

**CONGREGATION ENDOWMENT FUND  
(OLD ENDOWMENT)**

By this Trust Agreement (this "Agreement"), effective \_\_\_\_\_, 20\_\_\_\_, the Board of Directors of the \_\_\_\_\_ Congregation (the "Congregation"), a civil corporation pursuant to Wisconsin Statutes § 187.19, amends and restates the provisions of the declaration, agreement, or other arrangement ("Prior Arrangement") which established the \_\_\_\_\_ Congregation Endowment Fund (the "Fund") originally effective \_\_\_\_\_, \_\_\_\_\_.

WHEREAS, the Prior Arrangement created the Fund for the purpose of \_\_\_\_\_; and

WHEREAS, the Board of Directors has determined that the money and/or property in the Fund would be better held pursuant to the provisions of this Agreement, separate from The Catholic Diocese of Madison Foundation, Inc.; and

WHEREAS, any provisions of the Prior Arrangement that are to supersede any contrary provisions of this Agreement are set forth in an addendum ("Addendum") attached to this Agreement (i.e., the lack of any Addendum means that the Prior Arrangement is completely superseded by this Agreement);

NOW, therefore, the Board of Directors confirms the existence of the Fund as an irrevocable trust, with the members of the Board of Directors serving as trustees ("Trustees"), holding, investing, and administering the money and property contributed to the Fund pursuant to the following terms and provisions as modified by any Addendum:

**ARTICLE I. Name of Trust Fund**

The name of this trust Fund (either as originally named or as renamed in this Agreement) shall hereinafter be \_\_\_\_\_ Congregation Endowment Fund. The Trustees shall conduct the activities of the Fund in that name.

**ARTICLE II. Purposes of Trust Fund**

The purposes for which this trust Fund is amended and restated are the following

- A. **Support of Congregation.** To support and assist the Congregation in its mission by providing supplemental funding of programs and services.
- B. **Additional Support.** To provide additional support to the Congregation for its operation, maintenance, capital requirements, and continued existence.
- C. **Tax-Exempt Purposes.** To operate exclusively for religious, charitable, or educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

- D. **Receipt of Contributions.** To receive any real property or tangible or intangible personal property, including money, by gift, grant, devise, or bequest from any individual, foundation, corporation, either private or public, or governmental instrumentality for the purpose or purposes set forth herein and to administer such property for such purpose or purposes.
- E. **Diocesan Policies.** To carry out the work of the Fund in accordance with the policies and guidelines established by the Bishop for the Diocese of Madison and the Congregation.

### **ARTICLE III. Additions to the Trust Fund**

The Trustees may receive and accept, as an addition to the trust Fund, any property whether real, personal, or mixed, by way of gift, bequest, or devise, from any person, firm, trust, or corporation for the purposes of the Fund as specified in Article II hereof, to be held, administered, and disposed of in accordance with and pursuant to the provisions of this Agreement, but no gift, bequest, or devise of any such property shall be received and accepted if it is conditioned or limited in such a manner (1) as to require the disposition of the income or its principal to any person or organization for other than “charitable, religious or educational purposes” as specified in Article II of this Agreement, or (2) as shall, in the opinion of the Trustees, jeopardize the federal income tax exemption of the Fund pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States Internal Revenue Law.

### **ARTICLE IV. Administration of the Trust Fund**

- A. **Investment of Trust Fund.** The Trustees shall hold the Fund and its assets and may, in their sole discretion, invest it or parts of it in securities, real estate, or other investments which are permitted under the laws of the State of Wisconsin and pursuant to the Canon Law of the Roman Catholic Church. All investments shall be made in accordance with the investment guidelines promulgated by the Bishop for the Diocese of Madison or, in the absence of diocesan guidelines, in accordance with guidelines adopted by the Advisory Board. The Fund may be divided into sub-funds or sub-accounts.
- B. **Ascertainment of Principal and Income.** All property, real and personal, of whatever kind or nature, received and accepted by the Trustees, shall be held and administered by the Trustees to permit the ascertainment of principal and income of the Trust and the apportionment of receipts and expenses in accordance with the provisions of section 701.20, Wisconsin Statutes, or the corresponding provision of any future Wisconsin Statute, to the extent not inconsistent with the provisions of this Agreement. The Trustees shall, in their sole discretion, retain the cash and collect the income, and they shall from time to time, and in such manner as they deem proper in their sole discretion, devote and apply the principal of the Fund or the income thereof exclusively to the uses and purposes set forth in this Agreement.
- C. **Annual Distributions.** To the extent not inconsistent with any Addendum, the Trustees shall make annual distributions from the Fund consistent with the then-current diocesan spending policy based on the fair market value of the Fund assets determined on the last business day of the preceding calendar year, and in the proportions of the component sub-funds of the Fund on the last business day of the preceding calendar year. The total annual distribution

