

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO**

In re:  ROMAN CATHOLIC CHURCH OF THE DIOCESE OF GALLUP, a New Mexico corporation sole,  Debtor.	Chapter 11  Case No. 13-13676-t11  <b>Jointly Administered with:</b>
Jointly Administered with:  BISHOP OF THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF GALLUP, an Arizona corporation sole.  This pleading applies to:  <input checked="" type="checkbox"/> All Debtors. <input type="checkbox"/> Specified Debtor	Case No. 13-13677-t11

**MOTION TO EXTEND DEADLINE TO ASSUME OR REJECT  
LEASES PURSUANT TO 11 U.S.C. § 365(d)(4)**

Roman Catholic Church of the Diocese of Gallup (“**RCCDG**”) and the Bishop of the Roman Catholic Church of the Diocese of Gallup (the “**Arizona Entity**,” and collectively with RCCDG, the “**Debtors**”) respectfully request, in accordance with 11 U.S.C. §§ 105(a) and 365(d)(4)(B), that the Court enter an Order in the above-captioned, jointly administered Chapter 11 reorganization cases (the “**Reorganization Cases**”) extending the Debtors’ time to assume or reject all nonresidential real property leases in which either of the Debtors is a lessee, including, without limitation, that certain Lease Agreement dated June 28, 2013 by and between Catholic Peoples Foundation, Inc. and RCCDG, as lessee (collectively, the “**Leases**”). The Debtors request the § 365(d)(4)(B) deadline be extended through June 10, 2014. As discussed more fully herein, cause exists to extend the Debtors’ time to assume or reject the Leases.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. JURISDICTION.

The Court has jurisdiction over this Motion by virtue of 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The grounds for the relief requested herein include 11 U.S.C. §§ 105 and 365(d)(4)(B).

### II. BACKGROUND.

On November 12, 2013 (the “**Petition Date**”), the Debtors’ commenced the Reorganization Cases by filing voluntary Chapter 11 petitions. The Debtors are debtors-in-possession under 11 U.S.C. §§ 1107 and 1108.

The organization and background of the Debtors, and the relationship among them, the Diocese, the Parishes and various other entities within the geographic territory of the Diocese are described in the Wall Declaration, which is herein incorporated by this reference.

The Debtors filed these Reorganization Cases to help focus their efforts and limited financial resources to bring healing to those who were abused, parishioners, and others affected by the past acts of sexual abuse committed by clergy and others associated with the Diocese or who ministered within the geographic area of the Diocese. The Debtors seek to accomplish these goals by reorganizing their financial affairs pursuant to a plan of reorganization that will, among other things, fairly, justly, and equitably compensate those who were damaged because of sexual abuse by clergy or other workers in the Church, while allowing the Diocese to continue its ministry and mission, including providing counseling and other services to those who have been harmed and serving an underserved area and population with needed services.

On December 17, 2013, the US Trustee appointed an Unsecured Creditors’ Committee (the “**Committee**”).

The Debtors' time to assume or reject the Leases under 11 U.S.C. § 365(d)(4)(B) expires on March 12, 2014 (the "**Assumption/Rejection Deadline**").

While these Debtors do not have significant assets, that does not make these cases any less complex. In many ways, it makes these cases more challenging. The Debtors have been working in good faith to determine the extent of the real property owned by the Debtors that is not used to carry out their mission and ministry. In addition, the Debtors have been attempting to get a more clear understanding of their insurance situation as well as identifying other entities that might have indemnification or contribution obligations to the Debtors for the abuse that occurred many decades ago. In addition, the Debtors do not believe it is in the best interests of the creditors for the Debtors to be forced into a decision regarding assumption of non-residential real property leases at this stage in the cases.

Accordingly, the Debtors' respectfully request that the Court enter an order extending the Acceptance/Rejection Deadline through June 10, 2014.

### **III. ARGUMENT.**

Under Bankruptcy Code § 365(d)(4) a lease of nonresidential real property is deemed rejected if not assumed or rejected by the earlier of 120 after the entry of the order for relief, or the date a confirmation order is entered in the case. 11 U.S.C. § 365(d)(4). Subsection (B) allows a court to grant trustees a 90-day extension if the request is made prior to expiration of the 120-day period, and if the trustee is able to demonstrate cause for such an extension. *Id.* Cause under § 365(d) is not a defined term. In examining cause under § 365(d)(4), courts have looked at the following factors: (1) whether the lease is the primary asset; (2) whether amounts due under the lease are being paid; (3) whether there will be any potential prejudice to the landlord from noncompensable damages; (4) whether the case is unusually large or complex; and

(5) any other factor demonstrating the lack of a reasonable period of time for the trustee to decide whether to assume or reject. COLLIER ON BANKRUPTCY, ¶ 365.04[3][f] at 365–38 (15<sup>th</sup> ed. rev. 2007); *see also*, *South Street Seaport Ltd. P’ship v. Burger Boys, Inc. (In re Burger Boys, Inc)*, 94 F.3d 755, 761 (2nd Cir. 1996); *In re Beautyco, Inc.*, 307 B.R. 225, 231 (Bankr. N.D. Okla. 2004).<sup>1</sup>

The factors weigh in favor of granting the Debtors’ request for an extension. RCCDG has discussed this motion with the Catholic Peoples Foundation and is advised that they have no objection to this extension. In addition, there is no prejudice to the landlords due to this request. Also, while the Debtors do not have a significant amount of assets, these cases are administratively and legally complex, affecting a broad range of issues involving many litigants. Last, the initial stages of these cases have been filled with complex administrative tasks that have made it difficult to conduct a complete and thorough analysis of the Leases and to determine if any other Leases exist other than those already identified, and the Debtors need more time to make informed decisions regarding treatment of the Leases. In light these factors, sufficient cause exists to extend the Assumption/Rejection Deadline through June 10, 2014.

#### **IV. CONCLUSION.**

Based on the foregoing, and for good cause shown, the Debtors respectfully request the Court enter an Order:

A. Extending the time for the Debtors to assume or reject the Leases through June 10, 2014; and

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<sup>1</sup> The majority of courts hold that filing a motion to extend the § 365(d)(4) time to assume or reject within 120 days serves to toll the time upon which the debtor would otherwise have to act. *See Beautyco, Inc.*, 307 B.R. at 229 (citing cases).

B. Granting such other relief as is just under the circumstances.

RESPECTFULLY SUBMITTED this 11th day of February, 2014.

/s/ Susan G. Boswell

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**CERTIFICATE OF SERVICE**

Pursuant to F.R.C.P. 5(b)(3), F.R.B.P. 9036, NM LBR 9036-1(b), I hereby certify that service of the foregoing “Motion To Extend Deadline To Assume Or Reject Leases Pursuant To 11 U.S.C. § 365(d)(4)” was made on February 11, 2014 via e-mail and/or the notice transmission facilities of the Bankruptcy Court’s case management and electronic filing system on the following parties:

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