

**Diocesan Council Meeting
Diocese of the West
Tuesday, March 29, 2011
San Francisco, CA**

Diocesan Council Members, Deans and Department Heads Present: His Grace BENJAMIN, Bishop of the Diocese of the West; Archpriest Ian MacKinnon, Chancellor; Mary Caetta, Treasurer; Archpriest David Lowell, Secretary; Archpriests David Brum, Anthony Karbo, Lawrence Margitich, John Pierce, Christopher Swanson, Basil Rhodes, Matthew Tate; Priests Michael Anderson, John Strickland; Maha Estephan, Dorothy Nowik, Sub-Deacon Paul Philipenko, Ivan Pouchine, Carol Shumaik, Dmitri Solodow.

Also Present: Priest Andrew Cuneo, Rick Ashley, Tim McFadden, Barry Migyanko.

I. The meeting was called to order with prayer at 10:30 am.

II. Previous Minutes: The minutes of the December 16, 2010 Diocesan Council meeting were reviewed. **It was motioned, seconded, passed (Nowik, Shumaik) to approve the minutes.**

In an effort to make Diocesan Council minutes publicly available without the three months interval that can occur between Diocesan Council meetings, the Council will receive, review and approve minutes by email. Our goal will be to get official minutes onto the Diocesan website in a timely manner.

III. Report of Bishop Benjamin

- The Holy Synod meeting held in Santa Fe, NM primarily dealt with Metropolitan Jonah and the Chancellor. The Bishops agreed not to discuss the issues beyond what was announced publicly, but discussion on internet forums made many claims that are simply not true. The Bishops did not propose that the Metropolitan resign, nor are they seeking any such thing. The Metropolitan needs to get help to tend to himself and bring peace back into the daily workings of the Church.
- His Grace celebrated Pan-Orthodox vespers at Holy Virgin Cathedral in Los Angeles on the Sunday of Orthodoxy. Joining Bishop Benjamin were Metropolitan Gerasimos of the Greek Metropolis in San Francisco, Bishop Joseph of the Western Diocese of the Antiochean Church, and Bishop Maxim, Hierarch of the Serbian Diocese of the West.

IV. Treasurer's Report: Mary Caetta reported that assessments from parishes are largely up to date. At this moment there is less than \$8,000 in assessments outstanding, and these parishes are regular in sending assessments. No problems to report.

We will do our fundraising appeal before the Feast of Saints Peter and Paul.

Our budget is in good shape. The Treasurer's Report is posted in full on the Diocese of the West website.

V. Old Business

A. Diocesan Loan Fund

The **Orthodox Church Capital Improvement Fund (OCCIF)**, Diocese of the West of the Orthodox Church in America, Omnibus Operating Agreement was reviewed.

1) Key points:

- a) The mission statement of the OCCIF is the funding of mortgage backed loans for the purchase, construction, improvement and/or refinancing of real estate affiliated with the Diocese of the West.
- b) All loan applicants must produce a letter from the Diocese of the West certifying the ecclesiastical suitability of the purpose of the loan.
- c) In event of the dissolution of OCCIF, any remaining net assets revert to the Diocese of the West.
- d) OCCIF will amend its by-laws to require:
 - 1) a super-majority (2/3) vote of the Board of Directors to make any change to OCCIF's mission;
 - 2) a super-majority (2/3) vote of the Board of the Directors must, at all times, be active members of OCA churches within the Diocese of the West.
- e) Should the OCCIF mission be materially altered, either party (OCCIF or DOW) may terminate the Operating Agreement with a 60 day cure period.
- f) OCCIF will be solely responsible for all of its operations.
- g) On a best efforts basis, the DOW will provide its and its affiliates cooperation in providing resources to the OCCIF for marketing and development purposes.

2) Once OCCIF is operative:

- a) The DOW will execute a pre-defined development plan to raise both donations and deposits, using DOW related solicitation sources for both types of funding.
- b) OCCIF will create a deposit pool at overnight rates as a holding fund until suitable projects are ready for funding. (The holding fund will be in FDIC insured accounts.)

c) The DOW will promote OCCIF's capabilities to fund real-estate related projects through informational presentations and on its website with reciprocal links with DOW entities, as well as through mailers to parishes.