may be made on a cumulative basis throughout the calendar year. At the time of this Agreement, the Trustees intend that such distributions not exceed five-percent of the Fund value based on a twelve-quarter rolling average of the corpus or principal balance of the Fund.

- D. **Extraordinary Distributions.** Additionally, by a unanimous decision of the Trustees, up to ten percent of the fair market value of the Fund (expressed as an average of the fair market value of the assets of the Fund on the last business day of the preceding twelve calendar quarters) may be used in any calendar year to meet an emergency need for funds for the purposes of the Congregation. Notwithstanding the foregoing, in matters of extreme circumstance, the Trustees may in their sole and absolute discretion, by a unanimous decision, make a hardship distribution in excess of such ten percent limit. Any distribution under this Paragraph may exceed ten percent of the fair market value of any component sub fund. Following an extraordinary distribution of any amount, no further use of the principal shall be permitted, except as necessary to make the annual distribution described in Article IV, Paragraph C, until the amount withdrawn extraordinarily has been replaced through other gifts or deposits to the Fund or through investment growth of the Fund. Any distributions under this Paragraph are additionally subject to the restrictions in Article V, Paragraph A.

#### **ARTICLE V. Restrictions on Use of the Trust Fund**

- A. **Unusual Distributions of Principal.** The principal of the Fund, beyond the usual annual distribution amounts, may be distributed only in unusual and critical circumstances as determined by a unanimous decision of the Trustees to the extent not inconsistent with any Addendum. Any decision to distribute more than ten percent of the principal of the Fund in any given year shall require formal consultation between the Trustees and the Advisory Board.
- B. **Designated-Purpose Donations.** If a donor (whether an individual, foundation, corporation, either public or private, or governmental instrumentality) designates at the time of donation that the donated funds or property be used for a specific purpose that is consistent with one or more of the purposes specified in Article II hereof, and if the Trustees accept the donation, then the Trustees will use the principal and/or income from the donated funds only for the use and to the extent designated by the donor. In such cases, the Trustees shall render a separate accounting for such funds or property, but for purposes of investment, such funds or property may be combined with other assets of the trust Fund.
- C. **Termination of Fund.** Any decision to terminate the Fund shall require formal consultation between the Trustees, the Advisory Board, and the Parish Finance Council, and shall be subject to the approval of the Bishop of Madison (or, if he is unavailable, the apostolic administrator or the diocesan administration). If the entire principal of the Fund is expended, then the Fund shall be deemed terminated.
- D. **No Private Inurement.** No part of the net earnings of the Trust shall inure or be payable to or for the benefit of any private individual (such as the Trustees or the members of the Advisory Board), except that reasonable compensation may be paid for services rendered to or for the Fund in the furtherance of its purposes and for reasonable and necessary expenses incurred in connection with the administration of the Fund.

- E. **No Lobbying or Political Activity.** No substantial part of the activities of the Trust shall be the carrying on of propaganda, or otherwise attempting, to influence legislation. No part of the activities of the Trust shall be the participation in, or intervention in (including the publishing or distributing of statements for) any political campaign on behalf of (or in opposition to) any candidate for public office.
- F. **Tax-Exempt Activities.** Notwithstanding any other provisions of this Agreement, the Trustees shall neither have nor exercise any power, nor shall they engage, directly or indirectly, in any activities not permitted to be conducted or carried on by an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, or the corresponding provisions of any future United States Internal Revenue Law, or by any organization, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1986, or the corresponding provisions of any future United States Internal Revenue Law.

