

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re: Chapter 11

THE DIOCESE OF ST. CLOUD, a Minnesota Case No. 20-60337  
religious corporation,

Debtor.

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**NOTICE OF HEARING AND MOTION FOR AN ORDER (I) GRANTING EXPEDITED  
RELIEF, (II) APPROVING SETTLEMENT AGREEMENT, AND (III) APPROVING  
LEASE AMENDMENT AND SERVICES AGREEMENT**

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TO: The United States Bankruptcy Judge, the United States Trustee, and other parties in  
interest as specified in Local Rule 9013-3(a)(2).

The Diocese of St. Cloud, as debtor and debtor in possession in this case, hereby moves  
the court for the expedited relief requested below and gives notice of hearing:

**NOTICE OF HEARING AND MOTION**

1. The court will hold a hearing on this motion at **10:00 a.m. CDT on September 24, 2020**. Parties interested in attending the hearing should contact Judge Kressel's calendar clerk at (612) 664-5250 for the call-in information.

2. Given the expedited nature of this motion, Local Rule 9006-1(e) governs the deadline for responding to this motion and provides that responses may be filed no later than two hours before the scheduled time for the hearing, unless the court orders otherwise. **PURSUANT TO LOCAL RULE 9013-2, UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT A HEARING.**

3. The court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157(b)(2) and 1334, Bankruptcy Rule 5005, and Local Rule 1070-1. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The debtor filed the petition commencing this chapter 11 case on June 15, 2020.

4. The debtor files this motion under 11 U.S.C. § 363(b)(1), Bankruptcy Rules 6003, 6004(a) and (h), 9013, and 9019, and Local Rules 6004-1(e), 9013-1 through 3, and 9019-1. The debtor requests expedited relief pursuant to Bankruptcy Rule 9006(c) and Local Rule 9006-1(e). The debtor will provide notice of the hearing on this motion pursuant to Bankruptcy Rule 2002(a) and Local Rules 2002-1, 2002-4(a), and 9013-3.

5. The debtor hereby moves the court for entry of an order approving its settlement agreement and lease amendment with Catholic Charities of the Diocese of St. Cloud, a Minnesota non-profit corporation (“**Catholic Charities**”).

6. The debtor seeks the relief requested herein on an expedited basis because the current lease with Catholic Charities expired on June 30, 2020 and the settlement agreement is necessary to, among other things, allow the debtor to adequately market (and potentially sell) the subject property and propose a plan with settled treatment of Catholic Charities’ claims. Therefore, expedited approval will benefit the estate.

## **I. BACKGROUND**

On June 15, 2020, the debtor commenced this case by filing a voluntary Chapter 11 petition. The debtor is a debtor in possession under 11 U.S.C. §§ 1107 and 1108. Additional background information about the debtor is set forth in the *Declaration of Bishop Donald J. Kettler in Support of Chapter 11 Petition and First Day Motions* (the “**Kettler Declaration**”). Joseph Spaniol, the

debtor's Finance Officer, also verified the additional facts set forth below, as evidenced by the attached verification.

The debtor owns two parcels of real property located at 1726 7th Avenue South ("**Lot 1**") and 375 16th Street South ("**Lot 2**" and, together with Lot 1, the "**Property**") in St. Cloud, Minnesota, legally described as:

*Lots 1 and 2, Block 1, Busch Terrace 2, Stearns County, Minnesota*

Lot 1 is an 18-acre parcel with improvements that include the campus for the St. Cloud Children's Home. Lot 2 is a 22-acre parcel of vacant land.

Since acquiring the Property in 1980, the debtor has leased the Property to Catholic Charities. The debtor recently leased portions of the Property to Catholic Charities pursuant to that certain Lease dated January 1, 1999 (as amended from time to time), which terminated on June 30, 2020. Since June 30, 2020, Catholic Charities has been occupying small portions of the Property as a hold-over tenant. The debtor leases another portion of the Property to District 742 Community Schools, a local school district, to operate a school. A copy of such lease is attached hereto as **Exhibit D**.

On July 2, 2018, Catholic Charities commenced a lawsuit against the debtor in Stearns County, Minnesota, Case No. 73-CV-18-5584 (the "**Catholic Charities Action**") seeking, among other things, damages in excess of \$50,000 for unjust enrichment and promissory estoppel, imposition of a constructive trust, establishment of an equitable lien, and an equitable accounting. Catholic Charities also filed a lis pendens against the Property in connection with its lawsuit. Through the Stearns County lawsuit and the lis pendens, Catholic Charities asserts that it has contributed approximately \$4.7 million to improve the Property by constructing that portion of the Property known as the "Secure Facility", which is approximately 18,466 square feet in size, and

alleges that it is entitled to a remedy equal to the amount of its contribution. The debtor disputes these allegations.

The parties now wish to resolve all disputes between them and have entered into the *Settlement Agreement* dated September 15, 2020 (the “**Settlement Agreement**”), a copy of which is attached hereto as **Exhibit A**. The debtor and Catholic Charities have also entered into that certain *Lease Amendment and Services Agreement* dated September 15, 2020 (the “**Lease Amendment**”), amending the terms of the 1999 *Lease* on the Property. A copy of the Lease Amendment is attached hereto as **Exhibit B**. The original *Lease* and prior amendments thereto are attached hereto as **Exhibit C**.

The Settlement Agreement and Lease Amendment will provide a structure that allows the debtor to maximize the value of the Property for the benefit of this bankruptcy estate, resolve all claims, defenses, causes of action, and obligations with Catholic Charities, and solidify a plan treatment framework as it relates to Catholic Charities.

## **II. THE SETTLEMENT AGREEMENT**

The Settlement Agreement is the result of good faith, arms-length negotiations. It resolves the Catholic Charities Action, permits the sale of the Property, and provides a framework for treatment of Catholic Charities’ claims under a plan of reorganization. The primary elements are summarized as follows:<sup>1</sup>

- a. The Settlement Agreement resolves the Catholic Charities Action against the debtor and provides a mechanism for Catholic Charities to contribute to the debtor’s estate and reorganization efforts through a full release of claims against the estate and the Property.
- b. If the debtor seeks to sell the Property prior to confirmation, the Settlement Agreement provides a structure to allow the debtor to close the sale,

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<sup>1</sup> To the extent any description of the Settlement Agreement in this Motion is inconsistent with the terms of the Settlement Agreement, the terms of the Settlement Agreement control.

notwithstanding Catholic Charities' alleged claims, with such claims attaching to the proceeds of the sale until confirmation.

- c. In exchange for Catholic Charities' \$4.7 million release contribution, the debtor will propose a plan that treats Catholic Charities in accordance with the Settlement Agreement and identifies Catholic Charities as a "Protected Party".

The unsecured creditor's committee has consented to approval of the Settlement Agreement.

### **III. THE LEASE AMENDMENT**

The debtor also seeks approval of the Lease Amendment. The Lease Amendment, among other things, redefines the leased portions of the Property, removing those portions that Catholic Charities previously subleased to District 742 Community Schools to operate a school. The debtor now leases the previously subleased portions of the Property directly to District 742. The Lease Amendment facilitates the debtor's lease to District 742, which generates approximately \$100,000/year for the estate. The Lease Amendment further sets forth the terms of a services agreement pursuant to which Catholic Charities will provide maintenance services for the Property—a role it has played under the prior lease terms. If this motion is granted, the Lease Amendment will take effect as of July 1, 2020 for a one-year term that will automatically renew for additional one-year periods, unless terminated earlier in accordance with the Lease Amendment.

Given the significantly reduced footprint Catholic Charities will now lease, it will pay the debtor monthly rent of \$3,775.00 during the initial term. Catholic Charities will also pay the debtor monthly utilities and operating expenses of \$1,336.00, and it will be responsible for all repairs, maintenance, and ground maintenance for the entire Property, including the portion occupied by District 742. The debtor will reimburse Catholic Charities for the maintenance services provided by Catholic Charities at the hourly rates set forth in the Lease Amendment, but only with respect to maintenance services provided to portions of the Property that Catholic Charities does not lease.

The debtor will also reimburse Catholic Charities for expenses incurred in providing such maintenance services.

The unsecured creditor's committee has consented to approval of the Lease Amendment.

#### **IV. CONCLUSION**

WHEREFORE, the debtor requests entry of an order (1) granting expedited relief, (2) approving the Settlement Agreement (3) approving the Lease Amendment, (4) waiving the notice requirements and stay imposed by Bankruptcy Rule 6004(a) and (h), and (5) granting such other and further relief as the court deems just and proper.

Dated: September 15, 2020.

QUARLES & BRADY LLP

/s/ Jason D. Curry

Susan G. Boswell (AZ Bar No. 004791)

Jason D. Curry (AZ Bar No. 026511)

Michael Galen (AZ Bar No. 035044)

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*Counsel for the Debtor*

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF MINNESOTA**

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In re: Chapter 11  
THE DIOCESE OF ST. CLOUD, a Minnesota religious corporation, Case No. 20-60337  
Debtor.

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**VERIFICATION OF JOSEPH SPANIOL**

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I, Joseph Spaniol, Finance Officer for The Diocese of St. Cloud, declare under penalty of perjury that the facts in the motion and the memorandum are true and correct to the best of my knowledge, information, and belief.

Executed on: September 15, 2020

  
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Joseph Spaniol

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re:

Chapter 11

THE DIOCESE OF ST. CLOUD, a Minnesota religious corporation,

Case No. 20-60337

Debtor.

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**MEMORANDUM IN SUPPORT OF MOTION FOR AN ORDER (I) GRANTING  
EXPEDITED RELIEF, (II) APPROVING SETTLEMENT AGREEMENT, AND  
(III) APPROVING LEASE AMENDMENT AND SERVICES AGREEMENT**

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The debtor submits this memorandum in support of its motion seeking approval of the Settlement Agreement and the Lease Amendment.

**I. BACKGROUND**

The facts relevant to this memorandum are set forth in the verified motion and the Kettler Declaration.

**II. LEGAL ANALYSIS**

**A. Settlement Agreement**

Pursuant to Bankruptcy Rule 9019(a), “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Settlements are favored in bankruptcy as a means of minimizing litigation, expediting the administration of the bankruptcy estate, and providing for the efficient resolution of bankruptcy cases. *See In re Trism, Inc.*, 282 B.R. 662, 668 (B.A.P. 8th Cir. 2002). In evaluating a settlement, the standard is “whether the settlement is fair and equitable and in the best interests of the estate.” *Tri-State Fin., LLC v. Lovald*, 525 F.3d 649, 654 (8th Cir. 2008) (quoting *In re Martin*, 212 B.R. 316, 319 (B.A.P. 8th



Cir. 1997)). A settlement need not constitute “the best result obtainable” to be approved. *Martin*, 212 B.R. at 319. Rather, courts must determine that the settlement does not fall “below the lowest point in the range of reasonableness.” *Id.* (citations omitted).

In determining the reasonableness of a settlement, courts in the Eighth Circuit consider the following factors: (1) the likelihood of success in the litigation; (2) the difficulties, if any, in the matter of collection; (3) the complexity of the litigation involved, and the related expense, inconvenience, and delay; and (4) the paramount interest of creditors and a proper deference to their reasonable views. *Lovald*, 525 F.3d at 654. Each of these factors weighs in favor of approving the Settlement Agreement.

### **1. The Likelihood of Success in the Litigation**

The Catholic Charities Action is in its early stages. Although the debtor believes that it has valid defenses to Catholic Charities’ causes of action, neither parties’ theories of the case have been fully developed. The action is likely to be expensive and fact-intensive. Due to the uncertainty of the potential outcome in the Catholic Charities Action and the likely expenses of such litigation, the first factor weighs heavily in favor of approving the Settlement Agreement.

### **2. The Difficulties, if Any, in the Matter of Collection**

The second factor also weighs in favor of approving the Settlement Agreement. At this time, the debtor has not answered Catholic Charities’ amended complaint in the Catholic Charities Action and has not yet determined if it will assert counterclaims against Catholic Charities. Therefore, this prong may not apply to the debtor’s potential collection of a judgment against Catholic Charities. However, if Catholic Charities is successful in its causes of action, it could potentially collect against the Property, take possession of the Property, or seek to prevent

a beneficial sale of the Property. Any such scenario would be detrimental to the debtor's estate and its creditors.

**3. The Complexity of the Litigation Involved, and the Related Expense, Inconvenience, and Delay**

The litigation necessary to resolve the Catholic Charities Action would likely be complex and would involve several issues of fact and law. Because the lawsuit is in its early stages, resolving the dispute through litigation would be lengthy and would cause the debtor to incur significant costs. The third factor therefore weighs in favor of approving the Settlement Agreement.

**4. The Paramount Interest of Creditors and a Proper Deference to Their Reasonable Views**

The fourth factor also weighs in favor of approving the Settlement Agreement, which benefits creditors in this case by freeing the debtor from the uncertainties and costs of litigation. The Settlement Agreement also allows the debtor to retain a valuable estate asset that it may be able to monetize as one means of funding its reorganization plan. The unsecured creditor's committee consents to the relief requested herein.

The Settlement Agreement is therefore in the debtor's best interest, is fair and equitable, and should be approved.

**B. Lease Amendment**

As a debtor in possession, the debtor may exercise the rights and powers of a trustee, including rights granted by Bankruptcy Code § 363(b). *See* 11 U.S.C. § 1107; *In re Serbus*, 48 B.R. 5, 8 n.1 (Bankr. D. Minn. 1984). Bankruptcy Code § 363(b) provides that “[t]he trustee, after notice and a hearing, may . . . lease, other than in the ordinary course of business, property of the estate . . . .” The debtor has leased the Property to Catholic Charities for decades and on several occasions has entered into lease amendments or new leases. The debtor therefore

believes that entering into the Lease Amendment is within the ordinary course of its business. However, the debtor seeks court approval of the Lease Amendment out of an abundance of caution in the event that it falls outside the ordinary course of the debtor's business. The debtor therefore respectfully requests that the court approve the Lease Amendment.

Bankruptcy courts possess broad discretion when ruling on a motion under Section 363(b). *In re Farmland Indus., Inc.*, 289 B.R. 122, 126 (B.A.P. 8th Cir. 2003). The court may approve the use, sale, or lease of estate property under 11 U.S.C. § 363(b) if such action is supported by the debtor's sound business judgment. *See In re Farmland Indus., Inc.*, 408 B.R. 497, 501 (B.A.P. 8th Cir. 2009), *aff'd*, 639 F.3d 402 (8th Cir. 2011) (noting the elements considered by the bankruptcy court in approving a 363 sale).

In this case, the debtor has valid business justifications for entering into the Lease Amendment. The Lease Amendment will provide a structure that allows the debtor to maximize the value of the Property for the benefit of its bankruptcy estate. The Lease Amendment is necessary to define Catholic Charities' current occupation of the Property, facilitate the \$100,000/year District 742 lease, and provide on-sight maintenance for the Property at little expense to the estate.

