

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

The Roman Catholic Diocese of Syracuse,
New York,

Debtor.

Case No. 20- 30663

Chapter 11

MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (A) AUTHORIZING THE USE OF CASH COLLATERAL, AND (B) GRANTING ADEQUATE PROTECTION

The Roman Catholic Diocese of Syracuse, New York (the “Diocese”), by and through its undersigned counsel, hereby moves the Court (this “Motion”) for entry of interim and final orders, in substantially the forms attached hereto as *Exhibits A* and *B* respectively, (a) authorizing the Diocese’s use of cash collateral, and (b) granting adequate protection pursuant to 11 U.S.C. §§ 105, 361 and 363. In support of this Motion, the Diocese respectfully represents as follows:

BACKGROUND

1. On June 19, 2020 (the “Petition Date”), the Diocese filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (11 U.S.C. § 101 *et seq.*, the “Bankruptcy Code”) with the United States Bankruptcy Court for the Northern District of New York (the “Court”), commencing the Diocese’s chapter 11 case (this “Chapter 11 Case”). The Diocese continues to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for a trustee or examiner has been made in this Chapter 11 Case, and as of the date of this filing, no official committees have been appointed or designated.

2. Information regarding the Diocese’s history, business operations and structure, and the events leading up to this Chapter 11 Case is set forth in the *Declaration of Rev. Msgr. Timothy*

S. Elmer, J.C.L. Regarding Structure and Pre-Filing History of The Diocese and in Support of the Chapter 11 Petition and First Day Pleadings and the Declaration of Stephen Breen Regarding the Diocese's Assets and Operations and in Support of the Chapter 11 Petition and First Day Pleadings, each of which was filed on the Petition Date and is incorporated herein by reference.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (M).

6. The statutory and rule-based predicates for the relief requested herein are sections 105, 361 and 363 of the Bankruptcy Code and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

7. The Diocese does not, by filing its petition for relief and other documents in this bankruptcy case, waive any of its rights under any applicable law, including, without limitation, the Code of Canon law, the First Amendment of the United States Constitution, the Constitution for the State of New York, the Religious Freedom Restoration Act, the church autonomy doctrine, charitable trust law, New York trust law, and the rights to object to disclosure of information and to contend that certain assets discussed in the Motion are not property of the estate.

STATEMENT PURSUANT TO RULE 4001(b)(1)(B)

8. The Diocese provides the following summary of the material provisions of this Motion pursuant to Bankruptcy Rule 4001(b)(1)(B):

- (i) The creditor who has an interest in the Cash Collateral is KeyBank National Association ("Key"). *See* ¶ 9. In addition, NBT Bank, National Association ("NBT") has an interest in a pledged securities account for which the Diocese seeks to provide adequate protection. *See* ¶ 11.

- (ii) The Diocese is seeking authorization to use Cash Collateral to pay employee wages and other operating and/or administrative expenses incurred in this Chapter 11 Case, as well as and such other payments as may be authorized by the Court by separate order. *See* ¶¶ 13-14.
- (iii) The Diocese is seeking interim authorization to use Cash Collateral through July 31, 2020 and continued use of Cash Collateral pursuant to the Final Order (as defined herein). *See* ¶¶ 23-27.
- (iv) In order to adequately protect Key’s interest in the Cash Collateral, and NBT’s interest in the collateral pledged to NBT, the Diocese is proposing to continue to make regular payments of principal and interest as and when they become due and to grant each lender rollover liens as described herein. *See* ¶¶ 20-22.

THE DIOCESE’S PREPETITION SECURED INDEBTEDNESS

9. As of the Petition Date, the Diocese is indebted to Key pursuant to the following transactions and documents:¹

- (i) Business Loan Agreement, together with Amendment No. 1 thereto, each dated as of March 16, 2020 (the “Key Loan Agreement”), pursuant to which Key (a) made available to the Diocese a \$7,300,000 revolving loan consisting of a \$2,000,000 working capital line of credit (the “Key Line of Credit”)² and (b) a commitment to issue letters of credit on behalf of the Diocese in the aggregate not to exceed \$5,300,000;
- (ii) Promissory Note in the original principal amount of \$7,300,000 dated as of March 16, 2020 evidencing the Diocese’s obligations to Key under the Key Loan Agreement (the “Key Promissory Note”);
- (iii) \$5,300,000 Letter of Credit (the “Key Letter of Credit”) issued by Key to the New York State Worker’s Compensation Board (the “WCB”) to secure

¹ In addition to the documents specifically listed below, on April 17, 2020, the Diocese obtained through Key a \$1.2 million loan guaranteed by the United States Small Business Administration (SBA), which the Diocese anticipates may be forgiven pursuant to the SBA’s Paycheck Protection Program which was established by the recently enacted CARES Act.