#### **ARTICLE VI. Trustees and Meetings**

- A. **Trustees.** The Trustees shall be the five individuals who are on the Board of Directors of the Congregation, namely, the Bishop of Madison (or his equivalent in Canon Law), the Vicar General of the Diocese of Madison, the Pastor of the Congregation, and the two laypersons of the Congregation who are on the Board of Directors of the Congregation.
- B. **Matters of Ordinary Administration.** In matters of ordinary administration of the Fund, because the Pastor of the Congregation may generally exercise the proxy of the Bishop of Madison (or his equivalent in Canon Law), an action or decision of the Trustees need be made only by the Pastor of the Congregation.
- C. **Other Matters.** Except as otherwise provided herein, the Trustees shall act by a vote of a majority of their number at any given time.
- D. **Execution of Instruments.** Any instrument required to be executed by the Fund shall be valid if executed in the name of the Fund by the Pastor of the Congregation.
- E. **Meetings.** The Trustees shall normally meet at least once each year. Meetings shall be called and chaired by the Bishop of Madison or, if he is unavailable, by the Vicar General of the Diocese of Madison or, if he is unavailable, by the Pastor of the Congregation. Any or all Trustees may participate in a meeting through the use of any means of communication by which all participating Trustees may simultaneously hear or read each other's communications during the meeting.
- F. **Notice of Meetings.** At least ten days before any meeting of the Trustees, each Trustee shall be provided with a written notice of the meeting and the business to be transacted at the meeting. Any Trustee may waive in writing the receipt of such notice. Any Trustee who participates in a meeting shall be deemed to have received timely notice of the meeting.
- G. **Trustee Compensation and Expenses.** Trustees shall serve without compensation but may be reimbursed from the Fund for all expenses reasonably incurred in the administration of the Fund or the exercise of their duties as Trustees.

## **ARTICLE VII. Advisory Board**

The Trustees shall have a Fund advisory board (“Advisory Board”) consisting of individuals who shall be appointed (and may be removed) by a majority vote of the Trustees. The Advisory Board shall advise the Trustees in matters relating to the Fund. The Advisory Board shall be subject to the following:

- A. **Composition and Number of Members.** The Advisory Board shall have no less than four and no more than eight members. A majority of the members of the Advisory Board shall be members of the Congregation. For example, if the Advisory Board were to have four members, then at least three shall be members of the Congregation. At least one member shall be selected from the Parish Pastoral Council (if that body exists in the parish) and at least one member shall be selected from the Parish Finance Council.
- B. **Terms of Office.** The terms of office of the initial members of the Advisory Board shall be staggered terms so that approximately half of the initial terms are three years and approximately half are two years. Thereafter, a term of office shall be three years. Members of the Advisory Board may serve no more than two successive terms, but they may be eligible for reappointment to the Board after an absence of one year.
- C. **Vacancies.** In the case of any vacancy on the Advisory Board by death, resignation, disqualification, removal, or other cause deemed sufficient by the Trustees, a successor shall be appointed (by majority vote of the Trustees) to hold office for the unexpired portion of the term.
- D. **Budgets and Expenditures.** The Advisory Board shall propose an annual budget for the operation of the Fund and shall recommend the proposed budget to the Trustees, who shall have final authority to adopt or modify the budget. Unbudgeted expenditures must normally have the consent of the majority of the Advisory Board members, unless the Trustees determine otherwise.
- E. **Advisory Board Compensation and Expenses.** Members of the Advisory Board shall serve without compensation but may be reimbursed from the Fund for all expenses reasonable incurred in the administration of the Fund.

## **ARTICLE VIII. Powers of Trustees**

- A. **Powers.** The Trustees shall have all powers granted by governing law and all powers to invest the Trust Fund in accordance with the investment guidelines promulgated for the Diocese of Madison. The Trustees shall also have the following powers, exercisable in the discretion of the Trustees:
  - 1. To invest and reinvest the principal and income of the Trust as permitted under the laws of the State of Wisconsin in such property, real, personal or mixed, and in such manner as they shall deem proper.
  - 2. To change investments from time to time as they shall deem advisable.

