

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is hereby made between and among the Diocese of Tucson (the “Diocese” as defined herein), the “Other Releasing Parties” as defined herein, and “Old Republic” as defined herein.

RECITALS

WHEREAS, numerous individuals have asserted claims against the Diocese and certain Other Releasing Parties for injuries allegedly suffered due to sexual abuse by priests allegedly negligently hired, supervised, or maintained by the Diocese (the “Tort Claims” as defined herein); and

WHEREAS, Old Republic issued or allegedly issued certain insurance policies to or for the benefit of the Diocese and/or the Other Releasing Parties (the “Policies” as defined herein); and

WHEREAS, certain disputes between the Diocese and Old Republic have arisen and would be likely to arise in the future concerning Old Republic’s position regarding the nature and scope of Old Republic’s responsibilities, if any, to provide coverage to the Diocese and/or any of the Other Releasing Parties under the

Policies for the Tort Claims, including without limitation the sufficiency of the evidence of the existence and terms of the Policies, whether policy terms or exclusions provide or preclude coverage for the Tort Claims, whether the Diocese has complied with certain conditions precedent to coverage contained in the Policies, and whether and to what extent the costs incurred in connection with the Tort Claims are allocable to the Policies (the “Coverage Disputes”); and

WHEREAS, the Diocese filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code (as herein defined) on September 20, 2004 (the “Petition Date”), in the United States Bankruptcy Court for the District of Arizona, Case No. 4:04-bk-04721 (JMM) (the “Reorganization Case”); and

WHEREAS, the Diocese, Old Republic and the Other Releasing Parties without any admission of liability or concession of the validity of the positions or arguments advanced by each other, now wish fully and finally to compromise and resolve any and all Coverage Disputes and any and all other disputes between them; and

WHEREAS, through this Agreement, the Parties seek to provide Old Republic with the broadest possible release with respect to the Policies and to provide that Old Republic shall have no further obligations with respect to the Policies; and

WHEREAS, as part of the compromise and resolution of such disputes, the Parties wish to effect a sale of the Policies pursuant to Section 363 of the Bankruptcy Code; and

WHEREAS, each Party has received the advice of counsel in the preparation, drafting and execution of this Agreement, which was negotiated at arms' length;

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, subject to the approval of the Bankruptcy Court, the Parties hereby agree as follows:

I. DEFINITIONS AND CONSTRUCTION

1.1 As used in this Agreement, the following terms shall have the meanings set forth below. Terms not defined below shall have any meanings given to them in the Bankruptcy Code.

(a) **“Approval Order”** means a Final Order (as defined herein) in substantially the form attached hereto as Exhibit 1, with only such modifications as are acceptable both to Old Republic and the Diocese in each's respective sole discretion, entered by the Bankruptcy Court under Bankruptcy Code Sections 363 and/or 105 and Bankruptcy Rule 9019 and/or under such other provisions as the Bankruptcy Court may order, approving this Agreement and authorizing the Parties to undertake the settlement and the transactions contemplated by this Agreement.

(b) **“Bankruptcy Code”** means Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as amended from time to time.

(c) **“Bankruptcy Court”** means the United States Bankruptcy Court for the District of Arizona and any other court in which the Reorganization Case may be pending or which has jurisdiction over the Reorganization Case.

(d) **“Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure.

(e) **“Claim”** means any past, present or future claim, demand, action, cause of action, suit or liability of any kind or nature whatever, whether at law or equity, known or unknown, asserted or unasserted, anticipated or unanticipated, accrued or unaccrued, fixed or contingent, which has been or may be asserted by or on behalf of any Person, whether seeking damages (including compensatory, punitive or exemplary damages) or equitable, mandatory, injunctive, or any other type of relief, including cross-claims, counterclaims, third-party claims, suits, lawsuits, administrative proceedings, notices of liability or potential liability, arbitrations, actions, rights, requests, and causes of action or orders.

(f) **“Diocese”** means The Roman Catholic Church of the Diocese of Tucson, an Arizona corporation sole, and the Estate, as well as all of its past, present, and future affiliates, associated corporations and entities, employees, officers, directors, shareholders, principals, agents, attorneys, representatives, predecessors, successors and assigns.

(g) **“Effective Date”** means the date on which this Agreement becomes effective, which shall be the day upon which each of the Parties has

executed this Agreement and delivered evidence of that execution, through delivery of an executed signature page, to the other Parties.

(h) **“Extra-Contractual Claim”** means any Claim against Old Republic, seeking any type of relief, including compensatory, exemplary or punitive damages, or attorneys’ fees, interest, costs or any other type of relief, on account of alleged bad faith; failure to act in good faith; violation of any duty of good faith and fair dealing; violation of any unfair claims practices act or similar statute, regulation or code; any type of alleged misconduct; or any other act or omission of the insurer of any type for which the claimant seeks relief other than coverage or benefits under an insurance policy. Extra-Contractual Claims include without limitation: (1) any Claim arising out of or relating to Old Republic’s handling of any Party’s request for insurance coverage for any Claim, including without limitation any Tort Claim; and (2) the conduct of the Parties with respect to the negotiation of this Agreement.