² As of the Petition Date, the Diocese has not drawn upon the Key Line of Credit. Key’s obligation to fund the Key Line of Credit is contingent upon satisfaction of the conditions set forth in the Key Loan Agreement, including, without limitation, satisfaction of certain collateral requirements. Moreover, pursuant to section 364 of the Bankruptcy Code, any draw on the Key Line of Credit would occur only pursuant to an appropriate order of the Court after notice and a hearing.

the Diocese's obligations under its self-insured worker's compensation program;³

- (iv) Commercial Pledge Agreement, together with Amendment 1 thereto, each dated as of March 16, 2020 (the "Key Pledge Agreement"), pursuant to which the Diocese pledged all of its property in the possession of, or subject to the control of Key including, without limitation, its interest in approximately \$7.6 million of securities held in a blocked investment account at Key (the "Blocked Key Account"), to secure its obligations to repay Key for any amounts drawn on the Key Line of Credit or the Key Letter of Credit;
- (v) Control Agreement and Acknowledgement of Pledge and Security Agreement dated as of March 16, 2020 (the "Key Control Agreement"), pursuant to which the Diocese acknowledged that Key is in possession and/or control of the Blocked Key Account and other collateral pledged pursuant to the Key Pledge Agreement.

10. The Key Loan Agreement, Key Promissory Note, Key Letter of Credit, Key Pledge Agreement, and Key Control Agreement are collectively referred to herein as the "Key Secured Debt Documents" and the securities held in the Blocked Key Account, as well as any cash or other collateral subject to Key's lien under the Prepetition Key Secured Debt Documents, are collectively referred to in this Motion as the "Prepetition Key Collateral."

11. As of the Petition Date, the Diocese is also indebted to NBT pursuant to the following transactions and documents:

- (i) Loan Agreement dated as of February 25, 2020 (the "NBT Loan Agreement"), pursuant to which NBT made two term loans to the Diocese, each in the original principal amount of \$3,250,000, for a total loan amount of \$6,500,000;
- (ii) Term I Loan Note dated February 25, 2020 in the original principal amount of \$3,250,000 (the "NBT Term I Note");
- (iii) Term II Loan Note dated February 25, 2020 in the original principal amount of \$3,250,000 (the "NBT Term II Note" and together with the NBT Term I Note, the "NBT Notes"); and

³ As of the date of this Motion, the WCB has made no attempt to draw upon the Key Letter of Credit and, upon information and belief, there exists no cause for the WCB to do so.

- (iv) Specific Security Agreement (Pledged Account) dated February 25, 2020, (as amended, the “NBT Security Agreement”), pursuant to which the Diocese pledged its interest in an investment account established at NBT Bank (the “Blocked NBT Account”), including the Diocese’s interest in approximately \$9.8 million of investment property held therein, to secure its obligations to NBT under the NBT Loan Agreement and the NBT Notes.

12. The NBT Loan Agreement, NBT Notes, and NBT Security Agreement are collectively referred to herein as the “NBT Secured Debt Documents” and the investment property held in the Blocked NBT Account is referred to as the “Prepetition NBT Collateral.” The Key Secured Debt Documents and the NBT Secured Debt Documents are referred to collectively as the “Prepetition Secured Debt Documents” and the Prepetition Key Collateral and the Prepetition NBT Collateral are referred to collectively as the “Prepetition Collateral.”

