

FOUNDATION OF CATHOLICS UNITED IN SERVICE

FOCUS

DECLARATION OF TRUST

Diocese of Harrisburg

WHEREAS, since its founding in 1868, the Diocese of Harrisburg has become a vital force in south Central Pennsylvania, providing an ever growing network of educational, charitable and pastoral programs that enhance the area's religious, economic, cultural and social fabric; and

WHEREAS, in 1988 Most Reverend William H. Keeler, then Bishop of the Diocese of Harrisburg, recognized that it was imperative that the Diocese of Harrisburg stabilize existing educational, charitable and pastoral programs; improve and expand these programs; and initiate and develop urgently needed programs; and

WHEREAS, Most Reverend William H. Keeler, then Bishop of the Diocese of Harrisburg, in view of an inadequacy of ordinary operating financial resources of the Diocese of Harrisburg, deemed the establishment of a permanent endowment fund the best method of attaining these goals.

WHEREAS, on July 1, 1988 Most Reverend William H. Keeler, then Bishop of the Diocese of Harrisburg, after consultation with his staff of advisors, signed a Declaration of Trust commonly referred to as FOCUS, Foundation of Catholics United in Service; and

WHEREAS, the FOCUS Trust document , in paragraph 13, provided that the Trustee of the Trust, the Bishop of the Diocese of Harrisburg, retained the authority to modify or supplement the administration provisions of the Trust, provided that such changes are consistent with the purpose of the Trust; and

WHEREAS, based on recommendations of his staff and advisers, Most Reverend Ronald W. Gainer, Bishop of the Diocese of Harrisburg, hereby restates the original terms and conditions of the Trust with minor clarifications to the administrative provisions.

NOW THEREFORE, I, Most Reverend Ronald W. Gainer, Bishop of the Diocese of Harrisburg, and Trustee based on the foregoing, do hereby restate and declare as follows:

1. **NAME.** The Trust hereby provided for shall be known as the “Foundation of Catholic United in Service”, of the Diocese of Harrisburg. The acronym for the Trust shall be FOCUS and the use of the acronym shall have the full force and effect as if the entire name of the Trust was set forth.

2. **ACCEPTANCE OF GIFTS BY TRUSTEE.** The Trustee will accept all gifts, grants, devises, or bequests which in his sole and exclusive judgment shall appropriately aid, assist, or promote the purposes set forth in Paragraph 3 hereof. The Trustee shall also have the authority to reject certain gifts in his sole and exclusive judgment which are not practical or appropriate Trust assets. All gifts, grants, devises or bequests are subject to the following terms and conditions:

- (a) Any gift, grant, devise or bequest so accepted by the Trustee In Trust for the purposes specified in said Paragraph 3 hereof shall be subject to the terms and conditions of this Declaration and the donor or testator shall conclusively assent to and adopt all the provisions of this Declaration of Trust.
- (b) In the event that the amount of such gift, grant, devise or bequest shall be Ten Thousand Dollars (\$10,000.00) or more (or such greater or lesser amount that may be established from time to time by the Trustee) said testator or donor to the Trust may also specify, subject to the provisions of this Declaration of Trust, (Removed the word discretion as a sentence was added at the end of the paragraph) (1) the amount of and the time when the principal shall be distributed; (2) the purpose (which shall be compatible with the purposes set forth in Paragraph 3 hereof as determined by the Trustee) for which the income and/or principal shall be used for a definite or indefinite period; and (3) the name of the fund which may be a family or other appropriate memorial designation. Providing that the gift, grant, devise or bequest is accepted by the Trustee, then the direction of the testator or donor as to the use and/or disposition of income or principal shall be respected and observed. Subject, however, to the condition that if and whenever it shall appear to the Trustee after consultation with members of the Advisory Committee that circumstances have so changed since the execution of the instrument containing any gift, grant, devise or bequest as to render

unnecessary, undesirable, impractical or impossible a full and direct compliance with the terms of such instrument, or that said circumstances have so changed as to render said specifications no longer wise or beneficial, the Trustee, after consultation with the Advisory Committee, may at any time or from time to time redirect application of such gift, grant, devise or bequest to other related charitable purposes which shall accomplish the general purposes expressed in Paragraph 3 hereof. This authority of the Trustee is limited to determining as closely as possible the donor's original intention for the donation. This authority is similar to the civil courts' use of the "Cy Pres" doctrine which allows a Trustee to apply trust funds in a manner "as nearly like" the donor's original intention.

