrave v. Township of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)); *In re Elliot*, 94 B.R. 343, 345 (Bankr. E.D.Pa. 1988) (*citing In re Gabel*, 61 B.R. 661 (Bankr. W.D. La. 1985); *In re Enron Corp.*, 2003 WL 21755006 at \*2 (Bankr. S.D.N.Y. 2003) (order deeming all parties who did not object to proposed sale to have consented under section 363(f)(2)).

58. Thus, to the extent any parties holding a lien on or interest in the Property fail to object to the relief requested in the Motion, a sale of the Property free and clear of all liens claims and interests satisfies section 363(f)(2) of the Bankruptcy Code.

59. Alternatively, section 363(f)(5) is also satisfied and provides adequate cause for granting authorization to conduct the Sale free and clear of liens and interests insofar if any party claims exist. Therefore, the Debtor respectfully submits that section 363(f)(5) can be deemed satisfied upon a sale of the Assets being conducted free and clear of all liens.

## **IX. Good Faith**

60. Section 363(m) affords protection to a good faith buyer in any interest in property purchased from a debtor, notwithstanding that the sale conducted was later reversed or modified on appeal. Section 363(m) provides, in pertinent part, as follows:

The reversal or modification on appeal of an authorization under [section 363(b)] ... does not affect the validity of a sale ... to an entity that purchased ... such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale ... were stayed pending appeal

11 U.S.C. § 363(m). *See Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (Bankr. S.D.N.Y. 1994) (“Section 363(m) provides that good faith transfer of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal”); *In re Stein & Day, Inc.*, 113 B.R. 157, 162 (Bankr. S.D.N.Y. 1990) (“pursuant to 11 U.S.C. § 363(m), good faith purchasers are protected from the reversal of a sale on appeal unless there is a stay pending appeal.”)

61. The Second Circuit has held that a party would have to show fraud or collusion between a purchaser and the debtor-in-possession or trustee in order to demonstrate a lack of good faith. *See Kabro Assocs. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997) (“[t]ypically, the misconduct that would destroy a good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders”). *See also In re Bakalis*, 220 B.R. at 537.

62. While the Bankruptcy Code does not define “good faith,” the Second Circuit has held that a purchaser’s good faith is shown by the integrity of its conduct during the course of the sale proceedings, with a lack of integrity suggesting a lack of good faith. *See, e.g., In re Gucci*, 126 F.3d 380, 390 (2d Cir. 1997) (a purchaser’s good faith is lost by “fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders”) (internal citations omitted).

63. The Debtor intends to demonstrate that the Successful Bidder acted in good faith and is entitled to the protections of a good faith purchaser under section 363(m).

**X. THE COURT SHOULD WAIVE OR REDUCE THE REQUIREMENTS OF RULE 6004(H)**

64. Under Rule 6004(h) of the Bankruptcy Code, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for 14 days after entry of the order, unless otherwise ordered by the Court. Fed. R. Bankr. P. 6004(h). The stay period is intended to provide sufficient time for an objecting party to appeal before the order is implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h).

65. Although little guidance is provided by either Rule 6004(h) or the Advisory Committee Notes as to when a court should “order otherwise,” the 14-day stay period may be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” *In re Borders Grp., Inc.*, 453 B.R. 477, 486 (Bankr. S.D.N.Y. 2011). It is thus respectfully requested that the Court waive the 14 day stay period required under Rule 6004(h).

**XI. RESERVATION OF RIGHTS**

66. Nothing contained in this Motion or any actions taken by the Diocese pursuant to relief granted in the Order is intended or should be construed as: (a) an admission as to the validity of any particular claim against the Diocese or any related non-debtor entities; (b) a waiver of the Diocese’s rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Diocese’s rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Diocese that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this motion are valid, and the Diocese expressly reserve their rights to contest the extent, validity, or perfection or seek

avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's Order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Diocese's rights to subsequently dispute such claim.

**XI. NO PRIOR REQUEST**

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

**XII. CONCLUSION**

As set forth more fully above, authorizing the proposed Sale Procedures and, ultimately, the Sale is in the best interest of the Debtor's estate and creditors, including most notably the Survivors. The proposed Sale Procedures are designed to maximize the value of the Property, for the benefit of creditors, including Survivors, by setting the stage for a robust auction and, ultimately, the approval of the Sale to the Successful Bidder. Accordingly, the proposed Sale Procedures and Sale, subject to higher and better offers, maximizes the value available to the Debtor's estate and Survivors and thus, is in the best interests of the estate and should be approved.

For these reasons, it is submitted that the Sale should be approved on the terms and provisions set forth in the Proposed Purchase Agreement.

*[signatures on next page]*

**WHEREFORE**, the Diocese respectfully requests that the Court enter an Order, substantially in the form attached hereto as **Exhibit 1**, authorizing the Diocese to sell the Property to the Purchaser as set forth herein and granting such other and further relief as the Court deems just and proper.

Dated: Hartford, CT  
April 5, 2023

THE NORWICH ROMAN CATHOLIC  
DIOCESAN CORPORATION

By: /s/ Patrick M. Birney

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*Counsel to the Debtor  
and Debtor-in-Possession*



**CERTIFICATE OF SERVICE**

I hereby certify that on April 5, 2023, a copy of the foregoing was filed electronically through the Court's CM/ECF System and served by the Debtor's noticing agent in the manner described in the accompanying Motion.

/s/ Patrick M. Birney

Patrick M. Birney

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT  
HARTFORD DIVISION

In re:

THE NORWICH ROMAN CATHOLIC  
DIOCESAN CORPORATION,<sup>1</sup>

Debtor.

Chapter 11

Case No: 21-20687 (JJT)

**ORDER (A) APPROVING SALE PROCEDURES FOR THE SALE OF CERTAIN PROPERTY, INCLUDING ALL IMPROVEMENTS THEREON IN MONTVILLE, CONNECTICUT; (B) SCHEDULING AN AUCTION AND A SALE HEARING RELATED THERETO; (C) APPROVING THE FORM OF PURCHASE AND SALE AGREEMENT; AND (D) APPROVING THE FORM OF NOTICE OF THE AUCTION AND SALE HEARING**

Upon the motion (the “Motion”)<sup>2</sup> of The Norwich Roman Catholic Diocesan Corporation, debtor and debtors-in-possession in the above-captioned chapter 11 case (the “Debtor” or the “Diocese”), for entry of orders: (I)(a) approving the Sale Procedures substantially in the form attached as **Schedule A** to this Order (the “Sale Procedures”) for the sale of certain real property, and all improvements thereon, comprised of 113.19 acres of developed land located at 1593 Route 32, Montville, Connecticut (the “Property”), (b) scheduling an auction and a sale hearing related thereto, (c) authorizing and approving the form of purchase and sale agreement (the “Form PSA”); and (d) approving the form of notice of the auction and sale hearing substantially in the form attached as **Schedule B** to this Order (the “Sale Notice”); and (II)(a) authorizing the sale of to a prevailing bidder at

<sup>1</sup> The Debtor in this chapter 11 case is The Norwich Roman Catholic Diocesan Corporation, a/k/a The Roman Catholic Diocese of Norwich. The last four digits of the Debtor’s federal tax identification number are 7373.

<sup>2</sup> Capitalized terms used but not defined herein shall have the same meaning ascribed to them in the Motion.

an auction, free and clear of any and all liens, claims, encumbrances and other interests; (b) approving the form and manner of the notice of auction and sale hearing; and (c) certain related relief; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this District being proper pursuant to 28 U.S.C. § 1408; and the relief requested in the Motion being in the best interests of the Debtor's estate, its creditors, and other parties in interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor;

**THE COURT FINDS THAT:**

A. The findings and conclusions set forth in here constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following

conclusions of law constitute findings of fact, they are adopted as such. The bases for the relief requested are sections 105(a), 363, 365, 503(b), and 507(a)(2) of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 2002, 6004, and 6006(a), and Rules 6004-1, 6004-2 and 9013-1 of the Connecticut Local Rules of Bankruptcy Procedure (the “Local Rules”).

B. Notice of this Order pursuant to the Sale Notice complies with Bankruptcy Rule 2002 and has been provided to (a) the Office of the United States Trustee; (b) counsel to the Committee; (c) counsel to the School; (d) all parties who have expressed a written interest in the Property; (e) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or interest in the Property; (f) the Internal Revenue Service; (h) all other applicable state and local taxing authorities; (g) all other parties listed on the Debtor’s creditor matrix; and (h) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002 to Bankruptcy Rule 2002.

C. The Debtor has articulated good and sufficient reasons for this Court to (a) approve the Sale Procedures, (b) schedule the Auction and Sale Hearing related thereto, (c) authorize and approve the Form PSA, and (d) approve the Sale Notice.

D. The Sale Procedures are reasonable and appropriate and represent the best method for maximizing the value of the Property for the benefit of the Debtor and its estate.

E. The Sale Notice is reasonably calculated to provide interested parties with timely and proper notice of the proposed Sale, including, without limitation: (a) the date, time, and place of the Auction (if one is held); (b) the Sale Procedures; (c) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the

Sale Hearing; (d) reasonably specific identification of the Property to be sold; and (e) a description of the Sale as being free and clear of liens, claims, encumbrances, and other interests (collectively, “Interests”), with all such Interests attaching with the same validity and priority to the Sale Procedures. No other or further notice of the Sale shall be required.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein.
2. All objections to the relief requested in the Motion with respect to the Sale Procedures that have not been withdrawn, waived, or settled as announced to the Court at the Hearing or by stipulation filed with the Court, are overruled.
3. The Sale Procedures, substantially in the form attached hereto as **Schedule A**, are hereby approved in their entirety, and the Sale Procedures shall govern the submission, receipt, and analysis of all Bids relating to the proposed sale of the Property. Any party desiring to bid on the Property shall comply with the Sale Procedures. The Debtor, after consultation with the Committee, is authorized to take any and all actions necessary to implement the Sale Procedures.

**I. The Auction**

4. As further described in the Sale Procedures, if one or more Qualified Bids is received by the Bid Deadline, the Debtor will conduct the Auction at 10:00 a.m. (prevailing Eastern Time) on **May 5, 2023**, or such later time on such day or other place as the Debtor shall notify all creditors and all Qualified Bidders who have submitted Qualified Bids.
5. If the Debtor does not receive a Qualified Bid it may cancel the Auction.

6. Pursuant to Local Rule 6004-2(d)(2), each Bidder participating at the Auction shall be required to certify in writing that it is not engaged in any collusion with respect to the bidding, the Auction, or the Sale, as set forth in the Sale Procedures.

7. In the event of a competing Qualified Bid, all Qualified Bidders will be entitled, but not obligated, to submit Overbids.

8. Only Qualified Bidders may participate in the Auction. The Debtor, after consultation with the Committee, may (a) determine which Qualified Bid is the highest or otherwise best offer; (b) reject at any time before the entry of the Sale Order any Bid that, in the discretion of the Debtor, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the Sale Procedures, or (iii) contrary to the best interest of the Debtor's estate; (c) at or before the conclusion of the Auction, impose such other terms and conditions upon Qualified Bidders as the Debtor determines to be in the best interest of the Debtor's estate; and (d) prior to the entry of the Sale Order, re-open the Auction to consider further Bids, in the Debtor's reasonable business judgment.

9. By submitting a Bid in accordance with the Sale Procedures, each Bidder is agreeing to refrain from and waives any assertion or request for reimbursement on any basis analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, including pursuant to section 503(b) of the Bankruptcy Code.

## **II. Notice of the Sale Process**

10. The Sale Notice is hereby approved.

11. Within two days after the entry of this Order, the Debtor (or its agents) shall serve the Sale Notice by first-class mail upon: (a) the Office of the United States Trustee; (b)

counsel to the Committee; (c) counsel to the School; (d) the School; (e) all parties who have expressed a written interest in the Property; (f) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or interest in the Property; (g) the Internal Revenue Service; (h) all other applicable state and local taxing authorities; (i) all other parties listed on the Debtor's creditor matrix; and (j) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002 to Bankruptcy Rule 2002.

### **III. Objections to the Sale**

12. Objections, if any, to the relief requested in the Motion relating to the Sale must be in writing, filed with the Court, and be served so that it is actually received no later than **4:00 p.m. (prevailing Eastern Time) on May [●], 2023** (the "Sale Objection Deadline"). Objections shall be served on: (a) Counsel to the Debtor: Ice Miller, 1500 Broadway, 29th Floor, New York, NY 10036; Attn: Louis DeLucia, Esq. and Robinson & Cole LLP, 280 Trumbull St., Hartford, CT 06106, Attn: Patrick Birney, Esq.; (b) the Office of the United States Trustee for the District of Connecticut, 150 Court Street, Room 302, New Haven, CT 06510, Attn: Steven E. Mackey, Esq. ([Steven.E.Mackey@usdoj.gov](mailto:Steven.E.Mackey@usdoj.gov)); and (c) Counsel to the Official Committee of Unsecured Creditors: Zeisler & Zeisler, PC, 10 Middle St Floor 15, Bridgeport, CT 06604, Attn: Eric Henzy, Esq.