RELIEF REQUESTED

13. The Diocese seeks to use cash (other than cash or securities held in the Blocked Key Account) existing on or after the Petition Date that may be part of the Prepetition Key Collateral (the “Cash Collateral”). Additionally, the Diocese seeks the ability to continue to manage its investments in the Blocked Key Account and Blocked NBT Account in accordance with its prepetition practices and the Prepetition Secured Debt Documents, and to provide Key and NBT with adequate protection of their respective interests in the Prepetition Collateral by making regular payments of principal and interest in accordance with the Prepetition Secured Debt Documents and providing rollover liens. Accordingly, the Diocese hereby requests that the Court grant the following relief:

- (i) authorize the Diocese, pursuant to section 363(c) of the Bankruptcy Code, to use Cash Collateral to make payments in the ordinary course of the Diocese’s business, to pay administrative expenses incurred in this Chapter 11 Case, and to make such other payments as may be authorized by the Court by separate order;

- (ii) authorize the Diocese, pursuant to section 105(a) and 363(c) of the Bankruptcy Code, to continue to manage its investments held in the Blocked Key Account and the Blocked NBT Account, in accordance with its prepetition practices and the Prepetition Secured Debt Documents; and
- (iii) authorize the Diocese, pursuant to sections 361 and 363(e) of the Bankruptcy Code, to provide adequate protection to Key and NBT in the form of (a) continuing payments of principal and interest and (b) replacement liens.

14. The Diocese has consulted with Key regarding its continued use of Cash Collateral and Key has indicated that it supports the relief requested herein.

BASIS FOR RELIEF

A. The Diocese Has an Immediate Need to Use Cash Collateral

15. The Diocese has an urgent need to use Cash Collateral. Pursuant to the Key Pledge Agreement and Key Control Agreement, the Prepetition Key Collateral includes, among other things, cash held by the Diocese in several accounts at Key, including, without limitation, the Diocese's primary operating account (the "Operating Account"), as well as a segregated account for the Diocese's drug education program (the "Drug Ed. Account").

16. As described more fully in the Diocese's motion seeking entry of an order authorizing the continued maintenance of its bank accounts which was filed contemporaneously herewith, the Diocese relies upon its Operating Account to collect accounts receivable and to fund the majority of its disbursements, including for payroll, vendor and utility payments, and other expenses. The Diocese also relies upon the cash in the Drug Ed. Account to support the continued initiatives of its drug education program. Because the majority of the Diocese's unencumbered and unrestricted funds are held at Key, absent the ability to use Cash Collateral, the Diocese would not be able to pay wages, utility charges, and other critical business and operating expenses, nor could it continue to provide drug education services.

B. The Interests of Key and NBT Are Adequately Protected

17. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor in possession may only use “cash collateral” with the consent of the secured party with an interest therein or court approval. *See* 11 U.S.C. § 363(c)(2). Section 363(e) of the Bankruptcy Code further provides that, upon request of an entity that has an interest property used, sold or leased by a debtor, the court shall prohibit or condition the use of such property as is necessary to provide adequate protection of such entity’s interest. *See* 11 U.S.C. § 363(e).

18. Appropriate adequate protection is decided on a case-by-case basis. *See e.g., In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); *In re Beker Indus. Corp.*, 58 B.R. 725 (Bankr. S.D.N.Y. 1986); *see also In re JKK Chevrolet, Inc.*, 190 B.R. 542, 545 (Bankr. E.D. Va. 1995) (adequate protection is a flexible concept that is determined by considering the facts of each case) (*citing In re O’Connor*, 808 F.2d 1393, 1396-97 (10th Cir. 1987)). Although adequate protection is not defined in the Bankruptcy Code, section 361 of the Bankruptcy Code provides the following three (3) nonexclusive examples of what may constitute adequate protection:

- (1) requiring the [debtor] to make a cash payment or periodic cash payments to such entity, to the extent that the ... use ... under section 363 ... results in a decrease in the value of such entity’s interest in such property;
- (2) providing to such entity an additional or replacement lien to the extent that such ... use ... results in a decrease in the value of such entity’s interest in such property; or
- (3) granting such other relief ... as will result in the realization by such entity of the indubitable equivalent of such entity’s interest in such property.