3. **DISTRIBUTIONS - PURPOSES.** Subject to the particular terms of any gift, grant, devise or bequest as and only to the extent provided in Paragraph 2(b) hereof, the Trustee shall from time to time, but at least annually after conferring with the Advisory Committee as provided in Paragraph 6 hereof, distribute the entire net income of the Trust estate to such institutions, organizations, divisions of the Diocese or individuals residing in or operating in the Diocese of Harrisburg, which in the sole and exclusive judgment of the Trustee most effectively assist, encourage, support or promote the stabilization of and improvement of Diocesan educational, charitable and pastoral programs or the development of additional services and programs to meet the present and future needs of the Diocese of Harrisburg.

4. **USE OF PRINCIPAL.** The principal of a Trust fund may be used for any purpose within the scope of the Foundation which may be determined in the manner described in Paragraph 3 hereof as in the case of distribution of income, provided that no more than five percent (5%) of the fair market value of the principal of any gift, grant, devise or bequest measured as of the last day of the previous calendar year shall be disbursed annually in those cases where the testator or donor has not expressed a desire to allow annual principal distributions which exceed five percent (5%) of such market value. If the testator or donor determines that it is appropriate to exceed the aforesaid five percent (5%) limit, this must be set forth in the Participation Agreement signed at the time the donation is made.

5. **GIFTS MAY BE COMMINGLED IN A SINGLE TRUST.** All gifts, grants, devises and bequests to the Trustee which have a market value at the time of the receipt of less than the amount specified from time to time in Paragraph 2(b) hereof and such larger gifts, grants, devises and bequests in respect of which the donor or testator has made no specifications described in Subparagraphs (1), (2) or (3) of Paragraph 2(b) hereof may be commingled, held, managed, controlled, administered and disbursed by the said Trustee as a single Trust fund. Such single Trust fund may be referred to as the "General Fund" or by such other name as the Trustee may select. The Trustee shall give due recognition to any and all gifts, grants, devises and bequests to the General Fund and shall make a suitable record thereof including the names of donors, whenever the donors so desire, and the names of the persons, if any, in whose memory such gifts are made. The assets of the Trust are the sole property of the Trust and not any other entity as provided in paragraph 11.

6. **ADVISORY COMMITTEE.** The Trustee shall appoint an Advisory Committee of no less than five (5) nor more than fifteen (15) persons. Members of the Committee shall serve for a three (3) year term which may be renewed without limit by appointment of the Trustee. Prior to making any distribution of income or principal, the Trustee shall meet with the Advisory Committee to obtain their recommendations regarding such distributions. The Committee shall also review and make recommendations as specifically provided in Paragraphs 3 and 13 hereof and shall consult and advise the Trustee on such other matters as may be requested by the Trustee. Members of the Committee shall serve only in such capacity and shall have no status as Trustees or Co-Trustees hereunder. A member of the Committee shall be designated by the Trustee as Secretary of the Committee and shall record and maintain minutes of the declarations and actions of the Committee. All discretionary and administrative powers are vested in the Trustee and no powers shall be deemed or construed to be delegated, in whole or in part, to the Advisory Committee or its members.

7. **CUSTODY OF ASSETS.** All securities of the Foundation shall be physically held by the Office of Financial Administration of the Diocese of Harrisburg.

8. **EMPLOYMENT OF INVESTMENT ADVISOR.** The Trustee shall be authorized to employ a qualified professional investment advisor to provide investment research and supervision of the investments of the Foundation and conduct a continuous program of investment evaluation and appropriate sale or other disposition and reinvestment of the securities held by the Foundation. The investment objective of the Foundation will be to provide a reasonable return of income measured in light of the discretionary provisions of Paragraph 9(a) hereof and be in keeping with the social and

moral teachings of the Roman Catholic Church. The limited discretionary and administrative powers vested in the Trustee shall not be deemed or construed by this paragraph to be delegated, in whole or in part, to the investment advisor.