(i) **“Final Order”** means an order, judgment or other decree (including any modification or amendment thereof) that remains in effect and has not been reversed, withdrawn, vacated or stayed, and as to which the time to appeal or seek review, rehearing or writ of certiorari has expired and as to which no appeal or petition for review, reconsideration, rehearing or certiorari has been taken or, if such an appeal has been taken, (a) it has been resolved and no longer remains pending, or (b) an appeal has been taken timely but such order has not been stayed and the Diocese and Old Republic have mutually agreed in writing that the order

from which such appeal is taken should be deemed to be a Final Order within the meaning of this Agreement.

(j) **“Old Republic”** means Old Republic Insurance Company and its past, present, and future subsidiaries, parents, affiliates, associated corporations and entities, employees, officers, directors, shareholders, principals, parents, agents, attorneys, representatives, predecessors, successors and assigns.

(k) **“Insurance Coverage Claim”** means any Claim for insurance coverage under the Policies.

(l) **“Interests”** includes, without limitation, all liens, Claims, encumbrances, interests and other rights of any nature, whether at law or in equity.

(m) **“Other Releasing Parties”** means any Person other than the Diocese that is or may claim to be insured under any Policy, including without limitation all parishes, churches, schools and other institutions within or affiliated with the Diocese, as it may have been constituted from time to time, along with each of their past, present and future subsidiaries, affiliates, associated corporations and entities, employees, officers, directors, shareholders, principals, agents, attorneys, representatives predecessors, successors and assigns.

(n) **“Parties”** means the Diocese, the Other Releasing Parties, and Old Republic, and “Party” means any one of them.

(o) **“Person”** means an individual, any corporation, including without limitation a corporation sole, a partnership, an association, a limited liability company, a proprietorship, joint venture, a trust, executor, legal

representative, or any other entity or organization, as well as any federal, international, foreign, state, or local governmental or quasi-governmental entity, body, or political subdivision or any agency or instrumentality thereof.

(p) **“Plan Confirmation Order”** means a Final Order that: (1) approves the Diocese’s plan of reorganization pursuant to section 1129 and any other applicable provision of the Bankruptcy Code; and (2) contains an injunction, pursuant to section 105(a) of the Bankruptcy Code, enjoining all Persons from seeking any coverage, damages, or other relief from Old Republic and provides a means by which Settling Insurers, including Old Republic (as that term is defined in the Debtor's Third Amended and Restated Plan of Reorganization dated May 25, 2005 (the "Plan")), are covered by the injunction contained in the Plan.

(q) **“Policies”** means all insurance policies, known or unknown, issued or allegedly issued by Old Republic to the Diocese or under which the Diocese or an Other Releasing Party is or may claim to be an insured, named insured, person insured, additional insured, additional person insured, or otherwise entitled to any coverage or benefits under any such insurance policies, including without limitation the insurance policies and alleged insurance policies identified on Exhibit 2 to this Agreement.

(r) **“Reorganization Case”** means the Chapter 11 reorganization case filed September 20, 2004, by the Diocese in the United States Bankruptcy Court for the District of Arizona, *In re The Roman Catholic Church of the Diocese of Tucson*, Case No. 4:04-bk-04721 (JMM).

(s) **“Settlement Amount”** means the payment to be made by Old Republic pursuant to paragraph 2.1 of this Agreement.

(t) **“Tort Claim”** means any Claim resulting from alleged sexual molestation or abuse or conduct of a sexual nature and seeking monetary damages or other relief.

1.2 The following rules of construction shall apply to this Agreement:

(a) Unless the context of this Agreement otherwise requires, (1) words of any gender include each other gender; (2) words using the singular or plural number also include the plural or singular number, respectively; (3) the terms “hereof,” “herein,” “hereby” and derivative or similar words refer to this entire Agreement; (4) the words “include,” “includes” or “including” shall be deemed to be followed by the words “without limitation;” and (5) the word “or” shall be disjunctive but not exclusive;

(b) References to agreements and other documents shall be deemed to include all subsequent amendments and other modifications thereto;

(c) References to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation;

(d) Capitalized terms not defined in this Agreement shall have the meaning ascribed to them by the Bankruptcy Code;

(e) The wording of this Agreement was reviewed by legal counsel for each of the Parties and each of them had sufficient opportunities to propose and negotiate changes prior to its execution. None of the Parties will be entitled to have any wording of this Agreement construed against the other based on any contention as to which of the Parties drafted the language in question or which Party is an insurer.

II. PAYMENT OF SETTLEMENT AMOUNT

2.1 Subject to all of the terms of this Agreement, in full and final settlement of all responsibilities under and arising out of the Policies, and in consideration of the sale of the Policies to Old Republic free and clear of all Interests of any Person, and expressly subject to fulfillment of all Conditions to Payment identified in paragraph 3 below, Old Republic Fire Insurance Company and First State Insurance Company shall pay to the Diocese the sum of Five Hundred Fifty Thousand Dollars (\$550,000) (the "Settlement Amount") within thirty (30) days after the Conditions to Payment have been fulfilled.

2.2 The Parties expressly agree that the Settlement Amount is the total amount Old Republic is obligated to pay on account of any and all Claims of any kind made under or relating to the Policies (including without limitation the Tort Claims) or with respect to Extra-Contractual Claims relating to the Policies; that under no circumstance will Old Republic ever be obligated to make any additional payments to anyone in connection with the Policies, including any

amounts allegedly owed for Extra-Contractual Claims; and that all limits of liability of the Policies, including all per person, per occurrence and aggregate limits, shall be deemed fully and properly exhausted. The Parties further agree that the Settlement Amount is the full purchase price of the Policies, and that, upon payment of the Settlement Amount, Old Republic shall be deemed to own the Policies free and clear of all Interests of any Person.