11 U.S.C. § 361. Essentially, with the provision of adequate protection, the Bankruptcy Code seeks to shield a secured creditor from diminution in the value of its interest in the particular

collateral during the period of use. *See In re Hubbard Power & Light*, 202 B.R. 680, 685 (Bankr. E.D.N.Y. 1996); *In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992); *Beker Indus.*, 58 B.R. at 736; *see also In re Nice*, 355 B.R. 554, 563 (Bankr. N.D. Va. 2006) (“adequate protection is solely a function of preserving the value of the creditor’s secured claim as of the petition date due to a debtor’s continued use of collateral”).

19. Key has consented to the Diocese’s continued use of Cash Collateral on the terms set forth herein and the Diocese believes that Key is adequately protected by the granting of replacement liens as described below. NBT has also requested, and the Diocese has agreed to provide, adequate protection in the form of rollover liens.

The Proposed Adequate Protection

20. In order to adequately protect any interest Key may have in the Cash Collateral, the Diocese proposes to (a) make payments of principal and interest, if and to the extent they become due under the Key Secured Debt Documents (the “Key Adequate Protection Payments”) and (b) grant Key, to the extent of any diminution in the value of its interest in the Prepetition Key Collateral, and effective as of the Petition Date, perfected replacement security interests in, and valid, binding, enforceable and perfected liens (the “Key Rollover Liens”), on all of the Diocese’s cash, deposit accounts, and investment property in the possession of, or subject to the control of, Key, and all proceeds of the foregoing, whether in existence on the Petition Date or thereafter created, acquired or arising (collectively, the “Postpetition Key Collateral”) provided, however, that the Postpetition Key Collateral shall not include, and the Key Rollover Liens shall not attach to, any funds or property held by the Diocese (i) for the purpose of administering its insurance programs or health plan, (ii) which represent trust fund taxes or employee payroll deductions, or (iii) which are endowed funds or subject to donor restrictions on use.

21. Because the Diocese has not drawn anything on the Key Line of Credit, nor has the WCB drawn on the Key Letter of Credit, the Diocese does not anticipate that any Key Adequate Protection Payments will be due at this time. Furthermore, because the value of the Blocked Key Account is already in excess of Key's aggregate potential exposure under the Key Line of Credit and the Key Letter of Credit, the Diocese submits that the proposed Key Rollover Liens, together with any Key Adequate Protection Payments that may become due, more than adequately protect Key's interest (if any) in the Cash Collateral.

22. In order to adequately protect any interest NBT may have in the Prepetition NBT Collateral, the Diocese proposes to (a) continue to make regular payments of principal and interest, when and to the extent they become due under the NBT Secured Debt Documents (the "NBT Adequate Protection Payments") and (b) grant NBT, to the extent of any diminution in the value of its interest in the Prepetition NBT Collateral, and effective as of the Petition Date, perfected replacement security interests in, and valid, binding, enforceable and perfected liens (the "NBT Rollover Liens"), on all of the Diocese's investment property held in the Blocked NBT Account, and all proceeds of the foregoing, whether in existence on the Petition Date or thereafter created, acquired or arising (collectively, the "Postpetition NBT Collateral"). As of the Petition Date the Blocked NBT Account contained securities valued at approximately \$9.8 million. Accordingly, NBT is oversecured with respect to the \$6.5 million in term loans it has extended to the Diocese. The Diocese therefore submits that NBT will be adequately protected by the NBT Adequate Protection Payments and the issuance of the NBT Rollover Liens.

C. Interim Approval Should be Granted

23. The Diocese seeks interim approval of the use of Cash Collateral through July 31, 2020 to pay only (i) reasonable and necessary expenses to be incurred in the ordinary course in

connection with the operation of its business and fulfilment of its religious mission, (ii) administrative expenses incurred in connection with this Chapter 11 Case, and (iii) employee wages and such other payments as may be authorized by separate order of the Court.

24. The Diocese respectfully requests that the Court conduct a preliminary hearing on this Motion and authorize the Diocese to use Cash Collateral on an interim basis pending a hearing to consider authorizing such use on a final basis. Interim access to the Cash Collateral will ensure that the Diocese is able to avoid immediate and irreparable harm at the outset of this Chapter 11 Case.

25. Bankruptcy Rule 4001(b)(2) governs the procedures for obtaining approval to use cash collateral and it provides:

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14 day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Fed. R. Bankr. P. 4001(b)(2).