13. A party's failure to timely file or make an objection in accordance with this Order shall forever bar the assertion of any objection to the Sale, entry of the Sale Order, and/or consummation of the Sale with the Successful Bidder pursuant to the applicable purchase agreement, including, without limitation, the assumption and assignment of the contracts to the Successful Bidder pursuant to the applicable purchase agreement, and shall

be deemed to constitute such party's consent to entry of the Sale Order and consummation of the Sale and all transactions related thereto, including, without limitation such assumption and assignment.

**IV. Sale Hearing**

14. The Sale Hearing will be conducted on **May [●], 2023** at \_\_: \_\_ .m. (prevailing Eastern Time). The Sale Hearing will be held at the United States Bankruptcy Court for the District of Connecticut, Abraham Ribicoff Federal Building 450 Main Street, 7th Floor, Hartford, Connecticut, 06103.

15. The Debtor will seek entry of an order of the Court at the Sale Hearing approving and authorizing the Sale of the Property to the Successful Bidder. Upon entry of this Order, the Debtor is authorized to perform any obligation intended to be performed prior to the Sale Hearing or entry of the Sale Order with respect thereto. The Sale Hearing may be continued from time to time without further notice other than such announcement being made in open court or a notice of adjournment being filed with the Court and served on the Notice Parties.

**VI. Other Relief Granted**

16. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

17. The Debtor is hereby authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

18. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.



19. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry, notwithstanding any provision in the Federal Rules of Bankruptcy Procedure or the Local Bankruptcy Rules to the contrary, and the Debtor may, in its discretion and after consultation with the Committee without further delay, take any action and perform any act authorized under this Order.

20. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2023

JUDGE

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JAMES J. TANCREDI  
UNITED STATES BANKRUPTCY

**Schedule A to Sale Procedures Order**  
**(Sale Procedures)**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT  
HARTFORD DIVISION**

In re:

THE NORWICH ROMAN CATHOLIC  
DIOCESAN CORPORATION,<sup>3</sup>

Debtor.

Chapter 11

Case No: 21-20687 (JJT)

April \_\_, 2023

**SALE PROCEDURES**

Set forth below are the sale procedures (the “Sale Procedures”)<sup>2</sup> to be employed with respect to the proposed sale (the “Sale”) of in connection with the sale of property at 1593 Route 32, Montville, Connecticut (the “Property”). It is contemplated that the Sale will be implemented by an auction (the “Auction”) and the corresponding entry into a purchase and sale agreement with a Successful Bidder (as defined below) according to these Sale Procedures.

**I. Important Dates.**

Hearing on the Sale Motion (proposed)	April 14, 2023
Delivery of Sale Notice	April 17, 2023
Bid Deadline	May 1, 2023 at 4:00 p.m. (ET)
Auction	May 5, 2023
Objection to Sale	May [●], 2023
Sale Hearing	May [●], 2023

**II. Approval of Sale Procedures.**

On April [●], 2023, the Bankruptcy Court entered an order approving these Sale Procedures (the “Sale Procedures Order”), in furtherance of the Sale. The Bankruptcy Court has jurisdiction with respect to any dispute that may arise with respect to these Sale

Procedures. These Sale Procedures set forth the process (the “Bidding Process”) by which the Debtor is authorized to conduct the Auction for the Sale of the Property.

### **III. Marketing Process.**

#### **A. Advertising.**

The Debtor has utilized [www.bkassets.com](http://www.bkassets.com) to preview the essential term of the Sale Notice under the website’s “On Sale Soon” portal since on or about March 31, 2023. The Debtor will also publish the Sale Notice in the New London Day and with the media outlets controlled by New England Business Media, LLC (NEBM), a leading provider of regional business (including real estate) news and information in Hartford and New Haven, Connecticut and with [www.bkassets.com](http://www.bkassets.com).

#### **B. Auction Qualification Process.**

To be eligible to participate in the Auction, each offer, solicitation or proposal (each, a “Bid”), and each party submitting such a Bid (each, a “Bidder”), must be determined by the Debtor, in consultation with the Official Committee of Unsecured Creditors (the “Committee”), to satisfy each of the following conditions:

- (1) **Deposit:** Each Bid must be accompanied by a deposit in the amount of 10 percent (10.0%) of the Bid’s proposed purchase price to a non-interest bearing escrow account to be identified and established by the Debtor (the “Deposit”).
- (2) **Terms:** A Bid must include (a) a cover letter outlining the primary terms of the Bid, any affiliation or connection to the Debtor, any Committee members, including any insiders or affiliates of the foregoing; (b) a purchase and sale agreement (an “PSA”) marked up against the form provided by the Debtor (the “Form PSA”); (c) a real property lease (the “School Lease”) marked up against the form lease provided by the Debtor regarding the lease of the Property to St. Bernard’s School of Montville, Inc. (the “Form Lease”); and (c) such other transaction documents as determined by the Bidder are necessary to consummate the Sale (collectively, the “Transaction Documents”). The Debtor may waive any of the above requirements, after consultation with the Committee, for good cause shown. The Form PSA and Form Lease are attached hereto as **Bidding Procedures Ex. A** and **Bidding Procedures Ex. B**, respectively.
- (3) **Corporate Authority:** Written evidence reasonably acceptable to the Debtor, in consultation with the Committee, demonstrating appropriate corporate authorization to consummate the Sale; *provided, however*, that, if the Bidder is an entity specially formed for the purpose of acquiring the Property at the Auction, then the Bidder must furnish written evidence reasonably acceptable to the Debtor, in consultation with the Committee,

regarding the identity of the principal(s) of the Bidder and proof of the approval of the transaction by the equity holder(s) of such Bidder.

- (4) **Proof of Financial Ability to Perform:** Written evidence that the Debtor, in consultation with the Committee, reasonably concludes demonstrates that the Bidder has the necessary financial ability to close the transaction and provide adequate assurance of future performance under all contracts. Such information should include, *inter alia*, the following:

  - (a) contact names and numbers for verification of financing sources; and
  - (b) evidence of the Bidder's internal resources, proof of any debt or equity funding commitments that are needed to close the transaction, and any such other form of financial disclosure or credit-quality support information or enhancement demonstrating that such Bidder has the ability to close the transaction; *provided, however*, that the Debtor shall determine, in its reasonable discretion, in consultation with the Debtor's advisors and the Committee, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Bidder's financial qualifications.
  - (c) **Proposed Use of the Property:** Written evidence reasonably acceptable to the Debtor, in consultation with the Committee, reflecting the Bidder's intended use of the Property, including that the Bidder shall include in the Form PSA representations and warranties disclosing such use.
- (5) **Contingencies:** A Bid may not be conditioned on obtaining financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy in all material respects at the closing of specified representations and warranties set forth in the PSA.
- (6) **Irrevocable:** A Bid must be irrevocable through the Auction; *provided, however*, that if such Bid is accepted as the Successful Bid or the Backup Bid (as defined herein), such Bid shall continue to remain irrevocable, subject to the terms and conditions of the Sale Procedures.
- (7) **Disclaimer of Fees:** By submitting its Bid, each bidder is agreeing to refrain from and waive any assertion or request for reimbursement on any basis analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, including pursuant to section 503(b) of the Bankruptcy Code.
- (8) **Amount of Bid:** Any Bid submitted must propose a purchase price equal to or greater than \$6.5 million.

- (9) **Bid Deadline:** The Debtor must receive a Bid in writing, on or before May 1, 2023 at 4:00 p.m. (prevailing Eastern Time) or such later date as may be agreed to by the Debtor (the “Bid Deadline”). Bids must be sent to the following by the Bid Deadline to be considered: counsel for the Debtor, Ice Miller and Robinson & Cole LLP, and counsel for the Committee, Zeisler & Zeisler, P.C.

A Bid received from a Bidder before the Bid Deadline that meets the above requirements shall constitute a “Qualified Bid,” and such Bidder shall constitute a “Qualified Bidder.”

#### **IV. Auction.**

If more than one Qualified Bid is received by the Bid Deadline, the Debtor will conduct the Auction. Prior to the commencement of the Auction, the Debtor, in consultation with the Committee, shall determine the highest and best Qualified Bid(s) received. This determination may take into account any factors the Debtor, in consultation with the Committee, reasonably deems relevant to the value of the Qualified Bid(s) to the estate, including, *inter alia*, the following: (a) the amount and nature of the consideration; (b) the ability of the Qualified Bidder(s) to close the Sale; (c) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (d) any purchase price adjustments; (e) the impact of the transaction on any actual or potential litigation; (f) the terms of the School Lease; and (g) the net consideration to be received by the Debtor’s estate (collectively, the “Bid Assessment Criteria”). If no Qualified Bid is received by the Bid Deadline, the Debtor may determine not to conduct the Auction.

The Auction shall take place at 10:00 a.m. (prevailing Eastern Time) on **May 5, 2023 at 11:00 a.m. (E.T.)** at the offices of Robinson & Cole, 280 Trumbull Street, Hartford, Connecticut 06106, or such later time on such day or other place as the Debtor shall notify all Qualified Bidders. The Auction shall be transcribed or videotaped, and shall be conducted according to the following procedures:

##### **A. The Debtor Shall Conduct the Auction.**

The Debtor and its professionals shall direct and preside over the Auction. Only Qualified Bidders, or their representatives or agents, may submit Bids or Overbids (as defined below) at the Auction. At the start of the Auction the Debtor shall describe the terms of the highest and best Qualified Bid(s) received (the “Auction Baseline Bid(s)”).

All Bids made thereafter shall be Overbids, and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all Bidders who have submitted Qualified Bids. The Debtor shall maintain a transcript of all bids made and announced at the Auction, including the Auction Baseline Bid(s) and all Overbids.

##### **B. Terms of Overbids.**

An “Overbid” is any Bid made at the Auction subsequent to the Debtor’s announcement of the Auction Baseline Bid(s); provided that the first Overbid must be a

minimum of **\$50,000** over the Auction Baseline Bid(s). The Debtor shall retain the right to modify the bid increment requirements for each round at the Auction. Additional consideration in excess of the amount set forth in the Auction Baseline Bid(s) may include cash and the terms of the School Lease, in any applicable combination.

**(1) Remaining Terms are the Same as for Qualified Bids.**

Except as modified herein, an Overbid must comply with the conditions for a Qualified Bid set forth above; *provided, however*, that the Bid Deadline shall not apply. Any Overbid must remain open and binding on the Bidder until and unless the Debtor accepts a higher Overbid.

**(2) Announcing Overbids.**

The Debtor shall announce at the Auction the material terms of each Overbid.

**(3) Consideration of Overbids.**

The Debtor reserves the right, in its reasonable business judgment to make one or more adjournments in the Auction to, among other things: facilitate discussions between the Debtor and individual Bidders; allow individual Bidders to consider how they wish to proceed; and give Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor, in its reasonable business judgment and after consultation with the Committee, may require to evaluate any Overbid.

**C. No Collusion.**

Each Qualified Bidder participating at the Auction will be required to certify in writing at the Auction that it has not engaged in any collusion with respect to the Sale or bidding (including that it has no agreement with any other Bidder or Qualified Bidder to control the price).

**D. Backup Bidder.**

Notwithstanding anything in the Sale Procedures to the contrary, if an Auction is conducted, the party with the next highest or otherwise best Qualified Bid at the Auction, as determined by the Debtor in the exercise of its business judgment shall be required to serve as a backup bidder (the "Backup Bidder"). The Backup Bidder shall be required to keep its initial Bid (or if the Backup Bidder submitted one or more Overbids at the Auction, its final Overbid) (the "Backup Bid") open and irrevocable until the earlier twenty five (25) days after the date of the Sale Hearing (the "Outside Backup Date") or the closing of the transaction with the Successful Bidder. Following entry of the Sale Order, if the Successful Bidder fails to consummate an approved transaction because of a breach or failure to perform on the part of such Successful Bidder, the Debtor may designate the Backup Bidder to be the new Successful Bidder, and the Debtor will be authorized, but not required, to consummate the transaction with the Backup Bidder without further order of the Bankruptcy Court. In such case, the defaulting Successful Bidder's Deposit, if any, shall be forfeited to the Debtor's estate. The closing date to consummate the transaction with the Backup Bidder shall be no later than ten (10) calendar

days after the date that the Debtor provide notice to the Backup Bidder that the Successful Bidder failed to consummate a sale and that the Debtor desires to consummate the transaction with the Backup Bidder. The Deposit, if any, of the Backup Bidder shall be held by the Debtor until the earlier of two (2) business days after (a) the closing of the Sale with the Successful Bidder and (b) the Outside Backup Date; *provided, however*, that in the event the Successful Bidder does not consummate the transaction as described above and the Debtor provides notice to the Backup Bidder, the Backup Bidder's Deposit shall be held until the closing of the transaction with the Backup Bidder. If the Backup Bidder fails to consummate a transaction in accordance with the above conditions and timeframe, the Deposit of the Backup Bidder shall be forfeited to the Debtor's estate.