III. CONDITIONS TO OLD REPUBLIC PAYMENT

3.1 The obligation to pay the Settlement Amount in paragraph 2.1 above is expressly conditioned on, and payment need not be made unless and until, the Diocese has obtained both the Approval Order and the Plan Confirmation Order.

3.2 Approval Order. Within fourteen (14) days after the Effective Date, the Diocese shall file a motion requesting the Bankruptcy Court to enter the Approval Order. The Diocese shall use its best efforts to obtain entry of the Approval Order. Such best efforts shall include without limitation (a) supporting entry of the Approval Order during all discussions with claimants, their attorneys, guardians *ad litem*, and the unknown claims representative, (b) filing a written response, in a form acceptable to Old Republic, in the event any objections to the motion seeking the Approval Order are filed with the Bankruptcy Court, and (c) taking all reasonable steps to defend against any appeal, petition, motion or other challenge to the Bankruptcy Court's entry of the Approval Order.

3.2.1 Written notice of the Diocese's intent to seek entry of the Approval Order shall be provided to all known claimants, all Persons who have filed notices of appearance in the Reorganization Case, and all entities known to have provided general liability insurance to the Diocese. Notice of intent to seek entry of the Approval Order shall also be published one time in the Tucson Daily Star, the Tucson Citizen and the Arizona Republic in a form and at a time agreed to by the Parties or as ordered by the Bankruptcy Court.

3.3 Plan Confirmation Order. In conjunction with the Reorganization Case, and subject to the understanding that the claims bar date is currently scheduled for April 15, 2005, the Diocese shall use its best efforts promptly to obtain a Plan Confirmation Order. Such best efforts shall include without limitation (a) seeking entry of the Plan Confirmation Order on an appropriately timely basis, (b) urging the Bankruptcy Court to overrule any objections to the Confirmation Order, and (c) taking all reasonable steps to defend against any appeal, petition, motion or other challenge to the Bankruptcy Court's entry of a Plan Confirmation Order. Prior to entry of a Plan Confirmation Order, the Diocese shall oppose any motion to lift stay as to any Tort Claim. In the event the Bankruptcy Court lifts stay as to any Tort Claim prior to the Plan Confirmation Order, the Diocese shall defend that Tort Claim appropriately. In the event the Diocese fails to defend that Tort Claim, then (1) Old Republic shall have the right but not the duty to defend and/or indemnify that Tort Claim, and any such costs for

defense or indemnity shall not be set off against the Settlement Amount, or (2) Old Republic solely shall have the right to terminate this Agreement by written notice.

IV. CONDITION TO AGREEMENT

4.1 This Agreement shall be subject to the following condition. In the event the Bankruptcy Court dismisses the Reorganization Case (a) over the Diocese's objection prior to the entry of a Plan Confirmation Order, or (b) upon the request of the Diocese based on one or more of the conditions ("Dismissal Conditions") identified below, then either Party may terminate this Agreement by prompt written notice to the other. Upon termination of this Agreement, the releases provided herein shall become null and void, and the Parties shall retain all of their rights with respect to the Policies. Dismissal Conditions for purposes of this Agreement shall be defined as: (i) the failure of the Diocese, after a good faith effort, to obtain an order, by December 31, 2006, confirming a plan of reorganization propounded by the Debtor, provided, however, that this date shall be extended by up to one year at the request of either Party, and may be extended further by the consent of both Parties, which consent shall not be unreasonably withheld; (ii) the final and nonappealable determination of the Bankruptcy Court that any plan propounded by the Debtor, including any revisions or amendments of a plan, cannot be confirmed; or (iii) the agreement of Old Republic and the Diocese that the Diocese should seek dismissal of the Reorganization Case.

V. RELEASES

5.1 From and after the Effective Date, no Party shall commence against Old Republic any action, suit or proceeding of any nature whatsoever with respect to any matter, conduct, transaction, occurrence, fact or other circumstance alleged in, arising out of, connected with or in any way relating to any Policy, Claim or Old Republic's handling thereof, unless this Agreement is properly terminated pursuant to paragraph 4.1 above.

5.2 Subject to entry of the Approval Order and the Plan Confirmation Order as Final Orders, and without any further action by the Parties, the Diocese and the Other Releasing Parties, on the one hand, and Old Republic, on the other hand, each hereby fully, finally, and completely remises, releases, acquits and forever discharges, as of the Effective Date, the other from any and all past, present or future Claims, actual or alleged, known or unknown, accrued or unaccrued, suspected or unsuspected, including without limitation Tort Claims, Extra-Contractual Claims and all Claims relating to or arising out of the Reorganization Case, in connection with, relating to or arising out of, in any manner or fashion, the Policies, which the Parties agree have been performed fully and are deemed exhausted by payment, whether such Claims seek compensatory damages, punitive damages, exemplary damages, statutorily multiplied damages, attorneys' fees, interest, costs, or any other type of monetary or non-monetary relief.