26. After the final hearing, Bankruptcy Rule 4001(b) does not limit the use of cash collateral solely to those amounts necessary to prevent immediate and irreparable harm to the estate, and the debtor may use such amounts as it deems prudent in the operation of its business. *Cf. In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 36 (Bankr. S.D.N.Y. 1990) (approving at the final hearing debtor in possession financing in excess of what had been held to be “necessary to avoid immediate and irreparable harm” at the interim hearing).

27. The Diocese submits that, for the reasons set forth herein, immediate access to Cash Collateral is necessary to allow the Diocese to continue to operate and to preserve the value of the

Diocese's estate for the benefit of all parties in interest. Moreover, Key as the sole party with an interest in Cash Collateral has indicated its consent to such use.

D. Request for Final Hearing

28. Pursuant to Bankruptcy Rule 4001(b)(2), the Diocese requests that the Court schedule a hearing to consider entry an order authorizing the use of Cash Collateral on a final basis (the "Final Order"), and that the Final Order authorize the Diocese to use Cash Collateral in accordance with its business judgment, subject only to the Bankruptcy Code's limitations on paying prepetition claims as the same may be modified by any order of the Court authorizing such payments. The Diocese further request that the hearing to consider entry of the Final Order be held no later than thirty (30) days after the Petition Date.

WAIVER OF NOTICE AND STAY REQUIREMENTS

29. To implement the foregoing successfully, the Diocese seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and any stay of an order granting the relief requested herein pursuant to Bankruptcy Rules 6004(h), 7062, 9014 or otherwise.

RESERVATION OF RIGHTS

30. Nothing in this Motion, nor any payment made pursuant to the relief sought herein, if granted, is intended or should be construed as an admission as to the validity, priority or amount of any claim against the Diocese, a waiver of the Diocese's right to dispute any claim or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code and the Diocese expressly reserves its rights with respect thereto.

NOTICE

31. Notice of this Motion will be given to (i) the Office of the United States Trustee for the Northern District of New York, (ii) counsel for Key, (iii) counsel for NBT, (iv) the Diocese's

EXHIBIT A

Proposed Interim Order

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

The Roman Catholic Diocese of Syracuse,
New York,

Debtor.

Case No. 20- 30663

Chapter 11

**INTERIM ORDER (A) AUTHORIZING THE USE OF
CASH COLLATERAL, AND (B) GRANTING ADEQUATE PROTECTION**

Upon the motion of The Roman Catholic Diocese of Syracuse, New York (the “Diocese”) for entry of interim and final orders (a) authorizing the use of Cash Collateral and (b) granting adequate protection [Docket No. ___] (the “Motion”)¹; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this Chapter 11 Case and the Motion in this district is proper pursuant to 28 U.S.C. §§

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the Diocese, its estate, creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given under the circumstances and that, except as otherwise ordered herein, no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The Diocese is authorized, pursuant to section 363(c)(2)(B) of the Bankruptcy Code, to use Cash Collateral through [July 31, 2020] to pay only (i) reasonable and necessary expenses to be incurred in the ordinary course in connection with the operation of its business and fulfilment of its religious mission, (ii) administrative expenses incurred in connection with this Chapter 11 Case, and (iii) such other payments as may be authorized by separate order of the Court.
3. For avoidance of doubt, nothing in this Interim Order shall authorize the Diocese to use any cash or securities held in the Blocked Key Account without the prior consent of Key or any investment property held in the Blocked NBT Account without the prior consent of NBT, *provided, however*, that the Diocese may continue to manage its investments held in the Blocked Key Account and the Blocked NBT Account in accordance with its prepetition practices and the Prepetition Secured Debt Documents.
4. As adequate protection for the use of the Cash Collateral, Key shall receive, pursuant to sections 361, and 363(c)(2) of the Bankruptcy Code, (a) payments of principal and interest, if and to the extent they become due under the Key Secured Debt Documents (the “Key Adequate Protection Payments”) and (b) to the extent of any diminution in the value of its interest

in the Prepetition Key Collateral, and effective as of the Petition Date, perfected replacement security interests in, and valid, binding, enforceable and perfected liens (the “Key Rollover Liens”), on all of the Diocese’s cash, deposit accounts, and investment property in the possession of, or subject to the control of, Key, and all proceeds of the foregoing, whether in existence on the Petition Date or thereafter created, acquired or arising (collectively, the “Postpetition Key Collateral”) provided, however, that the Postpetition Key Collateral shall not include, and the Key Rollover Liens shall not attach to, any funds or property held by the Diocese (i) for the purpose of administering its insurance programs or health plan, (ii) which represent trust fund taxes or employee payroll deductions, or (iii) which are endowed funds or subject to donor restrictions on use.