**E. Additional Procedures.**

The Debtor may announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time to make subsequent Overbids) for conducting the Auction so long as such rules are not inconsistent with these Sale Procedures.

**F. Consent to Jurisdiction as Condition to Bidding.**

All Qualified Bidders, and all Bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Sale Procedures, the Auction or the construction and enforcement of any Transaction Documents.

**G. Closing the Auction.**

The Auction shall continue until there is only one or more Qualified Bid(s) that the Debtor determine in its reasonable business judgment is the highest or best Qualified Bid(s) at the Auction (the "Successful Bid" and the Bidder submitting such Successful Bid, the "Successful Bidder"). In making this decision, the Debtor shall consider the Bid Assessment Criteria. The Auction shall not close unless and until all Bidders who have submitted Qualified Bids have been given a reasonable opportunity to submit an Overbid at the Auction to the then-existing Overbid, and the Successful Bidder has submitted fully executed Transaction Documents memorializing the terms of the Successful Bid.

**VI. Sale Hearing.**

The Sale Hearing will be conducted on **May [ ● ], 2023** at \_\_:\_\_.m. (prevailing Eastern Time). The Sale Hearing will be held at United States Bankruptcy Court for the District of Connecticut, Abraham Ribicoff Federal Building 450 Main Street, 7th Floor, Hartford, Connecticut 06103.

Any objection to the sale of the Assets to the Successful Bidder or Back-Up Bidder must be in writing, filed with the Court, and be served so that it actually received no later than 4:00 p.m. (prevailing Eastern Time) on **May [ ● ], 2023** (the "Sale Objection Deadline"). Objections shall be served on: (a) Counsel to the Debtor: Ice Miller, 1500



Broadway, 29th Floor, New York, NY 10036; Attn: Louis DeLucia, Esq. and Robinson & Cole LLP, 280 Trumbull St., Hartford, CT 06106, Attn: Patrick Birney, Esq.; (b) the Office of the United States Trustee for the District of Connecticut, 150 Court Street, Room 302, New Haven, CT 06510, Attn: Steven E. Mackey, Esq. ([Steven.E.Mackey@usdoj.gov](mailto:Steven.E.Mackey@usdoj.gov)); and (c) Counsel to the Official Committee of Unsecured Creditors: Zeisler & Zeisler, PC, 10 Middle St Floor 15, Bridgeport, CT 06604, Attn: Eric Henzy, Esq.

#### **VII. Return of Deposit.**

The Deposits of all Qualified Bidders shall be held in one or more non-interest-bearing escrow accounts by the Debtor, but shall not become property of the Debtor's estate except as set forth in the Sale Procedures Order or the PSA at the close of the Sale, as set forth therein. The Deposit of the Backup Bidder shall be treated in accordance with Section IV(D) above.

#### **VIII. Reservation of Rights.**

The Debtor reserves its rights, in its reasonable business judgment in a manner consistent with its fiduciary duties that will best promote the goals of the bidding process, to modify these Sale Procedures or impose, at or prior to the Auction, additional customary terms and conditions on the sale of the Property, including, without limitation: (a) extending the deadline set forth in these Sale Procedures; (b) adjourning the Auction at the Auction and/or adjourning the Sale Hearing in open court without further notice; (c) reopening the Auction to consider further Bids or Overbids; (d) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction (*e.g.*, the amount of time to make subsequent overbids, whether a non-conforming Bid constitutes a Qualified Bid); (e) canceling the Auction; and (f) rejecting any or all Bids or Qualified Bids.

*[Remainder of Page Intentionally Blank]*

**Bidding Procedures Ex. A**  
(Form PSA)

**PURCHASE AND SALE AGREEMENT**  
(Approximately 113.19 acres in Montville, CT)

**THIS REAL ESTATE PURCHASE AND SALE AGREEMENT** (the “Agreement”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between The Norwich Roman Catholic Diocesan Corporation, a religious corporation organized under the laws of the State of Connecticut (the “Seller” or “Debtor”), whose address is 201 Broadway Norwich, Connecticut 06360 and [ ], or its Assigns (the “Purchaser”) whose address is \_\_\_\_\_, Connecticut 06\_\_\_\_.

**RECITALS**

A. The Debtor is the owner of the land and all Improvements thereon located in Montville, Connecticut, known as 1593 Route 32, MBL 041-003-000 consisting of approximately 113.19 acres and as more particularly described on **Exhibit A** annexed hereto. The final legal description to be mutually agreed upon by the Purchaser and the Seller.

B. On July 15, 2021, the Debtor filed a voluntary bankruptcy petition pursuant to Chapter 11 of the Bankruptcy Code in the Bankruptcy Case.

C. On March 31, 2023, the Debtor filed the Sale Motion seeking entry of an order authorizing the Debtor, among other things, to conduct a sale the Property including approving procedures with respect thereto.

D. In accordance with the Sale Motion, the Debtor now desires to sell the Property on the terms and conditions contained in this Agreement, including obtaining the Final Sale Order, which provides relief pursuant to sections 105, 363, and 365 of the Bankruptcy Code and Rules 4001, 6004, 6606 of the Bankruptcy Rules authorizing the transactions contemplated hereunder.

E. Purchaser desires to acquire Seller’s fee interest in the Property from Seller and Seller desires to transfer its fee interest in the Property to Purchaser, free and clear of all liens, claims and interests pursuant to the Sale Motion and Final Sale Order.

**NOW, THEREFORE**, in consideration of the mutual covenants and representations herein contained, Seller and Purchaser agree as follows:

**ARTICLE 1.**  
**DEFINITIONS**

**1.1** In this Agreement, and in the Exhibits and Schedules attached hereto, and unless otherwise defined in the recitals or otherwise herein, the following words and phrases shall have the following meanings:

**“Amendment”** means an amendment, renewal, supplement, modification, expansion, restatement, extension, or any other change or revision.

**“Appurtenance”** means all easements, covenants, restrictions, tenements, rights, and appurtenances benefiting or appertaining to the Property and the land lying in the streets and roads in front of and adjoining the Property.

**“Auction”** has the meaning set forth in the Sale Motion.

**“Backup Bidder”** has the meaning set forth in the Bidding Procedures.

**“Bankruptcy Case”** means the case styled *In re: The Norwich Roman Catholic Diocesan Corporation*, Case No. 21-20687.

**“Bankruptcy Code”** means title 11 of the United States Code, §§ 101 *et seq.*

**“Bankruptcy Court”** means the United States Bankruptcy Court for the District of Connecticut.

**“Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure.

**“Bidding Procedures”** means the procedures contained in the Sale Motion related to, among other things, the conduct of a sale process for the Property.

**“Bill of Sale”** means the document attached hereto as **Exhibit B**.

**“Business Day”** means any day other than (a) a Saturday or Sunday, (b) a federal or State of Connecticut banking holiday.

**“Closing”** means the closing of the transactions contemplated under this Agreement.

**“Closing Date”** shall have the meaning set forth in Section 6.1.

**“Deposit”** means the ten (10%) of the purchase price set forth in Section 2.1.

**“Deposit Refund”** means return of the Deposit to Purchaser without offset, recoupment or reduction of any kind.

**“Development Rights”** means all rights of Seller, if any, to the air space above the Land, and all zoning entitlements, development rights and appurtenances accruing to the Property under, or by reason of, any applicable zoning ordinance or other laws.

**“Encumbrances”** means any and all liens, mortgages, deeds of trust, security agreements, security interests, options, rights of purchase or first refusal, rights-of-way, restrictive

covenants, reservations, judgments, Leases, subleases, licenses, assignments, restrictions, or other encumbrances affecting title to the Property.

**“New School Lease”** means the lease that shall be entered into between Purchaser and the School, which shall become effective immediately after the Closing Date.

**“Final Sale Order”** means a final, non-appealable order of the Bankruptcy Court approving the Sale Motion that is not subject to a valid stay in a form substantially similar to **Exhibit D**.

**“Governmental Entity”** means the United States, the State, the County, the Town, or the City where the Property is located and any other State in which a party to this Agreement is incorporated or organized.

**“Improvements”** means all buildings, structures, and improvements located on the Land.

**“Land”** means the real property more particularly described on **Exhibit A** attached hereto.

**“Lease”** means all leases, rental agreements, occupancy agreements, subleases, or other agreements which permit or authorize the use and occupancy of the Property, together with any and all, if any, guaranties, security deposits, or other security for performance of a Tenant’s obligations thereunder, all Amendments and/or other agreements forming a part thereof, as listed on **Exhibit E**.

**“Legal Proceeding”** means any litigation, arbitration, administrative proceeding, or other legal proceeding of any kind.

**“Licenses and Permits”** means all building and other certificates, licenses, permits, and approvals granted by any Governmental Entity pertaining to the ownership or operation of the Property by Seller.

**“Local Rules”** means the local bankruptcy rules for the United States Bankruptcy Court for the District of Connecticut.

**“Permitted Encumbrance”** means an Encumbrance accepted by the Purchaser and expressly listed on **Exhibit F**.

**“Person”** means an individual person, a corporation, limited liability company, partnership, trust, joint venture, proprietorship, estate, association, Governmental Entity or other incorporated or unincorporated enterprise, entity, or organization of any kind.

**“Personal Property”** means equipment, machinery and other personal property of every nature and description owned by Seller and located on the Property as set forth in **Exhibit G**.

**“Plans”** means any environmental “Phase I” or other environmental reports prepared by third parties at the direction of Seller or a Tenant in connection with the Property or any portion thereof, which are in Seller’s possession or control.

**“Property”** means the Land and the Improvements, and Seller’s interest in all Appurtenances, Personal Property (if any), Development Rights, Contracts, Licenses and Permits, Plans, and Warranties and Guaranties.

**“Sale Motion”** means the motion to be filed in the Bankruptcy Court by the Debtor seeking approval of this Agreement and authority to sell the Property under Section 363 of the Code.

**“School”** means St. Bernard’s School of Montville, Inc.

**“Successful Bidder”** has the meaning set forth in the Sale Motion.

**“Tenant”** means any person or entity having rights to use or occupy portions of the property, including the School, all of which are collectively referred to herein as the “Tenants”.

**“Termination Deadline”** means 5:00 p.m. (Connecticut Time) on \_\_\_\_\_, 2023.

**“Title Company”** means Chicago/Commonwealth and Fidelity National.

**“Warranties and Guaranties”** means all unexpired warranties and guaranties running to the benefit of Seller in connection with the operation of the Property, if any.

**1.2** Unless specified to the contrary, references to Sections, Exhibits and Schedules mean the particular Section, Exhibit or Schedule in or to this Agreement, all of which Exhibits and Schedules are made a part hereof for all purposes the same as if set forth herein verbatim; it being expressly understood that if any Exhibit attached hereto which is to be executed and delivered at Closing contains blanks, such Exhibit attached hereto shall be deemed completed in the form executed.

**1.3** Wherever used in this Agreement:

1. the words “include” or “including” shall be construed as incorporating, also, “but not limited to” or “without limitation”;
2. the word “day” means a calendar day unless otherwise specified;
3. the word “party” means each of Seller and Purchaser;
4. the word “law” (or “laws”) means any statute, ordinance, resolution, regulation, code, rule, order, decree, judgment, injunction, mandate, or other legally binding requirement of a Governmental Entity; provided, however, only the partnership, corporate or limited liability company laws, as applicable, of a State other than Connecticut shall be deemed to be “laws” under this Agreement; and
5. each reference to “\$” or “dollars” means United States dollars.

**1.4** Certain other words and phrases are defined or described elsewhere in this Agreement.

**ARTICLE 2.**  
**PURCHASE AND SALE**

**2.1 Purchase and Sale.** Subject to the terms and conditions of this Agreement, Seller in consideration of the Purchase Price (defined below), hereby agrees to sell and convey to Purchaser, and Purchaser hereby agrees to purchase from Seller, the Seller's right, title and interest in the following:

All rights, privileges and easements appurtenant to the Property, all development rights and entitlements relating to the Property, all water, wastewater and other utility rights relating to the Property, and any and all easements, rights-of-way, adjacent streets, walls, alleys and other appurtenances used in connection with the beneficial use and enjoyment of the Property;

All of either Seller's right, title and interest in and to any and all (i) warranties, guaranties and beneficial indemnities currently in force and effect with respect to the Property, (ii) licenses, permits, certificates of occupancy, agreements, utility contracts, or similar documents relating to the Property, and (iii) design contracts, plans, drawings, specifications, surveys, engineering reports, environmental reports and other third-party reports pertaining to the physical characteristics of the Property; and

All of either Seller's right, title and interest in and to any insurance proceeds or awards for damages to the Real Property resulting from any taking in eminent domain and/or from any fire or other casualty.