5.3 The Parties acknowledge and agree that these releases comply with the Bankruptcy Code and applicable Arizona law, including Arizona Statute

§ 20-1123. The Parties acknowledge and agree that this Agreement in no way voids or annuls the Policies, or attempts to void or annul the Policies, which have been fully performed, within the meaning of Arizona Statute § 20-1123.

5.4 If, contrary to the Parties' specific intent, any Claims released pursuant to paragraph 5.2, including claims for insurance coverage under the Policies, are deemed to survive this Agreement, even though they are encompassed by the terms of the release set forth in this paragraph V of this Agreement, the Parties hereby forever, expressly, and irrevocably waive entitlement to and agree not to assert any and all such Claims.

5.5 The releases set forth in this paragraph V shall not apply to or have any effect on Old Republic's right to any Claim for reinsurance in connection with the Policies.

5.6 Nothing in this paragraph V is intended to, nor shall be construed to, release, waive, relinquish, or otherwise affect the Parties' rights and obligations under this Agreement.

VI. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

6.1 Each of the Parties separately represents and warrants as follows:

(a) To the extent it is a corporation, including without limitation a corporation sole, or other legal entity, it has the requisite power and

authority to enter into this Agreement and to perform the obligations contemplated by this Agreement, subject only to approval of the Bankruptcy Court;

(b) Subject to entry of the Approval Order and Plan Confirmation Order as Final Orders, the execution and delivery of, and the performance of the obligations contemplated by this Agreement have been approved by duly authorized representatives of the Party, and by all other necessary actions of the Party;

(c) Each Party has expressly authorized its undersigned representative to execute this Agreement on the Party's behalf as its duly authorized agent; and

(d) This Agreement has been thoroughly negotiated and analyzed by its counsel and has been executed and delivered in good faith, pursuant to arm's length negotiations, and for value and valuable consideration.

6.2 The Person(s) executing this Agreement on behalf of the Other Releasing Parties represents and warrants that he/she has received direction and authority from the Other Releasing Parties to execute this Agreement on their behalf and to provide the releases identified in paragraph V above on behalf of each of the Other Releasing Parties.

VII. ACTIONS INVOLVING THIRD PARTIES

7.1 For purposes of supporting the release granted in paragraph V and the extinguishment of any and all rights under the Policies resulting from the

purchase and sale thereof contemplated by this Agreement, the Diocese and each Other Releasing Party hereby agrees as follows with respect to any Claim against either:

(a) it will not seek to obtain payment from any other insurance company of any amount that may be attributable or allocable to Old Republic; and

(b) In the event that any insurer of the Diocese obtains a judicial determination or binding arbitration award that it is entitled to obtain a sum certain from Old Republic as a result of a claim for contribution, subrogation, indemnification or other similar claim against Old Republic for Old Republic's alleged share or equitable share, or to enforce subrogation rights, if any, of the defense and/or indemnity obligation of Old Republic for any Claims released pursuant to this Agreement, the Diocese shall voluntarily reduce its judgment or Claim against, or settlement with, such other insurer(s) to the extent necessary to eliminate such contribution, subrogation or indemnification claims against Old Republic. To ensure that such a reduction is accomplished, Old Republic shall be entitled to assert this paragraph as a defense to any action against it for any such portion of the judgment or Claim and shall be entitled to have the court or appropriate tribunal issue such orders as are necessary to effectuate the reduction to protect Old Republic from any liability for the judgment or Claim.

7.2 Old Republic shall not seek reimbursement for any payments Old Republic is obligated to make under this Agreement for contribution,

subrogation, indemnification or similar relief from any other insurer of the Diocese unless that other insurer first seeks contribution, subrogation, indemnification or similar relief from Old Republic. The Diocese shall use its reasonable best efforts to obtain from all insurers with which it settles agreements similar to those contained in this paragraph 7.2; provided, however, that the failure of the Diocese, despite its reasonable best efforts, to obtain such an agreement from any insurer with which it settles will not be a basis to terminate this Agreement or excuse Old Republic from performing its obligations hereunder, including without limitation payment of the Settlement Amount.

VIII. MISCELLANEOUS

8.1 In the event that any proceedings are commenced to invalidate all or any part of this Agreement, the Parties agree to cooperate fully to oppose such proceedings.

8.2 Each Party agrees to take such steps and to execute any documents as may be reasonably necessary or proper to effectuate the purpose and intent of this Agreement and to preserve its validity and enforceability. In the event that any action or proceeding of any type whatsoever is commenced or prosecuted by any Person not a Party hereto to invalidate, interpret, or prevent the validation, enforcement, or carrying out of all or any of the provisions of this Agreement, the Parties mutually agree, represent, warrant, and covenant to cooperate fully in opposing such action or proceeding.

8.3 The Diocese shall cooperate with Old Republic and its representatives in connection with the Approval Order, the Plan Confirmation Order, and the Reorganization Case in connection therewith. Such cooperation shall include without limitation consulting with Old Republic at its request concerning the status of proceedings and providing Old Republic with copies of requested pleadings, notices, proposed orders and other documents relating to such proceedings as soon as reasonably practicable prior to any submission thereof to the Bankruptcy Court; provided, however, that nothing contained in this paragraph shall obligate the Diocese to provide to Old Republic any information that is otherwise subject to the attorney-client or work product privileges but not subject to a joint defense or common interest privilege between the Diocese and Old Republic.

