

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

In re:

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

Debtor.

Chapter 11

Case No: 21-20687 (JJT)

April 5, 2023

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

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

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

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

**I. JURISDICTION AND VENUE**

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

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

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

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

**II. BACKGROUND**

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

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

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

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

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

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

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

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

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

### **III. SUMMARY OF RELIEF SOUGHT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**V. THE PROPOSED SALE TIMELINE**

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

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

## VI. SUMMARY OF THE SALE PROCEDURES

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

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

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

Heading	Summary Description
<b>Assets to Be Sold</b>	Approximately 113.19 acres and the improvements thereon, commonly known as 1593 Route 32, Montville, Connecticut.
<b>Known Lien Holders</b>	None
<b>Qualification of Bidders</b>	<p>To be eligible to participate in the Auction, each offer, solicitation or proposal (each, a "<u>Bid</u>"), and each party submitting such a Bid (each, a "<u>Bidder</u>"), must be determined by the Debtor to satisfy each of the following conditions:</p> <ol style="list-style-type: none"> <li data-bbox="743 1465 1502 1864">1. Corporate Authority. Written evidence reasonably acceptable to the Debtor demonstrating appropriate corporate authorization to consummate the Sale; <i>provided, however</i>, that, if the Bidder is an entity specially formed for the purpose of acquiring the Property at the Auction, then the Bidder must furnish written evidence reasonably acceptable to the Debtor regarding the identity of the principal(s) of the Bidder and proof of the approval of the transaction by the equity holder(s) of such Bidder. <i>See</i> Sale Procedures, § III(B)(3).</li> </ol>

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

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

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

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

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

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

**C. The Auction**

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

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

**F. The Sale Hearing**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **IX. Good Faith**

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

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

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

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

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

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

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

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

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

**XI. RESERVATION OF RIGHTS**

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

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

**XI. NO PRIOR REQUEST**

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

**XII. CONCLUSION**

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

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

*[signatures on next page]*

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

Dated: Hartford, CT  
April 5, 2023

THE NORWICH ROMAN CATHOLIC  
DIOCESAN CORPORATION

By: /s/ Patrick M. Birney

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

**CERTIFICATE OF SERVICE**

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

*/s/ Patrick M. Birney*  
\_\_\_\_\_  
Patrick M. Birney