Based upon all of the foregoing, entering into the Lease Amendment is a sound exercise of the debtor's business judgment and should be approved.

### **III. WAIVER OF STAY**

The prior *Lease* amendment terminated on June 30, 2020 and Catholic Charities is currently occupying the Property as a hold-over tenant. Additionally, entry of an order approving this motion is a condition precedent to the Settlement Agreement becoming effective, and the Settlement Agreement will facilitate a potential sale of the Property, among other

benefits. It is therefore in the estate's interests that the Lease Amendment and Settlement Agreement become effective immediately. The debtor requests that in addition to granting the motion, the court waive the notice requirements under Bankruptcy Rule 6004(a) and all applicable stays, including, without limitation, the stay that would otherwise apply under Bankruptcy Rule 6004(h).

#### **IV. CONCLUSION**

WHEREFORE, the debtor requests entry of an order (1) granting expedited relief, (2) approving the Settlement Agreement (3) approving the Lease Amendment, (4) waiving the notice requirements and stay imposed by Bankruptcy Rule 6004(a) and (h), and (5) granting such other and further relief as the court deems just and proper.

Dated: September 15, 2020.

QUARLES & BRADY LLP

/s/ Jason D. Curry

Susan G. Boswell (AZ Bar No. 004791)

Jason D. Curry (AZ Bar No. 026511)

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*Counsel for the Debtor*

# **EXHIBIT A**

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of September 15, 2020, by and among THE DIOCESE OF ST. CLOUD, a Minnesota religious corporation (the “**Debtor**”) and CATHOLIC CHARITIES OF THE DIOCESE OF ST. CLOUD, a Minnesota non-profit corporation (“**Catholic Charities**”). The Debtor and Catholic Charities may be referred to collectively as the “**Parties**” and each as a “**Party**”.

### RECITALS

- A. The Debtor is the fee owner of two parcels of real property located at 1726 7th Avenue South (“**Lot 1**”) and 375 16th Street South (“**Lot 2**” and, together with Lot 1, the “**Property**”) in St. Cloud, Minnesota, legally described as:

Lots 1 and 2, Block 1, Busch Terrace 2, Stearns County, Minnesota.

Lot 1 is an 18-acre parcel with improvements that include the campus for the St. Cloud Children’s Home (the “**Children’s Home**”). Lot 2 is a 22-acre parcel of vacant land.

- B. The Debtor acquired the Property in 1980. Since its acquisition, the Debtor has leased the Property to Catholic Charities. The Debtor currently leases portions of the Property to Catholic Charities pursuant to that certain *Lease* dated January 1, 1999 (as amended from time to time, the “**Lease**”), as most recently amended by that certain *Amendment to Lease* dated July 1, 2019. The Debtor also leases a portion of the Property (the “**Secure Facility**”) to District 742 Community Schools (the “**School District**”) to operate a school.
- C. On June 28, 2018, Catholic Charities served a complaint (the “**Complaint**”) on the Debtor’s attorney, thereby commencing an action (the “**Catholic Charities Action**”) against the Debtor. On July 2, 2018, Catholic Charities filed the Complaint in the District Court for Stearns County, Minnesota (the “**State Court**”) as Case No. 73-CV-18-5584. Through the Catholic Charities Action, Catholic Charities sought, among other things, damages in excess of \$50,000 for unjust enrichment and promissory estoppel, imposition of a constructive trust, establishment of an equitable lien, and an equitable accounting. Catholic Charities also filed a notice of lis pendens against the Property (the “**Lis Pendens**”).
- D. Catholic Charities asserts that it has contributed approximately \$4.7 million to improve the Property by constructing the Secure Facility, which is approximately 18,466 square feet in size. Through the Catholic Charities Action and the Lis Pendens, Catholic Charities alleges that it is entitled to a remedy equal to the amount of its contribution. The Debtor disputes these allegations.
- E. On June 15, 2020 (the “**Petition Date**”), the Debtor filed a voluntary Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the District of Minnesota (the “**Bankruptcy Court**”), thereby commencing Case No. 6:20-bk-60337 (the “**Bankruptcy Case**”). The Bankruptcy Case stayed the Catholic Charities Action as of the Petition Date.

- F. The Parties now wish to resolve all claims, defenses, causes of action, and obligations between them that arise from or relate to the Property, or otherwise, including with respect to the Catholic Charities Action, by entering into this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the promises, agreements, provisions, and covenants contained herein, the Parties agree as follows:

1. **Recitals; Acknowledgements.** Each of the Parties hereby acknowledge and agree that all of the Recitals set forth above are true and correct and, by this reference, are incorporated into and made a part of the body of this Agreement. The Parties expressly acknowledge and agree that:
  - 1.1 The Debtor is the fee owner of the Property;
  - 1.2 Catholic Charities is providing substantial value to the Debtor's estate through this Agreement;
  - 1.3 Each Party has had the opportunity to review this Agreement and to consult with counsel of its choosing with respect to this Agreement;
  - 1.4 The Bankruptcy Court has jurisdiction to approve and enforce this Agreement against each of the Parties;
  - 1.5 The terms and conditions of this Agreement are fair and reasonable, were negotiated by the Parties in good faith and at arm's-length, and the Parties otherwise acted in good faith in connection with this Agreement; and
  - 1.6 This Agreement is in the best interest of the Debtor's creditors and its bankruptcy estate because, among other things, it facilitates the Debtor's reorganization efforts by providing a mechanism to monetize the Property and fund the Plan.
2. **Effective Date.** This Agreement will become effective on the date that each of the following are fully satisfied (the "**Effective Date**"):
  - 2.1 Each of the Parties has fully executed this Agreement;
  - 2.2 The Bankruptcy Court has entered the Approval Order (defined below) in form and substance acceptable to the Debtor in all respects; and
  - 2.3 The Approval Order has become a final, non-appealable, and binding order.
3. **Definitions.** Unless otherwise defined in this Agreement, the following capitalized terms will have the meanings set forth below:
  - 3.1 "**Approval Motion**" means the *Notice of Hearing and Motion for an Order (I) Granting Expedited Relief, (II) Approving Settlement Agreement, and*

(III) *Approving Lease Amendment and Services Agreement* that the Debtor will file in the Bankruptcy Case, seeking entry of the Approval Order.

- 3.2 **“Approval Order”** means the Bankruptcy Court order approving this Agreement, substantially in the form attached hereto as **Exhibit A**, as requested in the Approval Motion; *provided*, that the final form and substance of the Approval Order must be acceptable to the Debtor in all respects.
- 3.3 **“Channeling Injunction”** has the meaning ascribed to such term in the Debtor’s Plan (once filed). Without limiting the Plan, the Channeling Injunction will enjoin any person (as defined in the Bankruptcy Code) from bringing any claims or actions against any Protected Party for any sexual abuse tort claims.
- 3.4 **“Confirmation Order”** means the final, non-appealable, and binding order confirming the Debtor’s Plan.
- 3.5 **“Lease Amendment and Services Agreement”** means that certain *Lease Amendment and Services Agreement* between the Debtor and Catholic Charities, as filed with the Bankruptcy Court.
- 3.6 **“Plan”** means the plan of reorganization that will be filed by the Debtor in the Bankruptcy Case and confirmed by entry of an order by the Bankruptcy Court.
- 3.7 **“Plan Effective Date”** means the date on which the Plan becomes effective pursuant to the terms thereof.
- 3.8 **“Protected Party”** has the meaning ascribed to such term in the Debtor’s Plan.
- 3.9 **“Transfer”** means any sale, conveyance, mortgage, grant, bargain, encumbrance, lease, alienation, pledge, assignment, hypothecation, transfer, or other disposition of all or any part of the Property or any estate or interest therein.
4. **Catholic Charities Plan Contribution.** Subject to the Plan Effective Date, Catholic Charities agrees to contribute to the Debtor’s Estate the following material benefits:
- 4.1 *Dismissal of Catholic Charities Action.* Within ten (10) calendar days following entry of the Confirmation Order, Catholic Charities will execute and deliver to the Debtor a Stipulation for Dismissal with Prejudice (**“Dismissal Stipulation”**), the form of which is attached here to as **Exhibit B**. Except as otherwise provided in **Section 5** herein, the Debtor is not permitted to file the Dismissal Stipulation until after the Plan Effective Date. After the Plan Effective Date, the Debtor is authorized to file the Dismissal Stipulation with the State Court to effectuate dismissal of the Catholic Charities Action with prejudice.
- 4.2 *Lis Pendens.* Within ten (10) calendar days following entry of the Confirmation Order, Catholic Charities will execute, notarize, and deliver to the Debtor Discharge of Lis Pendens (**“Lis Pendens Discharge”**), the form of which is



attached here to as **Exhibit C**. Except as otherwise provided in Section 5 herein, on or after the Plan Effective Date, the Debtor is not permitted to record the Lis Pendens Discharge until after the Plan Effective Date. After the Plan Effective Date, the Debtor is authorized to record the Lis Pendens Discharge with the appropriate government authority to effectuate a discharge of the Lis Pendens.

#### **4.3** *Release.*

4.3.1 As of the Plan Effective Date, Catholic Charities will be deemed to fully, finally, absolutely, and forever release and discharge the Debtor and its present and former directors, shareholders, officers, employees, agents, representatives, attorneys, consultants, fiduciaries, predecessors, successors, assigns, affiliates, and related corporate divisions (collectively, **“Released Parties”**) from any and all actions, causes of action, claims, debts, damages, demands, liabilities, obligations, suits, judgments, executions, and expenses and any and all other claims, counterclaims, defenses, rights of set-off, demands, and liabilities whatsoever (each a **“Claim”** and collectively, **“Claims”**) of any and every character, now known or unknown, direct and/or indirect, contingent or matured, of whatever kind or nature, for or because of any matter or things done, omitted, or suffered to be done by any of the Released Parties, at law or in equity: (i) in respect of the Property and the actions or omissions of Released Parties in respect of the Property, including, but not limited to, all claims asserted or that could have been asserted in the Catholic Charities Action, and (ii) arising from events occurring prior to and including the date of this Agreement. Notwithstanding the forgoing, this release will not affect Debtor’s obligations under the Lease Amendment and Services Agreement or any other valid, binding contract between the Parties that survives the Plan Effective Date.

4.3.2 Catholic Charities understands, acknowledges, and agrees that the Debtor may assert the release in Section 4.3.1 as a full and complete defense, and as the basis for an injunction, against any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of the provisions of such release.

4.3.3 Catholic Charities agrees that no fact, event, circumstance, evidence, or transaction that could now be asserted or that may hereafter be discovered will affect in any manner the final, absolute, and unconditional nature of the release set forth in Section 4.3.1.

**4.4** *No Further Contribution.* Except as expressly provided herein, Catholic Charities will not be required to contribute any further benefits under the Plan.

**5. Transfer.** The Parties acknowledge and agree that the Debtor (i) may seek to Transfer the Property to fund the Plan and/or ensure confirmation of same, and (ii) may Transfer

the Property, at any time, including any time prior to Plan confirmation or the Plan Effective Date. To the extent the Debtor seeks to Transfer the Property prior the Plan Effective Date, notwithstanding anything to the contrary set forth in this Agreement, Catholic Charities agrees to consent to such Transfer and to take any actions that may be required by a transferee or a title company to facilitate the Transfer, including dismissing one or more counts of the Catholic Charities Action and/or canceling the Lis Pendens, subject to each of the following conditions:

- 5.1 Such Transfer does not materially affect Catholic Charities' rights under the Lease;
  - 5.2 The Debtor complies with its obligations under Section 6 herein;
  - 5.3 After notice and hearing, the Bankruptcy Court approves the sale and the determines the purchase price constitutes fair market value under the circumstances; and
  - 5.4 The sale proceeds are held by the Debtor in a segregated debtor-in-possession account, subject to Catholic Charities' continuing claims until either: (a) the Plan Effective Date; or (b) as otherwise agreed to by the Parties.
6. **Plan of Reorganization.** Any Plan proposed by the Debtor will treat Catholic Charities in accordance with, and will incorporate the terms of, this Agreement and the Approval Order. As consideration for the benefit provided to the Debtor's estate by Catholic Charities under this Agreement (including, without limitation, the benefits provided in Section 4 above), the Plan will include Catholic Charities as a Protected Party. As such, under the Plan, Catholic Charities will obtain all benefits inuring to Protected Parties thereunder, including protections under the Channeling Injunction with respect to any sexual abuse claims that have been or may be asserted against Catholic Charities. In consideration of the agreements of the Debtor herein, so long as the Plan is consistent with the terms of this Agreement and the Debtor does not act in a manner materially inconsistent with this Agreement during the Bankruptcy Case, Catholic Charities agrees to (i) support such Plan, and (ii) not interfere with (A) the Debtor's reorganization efforts, or (B) the rights of the Debtor with respect to the Property or otherwise under this Agreement.
7. **Notices.** Any notice or correspondence required to be sent under this Agreement must be forwarded by email or first class mail to the addresses set forth below (or such other address that a Party designates by written notice to the other Party), and such notice will be deemed given upon the earlier of (a) successful email transmission, or (b) two days after being deposited in the United States mail, postage prepaid and addressed as follows:

If to the Debtor:	If to Catholic Charities:
<p>Diocese of St. Cloud Attn: Joseph Spaniol 214 3rd Avenue South St. Cloud, MN 56301 E-mail: jspaniol@gw.stcdio.org</p> <p><u>With a copy to:</u></p> <p>Jason D. Curry, Esq. QUARLES &amp; BRADY LLP Two North Central Ave. Phoenix, AZ 85004-2391 E-mail: jason.curry@quarles.com</p>	<p>Catholic Charities of the Diocese of St. Cloud Attn: Stephen R. Pareja, Executive Director 911 18th Street North St. Cloud, MN 56303 Email: steve.pareja@ccstcloud.org</p> <p><u>With a copy to:</u></p> <p>Christopher W. Harmoning LATHROP GPM 1010 W. St. Germain St., Suite 500 St. Cloud, MN 56301 Email: christopher.harmoning@lathropgpm.com</p>

## 8. Miscellaneous.

- 8.1** *Amendment.* This Agreement may only be amended or modified by a written agreement signed by the Parties, and approved by the Bankruptcy Court.
- 8.2** *Waiver; Remedies Cumulative.* A waiver signed by the Debtor will be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act will not preclude the exercise or enforcement of any of the Debtor's rights or remedies.
- 8.3** *Successors and Assigns.* This Agreement will be binding upon the Parties and their respective successors and assigns. All representations and warranties contained in this Agreement will survive the execution, delivery, and performance of this Agreement.
- 8.4** *Further Assurances.* Each Party will execute and deliver such further documents and instruments and do such things as are reasonably necessary or desirable to effectuate the intent of this Agreement and to secure the benefits of all rights and remedies conferred upon the Parties by the terms of this Agreement.
- 8.5** *Governing Law.* This Agreement will be governed by and construed in accordance with the substantive laws (other than conflict laws) of the State of Minnesota.
- 8.6** *Jurisdiction.* The Bankruptcy Court will retain exclusive jurisdiction to enforce the terms of this Agreement and the Approval Order.
- 8.7** **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY LAW, THE PARTIES HERETO WAIVE TRIAL BY JURY IN RESPECT OF ANY DISPUTE RELATED TO THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY, AND VOLUNTARILY MADE BY THE

**PARTIES HERETO, AND THE PARTIES HERETO HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT. THE PARTIES HERETO ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. EACH PARTY HERETO FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**

- 8.8** *Entire Agreement.* This Agreement and the Approval Order constitute the entire agreement and understanding of the Parties with respect to subject matter hereof and supersede all prior written or oral understandings and agreements between the Parties in connection with the subject matter thereof.
- 8.9** *Severability.* If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability will not affect other provisions or applications of this Agreement that can be given effect and this Agreement will be construed as if the unlawful or unenforceable provision or application had never been contained in this Agreement or prescribed by this Agreement.
- 8.10** *Interpretation; Headings.* No provision of this Agreement will be interpreted or construed against any Party because that Party or its legal representative drafted that provision. Each of the Parties hereto will be deemed to have drafted this Agreement. Any rule of law providing that ambiguities, inconsistencies, and the like will be construed against the drafter of a document will not apply to this Agreement. The titles of the Sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.
- 8.11** *Time.* Time and strict performance are of the essence of this Agreement.
- 8.12** *Authorized.* This Agreement has been duly and validly authorized by all necessary action on the part of the Parties.
- 8.13** *Counterparts.* This Agreement may be executed in any number of counterparts, each of which will constitute an original, but which counterparts together will constitute one and the same instrument. Unless the Debtor otherwise requires, a

person's photocopied, digital, or pdf signature will be deemed that person's original signature and will be binding for all purposes.