8.4 This Agreement constitutes a single integrated written contract that expresses the entire agreement and understanding between the Parties. Except as otherwise expressly provided, this Agreement supersedes all prior communications, settlements, and understandings between the Parties and their representatives regarding the matters addressed by this Agreement. Except as explicitly set forth in this Agreement, there are no representations, warranties, promises, or inducements, whether oral, written, expressed, or implied, that in any way affect or condition the validity of this Agreement or alter or supplement its terms. Any statements, promises, or inducements, whether made by any party or any agents of any party, that are not contained in this Agreement shall not be valid

or binding. Any changes to this Agreement must be made in writing and with the consent of all Parties.

8.5 By entering into this Agreement, none of Parties has waived or shall be deemed to have waived any rights, obligations, or positions it or they have asserted or may in the future assert in connection with any matter or Person outside the scope of this Agreement. The Parties' rights under policies of insurance issued by insurers other than Old Republic shall not be affected by this Agreement. No part of this Agreement, its negotiation or performance may be used in any manner in any action, suit or proceeding by any Person as evidence of the rights, duties or obligations of any of the Parties with respect to matters or Persons outside the scope of this Agreement. All actions taken and statements made by the Parties or by their representatives, relating to this Agreement or participation in this Agreement, including its development and implementation, shall be without prejudice or value as precedent, and shall not be used as a standard by which other matters may be judged.

8.6 This Agreement represents a compromise of disputed Claims and shall not be deemed an admission or concession by any Party of liability, culpability, or wrongdoing. Settlement negotiations leading up to this Agreement and all related discussions and negotiations shall be deemed to fall within the protection afforded to compromises and to offers to compromise by Rule 408 of the Federal Rules of Evidence and any parallel state law provisions. Any evidence of the terms of this Agreement or negotiations or discussions associated with this

Agreement shall be inadmissible in any action or proceeding for purposes of establishing any rights, duties, or obligations of the Parties, except in (1) a proceeding to obtain the Approval Order or the Plan Confirmation Order, (2) an action or proceeding to enforce the terms of this Agreement, or (3) any possible action or proceeding between Old Republic and any of its reinsurers. This Agreement shall not be used as evidence or in any other manner, in any court or dispute resolution proceeding, to create, prove, or interpret Old Republic's obligations under the Policies to the Diocese or to any other Person or any Claims of any Party against Old Republic.

8.7 Neither this Agreement nor the rights and obligations set forth herein shall be assigned without the prior written consent of the other Parties.

8.8 Section titles and/or headings contained in this Agreement are included only for ease of reference and shall have no substantive effect.

8.9 All notices, demands, or other communication to be provided pursuant to this Agreement shall be in writing and sent by facsimile or by Federal Express or other overnight delivery service, costs prepaid, to the Parties at the addresses set forth below, or to such other person or address as any of them may designate in writing from time to time:

If to Old Republic:

With a copy to:

If to the Diocese:

Fr. Al Schifano
Moderator of the Curia
Roman Catholic Church of the Diocese of Tucson
111 South Church Avenue
Tucson, AZ 85702-0031

With a copy to:

Susan G. Boswell, Esq.
Quarles & Brady Streich Lang LLP
One South Church, Suite 1700
Tucson, AZ 85701

If to the Other Releasing Parties:

And with a copy to:

Michael McGrath, Esq.
Mesch, Clark & Rothschild, P.C.
259 N. Meyer Ave.
Tucson, AZ 85701-1090

8.10 This Agreement may be executed in multiple counterparts, all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile, which facsimile counterparts shall be deemed to be originals.

8.11 The Parties agree that nothing contained in this Agreement shall be deemed or construed to constitute (1) an admission by Old Republic that the Diocese, the Other Releasing Parties, or any other Person was or is entitled to any insurance coverage under the Policies or as to the validity of any of the

positions that have been or could have been asserted by the Diocese, (2) an admission by the Diocese as to the validity of any of the positions or defenses to coverage that have been or could have been asserted by Old Republic or any Claims that have been or could have been asserted by the Diocese against Old Republic, or (3) an admission by the Diocese or Old Republic of any liability whatsoever with respect to any of the Tort Claims.

8.12 All of the entities included in the definition of Old Republic are intended beneficiaries of this Agreement. The Parties agree that, except as set forth in the prior sentence or otherwise set forth in this Agreement, there are no third-party beneficiaries of this Agreement.

8.13 This Agreement shall be regarded as confidential and shall not be disclosed to third-parties, except that this Agreement may be disclosed to (a) the Bankruptcy Court insofar as necessary to fulfill a Party's obligations under this Agreement, (b) to any Party's auditors, regulators or reinsurers, (c) any Person pursuant to court order, and (d) by any Party with the written consent of the other Party. The Parties acknowledge and agree, notwithstanding the foregoing, that a copy of this Agreement will be attached to the motion seeking the Approval Order and the material terms disclosed in any notice required to be given under this Agreement, the Bankruptcy Code or the Bankruptcy Rules in connection with seeking entry of the Approval Order.

8.14 Except as otherwise provided in this Agreement, each Party shall be responsible for their own fees and costs incurred in conjunction with the Reorganization Case or this Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the last date indicated below.