9. INVESTMENT AND ADMINISTRATIVE PROVISIONS. Without in any way limiting or restricting the generality of the foregoing, but rather in enlargement and extension thereof, and except as otherwise expressly restricted or enlarged by such specific provisions, if any, with respect thereto as may be contained in the particular Will or Trust instrument creating the Trust, the Trustee shall have the following powers, in addition to any powers granted by Pennsylvania Law to similar fiduciaries, with respect to the management, investment and control of the Trust estate:

- (a) To retain the securities and other property, real or personal, now or hereafter delivered or transferred to it in the condition in which they shall be when received as well as the property into which the same may be converted by reason of any corporate merger, consolidation, succession or reorganization for such time as he shall deem advisable, even though such property represents a large percentage of the total property held hereunder or may not be productive of income, or the Trustee may at his discretion, subject to the restrictions placed on the funds by a donor, as to any property at any time held hereunder, sell, covert, assign, covey, exchange, transfer, or in any way dispose of the same or any part thereof, at such price or prices, at public or private sale, and upon such terms and conditions as he shall deem advisable,

and shall execute and deliver good and sufficient deeds for any real estate, conveying title free and clear of all Trusts, and the proceeds thereof he shall invest in any kind of property, real or personal, and whether income producing, including mortgages or mortgage participations, common and preferred stocks, bonds, notes and other securities, regardless of whether the same are legal investments for fiduciaries as now or hereafter defined by law, whether by a statutory enactment, judicial decision or otherwise. The Trustee may hold intact the proceeds of the sale of any property, real or personal, at any time held hereunder without reinvesting the said proceeds, and may do so for such time and from time to time and in such manner as the Trustee deems advisable in the interest of the Trust. The Trustee shall not be responsible or accountable for any loss arising from the making of any investments in the exercise of his discretion or from the retention for any length of time or any securities or other property purchased or otherwise acquired by him notwithstanding the fact that such property may cease to be income producing, or for keeping any funds in savings banks or in commercial banks or trust companies, or uninvested, as hereinbefore permitted. No purchaser of any property, real or personal, from the Trustee shall be bound to see to the application of the purchase money arising therefrom or to inquire into the validity, expediency or propriety of such sale.

- (b) With respect to real estate: to manage the same; to lease for a term or terms within or beyond the life of any Trust hereunder; to release, partition, vacate or abandon; to grant and acquire licenses or easements; to dedicate to public use; to make improvements to or upon the same; to construct, demolish, alter, repair, maintain and rebuild buildings and other improvements; to sell and convey all or any part thereof, at such price or prices; at public or private sale, and upon such terms and conditions as it shall deem advisable, and to execute and deliver good and sufficient deeds, conveying title free and clear of all Trusts.

- (c) To cause the title to all or to portions of the Trust property held hereunder, both real and personal, to be registered in a name or names, either his own or other than his own and either as Trustee or otherwise, or it may hold the same in coupon or other unregistered form; all without increasing its liability by reason thereof.

- (d) To commingle, for investment and record keeping purposes only, the assets of any or all of the Trust funds established with the Trustee under this Declaration of Trust. In all respects other than investment and record keeping, the Trustee will hold, manage, control and administer these Trust funds as separate Trust funds, and will respect the terms, conditions and desires of each testator or donor as expressed in the Will, deed, agreement,

conveyance or other instrument by which the particular Trust is established, subject however, to the provisions of Paragraph 2 hereof.