**ARTICLE 3.**  
**PURCHASE PRICE**

**3.1 Purchase Price.** Subject to the prorations and adjustments described elsewhere in this Agreement, the total purchase price (the "Purchase Price") for the Property shall be [ ].

**3.2 Payment of Purchase Price.** The Purchase Price shall be paid by Purchaser to Seller as follows:

- (a) Purchaser shall, no later than the date the Sale Motion is filed with the Bankruptcy Court, deliver to legal counsel of Seller (Brown Jacobson, PC the "Escrow Agent") by wire transfer of immediately available funds the Deposit to be held in escrow pursuant to the provisions of subsection (c) below. The Deposit shall be applied toward the Purchase Price at Closing, and shall otherwise be paid or applied in accordance with this Agreement and Final Sale Order. The Deposit shall not be subject to any lien, attachment, trustee process or any other judicial process of any creditor of Seller or Purchaser. If the Deposit is not timely deposited, this Agreement shall automatically terminate ab initio and shall be of no force or effect. The Deposit Refund shall occur as more fully set forth in this Agreement including, without limitation, as provided in Section 10.2 regarding Seller's default under this Agreement.

(b) Upon Closing, by wire transfer drawn by and upon a federally regulated or state-chartered bank, the proceeds of which are immediately available, the sum of [ ].

(c) The Escrow Agent shall hold the Deposit pursuant to the following:

- (i) Escrow Agent shall hold the Deposit in a non-interest bearing trust account until the Closing (as hereinafter defined), or until this Agreement is sooner terminated as provided herein and shall pay over or apply the Deposit in accordance with the terms of this Agreement. At the Closing, the Deposit shall be paid by Escrow Agent to Seller.
- (ii) If for any reason the Closing does not occur and either party makes a written demand upon Escrow Agent for payment of the Deposit, which demand shall specify the reason the Closing did not occur, Escrow Agent shall deliver a copy of the written demand to the other party. If Escrow Agent does not receive a written objection to the proposed payment from the other party within ten (10) days after receiving such notice, Escrow Agent is hereby authorized to make such payment. If Escrow Agent does receive written objection within such ten (10) day period, or, if for any other reason, Escrow Agent in good faith shall elect not to make such payment, Escrow Agent shall continue to hold the Deposit until otherwise directed by written instructions from both parties to this Agreement or a final judgment of a court. In such event, the parties agree to diligently pursue a resolution of the dispute regarding the Deposit.
- (iii) Seller and Purchaser understand and agree that Escrow Agent's duties under this Agreement are purely ministerial, and that Escrow Agent's sole duty shall be to act in accordance with the express terms of this Agreement. Escrow Agent may act in reliance upon any writings or signatures believed by it, in good faith, to be genuine and may assume that any person purporting to give any writing, notice or instruction in connection with the provisions of this Agreement have been authorized to do so.
- (iv) Notwithstanding anything contained herein to the contrary, if, for any reason, Escrow Agent becomes involved in any formal or informal dispute, litigation or arbitration relating hereto, Escrow Agent is hereby authorized to withdraw as Escrow Agent and to deposit the Deposit with the Bankruptcy Court. Upon the withdrawal of Escrow Agent, Escrow Agent shall be fully relieved and discharged of any further duties as Escrow Agent.
- (v) Seller and Purchaser hereby jointly and severally agree to indemnify Escrow Agent and hold Escrow Agent harmless from

any losses, liabilities, claims, damages, costs, or expenses, including without limitation attorney's fees and litigation costs, suffered, or incurred by Escrow Agent in connection with the performance of Escrow Agent's duties hereunder.

**3.3 Liabilities Not Assumed.** Purchaser shall not assume or become responsible for any debts, liabilities, contract obligations, expenses, duties, obligations or claims of any nature whatsoever of Seller (and Seller shall continue to be solely and fully responsible therefor) (collectively, the "Excluded Liabilities"), other than liabilities arising after the Closing.

**ARTICLE 4.**  
**DELIVERY OF DOCUMENTS, CONDITIONS**  
**OF TITLE AND PERMITTED ENCUMBRANCES**

**4.1** Within seven (7) Business Days after a fully executed counterpart of this Agreement is delivered to Purchaser (except as otherwise provided), Seller shall deliver (except as otherwise provided) the following information and documents to Purchaser:

(a) Copies of statements in Seller's possession of the ad valorem, intangible and other real and personal property taxes, special and general assessments, school taxes, water, and sewer charges against the Property.

(b) The most recent surveys of the Property in Seller's possession, if any, (collectively, the "Survey"). Any updated surveys required in connection with Purchaser's acquisition of the Property shall be ordered and paid for by Purchaser.

(c) Copies of any unrecorded written agreements with utility companies or any other entity, in Seller's possession or control, and copies of any unrecorded easements in Seller's possession.

(d) Copies of all Leases, Lease files, Licenses and Permits, Plans, and Warranties and Guaranties related to the Property in Seller's possession.

(e) The most recent title commitments and title policies for the Property in Seller's possession.

(f) Copies of all Plans.

**4.2** Within ten (10) Business Days after the date of this Agreement, Purchaser shall cause the Title Company to deliver to Purchaser and Seller: (a) a current Commitment for an ALTA Owner's Policy of Title Insurance issued by the Title Company (the "Title Policy"), whereby said Title Company commits to issue its Title Policy written in accordance with this Agreement (the "Commitment"); and (b) copies of all instruments shown as exceptions on the Commitment. The Commitment shall describe the Property; shall list Purchaser as the prospective named insured; shall show as the policy amount the Purchase Price; and shall contain the commitment of the Title Company to insure Purchaser's fee interest in the Property upon the Closing. The Commitment shall show the status of the title of the Property and all exceptions that would appear in the Title Policy. Any items or exceptions to title which are accepted or waived in writing or deemed to have been accepted or waived by Purchaser pursuant to the terms of this Agreement, are Permitted Encumbrances. For the avoidance of doubt, any Encumbrance other than a Permitted



Encumbrance, including any Encumbrance or ownership interest of the School in the Property shall be disallowed or otherwise deemed invalid by the Final Sale Order.

**ARTICLE 5.**  
**CONDITIONS TO CLOSING**

**5.1 Conditions to Obligations of Purchaser.** The obligations of Purchaser to execute and deliver the applicable Closing Documents (as defined in Section 6.2) and to pay the Purchase Price shall be subject to the satisfaction of each of the following conditions at or prior to the Closing, unless otherwise specified:

(a) Title to the Property shall be free of Encumbrances other than Permitted Encumbrances and except as otherwise provided herein.

(b) Seller shall have executed (where applicable) and delivered the Closing Documents to be executed and delivered by Seller.

(c) All of the representations and warranties of Seller contained in this Agreement shall have been true and correct in all material respects when made, and shall be true and correct in all material respects on the Closing Date with the same effect as if made on and as of such date.

(d) Seller shall have performed, observed, and complied in all material respects with all covenants, agreements, and conditions required by this Agreement to be performed, observed, and complied with on Seller's part prior to or as of the Closing Date.

(e) Entry of a Final Sale Order and Court Approval (as defined in Section 5.3).

(f) Purchaser shall have received the Commitment for the Title Policy, which shall be consistent with this Agreement, including Section 4.2

**5.2 Conditions to Obligations of Seller.** The obligations of Seller to execute and deliver the applicable Closing Documents and to perform Seller's other obligations at the Closing under this Agreement are and shall be subject to the satisfaction of each of the following conditions at or prior to the Closing:

(a) Purchaser shall have delivered the Purchase Price to Seller at the Closing pursuant to the terms of this Agreement.

(b) Purchaser shall have executed (where applicable) and delivered the Closing Documents to be executed and delivered by Purchaser.

(c) Entry of the Final Sale Order.

(d) Seller having obtained the approval of the sale by the bishop and the Holy See as provided for in Canon Law 1292 *et seq.* Purchaser shall cooperate with Seller in obtaining all approvals as required by Canon Law 1292.

In the event that one of the above conditions precedent in Section 5.2(a)-(b) to the obligations of Seller shall not occur on or by the Closing Date and the occurrence of such condition is not waived

by Seller, then upon written notice from Seller to Purchaser delivered on or prior to the Closing Date, this Agreement shall terminate, and within five (5) Business Days the Deposit Refund shall occur, and neither party shall have any further obligation to the other. In the event that the condition precedent in Section 5.2(c) to the obligations of Seller shall not occur on or by the Closing Date, the Purchaser is not in default hereunder and the occurrence of such condition is not waived by Seller, then upon written notice from Seller to Purchaser delivered on or prior to the Closing Date, this Agreement shall terminate, and within five (5) Business Days the Deposit Refund shall occur, and neither party shall have any further obligation to the other. Seller's acceptance of the Purchase Price at Closing shall signify that all conditions to Seller's obligations to close the transaction contemplated in this Agreement have either been fulfilled by Purchaser or waived by Seller, subject only to such matters as may be specifically stated in this Agreement to survive the Closing. In the event that the condition precedent in Section 5.2(d) to the obligations of Seller shall not occur on or by the Closing Date, the Purchaser is not in default hereunder and the occurrence of such condition is not waived by Seller, then upon written notice from Seller to Purchaser delivered on or prior to the Closing Date, this Agreement shall terminate, and within five (5) Business Days the Deposit Refund shall occur, and neither party shall have any further obligation to the other. Alternatively, Seller shall have an additional thirty (30) day time period to obtain the required approvals under Canon Law 1292. Seller's acceptance of the Purchase Price at Closing shall signify that all conditions to Seller's obligations to close the transaction contemplated in this Agreement have either been fulfilled by Purchaser or waived by Seller, subject only to such matters as may be specifically stated in this Agreement to survive the Closing.

**5.3 Fiduciary Out Clause.** If Seller reasonably determines in good faith based upon the advice of outside counsel that continued performance under this Agreement would be inconsistent with the exercise of its fiduciary duties under applicable law, then Seller shall provide notice of such determination to the Purchaser within five (5) business days after the date thereof and, thereafter, Seller may terminate this Agreement upon return to Purchaser the amount being held in escrow.

## **ARTICLE 6.**

### **CLOSING**

**6.1 Closing.** The Closing will take place remotely via the exchange of electronic documents and signatures by electronic mail (or wet signatures, as required for the Real Estate) on the date that is within five (5) business days of the entry of the Final Sale Order ("Closing Date"), time is of the essence as to the Closing Date.

**6.2 Seller's Obligations at Closing.** At the Closing, Seller shall deliver to Purchaser possession of the Property free from any rights of possession of anyone whomsoever, including Tenants or other occupants, except as a condition of closing, the Purchaser shall enter into the New School Lease with the School as Tenant, and shall deliver to Purchaser, as applicable, the following documents (the "Closing Documents"):

(a) a quit claim deed (herein so called), in form and substance reasonably satisfactory to Purchaser, as applicable for the Real Property, conveying fee simple title in the Real Property to Purchaser, subject only to Permitted Encumbrances;

(b) counterparts of a Bill of Sale, if applicable (herein so called), in form and substance as set forth on **Exhibit B** attached hereto, duly executed by Seller, conveying the Personal Property, Development Rights, Contracts, Licenses and Permits, Warranties and Guaranties and Plans owned and transferable by Seller for the Property to Purchaser;

(c) customary affidavits executed by Seller as the Title Company shall reasonably require in order to omit from the Title Policy all exceptions for (i) mechanic's and materialman's liens for work conducted by Seller, and (ii) Tenants.

(d) good and immediately available funds in the amount due Purchaser under the prorations provisions of Article 7 below; provided, however, at the election of Seller, such sums may instead be credited against the Purchase Price to be paid by Purchaser to Seller under Section 6.3 below;

(e) a certificate of an officer of Seller, reflecting the authorization of (i) the actions to be taken by Seller under this Agreement and (ii) the execution and delivery of this Agreement, the Closing Documents and all other documents required to be executed and delivered by Seller pursuant to this Agreement;

(f) originals (or photocopies certified by Seller to be true and complete if originals are not available) of Contracts, Licenses and Permits, Plans and Warranties and Guaranties, if any, in Seller's possession;

(g) any State and local transfer tax or other forms required to be filed in connection with the sale of the Property or the recording of the quit claim deed, together with sufficient funds to pay said transfer taxes;

(h) a closing statement prepared by Seller, as reasonably approved by Purchaser, reflecting the Purchase Price and all adjustments and prorations provided for herein (the "Closing Statement"), executed by Seller;

(j) an affidavit of Seller certifying that Seller is not a 'foreign person,' as defined in the federal Foreign Investment in Real Property Tax Act of 1980, and the 1984 Tax Reform Act, as amended; and

(k) any written Leases between Seller and Tenants.