On behalf of THE DIOCESE (as defined herein)

By: _____

Name: _____

Title: _____

Date: _____

Witness: _____

**On Behalf of the OTHER RELEASING
PARTIES (as defined herein)**

By: _____

Name: _____

Title: _____

Date: _____

Witness: _____

herein) **On behalf of OLD REPUBLIC (as defined**

By: _____

Name: _____

Title: _____

Date: _____

Witness: _____

EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ARIZONA

In re:

THE ROMAN CATHOLIC CHURCH OF
THE DIOCESE OF TUCSON *aka* THE
DIOCESE OF TUCSON, an Arizona
corporation sole

Debtor.

[PROPOSED] ORDER APPROVING SETTLEMENT AGREEMENT WITH OLD REPUBLIC INCLUDING THE SALE OF INSURANCE POLICIES

A hearing having been held (the “Hearing”), to consider the motion, dated _____, 2005 (the “Motion”) of The Roman Catholic Church of the Diocese of Tucson *aka* the Diocese of Tucson, an Arizona corporation sole and the debtor and debtor in possession (the “Diocese” or the “Debtor”) in the above-captioned Chapter 11 reorganization case (the “Reorganization Case”), for an order pursuant to 11 U.S.C. §§ 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”) and Fed. R. Bankr. P. 2002, 6004 and 9019 (the “Bankruptcy Rules”) (i) authorizing the Diocese to enter into a compromise and settlement with Old Republic¹ pursuant to which the Diocese will release any and all Claims, including without limitation Tort Claims, Extra-Contractual Claims, and all Claims relating to or arising out of the Reorganization

¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the Settlement Agreement and Release attached hereto.

Case that it may have now or in the future may have against Old Republic arising out of, relating to or in any way connected with the Policies; (ii) authorizing the sale of the Policies pursuant to the terms and conditions of that Settlement Agreement and Release, dated as of _____, 2005, between the Diocese and Other Releasing Parties, as sellers, and Old Republic, as purchaser, a copy of which is annexed to the Motion as Exhibit 1 and incorporated by reference (the “Agreement”), and in consideration of the sale of the Policies to Old Republic free and clear of all Interests of any Person (as defined in the Agreement), each of which will attach with the same validity and priority to the proceeds of the sale; (iii) approving the Agreement and each of its terms; (iv) finding that the Agreement complies with the Bankruptcy Code and applicable law, including A.R.S. § 20-1123; and (v) acknowledging that the Agreement contemplates the release of Old Republic by certain non-debtor “Other Releasing Parties;” and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(b)(2) and 1334, and consideration of the Motion, the relief requested therein, and the responses thereto, if any, being a core proceeding in accordance with 28 U.S.C. § 157(b); and the appearances of all interested parties and all responses and objections to the Motion, if any, having been duly noted in the record of the Hearing; and upon the record of the Hearing, the Motion, said responses and objections, if any; and after due deliberation and sufficient cause appearing therefor, the Court hereby makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction, Final Order and Statutory Predicates

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014.

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O). Venue of this case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

D. This Order constitutes a final and immediately appealable order within the meaning of 28 U.S.C. § 158(a).

E. The statutory predicates for the relief sought in the Motion are 11 U.S.C. §§ 105(a) and 363 and Fed. R. Bankr. P. 2002, 6004 and 9019.

Retention of Jurisdiction

F. It is necessary and appropriate for the Court to retain jurisdiction to, among other things, interpret and enforce the terms and provisions of this Order and the Agreement, and to adjudicate, if necessary, any and all disputes arising under or relating in any way to, or affecting, any of the transactions contemplated under the Agreement. Such jurisdiction shall be retained even if the case is closed and the case may be reopened for such purpose.

Notice of the Motion

G. The Diocese has provided due and adequate notice of the Motion, Agreement and the subject matter thereof to the Other Releasing Parties, all known claimants, all persons who have filed notices of appearance in the Reorganization Case, and all entities known to have provided general liability insurance to the Diocese pursuant to Bankruptcy Rules 2002 and 6004. The Diocese has provided adequate notice to all other parties-in-interest by publication in the Tucson Citizen, the Arizona Daily Star and the Arizona Republic. No other or further notice is

necessary. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all known claimants and all parties-in-interest.

Sound Business Judgment and Reasonableness

H. The relief requested in the Motion is in the best interests of the Diocese, its creditors, the holders of all Claims, including the holders of Tort Claims, and other parties-in-interest. The Diocese has demonstrated good, sufficient and sound business purposes, cause and justifications for the relief requested in the Motion and the approval of the transaction contemplated thereby. The settlement and compromise with Old Republic embodied in the Agreement, including without limitation, the sale of the Policies and the release of claims as set forth therein are within the reasonable range of litigation outcomes if the Diocese and Other Releasing Parties were to litigate the matters resolved pursuant to this Order and represent fair and reasonable consideration for the sale of the Policies and release of claims as set forth therein.