**[SIGNATURES FOLLOW ON THE NEXT PAGE]**

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement as of the date first above written.

**THE DIOCESE OF ST. CLOUD**, a Minnesota religious corporation,

By: Donald J. Kettler  
Name: Donald J. Kettler  
Its: President

By: Jane M. Marrin  
Name: Jane M. Marrin  
Its: Secretary

Settlement Agreement

**CATHOLIC CHARITIES OF THE  
DIOCESE OF ST. CLOUD**, a Minnesota non-  
profit corporation

By: 

Name: Stephen R. Pareja

Its: Executive Director

**EXHIBIT A**

(Form of Approval Order)



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

---

In re:

Chapter 11

THE DIOCESE OF ST. CLOUD, a Minnesota religious corporation,

Case No. 20-60337

Debtor.

---

**ORDER (I) GRANTING EXPEDITED RELIEF, (II) APPROVING  
SETTLEMENT AGREEMENT, AND (III) APPROVING LEASE  
AMENDMENT AND SERVICES AGREEMENT**

---

This matter is before the court on the *Motion for an Order (I) Granting Expedited Relief, (II) Approving Settlement Agreement, and (III) Approving Lease Amendment and Services Agreement*. Based on the motion and the file,

IT IS ORDERED:

1. The expedited relief sought in the motion is granted.
2. The settlement agreement and the lease amendment and services agreement are approved.
3. The debtor is authorized to take all actions and execute and deliver all documents, instruments, and agreements consistent with the settlement agreement and the lease amendment and services agreement that it deems necessary and appropriate.
4. Notice of the motion, as provided therein, shall be deemed good and sufficient and the requirements of Fed. R. Bankr. P. 6004(a) and the Local Rules are satisfied by such notice.

5. Notwithstanding Fed. R. Bankr. P. 6004(h), this order is effective immediately.

DATED:

---

ROBERT J. KRESSEL  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT B**

(Form of Dismissal Stipulation)

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF STEARNS

SEVENTH JUDICIAL DISTRICT

---

Catholic Charities of the Diocese  
of St. Cloud,

Case Type: Other Civil  
Court File No.: 73-CV-18-5584  
District Court Judge Shan C. Wang

Plaintiff,

vs.

**STIPULATION FOR DISMISSAL  
WITH PREJUDICE**

The Diocese of St. Cloud,

Defendant.

---

IT IS HEREBY STIPULATED AND AGREED, by and among the parties hereto, by their respective undersigned attorneys, that the above-entitled action against Defendant be dismissed with prejudice and without costs or disbursements to any party.

LATHROP GPM

Dated: \_\_\_\_\_, 2020

---

Christopher W. Harmoning, #285948  
1010 West Saint Germain, Suite 500  
St. Cloud, Minnesota 56301  
Telephone: (320) 252-4414  
christopher.harmoning@lathropgpm.com

*Attorneys for Plaintiff*

MEIER, KENNEDY & QUINN, CHARTERED

Dated: \_\_\_\_\_, 2020

---

Thomas B. Wieser, #122841  
John C. Gunderson, #210833  
Attorneys for Defendant  
Suite 2200, Town Square Tower  
445 Minnesota Street  
St. Paul, Minnesota 55101-2137  
Telephone: (651) 228-1911  
TWieser@mkqlaw.com  
JGunderson@mkqlaw.com

Thomas A. Janson, #150360  
JANSON LAW OFFICE  
P.O. Box 795  
St. Joseph, Minnesota 56374  
Telephone: (320) 251-9500  
*tom@jansonlawoffice.com*

***Attorneys for Defendant***

F:\HOME\CLIENTS\9113.92\pl\2006 Stipulation for Dismissal.docx

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF STEARNS

SEVENTH JUDICIAL DISTRICT

---

Catholic Charities of the Diocese  
of St. Cloud,

Case Type: Other Civil  
Court File No.: 73-CV-18-5584  
District Court Judge Shan C. Wang

Plaintiff,

vs.

**ORDER FOR DISMISSAL  
WITH PREJUDICE**

The Diocese of St. Cloud,

Defendant.

---

Pursuant to the Stipulation for Dismissal, IT IS HEREBY ORDERED that the  
above-entitled action is hereby dismissed with prejudice and without costs or  
disbursements to any party.

There being no just reason for delay, LET JUDGMENT BE ENTERED  
ACCORDINGLY.

BY THE COURT

---

The Honorable Shan C. Wang  
Judge of District Court

**EXHIBIT C**

(Form of Lis Pendens Discharge)

(Top 3 inches reserved for recording data)

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**DISCHARGE OF NOTICE OF LIS PENDENS**

State of Minnesota  
County of Stearns

DISTRICT COURT  
Seventh Judicial District  
Court File Number 73-CV-18-5584

Catholic Charities of the Diocese of St. Cloud,

Plaintiff

vs.

**DISCHARGE OF NOTICE OF LIS PENDENS**

The Diocese of St. Cloud,

Defendant

The undersigned Catholic Charities of the Diocese of St Cloud does hereby certify that the Notice of Lis Pendens recorded on July 9, 2018, as Document Number 1524168, in the Office of the ☒ County Recorder ☐ Registrar of Titles of Stearns County, Minnesota, is hereby discharged.



\_\_\_\_\_  
*(signature of Attorney for Plaintiff(s))*

Christopher W. Harmoning, #0285948  
Lathrop GPM LLP  
1010 W St. Germain, STE 500  
St. Cloud, MN 56301

State of Minnesota, County of Stearns

This instrument was acknowledged before me on \_\_\_\_\_, \_\_\_\_\_, 2020 by Christopher W. Harmoning.

(Stamp)

\_\_\_\_\_  
*(signature of notarial officer)*

Title (and Rank): \_\_\_\_\_

My commission expires: \_\_\_\_\_  
*(month/day/year)*

THIS INSTRUMENT WAS DRAFTED BY:

John C. Gunderson  
Meier, Kennedy & Quinn, Chtd  
Suite 2200, Town Square Tower  
445 Minnesota Street  
St. Paul, MN 55101-2137  
651-228-1911  
JGunderson@mkqlaw.com

# **EXHIBIT B**

## **LEASE AMENDMENT AND SERVICES AGREEMENT**

This Lease Amendment and Services Agreement (the “**Agreement**”) is dated as of September 15, 2020, but upon satisfaction of the conditions precedent herein, made effective as of July 1, 2020, (the “**Effective Date**”). The Agreement is entered into by and between THE DIOCESE OF ST. CLOUD, a Minnesota religious corporation (“**Landlord**”) and CATHOLIC CHARITIES OF THE DIOCESE OF ST. CLOUD, Minnesota nonprofit corporation (“**Tenant**”).

### **RECITALS**

- A.** Landlord and Tenant have previously entered into that certain *Lease* dated as of January 1, 1999 (as amended and modified from time to time, the “**Lease**”), by which Landlord leased to Tenant portions of the following-described real property, together with certain of the improvements located thereon:

Lots 1 and 2, Block 1, Busch Terrace 2, Stearns County, Minnesota

(as more particularly described in the Lease, the “**Property**”).
- B.** Specifically, the portions of the Property leased to Tenant include portions known as the (a) garage and maintenance area, and IT Room (“**Maintenance Premises**”); and (b) the Old Cottage #2, (“**Cottage Premises**”, and together with the Maintenance Premises, the “**Leased Premises**”).
- C.** Through a separate lease, Landlord currently leases a portion of the Property (the “**Secure Facility**”) to District 742 Community Schools (the “**School District**”) to operate a school.
- D.** Landlord owns but does not lease all other portions of the Property (the “**Unleased Premises**”, together with the Secured Facility, the “**Non-Tenant Property**”). A map marking the various Leased Premises and Non-Tenant Property is attached hereto as **Schedule 1**.
- E.** On April 9, 2020, the Landlord provided written notice of termination of the Lease to the Tenant (the “**Termination Notice**”).
- F.** On June 15, 2020, Landlord filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Minnesota (the “**Bankruptcy Court**”), thereby commencing Case No. 20-60337 (the “**Bankruptcy Case**”). The Property and the Lease are subject to Bankruptcy Court jurisdiction, and Bankruptcy Court approval of this Agreement is a condition precedent to its effectiveness.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the promises, agreements, provisions, and covenants contained herein, the parties agree as follows:

## AGREEMENT

1. **Recitals; Acknowledgements.** Each of the parties hereby acknowledge and agree that all of the Recitals set forth above are true and correct and, by this reference, are incorporated into and made a part of the body of this Agreement.
2. **Conditions Precedent.** This Agreement will become effective as of July 1, 2020 on the date that each of the following are fully satisfied:
  - 2.1 Each of the Parties has fully executed this Agreement; and
  - 2.2 The Bankruptcy Court has entered an order approving this Agreement, substantially in form and substance acceptable to the parties in all respects, and such order has become a final, non-appealable, and binding order.
3. **Waiver and Lease Amendments.** The following provisions apply to and amend, as applicable, the Lease.
  - 3.1 **Waiver of Termination.** Landlord waives and withdraws the Termination Notice. Upon satisfaction of the Conditions Precedent, the Lease will be deemed not to have terminated as a result of the Termination Notice.
  - 3.2 **Lease Amendments.** Effective upon the satisfaction of the Conditions Precedent, the Lease is hereby amended, modified, and supplemented to incorporate the following, which such provisions will supersede and prevail over any conflicting provisions of the Lease:
    - 3.2.1 Section 1 of the Lease is hereby amended and restated to read as follows:

**“Description of the Leased Premises.** Landlord leases to Tenant those portions of the Property described and known as (a) garage and maintenance area, IT Room (“**Maintenance Premises**”); and (b) Old Cottage #2, (“**Cottage Premises**”, and together with the Maintenance Premises, the “**Leased Premises**”). For purposes of the computation of the Base Rent under the Lease, the Leased Premises consist of 11,325 square feet.”
    - 3.2.2 Section 2 of the Lease is hereby amended and restated to read as follows:

**“Term.** Subject to the provisions of Sections 13 and 16 of the Lease, the term of this Lease is one (1) year, commencing on July 1, 2020 and ending on June 30, 2021.”
    - 3.2.3 Section 3 of the Lease is hereby amended and restated to read as follows:

**“Base Rent.** Commencing on July 10, 2020 and continuing on the 10th day of each month thereafter throughout the term of the Lease, Tenant will pay Landlord monthly rent in the amount of \$3,775.00 (the “**Base Rent**”). Notwithstanding the foregoing, Tenant may elect to pay its Base Rent, in whole or in part, by offset in accordance with Section 4.2.3 of the *Services Agreement* between Landlord and Tenant.”

3.2.4 Section 4 of the Lease is hereby amended and restated to read as follows:

**“Use of the Premises.** Tenant may use the Leased Premises only to provide children’s social services, adult social services, and related administrative and support services. Tenant will restrict its use to such purposes and will not use or permit the use of the Leased Premises for any other purposes, without the written consent of the Landlord.”

3.2.5 Section 6 of the Lease is hereby amended and restated to read as follows:

**“Utilities and Operating Expenses.**

- (a) Utilities. In addition to Base Rent, commencing on July 10, 2020 and continuing on the 10th day of each month thereafter throughout the term of the Lease, Tenant will pay Landlord monthly installments of \$1,336.00 as Tenant’s share of gas, electricity, and insurance for the Leased Premises (the **“Leased Premises Expenses”**).
- (b) Repair and Maintenance of Leased Premises. Tenant will be solely responsible for all repairs, maintenance, and grounds maintenance for the Lease Premises.”

3.2.6 Section 13 of the Lease is hereby amended and restated to read as follows:

**“Automatic Renewal/Termination.** The following provisions will apply to automatic term extensions:

- 13.1 Unless terminated earlier in accordance with Section 16 of the Lease and subject to the provisions of this Section 13, the Lease term will automatically be extended for terms of one (1) year from the date of expiration of the initial term or from the date of expiration of the extended term, as the case may be, without the execution of any further Lease or instrument.
- 13.2 Each renewed term under this Section 13 will be governed by the same terms and conditions as provided in this Lease, except that the Base Rent due during the additional term(s) will be adjusted based on changes in the Consumer Price Index. The **“Consumer Price Index”** means the average for “all items” shown on the “United States city average for urban wage earners and clerical workers, all items, groups, subgroups, and special groups of items as promulgated by the Bureau of Labor Statistics of the United States Department of Labor” using the year 1993, as a base of 100.
- 13.3 Notwithstanding the forgoing or any other provision of the Lease, any party may terminate this Lease by notifying the other party in writing of such termination at least one (1) month prior to the expiration of the initial term and at least one (1) month prior to the expiration of any extended term.”

13.4 For the avoidance of doubt, unless Section 13.3 of the Lease applies and without altering any rights under Section 16 of the Lease, any party can terminate the Lease at any time for any reason by providing written notice three (3) months in advance of such termination.”

