

## **DECLARATION OF BURSE**

This DECLARATION OF BURSE is made this 23 day of August, 2019, by the Most Reverend Nelson J. Perez, Bishop of the Roman Catholic Diocese of Cleveland (hereinafter Bishop), for the benefit of St. Mark Parish, 15800 Montrose Ave, Cleveland, Ohio, 44111.

This Declaration of Burse shall also govern and be applicable to any individuals, firms or other entities who desire to be donors to the Burse established herein.

For the purposes of this Document, the definition of Burse is a restricted fund encompassing tangible or intangible property administered by an individual known as the Bursar held for the benefit of the St. Mark Parish subject to the rules and restrictions set forth herein.

### **WITNESSETH:**

WHEREAS, it appears that the Parish intended to establish an endowment fund to support the St. Mark Parish School during the episcopate of Most Rev. Anthony Pilla but it does not appear that an endowment fund agreement was ever executed; and

WHEREAS, the intended purposes of the endowment fund were to provide for the operation, maintenance, capital requirements, student scholarships, and the continued existence of St. Mark Parish School; and

WHEREAS, the Parish desires to memorialize its endowment fund in a document that is consistent with Canon Law and which shall supersede any prior endowment fund agreement to the extent one existed; and

WHEREAS there is a continuing need to provide support for the needs of the St. Mark Parish School and,

WHEREAS, certain individuals, firms and other entities have contributed or indicated a willingness and desire to contribute funds to support St. Mark Parish School for the purposes stated above.

NOW, THEREFORE, there is hereby established a Burse for this purpose to be known as "ST. MARK SCHOOL ENDOWMENT BURSE" to be administered pursuant to the following provisions:

#### **I. PURPOSE OF DECLARATION OF BURSE**

The purpose of this Declaration of Burse is to establish a Burse pursuant to canon 1303, §1, 2° of the Code of Canon Law ("Canon Law") for the purpose of providing for the operation, maintenance, capital requirements, student scholarships, and the continued existence of St. Mark Parish School.

The Burse shall be empowered in accord with the provisions of Canon Law and the policies and procedures of the Diocese of Cleveland to receive any real property or tangible or intangible personal property 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 only for such purpose or purposes.

The Burse shall not be used as a depository for tuition or other payments made to St. Mark Parish School nor any other gifts, including other moneys, not specifically designated as gifts to the ST MARK SCHOOL ENDOWMENT BURSE. Any donations placed in the Burse must be designated by the Donor as a contribution to the Burse. All contributions to the Burse shall be tax deductible.

## **II. BURSAR**

The Bursar of the Burse shall be the pastor of the Parish. If the governance of the Parish passes temporarily from the pastor to the parochial vicar or parochial administrator in accordance with canons 539-541, then the Bursar shall be the parochial vicar or parochial administrator in accordance with canons 539-541 until such time as the pastor is able to again assume his governance of the Parish or a successor pastor is appointed, at which time such pastor will become the Bursar.

## **III. BURSAR ADVISORS**

The Bursar Advisors shall consist of the Parish finance council ("Advisory Board"). It shall be the function of the Advisory Board to advise the Bursar in matters relating to the Burse. For an expenditure of Twenty-Five Thousand Dollars (\$25,000.00) or more for a particular purpose, a written advisory opinion of a majority of the Advisory Board shall be necessary and retained in a Burse file. Notwithstanding the requirement of obtaining a written advisory opinion, the Bursar shall not be bound by the recommendation of the Advisory Board.

## **IV. BURSE ASSETS**

The Bursar is hereby empowered in accord with the provisions of Canon Law and the policies and procedures of the Diocese of Cleveland to receive any real property or tangible or intangible personal property including money and insurance policies, whether given by gift, grant, devise or bequest from any individual, foundation, corporation, either public or private, or governmental instrumentality, when given for any of the purpose or purposes set forth in Item I hereof. All gifts to the Burse are deemed to be IRREVOCABLE.

The burse assets are considered "ecclesiastical goods" under Canon Law. Contributions to this Burse shall be deemed as made to St. Mark Parish and the use thereof shall be restricted by the terms of this document.

## **V. RESTRICTIONS ON USE OF BURSE ASSETS AND PROPERTY**

Where a donor, whether an individual, foundation, corporation, either public or private, has donated funds or property in accordance with the provisions of Canon Law and the understanding that said funds or property are to be utilized for a specific purpose, consonant with one or more of the purposes set forth herein, then and in that event, the Bursar in accord with the policies and procedures of the Diocese of Cleveland shall use such funds or assets, or their income, only to the extent as designated by the donor.

Additionally, no activity shall be carried on by the Burse which is not consistent with the purposes set forth herein. No part of the net earnings of said Burse shall inure to the benefit of, or be distributed to any of the advisors or Bursar herein, or other private persons, in any manner not consistent with the purpose of this Burse, with the exception that the Burse is hereby authorized and empowered to pay reasonable compensation for services rendered, and to make payments and distributions in furtherance of the purposes set forth herein, and for reasonable and necessary expenses incurred in connection with the administration of this Burse, which must be documented.

