

February 28, 2014

**BY FEDERAL EXPRESS**

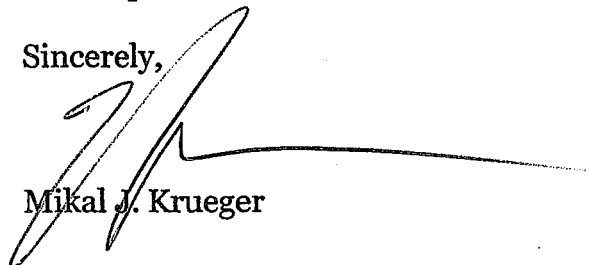
United States Bankruptcy Court  
Southern District of New York  
300 Quarropas Street  
White Plains, New York 10601-4140

**Re: The Christian Brothers Institute, et al.  
Case No.: 11-22820 (RDD)**

Dear Court Clerk:

On behalf of Bishop Kearney High School of Rochester New York, I am enclosing a response to the declaration of Discovery Charter School in connection with the above-referenced case. I will be filing a motion for admission *pro hac vice* shortly.

Sincerely,



Mikal J. Krueger

MJK/sla  
Enclosure

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1600 Crossroads Building  
Two State Street  
Rochester, NY 14614-1397  
585 232 3730  
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Canandaigua:  
35 South Main Street  
Canandaigua, NY 14424  
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100 East Main Street  
Penn Yan, NY 14527  
315 536 7555

CHAMBERLAIN D'AMANDA  
OPPENHEIMER & GREENFIELD LLP  
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**Hearing Date and Time: March 4, 2014, at 10:00 a.m.**

CHAMBERLAIN D'AMANDA  
OPPENHEIMER & GREENFIELD LLP  
Mikal J. Krueger, Esq.  
1600 Crossroads Building  
Two State Street  
Rochester, New York 14614-1397  
Telephone: (585) 232-3730  
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Attorneys for Bishop Kearney High School of Rochester New York

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**In re:**

**THE CHRISTIAN BROTHERS' INSTITUTE, et. al.,**

**CHAPTER 11**

**Case No.: 11-22820 (RDD)**

**Reorganized Debtors.**

**Jointly Administered**

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**RESPONSE OF BISHOP KEARNEY HIGH SCHOOL  
OF ROCHESTER NEW YORK TO THE DECLARATION  
OF DISCOVERY CHARTER SCHOOL IN OPPOSITION TO  
DEBTORS' MOTION TO AUTHORIZE THE SALE OF 125  
KINGS HIGHWAY SOUTH, IRONDEQUOIT, NEW YORK**

Bishop Kearney High School of Rochester New York ("Bishop Kearney"), by its attorneys, Chamberlain D'Amanda Oppenheimer & Greenfield LLP, for its response to the declaration in opposition of Discovery Charter School ("DCS"), alleges as follows:

1. This response is submitted to address the declaration filed on behalf of Discovery Charter School in opposition to the Trustee's and Reorganized Debtors' Joint Motion for entry of

an order authorizing the sale of real property located at 125 Kings Highway South, Town of Irondequoit, County of Monroe, State of New York (the "Property").

2. Bishop Kearney is the lessee of the Property pursuant to a lease with The Christian Brothers Institute (the "Lease").

3. The Trustee's and Reorganized Debtors' Joint Motion reflects that the proposed sale of the Property is subject to a Purchase and Sale Agreement dated January 29, 2014. A copy of the Purchase and Sale Agreement is attached to the Joint Motion as Exhibit B.

4. The terms of the Purchase and Sale Agreement provide that the Buyer [B. Thomas Golisano] intends to assign the Purchase and Sale Agreement to the Tenant [Bishop Kearney] and that Buyer's obligations to perform its undertakings provided in the Purchase and Sale Agreement are subject to and contingent upon, among other things, (a) Buyer and Tenant [Bishop Kearney] entering into an Assignment and Assumption Agreement and (b) Tenant purchasing the Property from the Seller in accordance with the Assignment and Assumption Agreement and the Purchase and Sale Agreement.

5. The right of first refusal claimed by DCS is based upon Bishop Kearney not electing to purchase the Property upon the same terms as a bona fide offer from a third party for the purchase of the Property, which Christian Brothers Institute desires to accept.

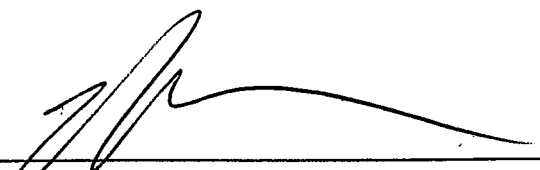
6. Accordingly, as the sale of Property that is the subject of the Joint Motion is effectively a sale of the Property to Bishop Kearney, there has not been a bona fide offer from a *third person* as contemplated under Article 30 of the Lease. At the very least, Bishop Kearney's purchase of the Property, if the motion is granted, constitutes an exercise by Bishop Kearney of the right of first refusal.