**6.3 Purchaser's Obligation at Closing.** At Closing, Purchaser shall deliver to Seller through the Title Company, as applicable, the following:

(a) the balance of the Purchase Price by wire transfer of immediately available funds to the account of Seller after credit for all applicable credits and prorations;

(b) executed counterparts of the Bill of Sale, if any, originally executed by Purchaser;

(c) counterparts of the Closing Statement, executed by Purchaser; and

**6.4 Closing Costs.** Except as otherwise expressly provided herein, Purchaser shall pay (i) all sales taxes on personal property, if any, (ii) the title premiums and the cost of any endorsements to the Title Policy required by Purchaser, if any, and the search and examination fees, (iii) Purchaser's share of prorations, (iv) the cost of updating the Survey, if required by Purchaser and (v) all recording charges (other than for discharges of mortgages). Seller shall pay (i) Seller's share of prorations, and (ii) all applicable state, city and county deed stamp tax, excise,

documentary stamp, conveyance, and transfer taxes. Except as otherwise provided herein, each party shall pay its own attorneys' fees.

**6.5 Allocation of Purchase Price.** Seller and Purchaser shall reasonably cooperate with each other to allocate the Purchase Price to the Land and Improvements, the Personal Property, and such other components constituting the Property to be conveyed herein.

## **ARTICLE 7.** **PRORATIONS**

**7.1** The following shall be apportioned and adjusted between Seller and Purchaser as of 11:59 p.m. (Connecticut time) the day preceding the Closing Date:

(a) Any water and sewer rents and charges; vault taxes or charges, elevator inspection charges (if any) and other like and similar municipal taxes and charges, each on the basis of the fiscal year or other period for which assessed, and apportioned upon the basis of the actual number of days in such year or period;

(b) Any electric, gas, steam and other public utility charges for services furnished to the Property on the basis of the actual number of days in any period covered by the charge being apportioned (except that no apportionment shall be made for any of such items as are furnished and charged by the applicable utility company directly to Tenant under any Leases).

**7.2** LEFT INTENTIONALLY BLANK.

**7.3** LEFT INTENTIONALLY BLANK.

**7.4** The apportionment (if any) of utility charges shall be made upon the basis of charges shown on the latest available bills of such utilities. The charges shown on such available bills for periods prior to the Closing Date shall be paid by Seller, and for the period from the date of each such last available utility bill to the Closing Date an apportionment shall be made based on the amount charged for the period covered by such last available bill. Seller will use all reasonable efforts to cause the respective utility companies to read its meters or fix its charges to the Closing Date, in which event Seller shall pay such charges, when billed, to the Closing Date and Seller's accounts with the utility companies will be cancelled, and Purchaser shall open new accounts with the utility companies and pay such charges from and after the Closing Date and/or promptly reimburse Seller for any such charges paid by Seller for any period subsequent to the Closing Date.

**7.5** If any item covered by this Article cannot be apportioned because the same has not been (or cannot be) fully ascertained on the Closing Date, or if any error has been made with respect to any apportionment, then such item shall be apportioned (or corrected, as applicable) as soon as the same is fully ascertained and shall be paid promptly thereafter by the appropriate party.

**7.6** LEFT INTENTIONALLY BLANK.

**7.7** In the event either Purchaser or Seller shall owe the other any money as a result of the terms of this Article 7 (whether at Closing or thereafter), then the party owing such money shall pay the other party such money promptly, as soon as the amount is finally determined.

7.8 This Article 7, and all rights and duties of the parties hereunder, shall survive the Closing for 180 days.

## **ARTICLE 8.**

### **REPRESENTATIONS AND WARRANTIES**

8.1 **Representations and Warranties of Seller.** Seller represents and warrants to Purchaser as follows, which representations and warranties shall be true and correct as of the date hereof and as of the Closing Date:

- (a) Seller has sole, good and marketable fee simple title to the Property.
- (b) The Property is sufficient for the continued conduct of the School's educational mission after the Closing in substantially the same manner as conducted prior to the Closing and constitutes all of the Property necessary to conduct the School's educational mission as currently conducted. Each structure and fixture on the Property is, to the Knowledge of Seller, structurally sound with no known structural defects, and in good operating condition and repair (normal wear and tear excepted).
- (c) Subject to entry of the Final Sale Order and such other authorization as is required by the Bankruptcy Court or Canon Law, Seller has the requisite capacity, power and authority, and has taken all action necessary to execute and deliver this Agreement and to consummate the transactions contemplated by this Agreement. This Agreement has been duly executed and delivered by Seller. Subject to entry of the Final Sale Order and such other authorization as is required by the Bankruptcy Court and under Canon Law, this Agreement constitutes a legal, valid and binding agreement of Seller, enforceable against Seller in accordance with its terms.
- (d) Upon the entry of the Final Sale Order and receipt of approval under Canon Law, the execution and delivery of the Closing Documents will not (A) violate any provision of the articles of organization of Seller; (B) violate, conflict with or result in a breach or termination of, or give any other party the right to terminate, or constitute a default under the terms of, any agreement to which Seller is a party or by which it is bound; (C) violate any judgment, order, injunction, award or decree of any Governmental Entity against or binding upon Seller or upon the Property or business of Seller; or (D) constitute a violation by Seller of any applicable law or regulation to which Seller is subject.
- (e) **FIRPTA.** Seller is not a foreign person within the meaning of Section 1445(b) (2) of the Internal Revenue Code of 1986, as amended.
- (f) **Documents Delivered.** The Seller documents delivered or to be delivered to Purchaser pursuant to Section 4.1 are true, correct, and complete copies in all material respects of the documents in Seller's possession.
- (g) **Other Agreements.** Seller is not a party to any outstanding contracts or options to purchase the Property or any portion thereof in favor of any third party.
- (h) **Leases.** Seller represents that other than the existing School lease, no leases are in effect for the Property.

**8.2 Representations and Warranties of Purchaser.** Purchaser represents and warrants to Seller as follows:

(a) **Organization.** Purchaser is a \_\_\_\_\_, duly organized, validly existing and in good standing and has all requisite authority to carry on its business; whose equity holders are [insert name of equity holders].

(b) **Corporate Authorization.** The execution, delivery and performance of this Agreement by Purchaser, and the consummation by Purchaser of the transactions contemplated by this Agreement (the "Transaction"), subject to requisite Bankruptcy Court approvals, have been duly and validly authorized by all requisite organizational action, and no other corporate or similar organizational proceedings are necessary to authorize the execution, delivery or performance of this Agreement by it. This Agreement has been duly and validly executed and delivered by Purchaser, and, assuming this Agreement is a valid and binding obligation of the Seller, this Agreement constitutes a valid and binding obligation of Purchaser, enforceable against it in accordance with its terms, upon approval of the Bankruptcy Court.

(c) **Governmental Authorization.** The execution, delivery and performance by Purchaser of this Agreement and the consummation of the Transactions by Purchaser require no action by or in respect of, or filing with, any governmental authority other than (a) consents, approvals or authorizations of, or declarations or filings with, the Bankruptcy Court, and (b) any such action or filing as to which the failure to make or obtain would not have a material effect on Purchaser or its ability to consummate the Transactions.

(d) **Noncontravention.** Neither the execution and delivery of this Agreement nor the consummation of the Transactions will (a) conflict with or result in any breach of any provision of organizational documents of Purchaser; (b) require any filing with, or the obtaining of any permit, authorization, consent or approval of, any Governmental Authority; (c) violate, conflict with or result in a default (or any event which, with notice or lapse of time or both, would constitute a default) under, or give rise to any right of termination, cancellation or acceleration under, any of the terms, conditions or provisions of any note, mortgage, other evidence of indebtedness, guarantee, license, agreement, lease or other contract, instrument or obligation to which Purchaser is a party or by which Purchaser or any of its assets may be bound; or (d) violate any Law applicable to Purchaser, except, with respect to clauses (b), (c) and (d), such requirements, violations, conflicts, defaults or rights which would not prevent Purchaser from consummating the Transactions.

(e) **Availability of Purchase Price.** Purchaser has sufficient funds available to it in cash to pay or cause to be paid any cash portion of the Purchase Price. Upon the consummation of the Transactions, (a) Purchaser will not be insolvent as defined in Section 101 of the Bankruptcy Code, (b) Purchaser will not be left with unreasonably small capital, Purchaser will not have incurred debts beyond its ability to pay such debts as they mature, and the capital of Purchaser will not be impaired.

(f) **Litigation.** There is no action, suit, investigation or proceeding pending against or, to the knowledge of Purchaser, threatened against Purchaser before any governmental authority which in any manner challenges or seeks to prevent, enjoin, materially alter or materially delay the Transactions.

(g) **Use of Property.** The Purchaser intends to use the Property after Closing as follows: [insert description of use of Property].

(h) **School Lease.** The Purchaser shall enter into the New School Lease at the Closing and honor the terms and conditions of the New School Lease post-Closing.

(i) **No Outside Reliance; Investigation.** Purchaser acknowledges and agrees that the representations and warranties made by Sellers to Purchaser in Section 8.1 (as qualified by the express terms and conditions (including limitations and exclusions) of this Agreement) (the “Express Representations”) are the sole and exclusive representations, warranties and statements of any kind made to Purchaser and on which Purchaser may rely in connection with the Transactions. Purchaser acknowledges and agrees all other representations, warranties and statements (other than the Express Representations) of any kind or nature expressed or implied, whether in written, electronic or oral form, in each case, made or provided by Seller, its advisors or any other person are disclaimed by Seller. Purchaser acknowledges and agrees that in making its decision to enter into this Agreement and all agreements and instruments in connection herewith and to consummate the transactions contemplated hereby and thereby it (i) has been afforded the opportunity to ask questions of and receive answers from the Seller or the School, (ii) has conducted its own independent investigation of Seller and the School, and has not relied on any representation, warranty or other statement by Seller, the School or any other Person on behalf of any Seller or the School, other than the Express Representations and (iii) has relied solely upon its own investigation and the Express Representations.

(j) **Outside Reliance; Investigation.** NEITHER PURCHASER, NOR ANY OTHER PERSON HAS MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER, RELATING TO PURCHASER IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, OTHER THAN PURCHASER’S EXPRESS REPRESENTATIONS.

**8.3 Survival.** None of the representations or warranties of Seller set forth in this Agreement, or in any other agreement or certificate executed in connection with, or delivered pursuant to, this Agreement shall survive the Closing. Other than the requirements of further assurances and actions specifically identified to be taken post-Closing, all other covenants of Seller shall expire upon Closing. All representations and warranties of Purchaser shall survive the Closing for a period of twelve (12) months, and Purchaser’s covenants and undertakings shall survive the Closing without limitation as to time. This Section 8.3 shall not limit any covenant or agreement of any Party which, by its term, contemplates performance after the Closing, but only to the extent such covenants and agreement are to be performed, or prohibit actions, subsequent to the Closing.

## **ARTICLE 9.**

### **RISK OF LOSS**

**9.1 Risk of Loss.** Until the transfer of title and possession on the Closing Date, the risk of loss by fire or other casualty to the Property shall be borne by Seller who shall keep the Property insured against such loss to the full extent of the fair insurable value thereof. In the event of any such loss prior to the Closing, Purchaser may elect to either rescind this Contract with a consequent payment of the Deposit Refund or to accept the proceeds of any insurance proceeds received by Seller and to perform under the terms of this Agreement.

**9.2 Condemnation.** If, prior to the Closing, an action is initiated to take the Property by eminent domain proceedings or by deed in lieu thereof (a “Condemnation”), Seller, upon receipt of written notice of such action from any Governmental Entity, shall immediately give Purchaser written notice of such Condemnation, Purchaser shall have the right to (a) terminate this Agreement, in which event the Deposit Refund shall occur within five (5) Business Days or (b) consummate the Closing, in which latter event all of Seller’s assignable right, title and interest in and to the award of the condemning authority shall be assigned to Purchaser at the Closing and there shall be no reduction in the Purchase Price.

## **ARTICLE 10.**

### **DEFAULT**

**10.1 Permitted Termination.** If this Agreement is terminated by either party pursuant to a right expressly given to it hereunder (a “Permitted Termination”), neither party shall have any further obligation to the other party except as expressly provided in the Agreement.

#### **10.2 Default Remedies of Purchaser.**

(a) Seller shall be in default hereunder if through no fault of Purchaser, Seller shall fail to Close on the sale of the Property on or before the Termination Date.

(b) In the event of a default by Seller under this Section 10.2, then provided Purchaser is not in default hereunder (and provided Purchaser has notified Seller of the specific nature of such default and allowed Seller a ten (10) Business Day period to cure such default (the “Remedy Period”), Purchaser may, at Purchaser’s sole option on or prior to Closing, terminate this Agreement by written notice delivered to Seller at or prior to the Closing, in which event the Deposit Refund shall occur within five (5) Business Days and thereafter neither Seller nor Purchaser shall have any obligations to the other under this Agreement, except as specifically set forth herein.

#### **10.3 Default Remedies of Seller.**

(a) Purchaser shall be in default hereunder if Purchaser shall fail to meet, comply with, or perform in any material respect any covenant, agreement, or obligation on its part required, and Purchaser fails to cure such breach or failure within ten (10) Business Days after written notice from Seller of such breach.