The full Omnibus Operating Agreement is attached.

3) Discussion:

We have been working on this plan for many years. The OCCIF must be a separate entity from the Diocese of the West. This protects the Diocese from liability associated with deposits and loans. While two thirds of the directors of OCCIF must be members of parishes in the Diocese of the West, it is the OCCIF board that chooses and elects these directors based on OCCIF's own self-governing norms. OCCIF is solely responsible for its own operations.

We will not have overlapping directors between the two entities.

Is it possible to allow OCCIF to operate independently with the Diocese of the West retaining ultimate control in the long run? No. The cooperative nature between the OCCIF and DOW must be based on mutual benefit and a mission-based vision shared by both. To be truly independent, each organization has to be free to part company with the other at some future time, and these by-laws allow for that with a sixty day "cure" period in which such a decision can be reviewed or withdrawn.

Because state and federal regulations govern the rules for deposits and obligations, OCCIF cannot run away with anyone's money.

Another question was raised: is the relationship too close between OCCIF and the Diocese of the West? Is there an adequate degree of separation? Rick Ashley, who presented the OCCIF Omnibus Operating Agreement, said that outside legal counsel has assured the OCCIF board that the degree of separation between the OCCIF and the Diocese of the West is adequate to protect both.

It was M/S/P (Caetta/Solodow) to approve the Omnibus Operating Agreement with the Orthodox Church Capital Improvement Fund and the Diocese of the West of the Orthodox Church in America.

The Diocesan Council thanked Archpriest Ian MacKinnon for championing this idea over these past dozen years and seeing it through to completion.

B. Raphael House of Portland, OR

In early April, the Board of Directors of Raphael House in Portland, OR will vote to amend their by-laws. Christ the Saviour Brotherhood has up to now had the authority to appoint two directors to the Board. This section of the by-laws will be amended to give the ruling Hierarch of the OCA Diocese of the West the authority to appoint two directors to the Raphael House of Portland Board of Directors. Archpriest Matthew Tate has been an active leader on this Board for many years, as was Archpriest David Shank who recently reposed in the Lord. The room in which the Board meets at the Raphael House of Portland has been named in honor of Fr. David Shank.

The Diocesan Council has been supportive of the change since it was first raised several years ago. Bishop Benjamin is in agreement with the change. No action is required at today's meeting.

C. Raphael House of San Francisco, CA

Bishop Benjamin reported that both directors Archpriest John Dresko and Barry Migyanko have, in consultation with His Grace, resigned from the Raphael House of San Francisco Board of Directors. Bishop Benjamin met with the new executive director of Raphael House of San Francisco to explain that we wish the agency well, but that in choosing to end the Orthodox live-in community, without the courtesy of contacting the Bishop or the two Raphael House board members who represent the Diocese of the West, there is no basis for a continuing relationship.

At Bishop Benjamin's direction, the Orthodox Chapel was removed from Raphael House in January.

Bishop Benjamin commended Fr. Michael Boyle, who served as Chaplain and Residential Program Director at Raphael House. Fr. Michael and Magdalena Boyle are now in Sitka, Alaska where Fr. Michael is the rector of the Cathedral.

Bishop Benjamin also commended Carmela Biggs for 25 years of faithful service at Raphael House.

With no official relationship remaining with Raphael House of San Francisco, it was M/S/P (Nowik, Tate) that all charitable giving earmarked for Raphael House of San Francisco will now be directed to the Portland Raphael House.

D. Life Giving Spring Retreat Center

The retreat center in Boulder City, Nevada continues to lose money. We are exempt from property taxes now that we have settled our tax case with the State of Nevada, and we have paid all back taxes owed during the years the case was in dispute. We will remain exempt as long as we continue to host retreats for the Church and other non-profit organizations and offer periodic religious services, as is our stated purpose.

Mary Caetta reported that the tax assessor sent us a refund of \$9,635.97. Since the original tax bill was paid equally by the Russian Women's Home of Mercy and the Diocesan Point Reyes Fund, we will divide the refund equally between both.