- (e) To vote, in person or by proxy, all stocks held hereunder; to unite with other owners of similar property in carrying out any plan for the reorganization of any corporation; to exchange the securities of any corporation for others issued by the same or by any other corporation; to assent to or oppose the consolidation or merger of any corporation with any other corporation; to assent to or oppose the leasing by any corporation of its property or any portion thereof to such corporation; and upon any such consolidation, merger, leasing or other arrangements to exchange the securities held by it for other securities issued in connection with such arrangement; to pay an assessment or expense which it may deem advisable for the protection of its interests as holder of the securities of any corporation; to deposit securities in any voting Trust or with any protective or like committee, or with a Trustee or with depositories designated thereby; and to exercise or sell any rights with reference to the securities of any corporation; all upon such terms as said Trustee shall deem advisable, and generally to exercise in respect of all securities held hereunder all the same rights and powers as are or may be exercised by persons owning similar property in their own right. The term "corporation" as used herein includes also an association or business Trust.

- (f) To be final judge of what constitutes income and what constitutes principal, except that the profits and losses from the sale, collection and realization of and upon securities and other property, together with any income taxes thereon, shall be credited to or charged against principal and not income. In case securities are taken or purchased for any Trust at a premium, the Trustee may set aside part of the income thereof as a sinking fund to retire or absorb such premium or to make any other provision for depreciation in the value of the securities by reason of their approaching maturity or otherwise. All dividends declared in stock of the issuing or another corporation (except dividends which have regularly and over a considerable period of time been paid in stock in lieu of cash, which dividends are hereby defined as ordinary stock dividends), and all extraordinary dividends declared upon corporate stock held hereunder whether payable in rights to subscribe to stock of the issuing or another corporation, or by way of liquidation or otherwise, shall not constitute or be treated as income but shall constitute and be treated as part of the principal hereof and the same shall be invested and managed by the Trustee as part of such principal. All ordinary cash dividends and all ordinary stock dividends as herein-above defined, and all oil, gas or other royalties shall be treated as ordinary income.
- (g) To allocate or apportion any losses to or between principal and/or income as he shall deem best.

- (h) To accept deeds of real estate or any other consideration whatsoever in satisfaction of bonds and mortgages, accepting such payments in connection therewith as it may deem advisable.
- (i) To borrow money for the purpose which the Trustee may consider advisable or beneficial for the protection or improvement of any Trust hereunder, and to pledge, mortgage or otherwise encumber the principal and income of such Trust or any part thereof in order to secure the payment of any indebtedness or charge for which the Trustee may consider such Trust liable. There shall be no obligation or liability upon the person from whom any such borrowing may be effected to inquire into the necessity, advisability or expediency of such borrowing or to see to the application of the money so borrowed.
- (j) To set up reserves out of income for taxes and assessments of all kinds and for repairs, insurance and general upkeep of buildings.
- (k) To sue and defend his own name as Trustee. The Trustee may, in such manner and upon such terms as he deems advisable, enforce in full, compromise or abandon claims or demands of any Trust hereunder against others, and may pay in full or compromise claims or demands against any such Trust.

- (l) To employ counsel, brokers and such other assistants and agents as it may deem necessary or proper to employ in and about the execution of any Trust hereunder to perform such duties as are not customarily performed by Trust institutions and to fix the terms, including compensation, of any such employment, and the Trustee shall pay for the same out of such Trust. The Trustee shall not be liable of any act or omission of any such counsel, broker or other assistant or agent selected with due care.

- (m) To allocate and apportion all expenditures, incident to, resulting from or arising out of any Trust hereunder, including all taxes, assessments, charges and attorney's fees against principal or income, or both, of any such Trust, and among the different beneficial interests in such Trust in such proportions as the Trustee shall deem equitable; provided, however, that the Trustee pay out of the principal the carrying charges or the deficit in carrying charges of any unproductive real estate or real estate insufficiently productive to pay all its carrying charges, and shall credit the entire proceeds of sale of such property to principal.

- n) To rely upon any affidavit, certificate, letter, notice, telegram or other paper or document believed by it to be genuine and upon any evidence by it believed to be sufficient. In determining who are the distributees hereunder,

the Trustee may rely upon such information with respect to heirship, relationship, survivorship, identity, or any other fact, as it believes to be correct.