3. To invest in or retain any stocks, shares, bonds, notes, obligations, or personal or real property, including without limitation any interests in or obligations of any corporation, partnership, association, business trust, investment trust, common trust fund, or investment company (although some or all of the property so acquired or retained is of a kind or size which but for this express authority would not be considered property).
4. To sell, lease, or exchange any personal, mixed, or real property at public auction or by private contract, for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertakings relating to the trust property, as the Trustees consider advisable, whether or not such leases or contracts may extend beyond the duration of the Trust, without prejudice to the provisions of the Canon Law of the Catholic Church regarding the alienation of patrimony and related transactions.
5. To borrow money for such periods, at such rates of interest, and upon such terms as the Trustees consider advisable, and as security for such loans to mortgage or pledge any real or personal property with or without power of sale; to acquire or hold any real or personal property, subject to any mortgage or pledge on or of property acquired or held by the Trust.
6. To execute and deliver deeds, assignments, transfers, mortgages, pledges, leases, covenants, contracts, releases, promissory notes, and other instruments, sealed or unsealed, incident to any transaction in which the Trustees engage.
7. To vote, give proxies, participate in the reorganization, merger or consolidation of any concern, or in the sale, lease, disposition, or distribution of its assets; to join with other security holders in acting through a committee, voting trustees, depositary or otherwise, and in this connection to delegate authority to such committee, depositary or trustees and to deposit securities with them or transfer securities to them, to pay assessments levied on securities or to exercise subscription rights in respect of securities.
8. To employ a bond or trust company as custodian of any funds or securities and to delegate to it such powers as the Trustees deem appropriate; to hold trust property without indication of fiduciary capacity but only in the name of a registered nominee, provided the trust property is at all times identified as such on the books of the Trust; to keep any or all of the trust property or funds in any place or places in the United States of America; to employ clerks, accountants, investment counsel, attorneys, agents and any special services, and to pay the reasonable compensation and expenses of all such services.

**B. Fiduciary Capacity.** The Trustees may exercise the powers under this Agreement solely in their fiduciary capacity consistent with and in furtherance of the purposes of the Trust, as specified in Article II hereof, and not otherwise. The Trustees shall act in good faith and exercise reasonable care and diligence in carrying out the purposes of the trust Fund.

**C. Engagement of Third Parties.** The Trustees may, in their discretion, engage investment advisors or other third parties as to any matters relating to investment, reinvestment, or distribution of assets in the Fund. The Trustees shall at all times have ultimate authority and power over investments, reinvestments, and the distribution of funds.

**D. Establishment of Policies.** The Trustees may establish policies and rules for the administration of the Fund. Any such policies or rules must be in accordance with policies

and guidelines established for the Diocese of Madison and with the Canon Law of the Roman Catholic Church.

- E. **Refusal of Contributions.** The Trustees may reject or refuse to accept any contributions or donations made to the Fund.
- F. **Conflict of Interest.** Any Trustee that might have a conflict between personal and fiduciary interests shall report the possible conflict to the other Trustees.
- G. **Exculpation.** The Trustees shall not, in the absence of bad faith, willful misconduct, or reckless indifference to the purposes of the trust, be liable for (or accountable for) errors of judgment in connection with the trust Fund.
- H. **Socially Responsible Investing.** The Trustees are urged, but in no way bound, to adhere to the guidelines for socially responsible investing as set forth by the United States Conference of Catholic Bishop, especially in the 2003 document entitled “Socially Responsible Investment Guidelines” and in any similar documents that may be published by that Conference from time to time.

#### **ARTICLE IX. Accounting**

- A. **Fiscal Year.** The fiscal year of the Fund shall be from July 1 through June 30 of each year.
- B. **Statement of Receipts and Disbursements.** The Trustees shall prepare a statement of Fund receipts and disbursements for each fiscal year. Within two months after the end of each fiscal year, the Trustees shall provide the statement for that year to the Finance Officer of the Diocese of Madison and the Advisory Board.
- C. **No Annual Report to IRS.** Because the Fund is operated, supervised, or controlled by or in connection with a religious organization described in section 501(c)(3) of the Internal Revenue Code, the Fund is exempt under current law from filing an annual report (Form 990) to the Internal Revenue Service as provided by section 6033(a)(3)(iv).

#### **ARTICLE X. Nonalienation of Funds**

No individual, foundation, corporation, either public or private, whether classifiable as donor or donee, or anyone claiming by or through them, or any other person, foundation, corporation, either public or private, shall have any right, title, or interest in or to the trust Fund or any part thereof. Title to all of the money, property, and income paid into or acquired by or according to the trust Fund shall be vested in and remain exclusively in the name of the Trustees. This Fund shall be immobilized (reserved for a specific purpose) pursuant to the Canon Law of the Roman Catholic Church. No benefits or monies payable from the Fund shall be subject in any matter to anticipation, alienation, sale, transfer, assignment, encumbrance, pledge, or charge by anyone other than the Trustees in conformance with this Agreement. Any attempt by anyone other than the Trustees, in conformance with this Agreement, to so anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the benefits or monies payable from the Fund shall be void.