No part of the activities of the Burse shall be used in the carrying on of propaganda, or otherwise attempting to influence legislation, and no activity of the Burse shall consist of participating in, or intervening in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

Notwithstanding any other provision of this Declaration of Burse, the Burse shall not carry out any other activities not permitted to be conducted or carried on by an organization exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code, and the Regulations issued pursuant thereto, as they now exist or as they may hereafter be amended, or by an organization, contributions to which are deductible under Section 170(c)(2) of such Code and Regulations as they now exist or as they may hereafter be amended, nor shall the Burse engage in any acts or failures to act which will cause the taxes described in Section 4941 through 4945 of such Code and Regulations, as they now exist or as they may hereafter be amended, to be levied upon the Burse.

## **VI. ACCOUNTING**

The fiscal year of the Burse shall be from July 1st to June 30th of the next year. A copy of the annual statement shall be submitted to the Diocesan Bishop and to the Financial Office of the Diocese on or before July 31st annually or otherwise in accordance with the policies and procedures of the Diocese of Cleveland. The annual statement shall be signed by the Bursar and all the members of the Advisory Board.

Notwithstanding any provisions stated in this document, this Burse becomes and remains an integral part of St. Mark Parish subject to the use restrictions, and shall bear the federal identification number of St. Mark Parish.

## **VII. CANONICAL DUTIES OF BURSAR.**

- a) To follow the norms of Canon Law and the policies and practices of the Diocese of Cleveland, especially those that concern acquisition and alienation of property.
- b) To preserve the principal of the Burse in accordance with canon 1303.
- c) To deposit any and all funds received by the Burse in such institutions as the Bursar may designate for that purpose as approved by the Bishop, and to invest such funds cautiously and properly for the sole benefit of the Burse and within the requirements of and after first obtaining the written approval of the Bishop as to the investment with due regard for the necessity of the Bishop to consult with his finance council and other concerned parties (canon 1305).
- d) To adhere to the intentions of donors (canon 1267, §3).
- e) To make, effectuate and deliver any and all deeds, assignments, documents, transfers or other written instruments consistent with the policies and practices of the Diocese of Cleveland, the norms of Canon Law and any instructions or norms that the Bishop may from time to time issue regarding such funds, which may be necessary or appropriate to carrying out the purposes and the powers granted herein.
- f) To make a yearly report of income, expenses and disbursements to the Bishop and the Diocesan Finance Office on or before July 31<sup>st</sup> annually or otherwise in accordance with Diocesan policy (canon 1284, §2, 8').
- g) To maintain and to archive appropriate and necessary documents and records, especially those on which the property rights of the Burse are based (canon 1284, §2, 9').
- h) To obtain the written permission of the Bishop before initiating or contesting litigation concerning the Burse (canon 1288).
- i) To refer to the Bishop or his designee any questions or issues regarding the construction of the terms and provisions of this Declaration of Burse and any other supplementary and amendatory documents. The construction adopted by the Bishop or his designee in good faith shall be binding upon all donors, donees and participants or other persons who may be involved or affected with respect to the Declaration of Burse.

## **VIII. POWERS AND DUTIES OF BURSAR**

In operating and administering the Burse, the Bursar shall, subject to and consistent with the provisions of this Burse and Canon Law, have the power and/or duty:

- a) To establish the policies and rules pursuant to which this Burse is to be operated and administered except where otherwise provided.
- b) To administer the Burse for the exclusive purposes as set forth in Item I hereof.
- c) To administer and operate the Burse in order to effectuate the purposes hereof.
- d) To receive and collect all contributions and donations made to the Burse.
- e) To invest and re-invest the principal and income of the Burse and to keep the same invested with distinction between principal and income. The Bursar may determine that certain levels in principal be reached before expenditures from the income may be made; this provision, however, does not restrict disbursements from the earnings account and nor does it authorize disbursements from the principal.
- f) To, in the Bursar's discretion, obtain the assistance of advisors with reference to investments, re-investments and disbursements, whether such advisors are individuals, corporations or other legal entities in addition to the Bursar Advisors referenced in Section III as well as accountants, specialists, or other agents that the Bursar shall deem necessary or desirable, with the understanding that the Bursar shall at all times have ultimate authority and power over investments, re-investments and distribution of funds except where otherwise provided. The Bursar shall be protected in relying upon the advice so given, provided such counselors, advisors or agents are professionals who are not parishioners or relatives of the Bursar.
- g) To, in the Bursar's discretion, appoint an investment manager or managers ("Appointee") to manage all or a part of the Burse assets, and to delegate to that Appointee the discretionary power to acquire and dispose of such assets, provided that the Appointee complies with the terms and conditions of this Declaration of Burse and policies and practices of the Diocese of Cleveland, whether in existence now or hereafter issued or promulgated. It is specifically provided, however, that the Bursar shall at all times have ultimate authority and power over the Burse and its assets, including with respect to any investments, re-investments, and distribution of funds, consistent with the norms of Canon Law, the terms of this Declaration of Burse, and any applicable policies and procedures of the Diocese of Cleveland.