(b) In the event of a default by Purchaser under Section 10.3(a), then Seller may terminate this Agreement by written notice delivered to Purchaser at or prior to the Closing, in which event Seller shall retain the Deposit, it being agreed between Purchaser and Seller that such sum shall be liquidated damages and the sole and exclusive remedy for Seller for a default by Purchaser hereunder because of the difficulty, inconvenience and uncertainty of ascertaining actual damages for such default and thereafter neither Seller nor Purchaser shall have any obligations to the other under this Agreement, except as specifically set forth herein.



**ARTICLE 11.**  
**SELLER'S PRE-CLOSING OBLIGATIONS**

**11.1 Operations.** Seller hereby agrees and covenants that from the date hereof through the Closing or earlier termination of this Agreement:

(a) Seller shall not, without the prior written approval of Purchaser, enter into any Contract or lease with regards to the Property that will be binding on Purchaser or the Property after the Closing except a Contract or lease in the ordinary course of business of the Property provided that any such Contract or lease in any event can be terminated upon 30 days' notice without payment or penalty.

(b) Seller shall not consent to any zoning changes of the Property without the prior written consent of Purchaser.

(c) Seller shall maintain its current liability insurance for the Property.

(d) Seller shall not sell or otherwise encumber the Property.

(e) Seller will not alter the physical condition of the Property in any material respect.

**ARTICLE 12.**  
**BROKERS**

**12.1** The parties hereby agree and acknowledge that there is no agent or broker involved in the transaction contemplated under this Agreement and no other agent(s) or broker(s) showed the Property to Purchaser or participated in the sale of the Property.

**ARTICLE 13**  
**BANKRUPTCY MATTERS**

**13.1 Bankruptcy Court Approval.**

(a) Seller is the debtor and debtor in possession in the Bankruptcy Case. As soon as practicable after the execution of this Agreement, the Debtor shall file papers with the Bankruptcy Court identifying the Purchaser as a stalking horse bidder and seeking approval of a process to obtain authority to sell the Property pursuant to a sale under Section 363 of the Code. Accordingly, the Bankruptcy Court shall have approved this sale for this purchase to proceed. For the avoidance of doubt, the transaction contemplates the entry of Bidding Procedures and, ultimately, the entry of a Final Sale Order, which shall include findings that 1) the Purchaser is a good faith purchaser for value, and 2) the sale and purchase of the Property is free and clear of all claims, encumbrances, and interests. The parties shall also seek for the Final Sale Order to provide a waiver of the 14 day stay period under Bankruptcy Rule 6004(h) and that the terms and conditions of the Final Sale Order will be immediately effective and enforceable upon its entry. Unless Purchaser unilaterally extends the date for Court Approval, if Court Approval does not occur by May 1, 2023, this Agreement shall terminate, and within five (5) Business Days the Deposit Refund shall occur, and neither Party shall have any further obligation to the other, except those that specifically survive termination of the Agreement.

(b) Seller and Purchaser each acknowledge that this Agreement and the sale of the Property by Purchaser are subject to Bankruptcy Court approval. Purchaser acknowledges that to obtain such approval, Seller must demonstrate that it has taken reasonable steps to obtain the highest and otherwise best offer possible for the Property, and that such demonstration will include giving notice of the transactions contemplated by this Agreement to creditors and other interested parties as ordered by the Bankruptcy Court, and, if necessary, conducting the Auction.

(c) Stalking Horse Status. Seller confirms that it is critical to the process of arranging an orderly sale of the Property to proceed by selecting Purchaser as its “stalking horse” to enter into this Agreement in order to present the Bankruptcy Court with arrangements for obtaining the highest realizable price for the Property and that, without Purchaser having committed substantial time and effort to such process, Seller’s estate would have to employ a less orderly process of sale and thereby incur higher costs and risk attracting lower prices. In recognition of the foregoing Seller agrees as follows:

- (i) To the fullest extent permissible under the order approving the Bidding Procedures, Seller shall file a notice designating Purchaser as the Stalking Horse and providing Purchaser the bidding protections contained herein;
- (ii) Seller acknowledges that Purchaser would not have invested the effort in negotiating and documenting the transaction provided for herein and incurring the obligations to pay its outside advisors and legal counsel if Purchaser were not paid certain the Expense Reimbursement, in the event that Purchaser does not purchase the Property due to the termination of this Agreement as a result of an Alternative Transaction;
- (iii) Seller shall provide Purchaser with a draft of the Final Sale Order prior to filing same with the Bankruptcy Court.

(d) Final Sale Order. Purchaser agrees that it will take such actions as are reasonably requested by Seller to assist in obtaining entry of the Final Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of demonstrating that Purchaser is a “good faith” purchaser under Section 363(m) of the Bankruptcy Code.

(e) Bidding Procedures. Purchaser agrees and acknowledges that Seller, including through its respective legal and financial advisors, is and may continue soliciting inquiries, proposals, or offers from third parties for all or any part of the Property, and are and may continue discussing and negotiating such inquiries, proposals or offers and providing information to Third Parties in connection therewith, as contemplated by the Bidding Procedures.

(f) Backup Bidder. If an Auction is conducted, and Seller does not choose Purchaser as the Successful Bidder, but instead choose Purchaser as the Backup Bidder, Purchaser must perform as the Backup Bidder in accordance with the Bidding

Procedures. If Purchaser is chosen to be the Backup Bidder, Purchaser will be required to keep its bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon by Purchaser prior to or at the Auction) open and irrevocable until the Closing of the sale of the Purchased Assets to the Successful Bidder. If the agreement with the Successful Bidder is terminated prior to the termination of this Agreement, and if Purchaser is the Backup Bidder, Purchaser will be deemed to be the Successful Bidder and will forthwith consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon by Purchaser prior to or at the Auction).

(g) If any conflict arises between the terms of this, on the one hand, and the Final Sale Order, on the other, the terms of the Final Sale Order shall control in all respects.

#### **ARTICLE 14** **MISCELLANEOUS**

**14.1 Notices.** All notices, demands and requests which may be given or which are required to be given by either party to the other, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective when (a) personally delivered to the address of the party to receive such notice set forth below, (b) transmitted if sent via facsimile or email (with confirmation of successful transmission), (c) the next succeeding Business Day after deposit with a nationally recognized overnight courier service (e.g., Federal Express) and addressed to the party as set forth below, or (d) three days after when deposited in any post office or mail receptacle regularly maintained by the United States Government, certified or registered mail, return receipt requested, postage prepaid, addressed as follows, or to such other place as Seller or Purchaser or Title Company, respectively, may from time to time designate by written notice to the other. A notice may be given by a party or by a party's attorney at law:

If to Seller:                      The Norwich Roman Catholic Diocesan Corporation  
201 Broadway  
Norwich, CT, 06360  
Attn:    Bishop Michael Cote

With copies to:                Brown Jacobson, PC  
22 Courthouse Square  
Norwich, CT, 06360  
Attn:    Jeffrey R. Godley, Esq.  
Phone: (860)889-3321  
Fax:     (860) 886-0673  
E-mail: jgodley@brownjacobson.com

If to Purchaser:

With copies to:

**14.2 Entire Agreement.** This Agreement embodies the entire agreement between the parties relative to the subject matter hereof, and there are no oral or written agreements between the parties, nor any representations made by either party relative to the subject matter hereof, which are not expressly set forth herein. The parties hereto do not intend to confer any benefit hereunder on any Person other than the parties hereto.

**14.3 Amendment.** This Agreement may be amended only by a written instrument executed by the party or parties to be bound thereby.

**14.4 Headings.** The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement.

**14.5 Governing Law.** This Agreement shall be governed and construed by the internal laws of the State of Connecticut.

**14.6 Successors and Assigns.** This Agreement shall bind and inure to the benefit of Seller and Purchaser and their respective successors and permitted assigns.

**14.7 Invalid Provision.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Agreement.

**14.8 Multiple Counterparts; Electronic Signatures.** This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one (1) agreement; in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart with each party's signature. Further, this Agreement may be executed by facsimile or by portable document format (.pdf) signature, such that execution of this Agreement by facsimile or by portable document format (.pdf) signature shall be deemed effective for all purposes as though this Agreement was executed as a "blue ink" original.

**14.9 Construction.** The words "herein" "hereof" "hereunder" and other similar compounds of the words "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision or section. Whenever used in this Agreement, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. Marginal notes are inserted for convenience only and shall not form part of the text of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same.

**14.10 Waivers.** No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

**14.11 Time of Essence.** Seller and Purchaser hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation, and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable default under this Agreement by the party so failing to perform.

**14.12 No Joint Venture.** This Agreement shall not create a partnership or joint venture relationship between Purchaser and Seller.

**14.13 Assignment.** Purchaser shall have a right to assign this Agreement to any entity which directly or indirectly, controls, is controlled by or under common control with Purchaser (an "Affiliate"), or to a Qualified Intermediary as part of a 1031 transaction. Any such assignment to Purchaser's Affiliate shall release Purchaser from its duties, liabilities, or obligations under this Agreement.

**14.14 Timing.** If the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday, or legal holiday under the law of the United States or the State of Connecticut, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

**IN WITNESS WHEREOF**, the undersigned parties have executed this Agreement on the date first written above.

**SELLER:**

**SELLER NAME**

THE NORWICH ROMAN CATHOLIC  
DIOCESAN CORPORATION

By: \_\_\_\_\_

Name:

Title:

**PURCHASER:**

**PURCHASER NAME**

By: \_\_\_\_\_

Name:

Title: Member

**Bidding Procedures Ex. B.**  
(Form Lease)

**LEASE**

THIS AGREEMENT made as of the \_\_\_\_ day of \_\_\_\_\_, 2023 between \_\_\_\_\_, a \_\_\_\_\_ corporation having a principal office at \_\_\_\_\_ (hereinafter collectively called the "Lessor"), and SAINT BERNARD SCHOOL OF MONTVILLE, INCORPORATED, a Connecticut corporation having an office at 1593 Norwich-New London Turnpike, Uncasville, Connecticut (hereinafter called the "Lessee").

W I T N E S S E T H :

The Lessor hereby leases to the Lessee and the Lessee hires and rents from Lessor, the buildings, land and improvements more particularly described on **Schedule A** attached hereto and hereby incorporated by reference, situated at 1593 Norwich-New London Turnpike, Uncasville, Connecticut and known as Saint Bernard School (hereinafter called the "Leased Premises").

The parties hereto covenant and agree as follows:

1. **TERM OF LEASE**

The term of this Lease shall be for a period of ten (10) years, commencing as of \_\_\_\_\_, and ending on the earlier of midnight on \_\_\_\_\_ or six (6) months following the last day the Leased Premises operates as a Roman Catholic school or such other purposes as are customary or proper to a Catholic, nonprofit school (the "Intended Use").

Each party hereto agrees, upon the demand of the other party, to execute and deliver to the other party a Notice of Lease in the form and executed in the manner required by Section 47-19 of the Connecticut General Statutes, as amended.

2. **RENEWAL TERMS**

The Term of this Lease shall automatically be renewed for one (1) additional term of ten (10) years from the original Lease expiration date hereof, unless written notice of Lessee's intention not to renew the Lease term is given to the Lessor by the Lessee at least one (1) year prior to the expiration of the original term. It is provided, however, that the automatic renewal provision shall not apply if the Lessee is in default as of the effective date of such renewal provided that the Lessor shall notify the Lessee that the Lease has been terminated by reason of such default. Any extension of the term of this Lease shall be upon all the terms and conditions as set forth herein for the initial term.

In the event that the Lease is extended for an additional term, all references contained in this Lease to the term hereof, whether by number of years or number of months, shall be construed to refer to the original term hereof, as extended aforesaid, whether or not specific reference thereto is made in this Lease.

3. COVENANT TO PAY RENT

For the term hereunder, Lessee agrees to pay and Lessor agrees to accept as rental the sum of ONE (\$1.00) DOLLAR per annum, payable on the first day of \_\_\_\_\_ following the date hereof, and on each anniversary date thereafter. Payments shall be rendered to, the Lessor

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4. ASSIGNMENT AND SUBLETTING

Lessee shall not assign this Lease, or sublease the Leased Premises or any part thereof, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld.

No consent of the Lessor given pursuant to this paragraph shall relieve the Lessee of its obligations under this Lease.

5. USE OF PREMISES

During the term of the Lease, the use of the Leased Premises shall be limited to the Intended Use, unless the Lessor shall waive such restriction in writing.

6. LESSOR'S RIGHT TO ENTRY

Lessee agrees that Lessor and Lessor's agents and other representatives shall have the right, without abatement of rent, to enter into and upon the Leased Premises, or any part thereof, at any time, for the purpose of examining the same or for making such repairs or alterations to the Leased Premises as may be necessary for the safety and preservation thereof; provided, however, that such examinations, repairs or alterations shall be so made as to cause a minimum of interference with the operation of the Lessee's business conducted in the Leased Premises. Lessor shall have the right to enter the Leased Premises at any time in the event of an emergency.