It was M/S/P (Solodow, Brum) to disburse \$4,817.98 to the Russian Women's Home of Mercy and return \$4,817.99 back into the Diocesan Point Reyes Fund.

E. Construction of Monastery Chapels

The construction of the Chapel at St. John of Shanghai and San Francisco Monastery in Manton, California was completed.

Plans for the chapel for the nuns in Santa Paula, California are still in process.

F. Parish and Clergy Screening/Background Checks

Local parishes pay for background checks on every Reader they recommend for tonsure, and for anyone who is to become a Sub-Deacon.

The Diocese of the West pays for the background checks on those ordained as Deacons or Priests within the Diocese as well as on all Deacons and Priests who transfer into this Diocese. We need to increase our line item in the budget for background checks.

It was M/S/P (Tate, Swanson) to add \$500.00 more to this year's budget to pay for background checks for incoming Priests and Deacons.

G. Synaxis of the Theotokos Parish Corporation

We extend our thanks to Peter Schwalbenburg for his work with lawyers and tenets in the care of the property on Duboce Street in San Francisco.

H. Status of Diocesan Loans

All loans made to parishes or monasteries in the Diocese are being repaid regularly per their agreements.

The property in Merced will need another \$3,000.00 worth of work to keep that property in salable condition.

It was M/S/P (Caetta, Brum) to use \$3,000.00 out of monies from the sale of Point Reyes to be added to the existing loan to the Merced parish, to be used for upkeep of land to keep the property salable.

VI. New Business

A. Report of the Diocesan Audit Committee

Archpriest David Brum reported to the Diocesan Council that a thorough internal audit was carried out. They found the financial records to be in excellent order. Everything is well-documented and easy to verify.

The Audit Committee does, however, have two recommendations they would like the Treasurer to adopt now and for future years.

1) Currently, Kaiser Health insurance premiums for His Grace and Father Barnabas are being paid to the Pacific Central Deanery (PCD). The Diocese is notified of the monthly payment at the beginning of the premium year. The Diocese receives no monthly invoices and no statement from either the PCD or Kaiser as to payments having been made to Kaiser.

Recommendation: A review of the process for managing the Diocesan Medical insurance program. We also recommend that Kaiser sends the bills directly to the insured for payment. That way there is proof that the medical insurance is being paid.

The Treasurer adopts this request gladly.

2) The Life Giving Spring Retreat Center and the Synaxis of the Theotokos corporations each have assets that are an integral part of the Diocese's assets.

Recommendation: That these corporations shall also be included in the Diocesan audit.

It was M/S/P (Solodow/Tate) that Life Giving Spring Retreat Center and Synaxis of the Theotokos corporations will be included in the annual internal audit.

B. Report on Meeting with Representatives of Moscow Patriarchate

Archpriest David Lowell reported on the March 15, 2011 meeting in Syosset with Metropolitan Hilarion and Archpriest Nikolay Bulashov who were here on a fact-finding mission on behalf of the Patriarch of Moscow.

C. Resolution

In light of issues concerning the Metropolitan and his relationship with the administration of the Church, His Grace Bishop Benjamin proposed the following resolution:

Whereas, the Diocesan Council of the Diocese of the West affirms the conciliar nature and polity of the Orthodox Church as expressed in the Holy Canons and the Statute of the Orthodox Church in America; and

Whereas, the Diocesan Council of the Diocese of the West understands the Primate

of the Orthodox Church in America to be bound by the Holy Canons to act in concert with his synod of bishops, rather than being a sovereign authority who acts independently and without reference to his peers, the diocesan bishops; and

Whereas, the Diocesan Council of the Diocese of the West recognizes a significant disruption in this critical relationship and urges the Holy Synod to exercise its pastoral care for the entire Church by calling its Primate to accountability and compliance with decisions agreed upon by the Holy Synod; and

Whereas, the Diocesan Council of the Diocese of the West recognizes the Metropolitan to be the presiding officer and chairman of both the Holy Synod and the Metropolitan Council;

Be it resolved: the Diocesan Council of the Diocese of the West reminds these two bodies of their fiduciary and legal responsibilities and urges the Holy Synod, with the support and consent of the Metropolitan Council, to:

- 1) establish a committee within the Holy Synod to control disbursement of the Primate's compensation based upon his compliance with the decisions and policies agreed upon by the Holy Synod;
- 2) establish a committee under the authority of the Holy Synod to control the distribution of funds in the line item for the Metropolitan's travel;
- 3) establish a committee under the authority of the Holy Synod to screen and vet significant decisions and pronouncements that relate to external affairs and the OCA's relations with other Churches;
- 4) understand the oversight of the chancery, its officers and staff to be the joint responsibility of the Holy Synod and the Metropolitan Council, and;
- 5) understand the departments and offices of the Orthodox Church in America to be under the oversight of both the Metropolitan Council and the Holy Synod.

After discussion, **the resolution was moved/seconded (Pouchine/Rhodes) and passed unanimously.**

D. The next meeting of the Diocesan Council will be Tuesday, June 14, 2011 at 10:30 am in San Francisco.

Meeting adjourned with prayer at 2:30 pm.

ORTHODOX CHURCH CAPITAL IMPROVEMENT FUND
DIOCESE OF THE WEST OF THE ORTHODOX CHURCH IN
AMERICA
OMNIBUS OPERATING AGREEMENT

April _____, 2011

THIS **OMNIBUS OPERATING AGREEMENT** ("Agreement") is made and entered into as of the _____ day of February, 2011 ("Effective Date"), by and between **ORTHODOX CHURCH CAPITAL IMPROVEMENT FUND**, a California nonprofit public benefit corporation (as further defined, the "OCCIF"), and **DIocese OF THE WEST OF THE ORTHODOX CHURCH IN AMERICA**, a California nonprofit religious corporation (as further defined, the "Diocese"). OCCIF and the Diocese may be referred to herein individually as a "party" or collectively as the "parties."

RECITALS

A. OCCIF has been established for purpose of funding or purchasing mortgage backed loans or other secured loans for the purchase, construction and/or refinancing of Diocesan affiliated real estate and improvements, as further provided in this Agreement.

B. The Diocese is a basic body of the Orthodox Church in America and consists of all parishes, mission parishes, missions, chapels and institutions of that church located within the Territory as hereinafter defined.

C. OCCIF intends to establish a Loan Program hereunder for the within purposes and to solicit and obtain donations, contributions, grants and other funding for the Program and other proper purposes of OCCIF.

D. The parties further desire to cooperate with and assist each other as set forth herein.

AGREEMENT

In consideration of the foregoing and the mutual promises in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions

The following terms used in this Agreement shall have the following meanings:

1.1 "affiliate" means a corporation, partnership or other person controlling, controlled by or under common control with the relevant party or person, but only so long as such control continues to exist. For purposes hereof, "control" means ownership, directly or indirectly, of at least fifty percent (50%) of the voting rights in such entity for the election of director (or, in the case of a noncorporate entity, equivalent rights to elect the governing body of the entity).

1.2 “Agreement” means this Omnibus Operating Agreement, and any schedules or attachments hereto, as may be amended or otherwise modified by the further written agreement of the parties from time to time.

1.3 “Approved Uses” means the purchase, construction and/or refinancing of Borrower Real Property to be used primarily for ecclesiastical purposes.

1.4 “Borrower Real Property” means the real estate and improvements of a Diocesan Borrower which (a) are purchased or owned or held by such Diocesan Borrower, (b) are approved for ecclesiastical use by the Diocese and primarily used for ecclesiastical purposes, and (c) are located solely within the Territory.

1.5 “Collateral” is defined in Section 3.3(d) hereof.

1.6 “Debt” means all principal, interest and other sums of any nature whatsoever which shall or may become due and payable by Diocesan Borrower pursuant to the terms and conditions of the Loan made to such Borrower under the Loan Program.

1.7 “Diocesan Borrower” means any parish, mission parish, mission, chapel or institution [or other affiliate] of the Diocese.

1.8 “Diocese” collectively means the Diocese of the West of the Orthodox Church in America, a California nonprofit religious corporation, and any successor or [affiliate or] permitted assign thereof. For these purposes OCCIF shall not be deemed an affiliate of the Diocese.