- h) To sell, exchange, convey, transfer or dispose of any property, whether real or personal, at any time, belonging to said Bursar in accord with the provisions of Canon Law and the policies and procedures of the Diocese of Cleveland. Any such sale may be made by contract or by auction, and no person dealing with the Bursar shall be required to see to the application of the money or to inquire into the validity, expediency or propriety of any such sale or other disposal.
- i) To retain, manage, operate, repair, improve and mortgage for any period, any real estate held by the Bursar.
- j) To pay and provide for the payment of all reasonable and necessary expenses incurred in the administration of this Bursar, to include but not be limited to expenses for the employment of administrative, legal, expert, and clerical assistance.
- k) To perform and do any and all such actions or things as may be properly incidental to the exercising of the powers, rights, duties and responsibilities of the Bursar.

**IX. LIABILITY OF BURSAR**

The Bursar shall be responsible for carrying out the provisions of this Bursar in good faith, and shall not, in the absence of bad faith, be responsible or accountable for errors of judgment in connection with the Bursar. In connection with the administration and duties as such Bursar, Bursar may be bonded, and in the event the Bursar desires to be so bonded, the cost of any premiums shall be deemed a reasonable and necessary expense of the Bursar.

**X. NON-ALIENATION OF FUNDS**

No individual, foundation, corporation either public or private, whether in the classification of donor or donee, or anyone claiming by or through them, or any other person, foundation, corporation, either public or private, shall have the right, title or interest in or to the Bursar or any part thereof. Title to all of the money, property and income paid into or acquired by or accruing to the Bursar shall be vested in and remain exclusively in St. Mark Parish. It is the intention that this Bursar shall constitute an irrevocable Bursar, and that no benefits or monies payable from the Bursar shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge; and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber or charge same shall be void.

**XI. DISSOLUTION**

If for any reason whatsoever, it becomes impractical or impossible to carry out the purposes set forth in this Declaration of Bursar, as determined in the discretion of Bursar,

after having heard the Advisory Board and after having obtained the written consent of the Bishop, then Bursar is hereby empowered to dissolve said Burse and to take such action as may be necessary and appropriate to wind up the affairs of the Burse and to effect termination of said Burse. The closing, termination, or extinction of the Parish School shall automatically be considered sufficient reason for dissolution. Upon dissolution, after paying or making provision for the payment of all liabilities and obligations of the Burse, the Bursar shall distribute the property of said Burse to St. Mark Parish's general fund. If that is impossible or impractical to carry out then the Bursar shall distribute the remaining property of the Burse in accordance with canon 122 or 123 or, if neither is applicable, then to the Roman Catholic Diocese of Cleveland. The disposition of assets shall always be done keeping in mind the intention of the donor(s).

## **XII. MERGER OR CONSOLIDATION**

If the Parish is merged or consolidated, then the Burse shall be modified in accordance with canon 121 so that it benefits the successor Parishes unless other circumstances described in the preceding paragraph call for the dissolution of the Burse, such as the size of the Burse and the number of beneficiaries. If there is more than one successor Parish, the Bishop, after having first heard the outgoing Bursar and the Advisory Board (or the Diocesan Finance Council), shall determine the shares attributed to each parish and shall amend this Declaration of Burse accordingly. The disposition of the assets shall always be done keeping in mind the intention of the donor(s).

## **XIII. AMENDMENT**

Subject to any limitations under Canon Law, the Bishop of Cleveland reserves the right at any time and from time to time by written instrument delivered to the Bursar to alter and amend this Declaration of Burse in whole or in part, provided, however, that no such alteration or amendment, under any circumstances:

- a. can have the effect of reinvesting in the Bishop of Cleveland any interest in the assets of the Burse or any part thereof, except to the extent that may be permitted under X or XI; or
- b. cause the Burse to carry out activities not permitted to be conducted or carried out by an organization exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as it may from time to time be amended.

## **XIV. MISCELLANEOUS**

a. Severability - In the event that any provision of this Declaration of Burse shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions of this Declaration of Burse; the provision or provisions held illegal or invalid shall be fully severable and so long as the purposes of this Burse can be effectuated, the Burse shall be construed and enforced as if the said illegal or invalid provision or provisions had never been

inserted herein.

b. Applicable Law - This Burse is accepted by the Bursar in the State of Ohio, and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of the State of Ohio and the norms of Canon Law.

IN WITNESS WHEREOF, this Declaration of Burse is hereby established on the day and year first above written.

Witnessed by:



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Ecclesiastical Notary



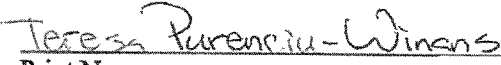
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Most Rev. Nelson J. Perez, Bishop  
of the Catholic Diocese of Cleveland



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Witness



\_\_\_\_\_  
Rev. Adam Zajac  
Pastor and Bursar

  
\_\_\_\_\_  
Print Name