5. As adequate protection of its interest in the Prepetition NBT Collateral, NBT shall receive, pursuant to sections 361 and 363(e) of the Bankruptcy Code (a) regular payments of principal and interest, when and to the extent they become due under the NBT Secured Debt Documents (the “NBT Adequate Protection Payments”) and (b) to the extent of any diminution in the value of its interest in the Prepetition NBT Collateral, and effective as of the Petition Date, perfected replacement security interests in, and valid, binding, enforceable and perfected liens (the “NBT Rollover Liens”), on all of the Diocese’s investment property held in the Blocked NBT Account, and all proceeds of the foregoing, whether in existence on the Petition Date or thereafter created, acquired or arising (collectively, the “Postpetition NBT Collateral”).

6. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Key Rollover Liens and the NBT Rollover Liens without the necessity of filing or recording any financing statement or other instrument or document (including, without limitation any mortgages or leasehold mortgages), or the taking of any other

action whatsoever which may otherwise be required under the law of any jurisdiction to validate or perfect such liens.

7. This Interim Order shall be without prejudice to Key's or NBT's right to seek relief from the automatic stay under section 362 of the Bankruptcy Code on any basis at any time upon notice to the Diocese and this Court. Subject to section 362 of the Bankruptcy Code, this Interim Order does not and shall not constitute a waiver by Key or NBT of any right either may have with respect to the Prepetition Collateral, including, without limitation, their rights as a secured party under the Prepetition Secured Debt Documents or the Uniform Commercial Code. The automatic stay imposed by section 362(a) of the Bankruptcy Code shall be, and it hereby is, modified to the extent necessary to effectuate the requirements of this Interim Order.

8. A final hearing on the Motion shall be held on [July __], 2020 at [__:__] [a.m./p.m.] prevailing Eastern Time. (the "Final Hearing"). Any objections or responses to the Motion shall be filed on or before July [__], 2020 at 4:00 p.m. (prevailing Eastern time) and served on parties in interest as required by the Local Rules. This Interim Order, and all acts taken in furtherance of or reliance upon this Interim Order, shall be effective notwithstanding the filing of an objection. In the event no objections or responses are timely filed and served in accordance with the foregoing, the Court may enter an order granting the Motion on a final basis without need for the Final Hearing.

9. The requirements set forth in Local Rule 9013-5(a) are satisfied.

10. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or are otherwise deemed waived.

11. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, this Interim Order shall be effective and enforceable immediately upon its

entry. Notwithstanding any objection to the Motion or this Interim Order, this Interim Order shall remain in effect until further order of this Court. Any subsequent modification or vacatur of this Interim Order shall not invalidate or impair any actions taken pursuant to this Interim Order prior to such modification or vacatur.

12. The Diocese is hereby authorized to take all actions it determines are necessary to effectuate the relief granted pursuant to this Interim Order.

13. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Interim Order.

###

EXHIBIT B

Proposed Final Order

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

The Roman Catholic Diocese of Syracuse,
New York,

Debtor.