3.2.7 Tenant’s address in Section 21.1 of the Lease is hereby amended and restated to read as follows:

“To Tenant: 911 18th Street North  
St. Cloud, MN 56303”

3.3 **Non-Impairment.** Except as expressly provided herein, nothing in this Agreement will alter or affect any provision, condition, or covenant contained in the Lease, it being the intent of the parties hereto that the provisions of the Lease will continue in full force and effect except as expressly modified hereby.

4. **Services Agreement.** In addition to the Lease, the parties desire to enter into a services agreement (the “**Services Agreement**”) on the following terms:

4.1 **Remaining Premises Repair and Maintenance.** As set forth in Section 6(b) of the Lease, Tenant is solely responsible for all repairs, maintenance, and grounds maintenance for the Leased Premises. In addition, unless terminated early as set forth herein, during the term of the Lease, Tenant agrees to repair and maintain the improvements and grounds of the Non-Tenant Property (all such repairs and maintenance services performed in connection with the Non-Tenant Property will be referred to herein as the “**Maintenance Services**”). The Maintenance Services include, but are not limited to, the following:

4.1.1 Maintaining, repairing, and keeping in good operating condition the heating, ventilation, and air-conditioning system;

4.1.2 Maintaining, repairing, and keeping in good operating condition the interior and exterior of all buildings and improvements located on the Non-Tenant Property; and

4.1.3 General grounds-keeping and snow removal on the Property.

4.2 **Reimbursement.** Landlord will compensate and reimburse Tenant for the Maintenance Services as follows:

4.2.1 Invoices. On the 15th day of each month during the Lease term, Tenant will submit to Landlord the following (collectively, the “**Invoices**”):

4.2.1.1 Timesheets, in form and detail satisfactory to Landlord, evidencing the total hours each of Tenant’s employees spent on Maintenance Services during the prior month (“**Timesheets**”). The Timesheets must include, among other information, the name of the employee, the date of the services, the hours worked on such services each day, and a brief description of the services performed; and

4.2.1.2 Receipts, evidencing all reasonable and necessary expenses paid by Tenant in performing Maintenance Services during the prior month (“**Expense Receipts**”).

4.2.2 Maintenance Service Payments. Within ten (10) days following Landlord’s approval of an Invoice, Landlord will pay to Tenant the following amounts (collectively, the “**Service Payments**”):

4.2.2.1 During the period July 1, 2020 through December 31, 2020, Landlord will pay to Tenant \$50 for each approved regular weekday business hour and \$75 for each approved overtime and weekend hour, as reflected in a timely submitted Invoice;

4.2.2.2 During the period January 1, 2021 through the term of the Lease, Landlord will pay to Tenant \$55 for each approved regular weekday business hour and \$82.50 for each approved overtime and weekend hour, as reflected in a timely submitted Invoice; and

4.2.2.3 Landlord will reimburse Tenant 100% of its approved and timely submitted Expense Receipts.

4.2.3 Setoff Rights. Tenant may elect to receive one or more Service Payments by offsetting the Base Rent due in the month(s) immediately following the due date of a Service Payment. To exercise such election, Tenant must notify Landlord in writing at least ten (10) calendar days prior to the due date the applicable Service Payment or the due date of the applicable Base Rent, whichever is earlier.

4.3 **Termination of the Services Agreement.** Regardless of the Lease, the Services Agreement may be terminated by either party as follows:

4.3.1 Automatically ten (10) calendar days following written notice of default under the Services Agreement by any party;

4.3.2 Automatically thirty (30) days following written notice of termination for any reason; and

Provided, however, that a termination of the Services Agreement will not operate to terminate or alter the Lease in any way, except with respect to Tenant’s setoff rights set forth in Section 4.2.3 above.

4.4 **Miscellaneous.**

4.4.1 The parties incorporate the Section 21.1 of the Lease into this Services Agreement.

4.4.2 This Services Agreement will be binding upon the parties and their respective successors and assigns.

- 4.4.3 This Services Agreement will be governed by and construed in accordance with the substantive laws (other than conflict laws) of the State of Minnesota.
- 4.4.4 Time is of the essence with respect to the Services Agreement.
- 4.4.5 In any action brought or arising out of the Services Agreement, parties hereby consent to the jurisdiction of any federal or state court having proper venue within the State of Minnesota and also consent to the service of process by any means authorized by Minnesota or federal law; *provided, however, that* while the Bankruptcy Case is pending, the Bankruptcy Court will have exclusive jurisdiction to enforce and interpret the provisions of the Services Agreement.
- 4.4.6 **WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY LAW, THE PARTIES HERETO WAIVE TRIAL BY JURY IN RESPECT OF ANY DISPUTE RELATED TO THIS SERVICES AGREEMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY, AND VOLUNTARILY MADE BY THE PARTIES HERETO, AND THE PARTIES HERETO HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS SERVICES AGREEMENT. THE PARTIES HERETO ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. EACH PARTY HERETO FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS SERVICES AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**
- 4.4.7 The headings used in this Services Agreement are for convenience only and will be disregarded in interpreting the substantive provisions of this Services Agreement.
- 4.4.8 If any provision of this Services Agreement will be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion will be deemed severed from this Services Agreement and the remaining parts will remain in full force as though the invalid, illegal, or unenforceable portion had never been a part thereof.
- 4.4.9 This Services Agreement constitutes the entire agreement and understanding of the parties with respect to subject matter hereof and



supersede all prior written or oral understandings and agreements between the parties in connection with the subject matter hereof.

5. **Execution in Counterparts.** To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It will not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts will collectively constitute a single document. It will not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages. Signatures delivered electronically, via facsimile or pdf, will bind the parties signing.
6. **Reservation of Rights.** Nothing set forth this Agreement will alter or amend any provision of the *Settlement Agreement* between Landlord and Tenant dated September 15, 2020. This Agreement is contemplated by the Settlement Agreement, and is entered into in furtherance of the Settlement Agreement.

[SIGNATURES ON FOLLOWING PAGE. REMAINDER OF THIS PAGE LEFT BLANK  
INTENTIONALLY.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**THE DIOCESE OF ST. CLOUD**, a  
Minnesota religious corporation,

By: 

Name: Joseph Spaniol

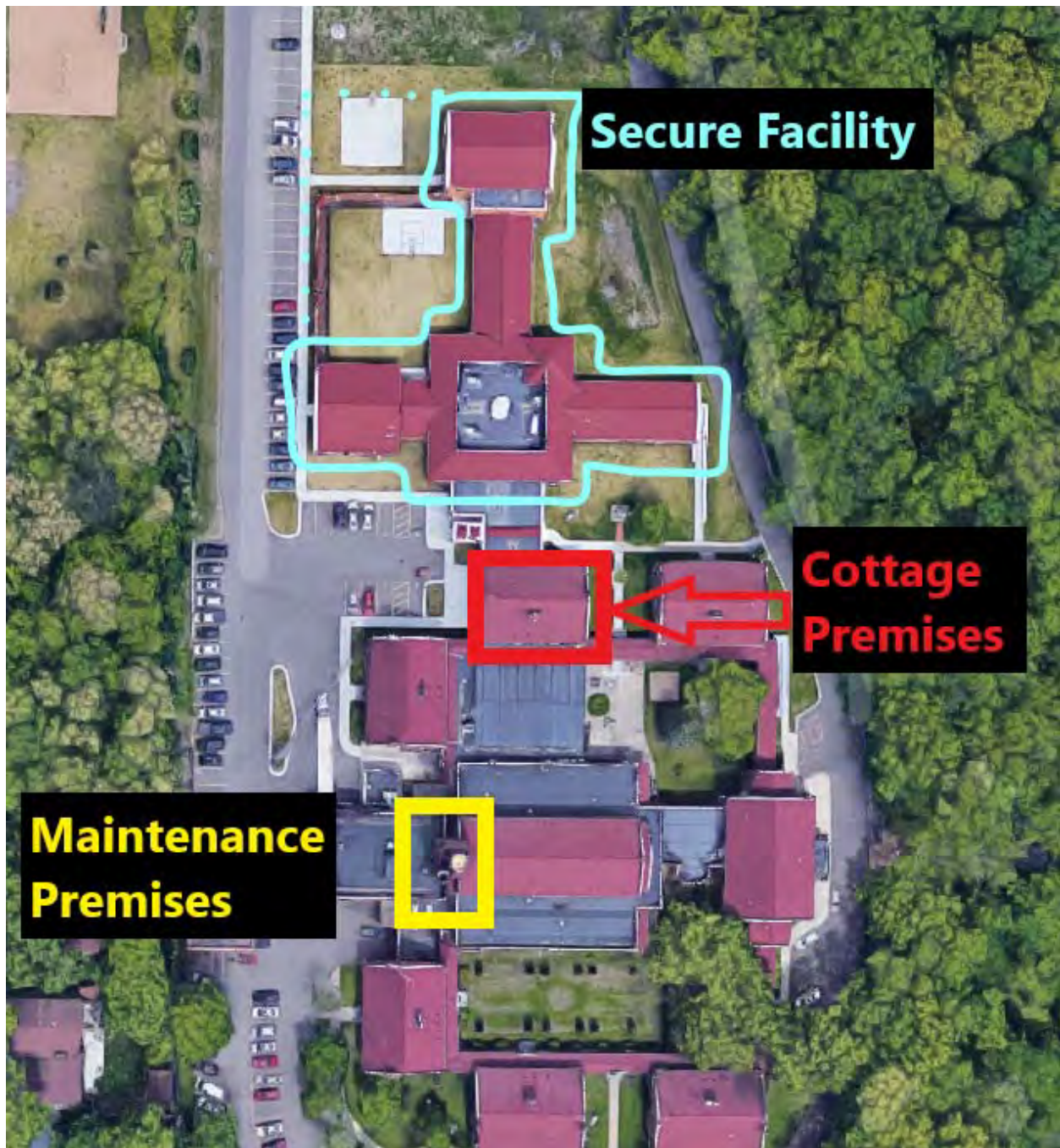
Its: Finance Officer

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**CATHOLIC CHARITIES OF THE  
DIOCESE OF ST. CLOUD**, a Minnesota  
non-profit corporation

By:   
Name: Stephen R. Pareja  
Its: Executive Director

**Schedule 1**  
(Map)



# **EXHIBIT C**



LEASE

Lease made effective January 1, 1999, between [redacted] a corporation formed pursuant to § 315.16 of the Minnesota Statutes, [redacted] and The Catholic Charities of the Diocese of St. Cloud, a non-profit corporation organized under the laws of the State of Minnesota, herein referred to as Tenant.

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Description of Premises. Landlord leases to Tenant the premises located in the City of St. Cloud, County of Stearns, State of Minnesota, and described on the attached Exhibit A. As used herein, the term "premises" refers to the real property above described and to any improvements located thereon from time to time during the term hereof.

2. Term. The term of this lease is One (1) year, beginning on January 1, 1999, and terminating on December 31, 1999, subject to the provisions of Section 13 below.

3. Rent. The total base rent under this lease is \$102,204.00. Tenant shall pay the Landlord that amount in installments of \$8,517.00 each month, beginning on January 10, 1999, with succeeding payments due on the 10th day of each month thereafter during the term of the lease, and until the total rent is paid in full.

4. Use of the Premises. The premises are to be used for the purposes of providing children's social services. Tenant shall restrict its use to such purposes and shall not use or permit the use of the premises for any other purpose without the written consent of the Landlord.

5. Improvements, Alterations and Repair.

5.1 Subject to the limitation that no substantial portion of the building on the demised premises shall be demolished or removed by Tenant without the prior written consent of Landlord, and, if necessary, of any Mortgagee, Tenant may at any time during the Lease term, subject to the conditions set forth below and at its own expense, make any alterations, additions, or improvements in and to the demised premises and the building. Alterations shall be performed in a workmanlike manner and shall not weaken or impair the structural strength, or lessen the value, of the building on the premises, or change the purposes for which the building, or any part thereof, may be used.

5.2 Conditions with respect to alterations, additions, or improvements are as follows:

- 5.2.1 Before commencement of any work, all plans and specifications shall be filed with and approved by all governmental departments or authorities having jurisdiction and any public utility company having an interest therein, and all work shall be done in accordance with requirements of local regulations. The plans and specifications for any alterations estimated to cost \$5,000.00, or more, shall be submitted to Landlord for written approval prior to commencing work.
- 5.2.2 Prior to commencement of any work, Tenant shall pay the amount of any increase in premiums on insurance policies provided for herein because of endorsements to be made covering the risk during the course of the work.
- 5.3 All alterations, additions, and improvements on or in the demised premises at the commencement of the term, and that may be erected or installed during the term, shall become part of the demised premises and the sole property of Landlord, except that all moveable trade fixtures installed by Tenant shall be and remain the property of Tenant.
- 5.4 Tenant shall, at all times during the lease and at Lessee's own cost and expense, repair, replace, and maintain in a good, safe, and substantial condition, all buildings and all parts thereof, including, without limitation, replacement of the plumbing, electrical and heating systems, the structural portions of the buildings and foundations, roofs and sidewalks, and any improvements, additions, and alterations thereto, on the demised premises, and shall use all reasonable precaution to prevent waste, damage, or injury to the demised premises.
- 5.5 If any mechanic's or material men's lien, or similar lien, is filed against the premises as a result of Tenant's failure to make such payments required for repairs, alterations or improvements of any kind, Tenant shall have the lien discharged within ninety days or, in the alternative, post security for the payment of the lien as required by the provisions of § 514.10 of the Minnesota Statutes concerning the foreclosure of liens, for the purpose of having the premises released from the lien.
- 5.6 Tenant shall provide an annual written report of all repairs to the premises, including repairs by staff maintenance department of the Tenant.

6. Utilities. All applications and connections for necessary utility services on the demised premises shall be made in the name of Tenant only, and Tenant shall be solely liable for utility charges as they become due, including those for gas, electricity, and telephone services.



7. Taxes and Assessments.

- 7.1 Tenant shall pay and discharge when due, as part of the rental of the demised premises, all real estate taxes and installments of assessments levied against the demised premises and due during the term of this lease. Payment shall be made by delivering to the Landlord a draft or check payable to the taxing authority ten days before payment is due. Landlord shall have the right at all times during the term of this lease to pay all such real estate taxes and assessments and the amount paid, shall be additional rent due from the Tenant at the next rent due date after any such payment with interest thereon at the rate then being charged by a depository of the Landlord for commercial loans, from the date of payment by Landlord until the repayment thereof by Tenant. It is understood and agreed that if the Landlord shall exercise this option, it shall not be obligatory on Landlord to inquire into the validity of any such tax or assessment. Taxes and installments due the first and last year of the lease term shall be prorated.
- 7.2 Tenant shall have the right to contest the validity of any tax or special assessment payable by Tenant which it deems to have been illegally levied or assessed against the demised premises, and for that purpose shall have the right to institute such proceeding or proceedings in the name of Landlord as Tenant shall deem necessary, provided that the expenses incurred by reason thereof shall be paid by Tenant, and provided, further, that it is necessary to use the name of Landlord in carrying on such proceedings. If the nature of proceedings allows Tenant to withhold all or any portion of the tax due, the amount so withheld shall be paid to Landlord and held in escrow until the legal proceedings have ended.