#### **ARTICLE XI. Amendment of Trust Instrument**

This Agreement and the trust Fund are irrevocable and may not be terminated, in whole or in part, except as provided in this Agreement.

A. **Written Amendments.** This Agreement may be amended at any time by a written instrument signed and acknowledged by all the Trustees. Nonetheless, no amendment shall authorize the Trustees to conduct the affairs of the trust Fund in any manner or for any purpose contrary to the purposes of the Trust as specified in Article II of this Agreement or any applicable provision of the United States Internal Revenue Code (current or future versions) or any provision of the Canon Law of the Catholic Church (current or future versions) or any policy of the Diocese of Madison, or to cause the principal of the trust Fund to be invaded or reduced contrary to the provisions and intent of this Agreement. All instruments amending this Agreement shall be noted upon or kept attached to the executed original of this Agreement held by the Trustees.

B. **Technical Amendments to Conform to Actions.** Any action taken or authorized by the Trustees which would be inconsistent with this Agreement, other than an action which is not permitted by Article V, this Article XI, or any provisions of governing law, or which is inconsistent with the purposes specified in Article II hereof, but which is taken or authorized by the affirmative vote of the majority of the Trustees, shall be given the same effect as though this instrument had been temporarily amended or suspended so far, but only so far, as is necessary to permit the specific action so taken or authorized. The power and authority provided for by this Paragraph B of Article XI is, however, only to authorize technical amendments to this Agreement for the purpose of ensuring that the Agreement conforms to the governing law, particularly applicable tax law.

## **ARTICLE XII. Termination of the Trust Fund**

If the Congregation is divided, merged, suppressed, or otherwise substantially altered as provided in the Canon Law of the Catholic Church (with or without a corresponding alteration or dissolution of the civil entity under which the Congregation is incorporated), the Trustees shall distribute the trust Fund in a manner determined by the Bishop of Madison in accordance with canons 121-123 of the Code of Canon Law or whatever canonical norms are in force at the time. If the Congregation is not so substantially altered, but the purposes for which the trust Fund is established no longer exist, the Trustees shall distribute the trust Fund into one or more other endowment trusts that are (a) maintained by or within the structure of the church of the Diocese of Madison, (b) not inconsistent with the purposes of the trust Fund or the teachings of the Catholic Church, and (c) not inconsistent with the intentions of the donors as closely as possible. If (1) the Congregation is not substantially altered and (2) the purposes for which the trust Fund was established continue to exist, but (3) the income derived from the trust Fund significantly exceeds the amount needed for those purposes and (4) the excess is expected to exist indefinitely, then to the extent permissible under state law, the Trustees may transfer from the trust Fund, to one or more other endowment trusts whose purposes are not inconsistent with the purposes of the trust Fund or the teachings of the Catholic Church, so much of the trust Fund that exceeds the amount reasonably appropriate for the trust Fund to satisfy its purposes for the foreseeable future. Otherwise, the trust Fund shall continue forever unless and until, consistent with the purposes set forth in Article II, the Trustees distribute all of the principal as provided in Article V, Paragraph A, regarding unusual distributions of principal.

**ARTICLE XIII. Applicable Law**

This Agreement and the trust Fund hereby amended and restated are governed in all respects by the laws of the State of Wisconsin, including Chapter 701 of the Wisconsin Statutes (the Wisconsin Trust Code), to the extent such laws do not conflict with the Canon Law of the Roman Catholic Church.

[SIGNATURES ON NEXT PAGE]

**IN WITNESS WHEREOF**, this \_\_\_\_\_ Congregation  
Endowment Agreement is executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by each member of the Board of Directors of the \_\_\_\_\_ Congregation.

\_\_\_\_\_  
Most Reverend Robert C. Morlino, Bishop of Madison  
(President and Trustee of the Congregation)

\_\_\_\_\_  
Reverend Monsignor James R. Bartylla, Vicar General  
(Trustee of the Congregation)

\_\_\_\_\_, Pastor  
(Vice President and Trustee of the Congregation)

\_\_\_\_\_  
(Treasurer and Trustee of the Congregation)

\_\_\_\_\_  
(Secretary and Trustee of the Congregation)