7. As Discovery Charter School's right of first refusal only exists if Christian Brothers has received a bona fide purchase and Bishop Kearney has not exercised its right of first refusal, all as contemplated in Article 30 of the Lease, Discovery Charter School has no right of first refusal under the terms of its sublease with Bishop Kearney.

8. However, to avoid any doubt on the issue, Bishop Kearney has now executed a notice formally exercising such right of first refusal. A copy of the formal notice of exercise is attached as Exhibit A. Accordingly, Discovery Charter School does not have a right of first refusal in connection with the proposed sale of the Property.

**WHEREFORE**, Bishop Kearney High School of Rochester New York respectfully requests that Discovery Charter School's request for an adjournment be denied and the motion be approved.

Dated February 28, 2014



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Mikal J. Krueger, Esq.  
CHAMBERLAIN D'AMANDA  
OPPENHEIMER & GREENFIELD LLP  
Attorneys for Bishop Kearney High School  
of Rochester New York  
1600 Crossroads Building  
Two State Street  
Rochester, New York 14614-1397  
Telephone: (585) 232-3730

# EXHIBIT A

February 28, 2014

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

The Christian Brothers' Institute  
260 Wilmot Road  
New Rochelle, New York 10804  
Attention: Brother Kevin M. Griffith, CFC

And

The Christian Brothers' Institute  
33 Pryer Terrace  
New Rochelle, New York 10804  
Attention: Brother Kevin M. Griffith, CFC

**Re: Bishop Kearney High School  
125 Kings Highway South, Town of Irondequoit, County of Monroe  
State of New York (the "Property")**

Dear Brother Griffith:

Please be advised that, pursuant to Paragraph 30, Right of First Refusal, contained in the Lease Agreement dated April 2, 2009, between The Christian Brothers' Institute, as Landlord, and Bishop Kearney High School of Rochester New York, as Tenant, Bishop Kearney High School of Rochester New York exercises the right of first refusal to purchase the Property, pursuant to the terms and conditions contained in the Real Property Purchase and Sale Agreement dated January 29, 2014 (the "Contract"), between The Christian Brothers' Institute, as Seller, and B. Thomas Golisano, as Buyer. Bishop Kearney High School of Rochester New York agrees to accept an Assignment and Assumption of the Contract with the Buyer as assignor and Bishop Kearney High School of Rochester New York as assignee.

Please acknowledge below receipt of this exercise of right of first refusal.

**BISHOP KEARNEY HIGH SCHOOL OF ROCHESTER NEW YORK**



Thomas M. O'Neil  
President and CEO

TMO/WST:sz

The Christian Brothers' Institute acknowledges receipt from Bishop Kearney High School of Rochester New York of the exercise of the right of first refusal to purchase the Property as set forth above and consents to such exercise.

**THE CHRISTIAN BROTHERS' INSTITUTE**

By: \_\_\_\_\_  
Name: Brother Kevin M. Griffith, CFC  
Title: Vice President

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

The Christian Brothers Institute, et al.

BK No.: 11-22820 (RDD)

Reorganized Debtors.

Chapter 11

Jointly Administered

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CERTIFICATE OF SERVICE

Mikal Krueger, Esq., affirms pursuant to law that on February 28, 2014 deponent served the Response of Bishop Kearney High on the following:

US Bankruptcy Court  
Southern District of New York  
300 Quarropas Street  
Room 248  
White Plains, NY 10601

Office of the United States Trustee  
U.S. Federal Office Building  
201 Varick Street, Room 1006  
New York, NY 10014

Alexander Geiger, Esq.  
Geiger & Rothenberg, LLP  
920 North Broad Street, Suite 8  
Lansdale, PA 19446

by sending a copy of same in a securely sealed postpaid wrapper properly addressed to the said parties via Federal Express, next business day, and on the following:

Ilan D. Scharf, Esq.  
Pachulski Stang Ziehl & Jones LLP  
780 Third Avenue, 36<sup>th</sup> Floor  
New York, New York 10017

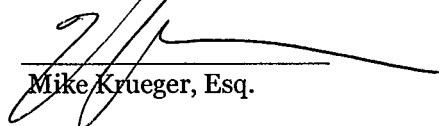
Anthony D. Dougherty, Esq.  
Tarter Krinsky & Drogin LLP  
1350 Broadway, 11<sup>th</sup> Floor  
New York, New York 10018

Scott S. Markowitz, Esq.  
Tarter Krinsky & Drogin LLP  
1350 Broadway, 11<sup>th</sup> Floor  
New York, New York 10018

James I. Stang, Esq.  
Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 11<sup>th</sup> Floor  
Los Angeles, CA 90067



by mailing a copy of same in a securely sealed postpaid wrapper properly addressed to the said parties in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.



Mike Krueger, Esq.