8. Insurance.

- 8.1 During the term of the Lease and for any further time than Tenant shall hold the demised premises, Tenant shall obtain and maintain at his expense the following types of amounts of insurance:
- 8.1.1 Fire Insurance. Tenant shall keep all buildings, improvements, and equipment on the demised premises, including all alterations, additions, and improvements, insured against loss or damage by fire, with all standard extended coverage that may be required by any first mortgagee. The insurance shall be in an amount sufficient to prevent Landlord and Tenant from becoming co-insurers under provisions of applicable policies of insurance, but in any event in an amount not less than 100 percent of the full insurable value of the demised premises,

excluding the cost of excavation and of foundations. If at any time there is a dispute as to the amount of such insurance, the same shall be settled by arbitration.

- 8.1.2 Personal Injury and Property Damage Insurance. Insurance against liability for bodily injury and property damage in an amount of not less than \$500,000.00 for injury or death to a person, and not less than \$500,000.00 for injury or death resulting from any one accident, and \$100,000.00 for property damage in anyone accident, provided that these amounts of insurance may be satisfied by an excess coverage policy.
  - 8.1.3 Other Insurance. Tenant shall provide and keep in force other insurance in amounts that may from time to time be required by Landlord against other insurable hazards as are commonly insured against for the type of business activity that Tenant will conduct.
  - 8.2 All insurance provided by Tenant as required by this section shall be carried in favor of Landlord and Tenant as their respective interests may appear, and in the case of insurance against damage to the demised premises by fire or other casualty, shall provide that loss, if any, shall be adjusted with and be payable to Landlord. If requested by Landlord, any insurance against fire or other casualty shall provide that loss shall be payable to the holder under a standard mortgage clause. All insurance shall be written with responsible companies that Landlord shall approve. All policies shall require 30 days' notice by registered mail to Landlord of any cancellation or change affecting any interest of Landlord.
9. Condemnation. The rights and duties in the event of condemnation are as follows:
- 9.1 If the whole of the demised premises shall be taken or condemned by any competent authority for any public or quasi-public use or purpose, this Lease shall cease and terminate as of the date on which title shall vest thereby in that authority, and the rent reserved hereunder shall be apportioned and paid up to that date.
  - 9.2 If only a portion of the demised premises shall be taken or condemned, this Lease and the term hereof shall not cease or terminate, but the rent payable after the date on which Tenant shall be required to surrender possession of such portion shall be reduced in proportion to the decreased use suffered by Tenant as the parties may agree or by arbitration as provided herein.
  - 9.3 In the event of any taking or condemnation in whole or in part, the entire

resulting award of consequential damages shall belong to Landlord without any deduction therefrom for the value of the unexpired term of this Lease or for any other estate or interest in the demised premises now or later vested in Tenant. Tenant assigns to Landlord all his right, title and interest in any and all such awards.

- 9.4 In the event of a partial taking, Tenant shall promptly proceed to restore the remainder of the building on the demised premises to a self-contained architectural unit, and Landlord shall pay to Tenant the cost of restoration but in no event to exceed a sum equal to the amount of the separate award made to and received by Landlord for consequential damages. In the event there is no separate award for consequential damage, the value shall be fixed and settled by arbitration as herein provided. The balance of any separate award or allocated amount not so used shall belong to and be retained by Landlord as its sole property.
- 9.5 In case of any governmental action not resulting in the taking or condemnation of any portion of the demised premises but creating a right to compensation therefor, or if less than a fee title to all or any portion of the demised premises shall be taken or condemned by any governmental authority for temporary use or occupancy, this Lease shall continue in full force and effect without reduction or abatement of rent, and the rights of the parties shall be unaffected by the other provisions of this section, but shall be governed by applicable law.

10. Landlord's Right of Entry. Tenant shall permit Landlord, its agents and other employees, to have access to and to enter the leased premises at all reasonable and necessary times to inspect the premises for any purpose connected with the repair, improvement, care and management of the premises, or for any other purpose reasonably connected with the Landlord's interest in the premises and to perform any work or other act found necessary on such inspection.

11. Subordination to Mortgage. This Lease and all rights of Tenant hereunder shall be subject and subordinate to the lien of any and all mortgages that may now or hereafter affect the demised premises, or any part thereof, and to any and all renewals, modifications, or extensions of any such mortgages. Tenant shall on demand execute, acknowledge, and deliver to Landlord, without expense to Landlord, any and all instruments that may be necessary or proper to subordinate this Lease and all rights therein to the lien of any such mortgage or mortgages and each renewal, modification, or extension, and if Tenant shall fail at any time to execute, acknowledge, and deliver any such subordination instrument, Landlord in addition to any other remedies available in consequence thereof, may execute, acknowledge, and deliver the same as Tenant's attorney in fact and in Tenant's name. Tenant hereby irrevocably makes, constitutes, and appoints Landlord, its successors and assign, his attorney in fact for that purpose.

12. Transferring or Encumbering Interest. Tenant shall not assign this lease or any interest herein, or sublet the demised premises or any part thereof or any right or privilege appurtenant thereto, nor allow any person to occupy or use the premises or any part thereof, without first obtaining the Landlord's written consent. Landlord's consent to any one assignment, sublease, or occupancy or use shall not be a consent to any subsequent assignment or sublease or occupancy or use. Any unauthorized assignment or sublease shall be void and shall be grounds for termination of the lease at Landlord's option.

13. Automatic Renewal. This lease will be automatically renewed for an additional term of one year, unless terminated as noted below. Each new term will be on the same terms and conditions as provided in this lease except that the rent shall be adjusted as follows: The rent specified in this lease shall be subject to increase in accordance with changes in the Consumer Price Index or Four (4%) percent, whichever is greater. The Consumer Price Index shall mean the average for "all items" shown on the "United States city average for urban wage earners and clerical workers, all items, groups, subgroups, and special groups of items as promulgated by the Bureau of Labor Statistics of the United States Department of Labor" using the year 1993 as a base of 100.

13.1 This lease shall automatically be renewed for terms of one (1) year from the date of expiration of the initial term or from the date of expiration of each renewed term, as the case may be, without the execution of any further lease or instrument, subject to the provisions of this § 13.

13.2 At least 2 months prior to the expiration of the initial term and at least 2 months prior to the expiration of any renewed term, Tenant shall notify Landlord in writing of the election to terminate this lease.

13.3 Rent for any renewed term shall be increased in accordance with the CPI or percentage of increase noted at the beginning of this section.

14. Indemnity. Tenant shall indemnify Landlord against all expenses, liabilities, and claims of every kind, including reasonable attorney's fees, incurred by Landlord, brought or made by or on behalf of any person or entity arising out of either (1) a failure by Tenant to perform any of the terms or conditions of this Lease, (2) any injury or damage happening on or about the demised premises, (3) failure to comply with any law of any governmental authority, or (4) any mechanic's lien or security interest filed against the demised premises or equipment, materials, or alterations of buildings or improvements thereon.

15. Default. Each of the following events shall constitute a default of this Lease by Tenant:

15.1 If Tenant shall fail to pay Landlord any rent or additional rent when the rent shall become due.

15.2 If Tenant shall fail to perform or comply with any of the conditions of this

Lease and if the nonperformance shall continue for a period of 10 days after notice thereof by Landlord to Tenant or, if the performance cannot be reasonably had within the 10-day period, Tenant shall not in good faith have commenced performance within the 10-day period and shall not diligently proceed to completion of performance.

15.3 If Tenant shall vacate or abandon the demised premises.

15.4 If this Lease or the estate of Tenant hereunder shall be transferred to or shall pass to or devolve on any other person or party, except in the manner herein permitted.

16. Effect of Default. In the event of any default hereunder, as set forth in Section 14.0 above, the rights of Landlord shall be as follows:

16.1 Landlord shall have the right to cancel and terminate this Lease, as well as all of the right, title and interest of Tenant hereunder, by giving to Tenant not less than 10 days' notice of the cancellation and termination. On expiration of the time fixed in the notice, this Lease and the right, title, and interest of Tenant hereunder, shall terminate in the same manner and with the same force and effect, except as to Tenant's liability, as if the date fixed in the notice of cancellation and termination were the end of the term herein originally determined.

16.2 Landlord may elect, but shall not be obligated, to make any payment required of Tenant herein or comply with any agreement, term, or condition required hereby to be performed by Tenant, and Landlord shall have the right to enter the demised premises for the purpose of correcting or remedying any such default and to remain until the default has been corrected or remedied, but any expenditure for the correction by Landlord shall not be deemed to waive or release the default of Tenant or the right of Landlord to take any action as may be otherwise permissible hereunder in the case of any default.

16.3 Landlord may re-enter the premises immediately and remove the property and personnel of Tenant, and store the property in a public warehouse or at a place selected by Landlord, at the expense of Tenant. After re-entry, Landlord may terminate the Lease on giving 10 days' written notice of termination to Tenant. Without the notice, re-entry will not terminate the Lease. On termination, Landlord may recover from Tenant all damages proximately resulting from the breach, including the cost of recovering the premises, and the worth of the balance of this Lease over the reasonable rental value of the premises for the remainder of the Lease term, which sum shall be immediately due Landlord from Tenant.

16.4 After re-entry, Landlord may re-let the premises or any part thereof for any term without terminating the Lease, at the rent and on the terms as Landlord may choose. Landlord may make alterations and repairs to the premises. The duties and liabilities of the parties if the premises are re-let as provided herein shall be as follows:

16.4.1 In addition to Tenant's liability to Landlord for breach of the Lease, Tenant shall be liable for all expenses of the re-letting, for the alterations and repairs made, and for the difference between the rent received by Landlord under the new Lease agreement and the rent installments that are due for the same period under this Lease.

16.4.2 Landlord shall have the right, but shall not be required, to apply the rent received from re-letting the premises (1) to reduce the indebtedness of Tenant to Landlord under the Lease, not including indebtedness for rent, (2) to expenses of the re-letting and alterations and repairs made, (3) to rent due under this Lease, or (4) to payment of future rent under this Lease as it becomes due.

16.4.3 After re-entry, Landlord may procure the appointment of a receiver to take possession and collect rents and profits of the business of Tenant, and, if necessary to collect the rents and profits. The receiver may carry on the business of Tenant and take possession of the personal property used in the business of Tenant, including inventory, trade fixtures, and furnishings, and use them in the business without compensating Tenant. Proceedings for appointment of a receiver by Landlord, or the appointment of a receiver and the conduct of the business of Tenant by the receiver, shall not terminate and forfeit this Lease unless Landlord has given written notice of termination to Tenant as provided herein.

17. Destruction of Premises. In the event of a partial destruction of the premises during the term from any cause, Lessee shall forthwith repair the same, provided the repairs can be made within 30 days under the laws and regulations of applicable governmental authorities. Any partial destruction shall neither annul nor void this Lease, except that Tenant shall be entitled to a proportionate reduction of rent while the repairs are being made, any proportionate reduction being based on the extent to which the making of repairs shall interfere with the business carried on by Tenant in the premises. If the repairs cannot be made in the specified time, Landlord may, at Landlord's option, make repairs within a reasonable time, this Lease continuing in full force and effect and the rent to be proportionately rebated as previously set forth in this section. In the event that Landlord does not elect to make repairs that cannot be made in the specified time, or those repairs cannot be made under the laws and regulations of the applicable governmental authorities, this Lease may be terminated at the option of either party. Any dispute between Landlord and Tenant relative

to the provisions of this section shall be subject to arbitration as provided herein.

18. Arbitration. Any controversy which, by the terms of this lease, is to be determined by arbitration, shall be submitted to arbitration under the laws of the State of Minnesota. The expenses of arbitration will be shared equally between the Landlord and the Tenant. The decision or award may be entered in any court having jurisdiction.

19. St. Cloud Childrens' Home Account. Upon receipt of each basic rent payment, Landlord agrees to deposit 50% into a separate interest bearing account which shall be known as the "S.C.C.H Renovation Fund". At all times this fund is the sole property of and subject to the control of Landlord. It is the intent that this fund shall be available for repair, maintenance and construction, required by Tenant as provided in 5.0 above, subject to the approval of the Landlord. Tenant may make application to Landlord for reimbursement from these funds by presenting written certification that the Tenant's Board of Directors have approved the application for such reimbursement. No more than 90% of the accrued account shall be paid in any calendar year. Any funds not paid in a calendar year shall be accumulated in this account. At the termination of this lease, and any extensions, there are no restrictions on this account which apply to the Landlord.

20. Non-Waiver of Conditions. The waiver by Landlord of the strict performance of any of the terms and conditions of this lease in any one instance shall not be deemed a subsequent waiver of any subsequent breach or default in any of the terms and conditions of the lease.

21. Miscellaneous.

- 21.1 Notice. All notices to be given with respect to this lease shall be in writing. The notice may be sent by certified mail, postage prepaid, return receipt requested, or may be delivered in person. Every notice to be given shall be delivered to the addresses noted below.

To Landlord: 214 South Third Avenue  
St. Cloud, Minnesota 56301

To Tenant: 1730 South Seventh Avenue  
St. Cloud, Minnesota 56301

Each of the parties shall give written notice to the other of any change in the foregoing addresses.

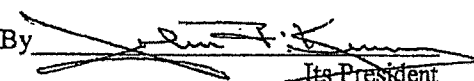
- 21.2 Surrender of Possession. Tenant shall, on the last day of the term, or on earlier termination and forfeiture of the Lease, peaceably and quietly surrender and deliver the demised premises to Landlord free of sub-tenancies, including all buildings, additions, and improvements constructed or placed thereon by Tenant, except moveable trade fixtures, all in good condition and repair. Any

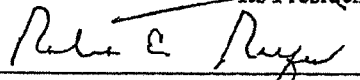
trade fixtures or personal property not used in connection with the operation of the demised premises and belonging to Tenant, if not removed at the termination or default, and if Landlord shall so elect, shall be deemed abandoned and become the property of Landlord without any payment or offset therefor. Landlord may remove such fixtures or property from the demised premises and store them at the risk and expense of Tenant if Landlord shall not so elect. Tenant shall repair and restore all damage to the demised premises caused by the removal of equipment, trade fixtures, and personal property.

- 21.3 Total Agreement; Amendment. This Lease contains the entire agreement between the parties and cannot be changed or terminated except by a written instrument subsequently executed by the parties hereto. Either party may request a verification of the amount of the rent for a renewed term by a letter agreement signed by the parties. This Lease and the terms and conditions hereof apply to and are binding on the heirs, legal representatives, successors, and assigns by both parties.
- 21.4 Applicable Law. This agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.
- 21.5 Time of the Essence. Time is of the essence in all provisions of this Lease.