Case No. 20- 30663

Chapter 11

**FINAL ORDER (A) AUTHORIZING THE USE OF
CASH COLLATERAL, AND (B) GRANTING ADEQUATE PROTECTION**

Upon the motion of The Roman Catholic Diocese of Syracuse, New York (the “Diocese”), for entry of interim and final orders (a) authorizing the use of Cash Collateral and (b) granting adequate protection [Docket No. ___] (the “Motion”)¹; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this Chapter 11 Case and the Motion in this district is proper pursuant to 28 U.S.C. §§

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having entered an order granting the Motion on an interim basis on [____], 2020 [Docket No. ____]; and this Court having determined that the relief requested in the Motion is in the best interests of the Diocese, its estate, creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given under the circumstances and no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. All objections to the Motion or the relief requested therein that have not been made, withdrawn, waived, or settled, and all reservations of rights included therein, are overruled and disallowed on the merits.
3. The Diocese is authorized, pursuant to section 363(c)(2)(B) of the Bankruptcy Code, to use Cash Collateral as it shall deem necessary or appropriate in the exercise of its business judgment, subject only to the Bankruptcy Code's limitations on payment of prepetition claims as the same may be modified by any order of this Court authorizing such payments.
4. For avoidance of doubt, nothing in this Final Order shall authorize the Diocese to use any cash or securities held in the Blocked Key Account without the prior consent of Key or any investment property held in the Blocked NBT Account without the prior consent of NBT, *provided, however*, that the Diocese may continue to manage its investments held in the Blocked Key Account and the Blocked NBT Account in accordance with its prepetition practices and the Prepetition Secured Debt Documents.

5. As adequate protection for the use of the Cash Collateral, Key shall receive, pursuant to sections 361, and 363(c)(2) of the Bankruptcy Code, (a) payments of principal and interest, if and to the extent they become due under the Key Secured Debt Documents (the “Key Adequate Protection Payments”) and (b) to the extent of any diminution in the value of its interest in the Prepetition Key Collateral, and effective as of the Petition Date, perfected replacement security interests in, and valid, binding, enforceable and perfected liens (the “Key Rollover Liens”), on all of the Diocese’s cash, deposit accounts, and investment property in the possession of, or subject to the control of, Key, and all proceeds of the foregoing, whether in existence on the Petition Date or thereafter created, acquired or arising (collectively, the “Postpetition Key Collateral”) provided, however, that the Postpetition Key Collateral shall not include, and the Key Rollover Liens shall not attach to, any funds or property held by the Diocese (i) for the purpose of administering its insurance programs or health plan, (ii) which represent trust fund taxes or employee payroll deductions, or (iii) which are endowed funds or subject to donor restrictions on use.

6. As adequate protection of its interest in the Prepetition NBT Collateral, NBT shall receive, pursuant to sections 361 and 363(e) of the Bankruptcy Code (a) regular payments of principal and interest, when and to the extent they become due under the NBT Secured Debt Documents (the “NBT Adequate Protection Payments”) and (b) to the extent of any diminution in the value of its interest in the Prepetition NBT Collateral, and effective as of the Petition Date, perfected replacement security interests in, and valid, binding, enforceable and perfected liens (the “NBT Rollover Liens”), on all of the Diocese’s investment property held in the Blocked NBT Account, and all proceeds of the foregoing, whether in existence on the Petition Date or thereafter created, acquired or arising (collectively, the “Postpetition NBT Collateral”).

7. This Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Key Rollover Liens and the NBT Rollover Liens without the necessity of filing or recording any financing statement or other instrument or document (including, without limitation any mortgages or leasehold mortgages), or the taking of any other action whatsoever which may otherwise be required under the law of any jurisdiction to validate or perfect such liens.

8. This Final Order shall be without prejudice to Key's or NBT's right to seek relief from the automatic stay under section 362 of the Bankruptcy Code on any basis at any time upon notice to the Diocese and this Court. Subject to section 362 of the Bankruptcy Code, this Final Order does not and shall not constitute a waiver by Key or NBT of any right either may have with respect to the Prepetition Collateral, including, without limitation, their rights as a secured party under the Prepetition Secured Debt Documents or the Uniform Commercial Code. The automatic stay imposed by section 362(a) of the Bankruptcy Code shall be, and it hereby is, modified to the extent necessary to effectuate the requirements of this Final Order.

9. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or are otherwise deemed waived.

10. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, this Final Order shall be effective and enforceable immediately upon its entry. Any subsequent modification or vacatur of this Final Order shall not invalidate or impair any actions taken pursuant to this Final Order prior to such modification or vacatur.

11. The Diocese is hereby authorized to take all actions it determines are necessary to effectuate the relief granted pursuant to this Final Order.

12. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Final Order.

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