- (o) To deal with any situation which may arise respecting the Trust estate or any part thereof in such manner as the Trustee shall deem advisable and for the best interests of the Trust estate. The grant to the Trustee of any specific power, authority or discretion, or the failure to grant specifically herein any other power, authority or discretion, shall not be construed to limit or curtail in any way or to any extent said full and complete power, authority and discretion, which it is intended and directed shall be exercisable at all times by the Trustee respecting any and all matters of whatsoever character pertaining to the Trust estate or any part thereof. The Trustee may exercise all the powers herein conferred upon him notwithstanding that he may also be acting or interested either individually or as Trustee of other Trusts or as agents for other persons or corporations interested in the same matter.

10. **AUDIT - PUBLICATION.** All accounts of the Trustee including all deposits to his order, all receipts by him, all expenses incurred or paid by him, all distributions of income or principal to any beneficiary and other disbursements of any kind whatsoever shall be audited, according to the practices and policy of the Diocese of Harrisburg, annually by independent auditors to be appointed by the Advisory Committee and paid out of funds of the Trust. There shall be

published annually in accordance with Diocesan policy, the report of the proceedings of the Foundation during the previous year which shall list the aggregate of gifts, grants, devises and bequests received by the Foundation during each year and the aggregate of distributions made for the purposes provided for herein during such year and such other information as the Trustee in his discretion shall determine.

11. **ASSETS ARE PROPERTY OF THE FOUNDATION ONLY.** While in the custody or control of the Trustee the assets of the Trust shall not be subject to assignment, pledge, attachment or the claims of creditors of the Diocese of Harrisburg, any parish within the Diocese or any other Diocesan related organization, entity or institution, or individual beneficiary. The assets of the Trust shall remain the sole property of the Trust. Trust assets may not be commingled with any other assets of any other entity associated with the Diocese of Harrisburg, and the Trust assets, including income and appreciation, must at all times be separately accounted for and records of such accounting must be maintained in the Trust records by the Trustee. No principal or income of this Trust shall be liable for any debt or legal process of the beneficiary of the Trust or the Trustee or the Diocese of Harrisburg or any affiliated or related entity.

12. **SUCCESSOR TRUSTEE.** The duly designated Bishop of the Diocese of Harrisburg shall be the Trustee of the Trust hereby created, and his successors in the Office of the Bishop of Harrisburg shall be and become the Successor Trustee of the Trust immediately upon his investiture as Bishop of the Diocese of Harrisburg.

13. AMENDMENT. The maker of any gift, grant, devise or bequest for the uses and purposes herein expressed upon and subject to the provisions hereof and all persons claiming by, through and under him shall be conclusively deemed to have agreed that the Trustee after consultation with members of the Advisory Committee may from time to time or at any time:

- (1) Modify or supplement the administrative provisions hereof, provided that any such modification, supplement or change shall be consistent with the general plan and purpose of the Foundation as expressed herein and with application of the entire net income and/or principal of any gift, grant, devise or bequest for the charitable purposes of the Foundation as defined in Paragraph 3 hereof, subject to the direction of the donor and subject at all times to the provisions of Paragraph 2 hereof as respects changing the purposes or directions specifically expressed in any particular Trust; and further provided that no modification, supplement or change which would increase the amount of principal which could be distributed in any year pursuant to the provisions of Paragraph 4 hereof shall be allowed. Any such modification, supplement or change shall comply fully with the application provisions of the Internal Revenue Code of 1954 as amended and the regulations thereunder, together with the applicable provisions of Pennsylvania Law as it pertains to Trusts of the type hereby created.

- (2) Construe any provision of this Declaration of Trust which construction and action thereunder shall be conclusive.
- (3) Supply any defect or omission herein which are deemed advisable to carry out the purposes of the Foundation.

14. **GOVERNING LAW.** The validity, construction and administration of the Trust shall be determined in accordance with the laws of the Commonwealth of Pennsylvania and the Canon Law of the Roman Catholic Church.

WITNESS the due execution hereof this 29th day of June, 2016.

WITNESS:

Helary Smith

+ Ronald W. Gainer
Most Reverend Ronald W. Gainer
Bishop of the Diocese of Harrisburg,
Trustee