7. REPAIRS, ALTERATIONS AND ADDITIONS

Except as Lessor is obligated to make repairs as provided in paragraph 8 hereof, Lessee agrees to keep the Leased Premises in good order, condition and repair at its own expense, including cleaning, vacuuming, dusting, trash removal and other janitorial services. Lessee shall be responsible for ordinary, routine maintenance and repairs to the grounds, and to the heating, cooling, electrical and plumbing systems of the buildings located on the premises, but shall not be responsible for replacing any such system or for any major capital expenditures to the physical plant of the Leased Premises. Lessee shall not have the right to make any alterations to the Leased Premises without first obtaining the written approval of the Lessor. Lessee agrees to indemnify and hold Lessor harmless from and against any claims for damage to persons or property resulting from Lessee's performance of any such alterations or repairs to the Leased Premises, and Lessee further agrees to obtain all required consents for the performance of such alterations or repairs from the governmental or other regulatory authorities having jurisdiction thereof, and to carry Workers' Compensation Insurance. At any time during the term of this Lease, Lessee may remove

from said Leased Premises all personal property and fixtures which were placed by it in or upon said Leased Premises, whether nailed or screwed or otherwise fastened to the Leased Premises. If the Lessee shall leave any such fixtures or personal property at the Leased Premises at the termination of its occupancy, Lessor shall have the right either to take ownership thereof or to remove the same at the expense of the Lessee. Any damage or disfigurement to the walls, ceilings or floors caused by such removal (whether by Lessor or by Lessee) shall be repaired by the Lessee, at Lessee's expense.

8. LESSOR'S COVENANT TO REPAIR

Except as otherwise expressly provided herein to the contrary, Lessor covenants to make all necessary repairs and replacements to the roof, the structural and exterior portions of all buildings and the grounds of the Leased Premises, and to the heating, cooling, electrical and plumbing systems, for the entire term of this Lease, except for (i) routine maintenance of the buildings and grounds, as provided elsewhere in this agreement, and (ii) subject to the waiver provisions of Section 22 hereof, any repairs required because of the negligence of Lessee, its employees, agents, contractors or invitees. Routine maintenance to the heating, cooling, plumbing, lighting and electrical systems shall be the responsibility of the Lessee.

9. INSURANCE

(a) The Lessee will, throughout the term of this Lease, provide and keep in force a public liability insurance policy covering the Leased Premises against all liability claims and demands for injuries to persons or loss of life, and damage to property arising out of the occupancy, maintenance or use of the Leased Premises in the amount of not less than \$1,000,000.00, and in an amount of not less than \$10,000,000 excess liability umbrella coverage, if such coverages are available, or if not in as great a dollar amount of coverage as possible, which policy or policies shall name the Lessor as an additional insured.

(b) The Lessor shall, throughout the term of this Lease, carry insurance on the Leased Premises, insuring against fire and the perils included in standard extended coverage in an aggregate amount which shall be not less than one hundred per cent (100%) of the full replacement value thereof. For such periods as this lease shall remain in effect, and during any renewals thereof, the Lessee agrees to reimburse the Lessor for the cost of such fire and extended coverage insurance on the leased premises.

(c) In the event that construction is in process at any time on a substantial improvement on the Leased Premises, the Lessor shall carry fire and extended coverage with so-called builder's risk coverage in completed value form on the improvement during the course of construction. For such periods as this lease shall remain in effect and during any renewals thereof, the Lessee agrees to reimburse the Lessor for the cost of the fire and extended coverage and/or builder's risk coverage on construction improvements.

(d) Lessee will deliver to the Lessor certificates of such policies, which certificates shall indicate the coverages herein required, and certificates of renewals, at least ten ( 10) days before the expiration dates of said policies.



(e) The Lessee shall insure its own fixtures, equipment and other personal property owned by it and used in the operation of its business, in such amounts as it shall deem advisable.

10. CONDITION OF PREMISES

The Lessee agrees that it has inspected the Leased Premises and leases the same "as is" at the commencement of this Lease, and further acknowledges that neither Lessor, nor any person acting on Lessor's behalf, has made any representation or warranty to Lessee with respect to the condition of the Leased Premises or its suitability for Lessee's use thereof, upon which Lessee has relied, except as expressly set forth in this Lease.

11. COMPLIANCE WITH LAWS

During the term hereof, Lessee shall, at its expense, comply with all statutes, laws, ordinances, rules, orders, regulations and requirements of the federal, state and municipal governments applicable to conditions existing by reason of Lessee's use and occupancy of the Leased Premises.

12. FIRE AND OTHER CASUALTY

(a) If the Leased Premises or any portion thereof is damaged by fire or other casualty, then, except as provided below, the damage shall be promptly repaired by and at the expense of Lessor. Until such repairs and restoration are completed, Rent shall be equitably abated to the extent that damage to the Leased Premises materially and adversely interferes with the conduct of Lessee's school operations. Lessor shall notify Lessee (the "Casualty Notice") in writing within fifteen (15) days of the occurrence of such damage when the damage is reasonably expected to be repaired. If (i) such damage to the Leased Premises shall materially and adversely interfere with the conduct of Lessee's operation of its school as reasonably determined by Lessee, and the estimated repair/restoration period is in excess of one hundred twenty (120) days after the occurrence of such casualty, then in such event Lessee may, by written notice to Lessor within forty-five (45) days after the date of such casualty, terminate this Lease as of the date of occurrence of such damage. If such damage can be repaired within one hundred twenty (120) days and Lessor fails to repair or restore such damage within such period, then Lessee may terminate this Lease, by giving thirty (30) days' prior written notice to Lessor, in addition to all other remedies Lessee may have under this Lease, at law or in equity.

(b) If Lessee does not terminate this Lease as set forth above, Lessor shall complete the repair and restoration of such damage as soon as reasonably possible, and if Lessor fails to complete such repair and restoration in any case within one hundred eighty (180) days following the date of loss, then Lessee may terminate this Lease, by giving thirty (30) days' prior written notice to Lessor, in addition to all other remedies Lessee may have under this Lease, at law or in equity.

(c) If the Leased Premises is damaged by fire or other casualty, and (i) the estimated repair/restoration period is in excess of one (1) year, and (ii) the cost to repair such damage is in

excess of fifty percent (50%) of the replacement cost of the damaged improvements, then Lessor may, by written notice to Lessee within forty-five (45) days after the date of such casualty, terminate this Lease. Upon such termination, Lessee shall be entitled to remain in the Leased Premises for not longer than six (6) months subsequent to such termination.

13. CONDEMNATION

(a) If the Leased Premises or any material part thereof shall be taken under the power of eminent domain for any public or quasi-public improvement or use, and taking which serves to make continued use and occupancy of the Leased Premises no longer reasonably possible, the term of this Lease shall terminate as of the date when the possession of the Leased Premises shall be required for such use or purpose.

(b) In the event of any such taking under the power of eminent domain, Lessor shall be entitled to and shall receive the entire award without deduction for any estate hereby vested in Lessee, but the Lessee shall have, and hereby reserves, the right to receive such compensation as may be available to it for the value of Lessee's trade fixtures and equipment.

14. DEFAULT

(a) This Lease and the term and estate hereby granted are subject to the limitation that:

(i) Whenever Lessee shall default in payment of any installment of rent on any day upon which the same ought to be paid, and if such default shall continue for ten ( 10) days following Lessee's receipt of written notice that the same is overdue; or

(ii) Whenever Lessee shall do, or permit anything to be done, contrary to any of the covenants, agreements, terms or provisions of this Lease, or shall fail in the keeping or performing of any of the covenants, agreements, terms or provisions of this Lease, which on the part or behalf of Lessee are to be kept or performed, other than the payment of rent, and Lessee shall fail to remedy the same within thirty (30) days after Lessor shall have given to the Lessee notice specifying the same, or, if such complained of condition is not curable within such period, and Lessee shall fail to commence to take steps to remedy the same within such period, or having so commenced, shall thereafter fail to proceed diligently to remedy the same; or

(iii) Whenever an involuntary petition shall be filed against the Lessee under any bankruptcy or insolvency laws or under the reorganization provisions of any law of like import, or a receiver of Lessee, or for the property of Lessee, shall be appointed without the acquiescence of Lessee and such situation or condition shall continue and shall not be removed by Lessee within ninety (90) days after the happening of any such event; or

(iv) Whenever Lessee shall make an assignment of the property of Lessee for the benefit of creditors or shall file a voluntary petition under any bankruptcy or insolvency law, or whenever any court of competent jurisdiction shall approve a petition filed by Lessee under the reorganization provisions of the United States Bankruptcy Code or under the provisions of any law of like import; or

(v) Whenever Lessee shall desert or abandon the Leased Premises (it being acknowledged by Lessor that Lessee's failure to open for business during the months of July and August, or any portion thereof, shall not constitute abandonment or desertion of the Leased Premises); then, regardless of and notwithstanding the fact that Lessor has or may have some other remedy under this Lease or by virtue thereof, or in law or in equity, Lessor may give to Lessee a notice (herein called the "second notice") of intention to end the term of this Lease, specifying a date not less than fifteen (15) days thereafter, and upon the giving of the second notice, this Lease and the term and estate hereby granted shall expire and terminate upon the day so specified in the second notice, as fully and completely and with the same force and effect as if the day so specified were the date hereinbefore fixed for the expiration of the term of this Lease, and all rights of the Lessee hereunder shall expire and terminate, but Lessee shall remain liable for damages as hereinafter provided.

(b) In the event that this Lease shall be terminated as hereinabove provided, or by judicial proceedings, or if the Leased Premises shall be abandoned by Lessee, Lessor may, without notice, re-enter the Leased Premises, either by force or otherwise, and remove the Lessee's effects and hold the Leased Premises as though this Lease had not been made, and Lessee hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end.

In case of any default, re-entry, expiration and/or dispossession by summary proceedings or otherwise. (i) the rent shall become due thereupon and be paid up to the time of such re-entry, dispossess and/or expiration; (ii) Lessor shall use reasonable efforts to re-let the Leased Premises for the balance of the term of this Lease; (iii) Lessee or the legal representatives of Lessee shall also pay Lessor, as liquidated damages for the failure of Lessee to observe and perform said Lessee's covenants herein contained, any deficiency between the rent hereby reserved and/or covenants to be paid and the amount of any rents collected on account of the lease or leases of the Leased Premises for each month of the period which would otherwise have constituted the balance of the term of this Lease. The failure of Lessor to re-let the Leased Premises or any part or parts thereof shall not release or affect Lessee's liability for damages if Lessor has used reasonable efforts in attempting to re-let the Leased Premises. In computing such liquidated damages, there shall be added to the said deficiency such reasonable expenses as Lessor may incur in connection with re-letting, such as reasonable legal expenses, attorneys' fees, brokerage fees and a reasonable amount for keeping the Leased Premises in good order or for preparing the same for re-letting. Any such liquidated damages shall be paid by the Lessee upon demand of the Lessor and any suit brought to collect the amount of the deficiency shall not prejudice in any way the rights of Lessor to collect the amount of any deficiency. Lessor, at Lessor's sole cost and expense and at Lessor's option, may make such alterations, repairs, replacements and/or decorations in the Leased Premises as Lessor, in Lessor's sole judgment, considers advisable and necessary for the purpose of re-letting the Leased Premises; and the making of such alterations, repairs, replacements and/or decorations shall not operate or be construed to release Lessee from liability hereunder as aforesaid. In the event of a breach by Lessee of any of the covenants or provisions hereof, Lessor shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this Lease of any particular remedy shall not preclude Lessor from any other remedy at law or in equity.

(c) In the event that (i) Lessor, for any reason, other than by reason of any default by Lessee, fails to fulfill any covenant or provision of this Lease on its part to be performed, and (ii) such failure materially and adversely interferes with the conduct of Lessee's business conducted from the Leased Premises, as reasonably determined by Lessee; and (iii) such failure is not remedied within five (5) business days after Lessor receives actual notice of such failure, then (x) rent shall be abated as of the date of such failure until such failure is remedied; and (y) Lessee shall have the right, but not the obligation, to remedy Lessor's failure and charge Lessor for the reasonable cost of such remedy, which charges shall be payable by Lessor within ten (10) days of Lessee's demand therefor. Without limiting whatever rights and remedies may be available to Lessee arising from such default, and upon Lessor's failure to pay the same, Lessee shall have the right to credit such cost against any future installments of rent until such cost is fully recouped by Lessee. In addition, if such failure is not remedied within thirty (30) days after Lessee shall have given Lessor written notice of such failure, then Lessee shall have the right to terminate this Lease by giving Lessor written notice.

15. UTILITIES

(a) Lessee shall pay for heat to the Leased Premises.