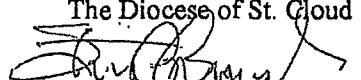
IN TESTIMONY WHEREOF, the parties have executed this Lease at St. Cloud, Minnesota, the day and year first above written.

The Diocese of St. Cloud

By  Its President

And  Its Secretary  
LANDLORD

The Catholic Charities of  
The Diocese of St. Cloud

By  Its Executive Director



STATE OF MINNESOTA    )  
                                      ) ss.  
COUNTY OF                    )

On this 16<sup>th</sup> day of April, 1999, before me, a notary public within and for said county, personally appeared John F. Kinney and Robert E. Rolfes, to me known to be the persons described in, and who executed the foregoing instrument, and acknowledged that they executed the same as President and Secretary, respectively, of The Diocese of St. Cloud.

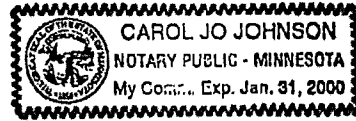
Sister Mary Mundermuth  
Notary Public

STATE OF MINNESOTA    )  
                                      ) ss.  
COUNTY OF                    )

On this 16<sup>th</sup> day of April, 1999, before me, a notary public within and for said county, personally appeared Steven Bresnahan to me known to be the person described in, and who executed the foregoing instrument, and acknowledged that he executed the same as Executive Director of The Catholic Charities of the Diocese of St. Cloud.

Carol Jo Johnson  
Notary Public

THIS INSTRUMENT DRAFTED BY:  
Schmitt & Janson Law Office  
124 East St. Germain  
P. O. Box 1752  
St. Cloud, MN 56302  
(320) 251-9500



AMENDMENT TO LEASE

WHEREAS, The Diocese of St. Cloud (The Diocese), as Landlord, and Catholic Charities of the Diocese of St. Cloud (Catholic Charities), as Tenant, entered into a Lease dated January 1, 1999, which Lease is incorporated herein by reference, and by which The Diocese leased real estate and buildings commonly known as the St. Cloud Children's Home to Catholic Charities; and,

WHEREAS, the Lease has renewed annually since that time pursuant to Paragraph 13 of the Lease; and

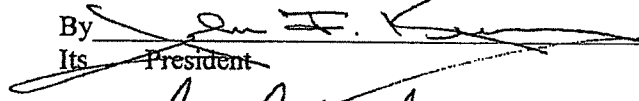
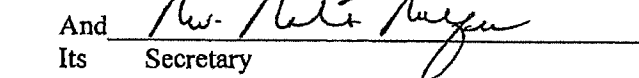
WHEREAS, it is the desire of the parties to modify the Lease for a period of one year.

NOW, THEREFORE, it is agreed upon between the parties as follows:

1. For a period of one year, starting July 1, 2009, and terminating June 30, 2010, Paragraph 19 of the Lease shall be amended to provide that Landlord shall not be required to deposit 50% of each month's basic rent payment into a separate interest bearing account known as the "S.C.C.H. Renovation Fund". After June 30, 2010, Paragraph 19 of the Lease shall revert to its original form.
2. All remaining provisions of the Lease shall remain in effect and are not modified by paragraph 1 above.

IN TESTIMONY WHEREOF, the parties have executed this Amendment to Lease

THE DIOCESE OF ST. CLOUD

By   
Its President  
And   
Its Secretary

CATHOLIC CHARITIES OF  
THE DIOCESE OF ST. CLOUD

By   
Its Executive Director

**AMENDMENT TO LEASE**

WHEREAS, The Diocese of St. Cloud (The Diocese), as Landlord, and Catholic Charities of the Diocese of St. Cloud (Catholic Charities), as Tenant, entered into a Lease dated January 1, 1999, which Lease is incorporated herein by reference, and by which The Diocese leased real estate and buildings commonly known as the St. Cloud Children's Home to Catholic Charities; and,

WHEREAS, the Lease has renewed annually since that time pursuant to Paragraph 13 of the Lease; and

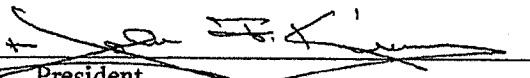
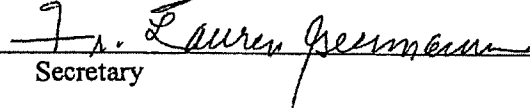
WHEREAS, it is the desire of the parties to modify the Lease for a period of one year.

NOW, THEREFORE, it is agreed upon between the parties as follows:

1. For a period of one year, starting July 1, 2010, and terminating June 30, 2011, Paragraph 19 of the Lease shall be amended to provide that Landlord shall not be required to deposit 50% of each month's basic rent payment into a separate interest bearing account known as the "S.C.C.H. Renovation Fund". After June 30, 2011, Paragraph 19 of the Lease shall revert to its original form.
2. All remaining provisions of the Lease shall remain in effect and are not modified by paragraph 1 above.

IN TESTIMONY WHEREOF, the parties have executed this Amendment to Lease

**THE DIOCESE OF ST. CLOUD**

By   
Its President  
And   
Its Secretary

**CATHOLIC CHARITIES OF  
THE DIOCESE OF ST. CLOUD**

By   
Its Executive Director



THE CHANCERY

214 Third Avenue South • P.O. Box 1248 • St. Cloud, MN • 56302-1248 • 320-251-2340 • fax: 320-251-0470

AMENDMENT TO LEASE

WHEREAS, The Diocese of St. Cloud (The Diocese), as Landlord, and Catholic Charities of the Diocese of St. Cloud (Catholic Charities), as Tenant, entered into a Lease dated January 1, 1999, which Lease is incorporated herein by reference, and by which The Diocese leased real estate and buildings commonly known as the St. Cloud Children's Home to Catholic Charities; and,

WHEREAS, the Lease has renewed annually since that time pursuant to Paragraph 13 of the Lease; and

WHEREAS, it is the desire of the parties to modify the Lease for a period of one year.

NOW, THEREFORE, it is agreed upon between the parties as follows:

1. For a period of one year, starting July 1, 2011, and terminating June 30, 2012, Paragraph 19 of the Lease shall be amended to provide that Landlord shall be required to deposit \$833.33 of each month's basic rent payment into a separate interest bearing account known as the "S.C.C.H. Renovation Fund". After June 30, 2012, Paragraph 19 of the Lease shall revert to its original form.
2. All remaining provisions of the Lease shall remain in effect and are not modified by paragraph 1 above.

IN TESTIMONY WHEREOF, the parties have executed this Amendment to Lease

THE DIOCESE OF ST. CLOUD

By [Signature]  
Its President  
And [Signature]  
Its Secretary

CATHOLIC CHARITIES OF  
THE DIOCESE OF ST. CLOUD

By [Signature]  
Its Executive Director

JUN 01 2012

AMENDMENT TO LEASE

WHEREAS, The Diocese of St. Cloud (The Diocese), as Landlord, and Catholic Charities of the Diocese of St. Cloud (Catholic Charities), as Tenant, entered into a Lease dated January 1, 1999, which Lease is incorporated herein by reference, and by which The Diocese leased real estate and buildings commonly known as the St. Cloud Children's Home to Catholic Charities; and,

WHEREAS, the Lease has renewed annually since that time pursuant to Paragraph 13 of the Lease; and


WHEREAS, it is the desire of the parties to modify the Lease for a period of one year.

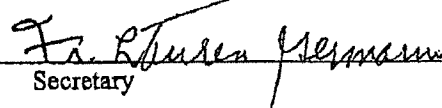
NOW, THEREFORE, it is agreed upon between the parties as follows:

1. For a period of one year, starting July 1, 2012, and terminating June 30, 2013, Paragraph 19 of the Lease shall be amended to provide that Landlord shall be required to deposit \$2083.34 of each month's basic rent payment into a separate interest bearing account known as the "S.C.C.H. Renovation Fund". After June 30, 2013, Paragraph 19 of the Lease shall revert to its original form.
2. All remaining provisions of the Lease shall remain in effect and are not modified by paragraph 1 above.

IN TESTIMONY WHEREOF, the parties have executed this Amendment to Lease

THE DIOCESE OF ST. CLOUD

By \_\_\_\_\_  
Its President

And \_\_\_\_\_  
Its Secretary

CATHOLIC CHARITIES OF  
THE DIOCESE OF ST. CLOUD

By \_\_\_\_\_  
Its Executive Director

AMENDMENT TO LEASE

WHEREAS, The Diocese of St. Cloud (The Diocese), as Landlord, and Catholic Charities of the Diocese of St. Cloud (Catholic Charities), as Tenant, entered into a Lease dated January 1, 1999, which Lease is incorporated herein by reference, and by which The Diocese leased real estate and buildings commonly known as the St. Cloud Children's Home to Catholic Charities; and,

WHEREAS, the Lease has renewed annually since that time pursuant to Paragraph 13 of the Lease; and

WHEREAS, it is the desire of the parties to modify the Lease as follows:

NOW, THEREFORE, it is agreed upon between the parties as follows:

1. For a period of one year, starting July 1, 2013, and terminating June 30, 2014, Paragraph 19 of the Lease shall be amended to provide that Landlord shall be required to deposit \$2000.00 of each month's basic rent payment into a separate interest bearing account known as the "S.C.C.H. Renovation Fund".
2. Paragraph 13 of the Lease, as amended, is deleted in its entirety and replaced as follows: "13. Holdover. If, upon the end of term of this Lease, as amended, no party has given the other a notice of termination of the lease, the lease shall continue on a month to month basis under the same terms as those in effect during the previous term."
3. All remaining provisions of the Lease shall remain in effect and are not modified by paragraph 1 above.

IN TESTIMONY WHEREOF, the parties have executed this Amendment to Lease

THE DIOCESE OF ST. CLOUD

By + Dmaw J Kettler  
Its President

And Jane Martin  
Its Secretary

CATHOLIC CHARITIES OF  
THE DIOCESE OF ST. CLOUD

By \_\_\_\_\_

JUN 04 2014

AMENDMENT TO LEASE

WHEREAS, The Diocese of St. Cloud (The Diocese), as Landlord, and Catholic Charities of the Diocese of St. Cloud (Catholic Charities), as Tenant, entered into a Lease dated January 1, 1999, which Lease is incorporated herein by reference, and by which The Diocese leased real estate and buildings commonly known as the St. Cloud Children's Home to Catholic Charities; and,

WHEREAS, the Lease has renewed annually since that time pursuant to Paragraph 13 of the Lease; and

WHEREAS, it is the desire of the parties to modify the Lease as follows:

NOW, THEREFORE, it is agreed upon between the parties as follows:

1. For a period of one year, starting July 1, 2014, and terminating June 30, 2015, Paragraph 19 of the Lease shall be amended to provide that Landlord shall be required to deposit \$2000.00 of each month's basic rent payment into a separate interest bearing account known as the "S.C.C.H. Renovation Fund".
2. Paragraph 13 of the Lease, as amended, is deleted in its entirety and replaced as follows: "13. Holdover. If, upon the end of term of this Lease, as amended, no party has given the other a notice of termination of the lease, the lease shall continue on a month to month basis under the same terms as those in effect during the previous term."
3. All remaining provisions of the Lease shall remain in effect and are not modified by paragraph 1 above.

IN TESTIMONY WHEREOF, the parties have executed this Amendment to Lease

THE DIOCESE OF ST. CLOUD

By + Donald J. Kettler  
Its President

And Kene Martin  
Its Secretary

CATHOLIC CHARITIES OF  
THE DIOCESE OF ST. CLOUD

By Stef Bruch  
Its Executive Director

**AMENDMENT TO LEASE**

This Amendment to Lease is made as of July 1, 2017 (the "Effective Date"), by and between the Diocese of St. Cloud ("Landlord") and Catholic Charities of the Diocese of St. Cloud ("Tenant").

**RECITALS**

A. Landlord and Tenant have previously entered into a Lease dated as of January 1, 1999, by which Landlord leased to Tenant the following described real property, together with certain of the improvements located thereon:

Lots 1 and 2, Block 1, Busch Terrace 2, Stearns County, Minnesota (the "Property").

B. The Lease has been amended from time to time by the parties. Copies of the Lease and the prior amendments to the Lease are attached to this Amendment to Lease as Exhibit A (collectively, the "Lease").

C. At its sole expense, Tenant has previously constructed material improvements on the Property. Such improvements include, but are not limited to, a secure residential facility of approximately 18,466 square feet at a cost of approximately \$4,700,000.00 (the "Secure Facility").

D. Tenant has not paid Landlord any rent for the Secure Facility in light of Tenant's investment in such improvements.

E. The parties have previously agreed to defer the payment of rent from the Effective Date under the Lease by Tenant, pending the negotiation of this Amendment to Lease (the "Deferral Period"). During the Deferral Period, Tenant has continued to pay all operating expenses for the Property attributable to that portion of the Property other than the Leased Premises defined below (the "Ongoing Operating Expenses"). Through April 30, 2018, the Ongoing Operating Expenses paid by Tenant in excess of the Base Rent and Operating Expenses set forth in this Amendment to Lease are \$76,687.00. Accordingly, Landlord has agreed to reimburse Tenant the amount owed Tenant through April 30, 2018, together with any additional amount required to reimburse Tenant for Ongoing Operating Expenses paid by Tenant in excess of the Base Rent and Ongoing Operating Expenses incurred or paid by Tenant for the period of May 1, 2018, through May 31, 2018, in consideration of the execution of this Amendment to Lease.