Good Faith of Insurance Policy Purchaser

I. The Agreement was negotiated and proposed, and has been entered into by the parties, in good faith, from arm's length bargaining positions, and without fraud or collusion. Each party to the Agreement was represented by counsel. The sale consideration and other consideration to be realized by the Diocese pursuant to the Agreement is fair and reasonable. Old Republic and each person comprising Old Republic, is a good faith purchaser for value within the meaning of 11 U.S.C. § 363(m) and is entitled to the protection thereof and neither the Agreement nor the transaction contemplated thereby are subject to avoidance under 11 U.S.C. § 363(n). Neither the Diocese nor the Other Releasing Parties nor Old Republic nor any person comprising Old Republic has engaged in any conduct that would cause or permit the Agreement, or the sale of the Policies, to be avoided under 11 U.S.C. § 363(n) or that would prevent the application of 11 U.S.C. § 363(m) or cause the application of 11 U.S.C. § 363(n). Further, in the absence of a stay

pending appeal, if any, Old Republic will be acting in good faith within the meaning of 11 U.S.C. § 363(m) in consummating the transactions contemplated by 11 U.S.C. § 363(n) at any time after entry of the order.

Satisfaction of Section 363 and Other Bankruptcy Code Requirements

J. The transactions contemplated by the Motion and the Agreement are in compliance with and satisfy all applicable provisions of the Bankruptcy Code, including without limitation 11 U.S.C. § 363.

K. The Diocese may sell the Policies free and clear of Interests under 11 U.S.C. § 363(f) because, in each case, one or more of the criteria set forth in sections 11 U.S.C. § 363(f)(1)-(5) have been satisfied. Those holders of Interests against any of the Policies and/or claims thereunder who did not object, or who withdrew their objections, to the Motion or the relief requested therein are deemed to have consented pursuant to 11 U.S.C. § 363(f)(2). Each holder of an Interest or other lien in the Policies or claims thereunder can be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such Interest as contemplated by 11 U.S.C. § 363(f)(5).

L. The sale of the Policies provides claimants, including holders of Tort Claims, with adequate protection. These claimants will be able to pursue their claims against the proceeds of the sale. Accordingly, the sale of the Policies free and clear of Interests satisfies the statutory prerequisites of 11 U.S.C. § 363(f).

Releases

M. There is an immediate and exigent need to consummate the transactions contemplated under the Agreement. In light of the terms of the Agreement, it is reasonable and appropriate for the Diocese and Other Releasing Parties to provide the releases set forth in the Agreement.

No Successor Liability

N. The transfer pursuant to the Agreement of the Policies does not and will not subject or expose Old Republic or any of its affiliates, successors, predecessors, shareholders, members, partners, directors, officers, managers, employees, insiders, agents, representatives and advisors, to any liability, claim, cause of action or remedy by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based on, in whole or in part, directly or indirectly, including, without limitation, any theory of tort, creditors' rights, equity, antitrust, environmental, successor or transferee liability, labor law, *de facto* merger, or substantial continuity.

O. No common identity of officers or directors exists between Old Republic and the Diocese or the Other Releasing Parties.

P. Old Republic is purchasing the Policies pursuant to the Agreement and this Order. Old Republic is not purchasing any other assets of the Diocese or the Other Releasing Parties. Old Republic shall not have any responsibility or liability with respect to any of the other assets of the Diocese or the Other Releasing Parties.

Q. A sale of the Policies other than one free and clear of Interests would impact adversely on the Diocese and creditors and would be of substantially less benefit to the estate of the Diocese.

Supplemental Injunction

R. Issuing a supplemental injunction under 11 U.S.C. §§ 105(a) and 363 is essential to the reorganization of the Diocese. The Diocese and Old Republic have agreed that a supplemental injunction is a necessary prerequisite for their agreeing to the terms and conditions of the Agreement, and Old Republic will not consummate the sale of the Policies in the absence of a supplemental injunction from this Court.

S. The claimants, including the holders of the Tort Claims, are adequately protected in that they have the right to pursue their claims against the proceeds of the sale of the Policies with the same validity and priority as against the Policies.

For all of the foregoing and after due deliberation, **IT IS ORDERED,**
ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED and APPROVED in all respects.
2. The Agreement and each of its terms and conditions are hereby approved.
3. For the reasons set forth herein and on the record at the Hearing, all objections to the Motion and the relief requested therein and/or granted in this Order that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections are overruled on the merits.
4. The Diocese is authorized, empowered and directed to enter into the Agreement, pursuant to 11 U.S.C. § 363(b) and other applicable provisions of the Bankruptcy Code, to sell, transfer and convey its Interest in the Policies to Old Republic in accordance with the terms and subject only to the conditions specified herein and in the Agreement. The Debtor's transfer of its Interests in the Policies, in conjunction with the Other Releasing Parties' transfer of their Interests in the Policies pursuant to the Agreement, shall vest Old Republic with all right, title, and Interest in and to the Policies, free and clear of all rights, claims and Interests, effective as of the payment of the Purchase Price (as defined below).
5. The terms of the Agreement are approved in their entirety, and this Order and the Agreement shall be binding upon the Diocese, all creditors of the Diocese, Other Releasing Parties, and all other parties-in-interest and each of their successors and assigns. Subject to the payment by Old Republic to the Diocese of the consideration provided for in the

Agreement, the sale of the Policies to Old Republic shall constitute a legal, valid, and effective transfer of the Policies and shall vest Old Republic with all right, title and Interest in and to the Policies free and clear of all rights, claims and Interests, effective as of the payment of the Purchase Price.