1.9 “Effective Date” is defined in the Preamble to this Agreement.

1.10 “Indebtedness” means, for any Diocesan Borrower or other relevant person as of any relevant date of determination, any and all of the following: (a) any obligation of such Borrower or other person for borrowed money, including without limitation (i) any obligation incurred through the issuance and sale of bonds, debentures, promissory notes or other debt instruments, whether or not secured by a Lien on any asset or interest of such Borrower or other person, and (ii) any obligation for borrowed money which is non-recourse to the credit of such Borrower or other person but which is secured by a Lien on any asset or property of such Borrower or other person; (b) any obligation of such Borrower or other person on account of deposits or advances; (c) any obligation of such Borrower or other person for the deferred purchase price of any property or services; (d) any capital lease obligation of such Borrower or other person; (e) any Indebtedness of any third person secured by a Lien on any asset or property of such Borrower or other person, whether or not such Indebtedness is assumed by such Borrower or other person; and (f) any other obligation or liability of such Borrower or other person reasonably deemed

relevant by OCCIF in determining the creditworthiness of such Borrower or other person.

1.11 “Lien” means any security interest, lien, charge, pledge, mortgage, equity or encumbrance of any kind.

1.12 “Loan” is defined in Section 3.1 hereof.

1.13 “Loan Documents” means the Promissory Note, the Security Agreement, and such other instruments and agreements executed by the Diocesan Borrower in connection with the Loan.

1.14 “Loan Fee” is defined in Section 4 hereof.

1.15 “Loan Program” is defined in Section 3.1 hereof.

1.16 “OCCIF” collectively means the Orthodox Church Capital Improvement Fund, a California nonprofit public benefit corporation, and any successor or affiliate or permitted assign thereof. For these purposes the Diocese shall not be deemed an affiliate of OCCIF.

1.17 “OCCIF Mission” is defined in Section 6.1 hereof.

1.18 “person” collectively means any individual, partnership, corporation, company, limited liability company, fiduciary, firm, joint venture, trust, unincorporated association, governmental authority or other person or entity of any kind or nature.

1.19 “proceeding” means any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), prosecution, contest, hearing, inquiry, inquest, audit, examination or investigation that is, has been or may in the future be commenced, brought, conducted or heard at law or in equity or before any court or other governmental tribunal or any arbitrator or arbitration panel.

1.20 “Promissory Note” is defined in Section 3.3(c) hereof.

1.21 “Security Agreement” is defined in Section 3.3(d) hereof.

1.22 “Term” is defined in Section 10.1 hereof.

1.23 “Territory” means the geographical territory in the United States comprised of the States of Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington and Wyoming.

2. **Status of Parties**

OCCIF and the Diocese are independent entities and neither party has any ownership or equity interest of any kind or nature in the other party or any assets or properties of such other party, subject solely to the terms of Section 8 hereof (Dissolution of OCCIF). This Agreement does not and shall not create an agency, employment, franchise, partnership or joint venture relationship between the parties. No party has the right or power or authority to enter into any agreement or other obligation on behalf of or otherwise bind the other party. Without limiting the generality of the foregoing, the parties acknowledge and agree that OCCIF shall have the sole right, power and authority to conduct its operations and functions, including but not limited to the Loan Program.

3. **OCCIF Loan Program**

3.1 Loan Program. Subject to the full performance of the Diocese under this Agreement, OCCIF shall establish, maintain, manage, operate and administer during the Term hereof one or more programs (collectively "Loan Program") for the lending of funds to eligible Diocesan Borrowers for Approved Uses (each a "Loan"). The parties do not intend that OCCIF shall make any Loans with respect to real estate or improvements located outside of the Territory.

3.2 Loan Standards. OCCIF shall develop Loan standards and criteria, procedures and documentation for the Loan Program, as determined by OCCIF in its sole judgment and which shall be subject to change from time to time. Notwithstanding any contrary provision hereof, OCCIF shall have no obligation to make a Loan to any Diocesan Borrower, and all Loans under the Loan Program and the terms and conditions of such Loans shall be in the sole discretion of OCCIF.