F. The parties desire to further modify the Lease as set forth in this Amendment to Lease.



### AGREEMENT

1. Paragraph 1 of the Lease is hereby amended to read as follows:

"Description of Premises. Landlord leases to Tenant those portions of the Property described and known as (a) the Busch Building; (b) Old Cottage # 2; (c) all that portion of the Property lying north of the historical buildings and improvements located on the Property; and (d) the Secure Facility (collectively, the "Leased Premises"). For purposes of the computation of the Base Rent under the Lease, the Leased Premises consist of 29,133 square feet.
2. Paragraph 2 of the Lease is hereby amended to read as follows:

"Term. The term of this lease is Two (2) years, beginning on July 1, 2017, and terminating on June 30, 2019, subject to the provisions of Section 13 of the Lease, notwithstanding any prior amendments to the Lease."
3. Paragraph 3 of the Lease is hereby amended to read as follows:

"Rent. Tenant shall pay Landlord installments of \$9,711.00 each month beginning on July 10, 2017, with succeeding payments due on the 10<sup>th</sup> day of each month thereafter during the term of the lease. No rent shall be required of Tenant for the Secure Facility. Notwithstanding the foregoing, Tenant may offset the Ongoing Operating Expenses against such base rent."
4. Paragraph 4 of the Lease is hereby amended to read as follows:

"Use of the Premises. The premises are to be used for the purposes of providing children's social services, adult social services and related administrative and support services. Tenant shall restrict its use to such purposes and shall not use or permit the use of the premises for any other purposes without the written consent of the Landlord."
5. Paragraph 5.4 of the Lease is hereby deleted in its entirety.
6. Paragraph 6 of the Lease is hereby amended to read as follows:

"Utilities and Operating Expenses. In addition to the base rent, Tenant shall pay Landlord installments of \$5,394.55 each month beginning on July 10, 2017, with succeeding payments due on the 10<sup>th</sup> day of each month thereafter during the term of the lease as Tenant's share of gas, electricity, and insurance for the Leased Premises (the "Leased Premises Expenses"). In addition to the Leased Premises Expenses, Tenant shall be

responsible for all repairs, maintenance and grounds maintenance for the Property (the "Repairs and Maintenance Expenses"). Landlord will reimburse Tenant on a monthly basis for the repairs, maintenance and grounds maintenance costs and expenses incurred or paid by Tenant relating to that portion of the Property not occupied by Tenant through a payment of \$8,810.98 per month beginning June 1, 2018, and continuing throughout the term of the Lease. Should the total of the Leased Premises Expenses and Repairs and Maintenance Expenses exceed \$169,442.00 (the "Maintenance Cap") during either of the period of (i) July 1, 2017, through June 30, 2018, or (ii) July 1, 2018, through June 30, 2019, any amounts in excess of the Maintenance Cap shall be allocated between the parties with Landlord being responsible for 62.4% of such excess amount and Tenant being responsible for 37.6% of such excess amount. Notwithstanding the foregoing, Tenant may offset the Ongoing Operating Expenses against such operating costs and expenses."

7. Paragraph 13 of the Lease is hereby amended to read as follows, notwithstanding any prior amendment to the Lease:

"Automatic Renewal/Termination. This lease will be automatically renewed for an additional term of one year, unless terminated as noted below. Each new term will be on the same terms and conditions as provided in this lease except that the rent shall be adjusted as follows: The rent specified in this lease shall be subject to increase in accordance with changes in the Consumer Price Index. The Consumer Price Index shall mean the average for "all items" shown on the "United States city average for urban wage earners and clerical workers, all items, groups, subgroups, and special groups of items as promulgated by the Bureau of Labor Statistics of the United States Department of Labor" using the year 1993, as a base of 100.

- 13.1 This lease shall automatically be extended for terms of one (1) year from the date of expiration of the initial term or from the date of expiration of the extended term during, as the case may be, without the execution of any further lease or instrument, subject to the provisions of this § 13.
- 13.2 At least One (1) month prior to the expiration of the initial term and at least One (1) month prior to the expiration of any extended term, either party shall notify the other party in writing of the election to terminate this lease.
- 13.3 Rent for any extended term shall be increased in accordance with the CPI noted at the beginning of this section.

Notwithstanding the foregoing, either party may at any time during the term of the lease notify the other party of its intention to terminate the lease, provided such notice is provided at least Three (3) months prior to the effective date of any such termination.”

8. Paragraph 19 of the Lease is hereby deleted in its entirety.

9. The Recitals set forth above are hereby incorporated into and made a part of this Agreement and the parties acknowledge and agree that each of the recitals is true and correct.

IN WITNESS WHEREOF, the parties have executed this Amendment to Lease as of the date set forth above.

[Signature Pages Follow.]

DIOCESE OF ST. CLOUD

By Donald J. Kettler  
Its President

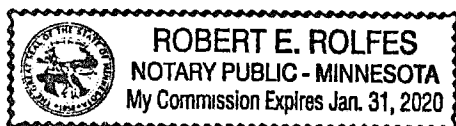
By Jane M. Marin  
Its Secretary

STATE OF MINNESOTA    )  
                                      )  
COUNTY OF STEARNS    )

I HEREBY CERTIFY that on this 10 day of May, 2018, before me, the undersigned, a Notary Public within and for said County and State, personally appeared Donald J. Kettler and Jane M. Marin, who, being duly sworn did say that they are the President and Secretary, respectively, of the DIOCESE OF ST. CLOUD, a Minnesota religious corporation, and who is known to me (or satisfactorily proven) to be the persons whose names are subscribed to the foregoing instrument, and who acknowledged that said instrument was executed on behalf of said corporation by authority of its Board of Directors and for the purposes therein contained.

IN WITNESS my hand and notary seal.

Robert E. Rolfes  
Notary Public



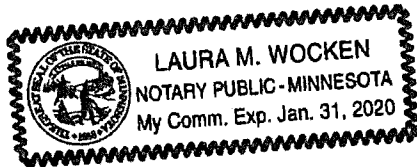
CATHOLIC CHARITIES OF THE  
DIOCESE OF ST. CLOUD

By [Signature]  
Its Executive Director

STATE OF MINNESOTA )  
 )  
COUNTY OF STEARNS )

I HEREBY CERTIFY that on this 8<sup>th</sup> day of May, 2018, before me, the undersigned, a Notary Public within and for said County and State, personally appeared Stephen R. Pareja, who, being duly sworn did say that s/he is the Executive Director of CATHOLIC CHARITIES OF THE DIOCESE OF ST. CLOUD, a Minnesota nonprofit corporation, and who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, and who acknowledged that said instrument was executed on behalf of said corporation by authority of its Board of Directors and for the purposes therein contained.

IN WITNESS my hand and notary seal.



[Signature]  
Notary Public

**INSTRUMENT DRAFTED BY:**

Phillip L. Kunkel (#58981)  
Gray, Plant, Mooty, Mooty &  
Bennett, P.A.  
1010 West St. Germain, Suite 500  
St. Cloud, MN 56301  
Phone: 320-252-4414

**AMENDMENT TO LEASE**

This Amendment to Lease is made as of July 1, 2019 (the "Effective Date"), by and between the Diocese of St. Cloud ("Landlord") and Catholic Charities of the Diocese of St. Cloud "Tenant").

**RECITALS**

- A. Landlord and Tenant have previously entered into a Lease dated as of January 1, 1999, by which Landlord leased to Tenant the following described real property, together with certain of the improvements located thereon:

Lots 1 and 2, Block 1, Busch Terrace 2, Stearns County, Minnesota (the "Property").

- B. The Lease has been amended from time to time by the parties. Copies of the Lease and the prior amendments to the Lease are attached to this Amendment to Lease as Exhibit A (collectively, the "Lease").
- C. At its sole expense, Tenant has previously constructed material improvements on the Property. Such improvements include, but are not limited to, a secure residential facility of approximately 18,466 square feet at a cost of approximately \$4,700,000.00 (the "Secure Facility").
- D. Tenant has not paid Landlord any rent for the Secure Facility in light of Tenant's investment in such improvements.
- E. The parties desire to further modify the Lease as set forth in this Amendment to Lease.

### AGREEMENT

1. Paragraph 1 of the Lease is hereby amended to read as follows:

"Description of Premises. Landlord leases to Tenant those portions of the Property described and known as (a) the old school and administration building, garage and maintenance area, IT Room; (b) Old Cottage # 2; (c) all that portion of the Property lying north of the historical buildings and improvements located on the Property; and (d) the Secure Facility (collectively, the "Leased Premises"). For purposes of the computation of the Base Rent under the Lease, the Leased Premises consist of 23, 743 square feet

2. Paragraph 2 of the Lease is hereby amended to read as follows:

"Term. The term of this lease is one (1) year, beginning on July 1, 2019, and terminating on June 30, 2020, subject to the provisions of Section 13 of the Lease, notwithstanding any prior amendments to the Lease."

3. Paragraph 3 of the Lease is hereby amended to read as follows:

"Rent. Tenant shall pay Landlord installments of 7,914.00 each month beginning on July 10, 2019, with succeeding payments due on the 10<sup>th</sup> day of each month thereafter during the term of the lease. No rent shall be required of Tenant for the Secure Facility. Notwithstanding the foregoing, Tenant may offset the Ongoing Operating Expenses against such base rent." (The monthly net payment by Tenant to Landlord after all adjustments below is \$3,155.00).

4. Paragraph 4 of the Lease is hereby amended to read as follows:

"Use of the Premises. The premises are to be used for the purposes of providing children's social services, adult social services and related administrative and support services. Tenant shall restrict its use to such purposes and shall not use or permit the use of the premises for any other purposes without the written consent of the Landlord."

5. Paragraph 5.4 of the Lease is hereby deleted in its entirety.

6. Paragraph 6 of the Lease is hereby amended to read as follows:

"Utilities and Operating Expenses. In addition to the base rent, Tenant shall pay Landlord installments of \$ 5,066.00 each month beginning on July 10, 2019, with succeeding payments due on the 10<sup>th</sup> day of each month thereafter during the term of the lease as Tenant's share of gas, electricity, and insurance for the Leased Premises (the "Leased Premises Expenses"). In addition to the Leased Premises Expenses, Tenant shall be responsible for all repairs, maintenance and grounds maintenance for the Property (the "Repairs and Maintenance Expenses"). Landlord will reimburse Tenant on a monthly basis for the repairs, maintenance and grounds maintenance costs and expenses incurred or paid by Tenant relating to that portion

of the Property not occupied by Tenant through a payment of \$9,825.00 per month beginning July 10, 2019, and continuing throughout the term of the Lease. Should the total of the Leased Premises Expenses and Repairs and Maintenance Expenses exceed \$182,275.00 (the "Maintenance Cap") during either of the period of (i) July 1, 2019, through June 30, 2020, any amounts in excess of the Maintenance Cap shall be allocated between the parties with Landlord being responsible for 64.6% of such excess amount and Tenant being responsible for 35.4% of such excess amount. Notwithstanding the foregoing, Tenant may offset the Ongoing Operating Expenses against such operating costs and expenses."

7. Paragraph 13 of the Lease is hereby amended to read as follows, notwithstanding any prior amendment to the Lease:

"Automatic Renewal/Termination. This lease will be automatically renewed for an additional term of one year, unless terminated as noted below. Each new term will be on the same terms and conditions as provided in this lease except that the rent shall be adjusted as follows: The rent specified in this lease shall be subject to increase in accordance with changes in the Consumer Price Index. The Consumer Price Index shall mean the average for "all items" shown on the "United States city average for urban wage earners and clerical workers, all items, groups, subgroups, and special groups of items as promulgated by the Bureau of Labor Statistics of the United States Department of Labor" using the year 1993, as a base of 100.

13.1 This lease shall automatically be extended for terms of one (1) year from the date of expiration of the initial term or from the date of expiration of the extended term during, as the case may be, without the execution of any further lease or instrument, subject to the provisions of this § 13.

13.2 At least One (1) month prior to the expiration of the initial term and at least One (1) month prior to the expiration of any extended term, either party shall notify the other party in writing of the election to terminate this lease.

13.3 Rent for any extended term shall be increased in accordance with the CPI noted at the beginning of this section.

Notwithstanding the foregoing, either party may at any time during the term of the lease notify the other party of its intention to terminate the lease, provided such notice is provided at least Three (3) months prior to the effective date of any such termination."

8. Paragraph 19 of the Lease is hereby deleted in its entirety.
9. Neither Landlord or Tenant shall be deemed to waive nor shall either party be estopped from raising any defenses or asserting any claims in the current action pending in the Stearns County District Court, File # 73-cv-18-5584 (the "Action"). In addition, neither Landlord nor Tenant shall be deemed to have waived nor shall either party be estopped from raising any defenses or asserting any claims in the Action as a result of any prior actions or lease accommodations



made by either party. To the extent that Tenant has overpaid rent to Landlord before the execution of this Amendment to Lease, Tenant shall be permitted to credit future payments with such overpayment. The Recitals set forth above are hereby incorporated into and made a part of this Agreement and the parties acknowledge and agree that each of the recitals is true and correct.

IN WITNESS WHEREOF, the parties have executed this Amendment to Lease as of the date set forth above.

[Signature Pages Follow.]

DIOCESE OF ST. CLOUD

By Donald J. Kettler  
Its President

By Jane M. Marrin  
Its Secretary

STATE OF MINNESOTA)  
)  
COUNTY OF STEARNS)

I HEREBY CERTIFY that on this 19<sup>th</sup> day of Sept, 2019, before me, the undersigned, a Notary Public within and for said County and State, personally appeared Donald J. Kettler and Jane M. Marrin, who, being duly sworn did say that they are the President and Secretary, respectively, of the DIOCESE OF ST. CLOUD, a Minnesota religious corporation, and who is known to me (or satisfactorily proven) to be the persons whose names are subscribed to the foregoing instrument, and who acknowledged that said instrument was executed on behalf of said corporation by authority of its Board of Directors and for the purposes therein contained.

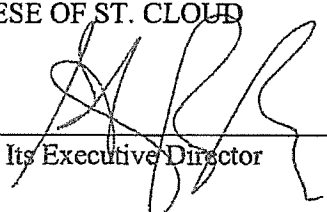
IN WITNESS my hand and notary seal.



Theresa J. Voigt  
Notary Public

CATHOLIC CHARITIES OF THE  
DIOCESE OF ST. CLOUD

By

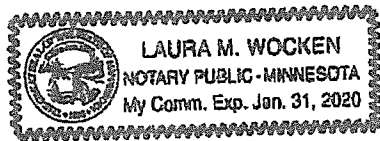
  
Its Executive Director

STATE OF MINNESOTA)

COUNTY OF STEARNS )

I HEREBY CERTIFY that on this 19th day of September, 2019, before me, the undersigned Notary Public within and for said County and State, personally appeared Stephen R. Pareja, who being duly sworn did say that s/he is the Executive Director of CATHOLIC CHARITIES OF THE DIOCESE OF ST. CLOUD, a Minnesota nonprofit corporation, and who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, and who acknowledged that said instrument was executed on behalf of said corporation by authority of its Board of Directors and for the purposed therein contained.

IN WITNESS my hand and notary seal.



Laura M Wocken  
Notary Public

# EXHIBIT D

## REAL ESTATE LEASE

This Lease Agreement ("Lease") in by and between **Diocese of St Cloud** ("Landlord"), and **District 742 Community Schools** ("Tenant"). The parties agree as follows:

**PREMISES.** Landlord, in consideration of the lease payments provided in the Lease, leases to Tenant portions of the facility at 1726 7<sup>th</sup> Avenue South, St. Cloud, MN, that include:

Description	Square Footage
School Wing, Community Area, North Hall	10,716
Storage area/East Hallway	300
Lobby, Gymnasium, Fitness Area	3,331

**TERM.** The lease term will begin July 1, 2020 and will terminate on June 30, 2021.

**CHARGES TO LEASE AGREEMENT.** Changes or alterations to this contract will be made in writing by addendum only.

**LEASE RATE.** This lease shall be based on the rates identified in the table above. The annual lease amount shall be \$96,239.50.