6. The \$550,000 cash purchase price (the “Purchase Price”) under the Agreement shall be paid by Old Republic as provided in the Agreement.

7. The releases in the Agreement comply with the Bankruptcy Code and applicable Arizona law, including A.R.S. § 20-1123. The Agreement in no way voids or annuls the Policies, or attempts to void or annul the Policies, which have been fully performed, within the meaning of A.R.S. § 20-1123.

8. The sale of the Policies to Old Republic under the Agreement will constitute transfers for reasonably equivalent value and fair consideration under the Bankruptcy Code and the laws of the State of Arizona.

9. The Diocese and the Other Releasing Parties and Old Republic are each hereby authorized to take all actions and execute all documents and instruments that the Diocese and the Other Releasing Parties and Old Republic deem necessary or appropriate to implement and effectuate the transactions contemplated by the Agreement.

10. Pursuant to 11 U.S.C. §§ 105(a) and 363(f) and subject to the consummation of the sale of the Policies as provided under the Agreement, the Policies shall be and hereby are transferred to Old Republic, free and clear of (a) all Interests in the Policies and (b) any and all claims (as defined in 11 U.S.C. § 101(5)), obligations, demands, debts, rights, contractual commitments, restrictions, interests and matters of any kind and nature, whether arising prior to or subsequent to the commencement of the Reorganization Case, and whether

imposed by agreement, understanding, law, equity or otherwise (including without limitation, Interests in the Policies that purport to give to any party a right or option to effect any forfeiture, modification or termination of the interest of the bankruptcy estate or Old Republic, as the case may be, in the Policies).

11. Pursuant to 11 U.S.C. §§ 105(a) and 363, any and all persons and entities who now hold or who may in the future hold Interests of any kind or nature (including, without limitation, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade and other creditors, tort claim holders and all others holding claims or interests of any kind or nature whatsoever) against the Diocese, the Other Releasing Parties, or the Policies are hereby barred, estopped and permanently enjoined from asserting such Interests against Old Republic or any of its affiliates, stockholders, members, partners, parent entities, successors, assigns, officers, directors or employees, agents, representatives, and attorneys, or against the Policies.

12. Any and all Interests in the Policies, shall be transferred, affixed, and attached to the Purchase Price proceeds of the sale, with the same validity, priority, force, and effect as such Interests had upon the Policies immediately prior to the consummation of the sale of the Policies.

13. Old Republic is a good faith purchaser of the Policies and is entitled to (and is hereby granted) all of the protections provided to a good faith purchaser under 11 U.S.C. § 363(m). The transactions contemplated by the Agreement shall not be subject to avoidance under 11 U.S.C. § 363(n). Each and every Person is hereby enjoined from commencing or continuing an action seeking relief under 11 U.S.C. § 363(n) with respect to Old Republic.

14. Old Republic is not, and shall not be deemed to be, a successor to the Diocese or the Other Releasing Parties by reason of any theory of law or equity or as a result of the consummation of the transactions contemplated in the Agreement or otherwise. Old Republic shall not assume any liabilities of the Diocese or the Other Releasing Parties.

15. Pursuant to Fed. R. Bankr. P. 9019, the settlement and release of any and all duties, obligations, damages, costs, fees, deductibles, retentions, premiums, accountings, interest charges, payments, setoffs, debts, accounts, Insurance Coverage Claims, Tort Claims, Extra-Contractual Claims, and Claims of every kind, nature and description, known or unknown, asserted or unasserted, arising or alleged to have arisen from the beginning of the world or which may hereafter arise until the end of time out of or in connection with the Policies (the “Released Claims”) are hereby approved effective as set forth under the Agreement. All of the Released Claims are hereby dismissed and forever released effective as set forth under the Agreement.

16. This Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing and shall not be stayed under Fed. R. Bankr. P. 6004(g) or any other applicable provision.

17. This Court shall retain exclusive jurisdiction to interpret and enforce the provisions of the Agreement and this Order in all respects and further to hear and determine any and all disputes between the Diocese and/or the Other Releasing Parties and/or Old Republic, as the case may be, and any other Person; provided, however that in the event the Court abstains from exercising or declines to exercise such jurisdiction or is without jurisdiction with respect to the Agreement or this Order, such abstention, refusal, or lack of jurisdiction shall have no effect upon, and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter. In the event this case has been

closed, there shall be a right to have this case reopened upon *ex parte* motion or application for such purposes as provided in this paragraph.

18. The provisions of this Order are nonseverable and mutually dependent.

19. This Order shall inure to the benefit of Old Republic, the Diocese, the Other Releasing Parties and their respective successors and assigns, and shall be binding upon the Diocese and the Other Releasing Parties.

20. Each and every federal, state, and local governmental agency or department is hereby directed to accept for filing, recording or otherwise any and all documents and instruments necessary and appropriate to consummate and/or evidence the transactions contemplated by the Agreement and this Order.

Dated: _____, 2005

United States Bankruptcy Judge

EXHIBIT 2

The following insurance policies and alleged insurance policies² are included within the definition of Policies:

<u>Insurer</u>	<u>Policy Number</u>	<u>Policy Period</u>
Old Republic Insurance Company	ORZU4226	6-1-81 to 7-1-82

² Old Republic does not by this Exhibit or in this Agreement concede the existence, terms, conditions or limits of any Policy.