3.3 Loan Requirements. As conditions precedent to any Loan under the Loan Program, unless otherwise determined by OCCIF in its sole and absolute discretion with respect to a particular Loan transaction:

(a) The Diocesan Borrower shall submit a loan application to OCCIF in the form and containing such information and documentation as determined by OCCIF from time to time ("Loan Application"). OCCIF shall have the right to conduct or have conducted a credit review of the financial status of the Diocesan Borrower, including but not limited to any credit reports and all outstanding Indebtedness of such Borrower. All Loans shall be conditioned upon the satisfactory completion of the due diligence and review by OCCIF as determined in its sole judgment.

(b) The Diocesan Borrower further shall obtain and deliver to OCCIF a letter of approval for the Loan from an appropriate official of the Diocese certifying the ecclesiastical suitability of the proposed purchase,

construction and/or refinancing of the Borrower Real Property for which the Loan is being made.

(c) The Loan shall be evidenced by a written and legally enforceable promissory note of the Diocesan Borrower in the principal amount of the Loan, bearing interest as set forth therein and with a maturity date, events of default and other terms and conditions set forth in the note (“Promissory Note”). The Diocesan Borrower and any guarantor shall be liable for payment of the entire Debt under the Loan. In the judgment of OCCIF the principal funds under the Loan may be disbursed in one or more installments to the Diocesan Borrower.

(d) The Loan shall be secured by a mortgage or deed of trust or other security agreement (collectively “Security Agreement”) as determined by OCCIF covering the fee simple estate of the Diocesan Borrower in the Borrower Real Property and such additional assets or property of the Diocesan Borrower as may be subject by agreement to the Loan or the Security Agreement (including the Borrower Real Property, collectively “Collateral”).

(e) The Diocesan Borrower shall further enter into, execute and deliver such additional Loan Documents deemed appropriate in the sole judgment of OCCIF.

(f) The Loan shall be contingent on the issuance of a title policy for the Borrower Real Property, and the issuance and maintenance of general liability, loss and damage and other appropriate insurance with respect to such Property, in each case in form and substance satisfactory to OCCIF.

(g) OCCIF in its sole judgment also may require one or more guarantees of performance or collection from third parties under the Promissory Note, the Security Agreement and such other documents or instruments to which the Diocesan Borrower may be subject in connection with the Loan.

(h) The Loan shall not be a revolving loan and will not be re-advanced by OCCIF.

(i) The proceeds of the Loan shall only be used by the Diocesan Borrower for the Approved Uses as set forth in the Loan Application.

(j) The Diocesan Borrower shall further enter into the following covenants in substance in connection with the Loan: (i) the Borrower Real Property shall be primarily used for ecclesiastical purposes under the sole authority of the Diocese of the West of the Orthodox Church in America during the entire term of the Loan; (ii) the Diocesan Borrower shall remain a parish, mission parish, mission, chapel or institution of the Diocese of the West of the Orthodox Church in America during the entire term of the Loan; (iii) the Diocesan Borrower shall comply with all applicable tax and charitable trust and other laws, regulations and ordinances; (iv) the Diocesan Borrower shall not

materially change or discontinue its operations in the manner conducted as of the date of the Loan and as represented in the Loan Application; (v) the Diocesan Borrower shall not encumber, pledge, mortgage, Lien, lease, grant a security interest in, assign, sell or otherwise transfer, by operation of law or otherwise, all or any portion of the Collateral or any legal or equitable interest therein, or any interest in the Diocesan Borrower, without the prior written consent of OCCIF, which may be withheld in its sole discretion; (vi) the Diocesan Borrower will indemnify, hold harmless and defend OCCIF and any related persons from and against any breach or violation of the Loan or any documents thereunder, or the ownership, management or operation of the Borrower Real Property, or in the case of such other matters as set forth in the indemnification obligation; and (vii) such additional covenants, representations and warranties of Diocesan Borrower as deemed appropriate in the sole judgment of OCCIF.

(k) OCCIF or its representatives shall have the right to inspect the Borrower Real Property at any time during the term of the Loan, upon reasonable notice.