**LEASE PAYMENTS.** Tenant shall pay to Landlord lease payments of Eight Thousand nineteen dollars and ninety-six cents (\$8,019.96) per month in advance on the first day of each month. Lease payments shall be made to Landlord at:

Diocese of St Cloud  
214 3<sup>rd</sup> Avenue South  
St. Cloud, MN 56301

Payments may be mailed to this address or delivered during normal business hours Monday through Friday, between 8:00 am and 4:00 pm. Payments must be at this address no later than the third day of each month. The address may be changed from time to time by Landlord.

**POSSESSION.** Tenant shall be entitled to possession on the first day of the term of this lease, and shall yield possession to Landlord on the last day of the term of this Lease, unless otherwise agreed by both parties in writing. At the expiration of the term, Tenant shall remove its goods and effects and peacefully yield up the Premises to Landlord in as good a condition as when delivered to Tenant, ordinary wear and tear excepted.

**EARLY TERMINATION.** This lease may be terminated by either party upon written notice sent by certified mail with a minimum period of ninety (90) days from receipt of notice.

**USE OF PREMISES.** Tenant shall occupy and use the Premises for teaching and educational purposes.

**PETS.** No pets shall be allowed without the prior written consent of Landlord.

**KEYS.** Landlord to provide Tenant keys and or proximity cards as needed. Upon termination of this lease, Tenant shall return keys and or cards to the Landlord.

**STORAGE.** Tenant shall be entitled to store items of personal property in premises during the term of this Lease. Landlord shall not be liable for loss of, or damaged to, such stored items.

**PROPERTY INSURANCE.** Landlord and Tenant shall each be responsible to maintain appropriate insurance for their respective interests in the Premises and property located on the Premises.

**MAINTENANCE.** Landlord shall have the responsibility to maintain the Premises in good repair at all times and perform all repairs necessary to satisfy any implied warranty of habitability.

**DAMAGE REPAIRS.** If repairs for damage that are not considered normal wear and tear become necessary, they shall be coordinated through Landlord's Property Maintenance Supervisor. If Landlord's staff are able to make necessary repairs the repair time will be recorded and billed to Tenant at a rate of \$50.00 per hour plus the actual cost of materials. Repairs that are beyond the abilities or scope of Landlord's maintenance staff shall be coordinated by Landlord's maintenance supervisor and contracted out to a third party and will be billed to Tenant at the actual cost of such repairs.

**EMERGENCY.** In the event of an emergency, please contact:

Landlord      1) Joseph Spaniol, Finance Officer  
                    320-249-0963 (cell) or 320-529-4606 (office)

Tenant        1) Amy Skaalerud, Executive Director of Business  
                    320-370-8025 (office) or 320-309-8611 (cell)  
                    2) Carol O. Potter, Executive Director of Student Services/Special Education  
                    320-370-8075 (office)

**UTILITIES AND SERVICES.** Landlord shall be responsible for water, electric, gas, maintaining a dumpster for trash removal, lawn maintenance, and snow removal. Housekeeping, pest control, and janitorial services shall be provided by Tenant.

**HABITABILITY.** Tenant has inspected the Premises and fixtures, and acknowledges that the Premises are in a reasonable and acceptable condition of habitability for their intended use, and agreed lease payments are fair and reasonable. If the condition changes so that, in Tenant's opinion, the habitability and rental value of the Premises are adversely affected, Tenant shall promptly provide reasonable notice to Landlord.

**DEFAULTS.** Tenant shall be in default of this Lease if Tenant fails to fulfill any lease obligation or term by which Tenant is bound.

**LATE PAYMENTS.** For each payment that is not paid within the three days after it's due date, Landlord shall have the option to charge the Tenant a late fee of five percent of the monthly lease payment plus Five Dollars (\$5.00) per day, beginning with the fourth day after due date.

**NOTICE TO QUIT AND HOLDOVER.** Tenant agrees, at least thirty (30) days prior to the expiration of the term hereof, to give written notice to the Landlord of intentions to vacate the Premises at the end of the term of the lease, and if such notice is not timely given, the Tenant agrees to pay the Landlord, the rent due for the following month. If Tenant maintains possession of the Premises for any period after the termination of this Lease ("Holdover Period"), Tenant shall pay to Landlord lease payment(s) during the Holdover Period at a rate equal to the most recent rate preceding the Holdover Period. Such Holdover shall constitute a month-to-month extension of this Lease, with all other provisions of this rental agreement, including the provision requiring at least a thirty (30) day notice of Tenant's intent to vacate shall remain in full force and effect.

**CUMULATIVE RIGHTS.** The right of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

**ACCESS BY LANDLORD TO PREMISES.** Landlord shall have the right to enter the Premises from time to time to make inspections or provide necessary services, maintenance or repairs.

**INSURANCE.** Tenant shall keep in force throughout the Term:

- a). A Commercial General Liability insurance policy or policies to protect Landlord against and liability to the public or any invitee of Tenant incidental to the use of or resulting from any accident occurring in or upon the Premises with a limit of not less than \$1,000,000 per occurrence and not less than \$2,000,000 in the annual aggregate, or such larger amount as Landlord may prudently require from time to time, covering bodily injury and property damage liability and \$1,000,000 products/completed operations aggregate;
- b). Business Auto Liability covering owned, non-owned, and hired vehicle with a limit of not less than \$1,000,000 per accident;
- c). Insurance protecting against liability under Worker's Compensations Laws with limits a lease as required by statute;
- d). Employers Liability with limits of \$500,00 each accident, \$500,000 policy limit, and \$500,00 each employee.

**INDEMNITY REGARDING USE OF PREMISES.** To the extent permitted by law, Tenant agrees to indemnify, hold harmless, and defend Landlord from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney fees, if any, which Landlord may suffer or incur in connection with Tenant's possession, use or misuse of the Premises, except Landlord's act or negligence.

**DANGEROUS MATERIALS.** Tenant shall not keep or have on the Premises and article or thing of a dangerous, flammable, or explosive character that might substantially increase the danger of fire on the Premises, or that might be considered hazardous by a reasonable insurance company, unless the prior written consent of Landlord is obtained and proof of adequate insurance protection is provided by Tenant to Landlord.

**COMPLIANCE WITH REGULATIONS.** Tenant shall promptly comply with all law, ordinances, requirements and regulations of the federal, state, county, municipal and other authorities, and the fire insurance underwriters. However, Tenant shall not by this provision be required to make alterations to the exterior of the building or alterations of a structural nature.

**ALTERATIONS.** Tenant is not allowed to paper, or paint walls, resurface floors, dismantle or install permanent fixtures, alter woodwork or carpet, or make other changes without prior written consent from Landlord. Said consent shall not be unreasonably withheld. Any and all alterations will become the property of the Landlord and will remain the property of the Landlord upon termination of the Lease.

**MECHANICS LIENS.** Neither Tenant nor anyone claiming through the Tenant shall have the right to file mechanics liens or any other kind of lien on the Premises and the filing of this Lease constitutes notice that such liens are invalid. Further, Tenant agrees to (1) give actual advance notice to any contractors, subcontractors or suppliers of goods, labor, or services that such liens will not be valid, and (2) take whatever additional steps that are necessary in order to keep the premises free of all liens resulting from construction done by or for the Tenant.

**SUBORDINATION OF LEASE.** This Lease is subordinate to any mortgage that now exists, or may be given later by Landlord, with respect to the Premises.

**ASSIGNABILITY/SUBLETTING.** Tenant may not assign or sublease any interest in the Premises, nor assign, mortgage or pledge this Lease.

**NOTICE.** Notice under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed to the party at the appropriate address set forth below. Notices mailed in accordance with these provisions shall be deemed received on the third day after posting.

The following are authorized to act on all matters, to include collect rents, perform maintenance and service notices.

**LANDLORD:** Diocese of St Cloud  
**Landlord Contacts:** Joseph Spaniol  
**Street Address:** 214 3<sup>rd</sup> Avenue South  
**City, State, Zip:** St. Cloud, MN 56301

The following is authorized to occupy the Premises under the provisions of this lease agreement.



**TENANT:** District 742 Community Schools  
**Tenant Contact:** Amy Skaalerud or Carol O. Potter  
**Street Address:** 1201 2<sup>nd</sup> Street South  
**City, State, Zip:** Waite Park, MN 56387

Such addresses may be changed from time to time by either party by providing notice as set forth above.

**GOVERNING LAW.** This Lease shall be construed in accordance with the laws of the State of Minnesota.

**ENTIRE AGREEMENT/AMENDMENT.** This Lease contains the entire agreement of the parties and there are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Lease. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

**SERVERABILITY.** If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

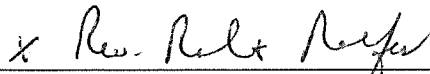
**WAIVER.** The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of the party's rights to subsequently enforce and compel strict compliance with every provision of this Lease.

**BINDING EFFECT.** The provisions of this Lease shall be binding upon and inure to the benefit of both parties and their respective legal representatives, successors, and assigns.

(SIGNATURE PAGE TO FOLLOW)

**LANDLORD:**

DIOCESE OF ST. CLOUD

  
Rev. Robert Rolfes, Vicar General

5-13-20


Date

**TENANT:**

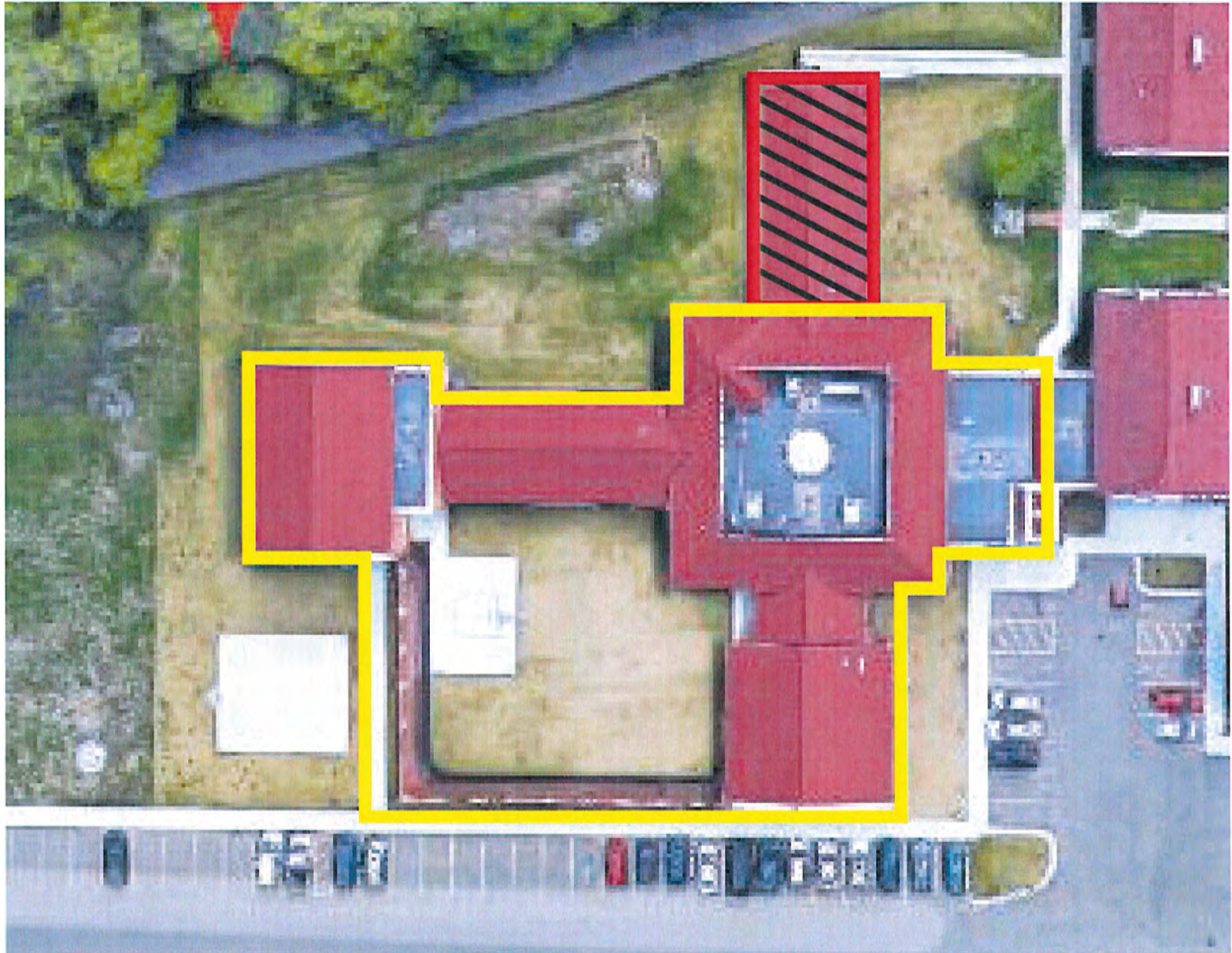
DISTRICT 742 COMMUNITY SCHOOLS

 **Amy Skaalerud**

05/07/2020

 Amy Skaalerud, Executive Director of Finance and Business Services

Date



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Chapter 11

THE DIOCESE OF ST. CLOUD, a Minnesota religious corporation,

Case No. 20-60337

Debtor.

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**ORDER (I) GRANTING EXPEDITED RELIEF, (II) APPROVING  
SETTLEMENT AGREEMENT, AND (III) APPROVING LEASE  
AMENDMENT AND SERVICES AGREEMENT**

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This matter is before the court on the *Motion for an Order (I) Granting Expedited Relief, (II) Approving Settlement Agreement, and (III) Approving Lease Amendment and Services Agreement*. Based on the motion and the file,

IT IS ORDERED:

1. The expedited relief sought in the motion is granted.
2. The settlement agreement and the lease amendment and services agreement are approved.
3. The debtor is authorized to take all actions and execute and deliver all documents, instruments, and agreements consistent with the settlement agreement and the lease amendment and services agreement that it deems necessary and appropriate.
4. Notice of the motion, as provided therein, shall be deemed good and sufficient and the requirements of Fed. R. Bankr. P. 6004(a) and the Local Rules are satisfied by such notice.

5. Notwithstanding Fed. R. Bankr. P. 6004(h), this order is effective immediately.

DATED:

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ROBERT J. KRESSEL  
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Chapter 11

THE DIOCESE OF ST. CLOUD, a Minnesota religious corporation,

Case No. 20-60337

Debtor.

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**CERTIFICATE OF SERVICE**

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I, Jason D. Curry, declare under penalty of perjury that on September 15, 2020, I caused to be served the foregoing *Notice of Hearing and Motion for an Order (I) Granting Expedited Relief, (II) Approving Settlement Agreement, and (III) Approving Lease Amendment and Services Agreement* to each party named below at the e-mail address or mailing address stated for each party:

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District Counsel  
Internal Revenue Service  
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Dated: September 15, 2020.

QUARLES & BRADY LLP

/s/ Jason D. Curry

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