(b) Lessee shall provide for the removal of snow and ice from the Leased Premises, and Lessee shall pay for the usage charges for use of water and sewer provided at the Leased Premises.

(c) Lessee shall pay for electricity furnished to the Leased Premises and maintenance within the Leased Premises, including replacement of all light bulbs and fluorescent light bulbs within the Leased Premises. Lessee shall pay any and all utilities other than those mentioned herein which are provided at the leased premises.

16. WAIVER

No waiver of any provisions of this Lease shall be effective unless in writing, signed by the waiving party. One or more waivers of any covenant or condition by Lessor or Lessee shall not be construed as a waiver of a subsequent breach of the same or any other covenant or condition, and the consent or approval by Lessor to or of any act by Lessee requiring Lessor's consent or approval shall not be construed to waive or render unnecessary Lessor's consent or approval to or of any subsequent similar act by Lessee.

17. INTERPRETATION

Whenever used herein, and the context so requires, the singular number shall include the plural and the plural the singular, and the use of any gender shall include all genders. The paragraph headings used herein are for reference and convenience only. The words "re-enter" and "re-entry", as used herein, are not restricted to their technical legal meaning. The word "term" shall mean and include the term of this Lease and any extensions thereof, unless the context indicates otherwise. The terms of this lease shall be governed by and interpreted under the laws of the State of Connecticut.

18. ENTIRE AGREEMENT

No oral statement or prior written matter shall have any force or effect. Lessee and Lessor agree that they are not relying on any representations or agreements other than those contained in this Lease. This Lease shall not be modified, except by a writing, subscribed by all parties, nor may this Lease be canceled by Lessee, except with the written consent of Lessor, unless otherwise specifically provided herein.

19. SURRENDER OF LEASED PREMISES

Upon the expiration of the term hereof, Lessee shall surrender the Leased Premises to Lessor in as good order and condition as at the commencement of the term. reasonable wear and tear, damage by fire, other casualty and the elements, excepted.

20. WAIVER OF LESSOR'S LIABILITY

Lessee acknowledges that Lessor shall not be liable to Lessee for any losses incurred by Lessee due to the condition of the Leased Premises during the term of this Lease, including, but not limited to, loss of business due to the uninhabitability of the Leased Premises, damage to fixtures or personalty owned by Lessee from any cause whatsoever, including water damage, or injury to persons occurring within the Leased Premises or any area within the exclusive control of the Lessee. Lessee shall, at its option obtain insurance to cover Lessee with respect to any such losses or injuries.

21. QUIET ENJOYMENT

Lessor covenants that so long as Lessee pays the rent reserved in this Lease and performs and observes all of the other covenants and provisions hereof, Lessee shall quietly enjoy the Leased Premises as herein provided for the term hereof.

22. RELEASE OF LIABILITY

Notwithstanding anything stated in this lease to the contrary, Lessor and Lessee, for themselves and for their respective insurers, do hereby mutually release each other from any and all claims, demands, actions and causes of action that each may have or claim to have against the other

(including, but not in limitation of the foregoing, all rights of subrogation accruing to any insurers of the parties) for loss of or damage to the property of the other, whether real or personal, caused by or resulting from any casualty of the type covered by fire or extended coverage insurance, based on coverage for 100% replacement cost, without regard for any deductible amounts, and without regard for whether such insurance is then in effect, and notwithstanding that any such loss or damage may be due to or result from the negligence of either of the parties or their respective officers, employees, or agents. Lessor and Lessee will each endeavor to secure a waiver of subrogation through the inclusion in, or an endorsement on, any fire and extended coverage insurance policy insuring their respective property (whether real or personal); provided, however, that a failure by either party to secure such inclusion or endorsement as aforesaid shall not in any manner affect the provisions of the above mutual release.

23. NOTICES

Except as any statute relating to summary process may otherwise require, any notice or demand which, under the terms of this Lease or under any statute, must or may be given or made by the parties hereto, shall be in writing and shall be given or made by Certified Mail, Return Receipt Requested, addressed to the respective parties, as follows:

TO THE LESSEE: Saint Bernard School  
c/o  
1593 Norwich-New London Turnpike  
Uncasville, CT 06382

TO THE LESSOR:

Such notice or demand shall be deemed to have been given or made when deposited, postage prepaid, in the United States Mail. The above addresses may be changed at any time by giving thirty (30) days' prior written notice as above provided.

24. RIGHTS OF HEIRS, SUCCESSORS AND ASSIGNS

The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the Lessor and the Lessee and their respective heirs, successors and assigns, but neither Lessor nor Lessee shall be bound hereby or liable hereunder unless and until this Lease shall have been executed and delivered by both Lessor and Lessee.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

Signed and Delivered  
In the Presence of:

\_\_\_\_\_

\_\_\_\_\_

BY: \_\_\_\_\_

Its \_\_\_\_\_

\_\_\_\_\_

SAINT BERNARD SCHOOL OF MONTVILLE,  
INCORPORATED

\_\_\_\_\_

BY: \_\_\_\_\_

Its \_\_\_\_\_

STATE OF CONNECTICUT:

: ss., \_\_\_\_\_

COUNTY OF \_\_\_\_\_:

On this, the \_\_\_\_ day of \_\_\_\_\_, 2023, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of \_\_\_\_\_, a corporation, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand.

\_\_\_\_\_

Commissioner of the Superior Court  
Notary Public  
My Commission Expires:

STATE OF CONNECTICUT:

: ss., \_\_\_\_\_  
COUNTY OF \_\_\_\_\_:

On this, the \_\_\_\_ day of \_\_\_\_\_, 2023, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of Saint Bernard School of Montville, Incorporated, a corporation, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand.

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Commissioner of the Superior Court  
Notary Public  
My Commission Expires:



**Schedule A to Sale Procedures Order**  
**(Sale Notice)**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT  
HARTFORD DIVISION

In re:

NORWICH ROMAN CATHOLIC  
DIOCESAN CORPORATION,

Debtor.

Chapter 11

Case No: 21-20687 (JJT)

**NOTICE OF SALE PROCEDURES,  
AUCTION, HEARING AND DEADLINES RELATING TO THE  
SALE OF CERTAIN PROPERTY, INCLUDING ALL  
IMPROVEMENTS THEREON IN MONTVILLE CONNECTICUT**

**PLEASE TAKE NOTICE** that on March 31, 2023, the Norwich Roman Catholic Diocesan Corporation (the “Debtor”) in the above-captioned case, filed a *Motion for Entry of (I) Order (A) Approving Sale Procedures for the Sale of Certain Property, Including All Improvements Thereon in Montville, Connecticut; (B) Scheduling An Auction and a Sale Hearing Related Thereto, and (C) Approving the Form of Notice of the Auction and Sale Hearing; and (II) Order (A) Approving Such Sale of the Property Free and Clear of Liens, Claims, Encumbrances and Other Interests, and (C) Related Relief* [Docket No. ] (the “Sale Motion”).<sup>2</sup> The Debtor seeks to complete a sale (the “Sale”) of certain real property, and all improvements thereon, comprised of 113.19 acres of developed land located at 1593 Route 32, Montville, Connecticut (the “Property”) to a prevailing bidder or bidders (the “Successful Bidder”) at an auction scheduled for May 5, 2023 (“Auction”). The Sale, if approved by the Bankruptcy Court, will transfer the Property to the Successful Bidder free and clear of all liens, claims, encumbrances and other interests pursuant to section 363 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that, on April [ ● ], 2023 the Bankruptcy Court entered an order [Docket No. ] (the “Sale Procedures Order”) approving the sale procedures set forth in the Sale Motion (the “Sale Procedures”), which set the key dates and times related to the sale of the Property to the Successful Bidder. **All interested bidders should carefully read the Sale Procedures.** To the extent that there are any inconsistencies between the Sale Procedures and the summary description of its terms and conditions contained in this notice, the terms of the Sale Procedures shall control.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Sale Procedures, the Debtor must receive any other Bid from interested bidders in writing, on or before **May 1, 2023 at 4:00 p.m. (prevailing Eastern Time)** or such later date as may be agreed to by the Debtor (the “Bid Deadline”). To be considered, any such Bid must satisfy all of the requirements set forth in the Sale Procedures and must be sent to the following by the Bid Deadline to be considered: (a) Counsel to the Debtor: Ice Miller, 1500 Broadway, 29th Floor, New York, NY 10036; Attn: Louis DeLucia, Esq. and Robinson & Cole LLP, 280 Trumbull St., Hartford, CT 06106, Attn: Patrick

Birney, Esq.; (b) the Office of the United States Trustee for the District of Connecticut, 150 Court Street, Room 302, New Haven, CT 06510, Attn: Steven E. Mackey, Esq. ([Steven.E.Mackey@usdoj.gov](mailto:Steven.E.Mackey@usdoj.gov)); and (c) Counsel to the Official Committee of Unsecured Creditors: Zeisler & Zeisler, PC, 10 Middle St Floor 15, Bridgeport, CT 06604, Attn: Eric Henzy, Esq. and Stephen Kindseth, Esq.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the terms of the Sale Procedures, if the Debtor receives one or more Qualified Bids by the Bid Deadline, the Auction shall take place at **11:00 a.m. (prevailing Eastern Time) on May 5, 2023** at the offices of Robinson & Cole, 280 Trumbull Street, Hartford, Connecticut 06106, or such later time on such day or other place as the Debtor shall notify all Qualified Bidders. The Auction shall be transcribed or videotaped, and shall be conducted according to the following procedures:

**PLEASE TAKE FURTHER NOTICE** that a hearing will be held to approve the sale of the Property to the Successful Bidder (the “Sale Hearing”) before the Honorable James J. Tancredi, U.S. Bankruptcy Court for the District of Connecticut, on **May [ ● ], 2023 at \_\_: \_\_.m.** (prevailing Eastern Time). The Sale Hearing will be held United States Bankruptcy Court for the District of Connecticut, Abraham Ribicoff Federal Building 450 Main Street, 7th Floor, Hartford, Connecticut 06103.

**PLEASE TAKE FURTHER NOTICE** that any objection to the sale of the Property to the Successful Bidder or Back-Up Bidder must be in writing, filed with the Court, and be served so that it actually received no later than **4:00 p.m. (prevailing Eastern Time) on May [ ● ], 2023** ((the “Sale Objection Deadline”). Objections shall be served on: (a) Counsel to the Debtor: Ice Miller, 1500 Broadway, 29th Floor, New York, NY 10036; Attn: Louis DeLucia, Esq. and Robinson & Cole LLP, 280 Trumbull St., Hartford, CT 06106, Attn: Patrick Birney, Esq.; (b) the Office of the United States Trustee for the District of Connecticut, 150 Court Street, Room 302, New Haven, CT 06510, Attn: Steven E. Mackey, Esq. ([Steven.E.Mackey@usdoj.gov](mailto:Steven.E.Mackey@usdoj.gov)); and (c) Counsel to the Official Committee of Unsecured Creditors: Zeisler & Zeisler, PC, 10 Middle St Floor 15, Bridgeport, CT 06604, Attn: Eric Henzy, Esq.

**PLEASE TAKE FURTHER NOTICE** that the Debtor is seeking to waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d) in order for the Sale to close immediately upon entry of the Sale Order by this Court.

**PLEASE TAKE FURTHER NOTICE** that this notice is subject to the full terms and conditions of the Sale Motion, the Sale Procedures Order and the Sale Procedures, which shall control in the event of any conflict, and the Debtor encourages parties in interest to review such documents in their entirety. Copies of the Sale Motion, the Sale Procedures, and the Sale Procedures Order are available online at the Debtor’s restructuring website: <https://www.norwichdiocese.org/Reorganization> or may be obtained by contacting the Debtor’s claims and notice agent [**insert Omi website here [ ● ]**] **You will not receive further notice of the Sale.** If you require additional information regarding the Sale Procedures and/or Sale Motion, or any notice of sale or hearing, please make a request in writing to [**insert Omi website here [ ● ]**]

Dated: Hartford, CT  
April \_\_, 2023

THE NORWICH ROMAN CATHOLIC  
DIOCESAN CORPORATION

By: /s/ **DRAFT**

Patrick M. Birney (CT No. 19875)  
Andrew A. DePeau (CT No. 30051)  
Annecca H. Smith (CT No. 31148)

**ROBINSON & COLE LLP**

280 Trumbull Street  
Hartford, Connecticut 06103

Telephone: (860) 275-8275

Facsimile: (860) 275-8299

E-mail: pbirney@rc.com

adepeau@rc.com

asmith@rc.com

-and-

Louis T. DeLucia (admitted *pro hac vice*)

Alyson M. Fiedler (admitted *pro hac vice*)

**ICE MILLER LLP**

1500 Broadway, 29<sup>th</sup> Floor

New York, NY 10036

Telephone: (212) 824-4940

Facsimile: (212) 824-4982

E-mail: louis.delucia@icemiller.com

alyson.fiedler@icemiller.com

*Counsel to the Debtor  
and Debtor-in-Possession*