4. **Loan Fees**

4.1 **Loan Transaction Fee.** OCCIF shall be entitled to a loan transaction fee for each Loan in the amount of [\$_____][_____ percent of the principal amount of the Loan], in addition to interest and other sums payable under the terms of the Loan.

4.2 **Loan Expenses.** The Diocesan Borrower also shall pay to OCCIF all reasonable expenses necessarily incurred by or for OCCIF in connection with the processing and documentation of the Loan and the perfection of the Security Interest in the Collateral, in addition to its other obligations under the Loan Documents.

4.3 **General Rights.** The foregoing fees and expenses are not intended to limit but shall be in addition to any and all other rights or remedies of OCCIF in connection with the Loan.

5. **OCCIF Funding**

5.1 **In General.** OCCIF shall have the full right and power at all times in its sole and absolute discretion (a) to solicit and obtain funding and other financial support for its Loan Program and for the other projects and general operations and activities of OCCIF, whether in the form of grants, contributions, donations, bequests, deposits, loans, advances, sources of income or any other sources of funding of any kind or nature; (b) to establish endowment funds, engage in investments and other transactions, and otherwise maintain and enhance the financial growth and stability of OCCIF; (c) to fund or purchase mortgage backed or other secured loans; (d) to assign, convey or otherwise transfer any of its rights, title and interest in or to any loans or loan portfolios or other assets or

properties, with or without consideration; and (e) to engage in other operations and activities in furtherance of its purposes (collectively “General Funding”). OCCIF shall be the sole owner of all such funding and its other assets and properties, and neither the Diocese nor any affiliate shall have any legal or beneficial interest therein of any kind or nature, subject only to Section 8 hereof (Dissolution of OCCIF).

5.2 Diocesan Efforts. Without limiting the other provisions of this Section 5, the Diocese and its affiliates shall exercise their respective best efforts at all times during the Term of this Agreement to fully assist and cooperate with OCCIF and its affiliates in connection with the Loan Program and in connection with the General Funding of OCCIF, including but limited to (a) the active promotion of the Loan Program to prospective Diocesan Borrowers and to Diocesan parishioners and other Diocesan persons generally; (b) the provision of contact information and other resources and support for the marketing and development of the Loan Program; and (c) the active assistance and support of the solicitation by OCCIF and its affiliates of grants, contributions, donations, bequests, deposits and other funding sources from Diocesan parishioners and other Diocesan persons, including the identification of and introduction of OCCIF to potential individual and corporate donors and depositors.

5.3 Exclusive Right of Referral. During the Term hereof, the Diocese and its affiliates at all times (a) shall exclusively recommend and refer all prospective Diocesan Borrowers to OCCIF for any proposed loan or other financing transactions with respect to the purchase, construction and/or refinancing of Borrower Real Property; (b) shall affirmatively require such Diocesan Borrowers to conduct all such loan or other financing transactions with OCCIF, to the fullest extent of the authority of the Diocese or its ecclesiastical order to do so; and (c) shall not refer a prospective Diocesan Borrower to other financing sources for any such loan or financing transaction, provided that the Diocese may make such a referral on an individual case by case basis at any time following thirty (30) days after the final written decision by OCCIF to not provide a Loan to a prospective Diocesan Borrower for the subject loan or financing transaction.

6. OCCIF Mission.

6.1 Mission Statement. The primary mission of OCCIF is the funding or purchase of mortgage backed loans or other secured loans for the purchase, construction, and/or refinancing of real estate and improvements affiliated with the Diocese of the West of the Orthodox Church in America (“Mission”). OCCIF shall have the unilateral right and power to change its Mission at any time, subject to the required supermajority vote of its Board of Directors and subject to the termination provisions of Section 10.3 hereof.

6.2 Amendment of By-Laws. Within thirty (30) days from the execution of this Agreement, the Board of Directors of OCCIF will amend the By-Laws of the organization to require 1) a two-thirds (2/3d) supermajority vote of all of the directors of OCCIF to make any material change in the Mission of the organization and 2) that at all times, at least two-thirds (2/3d) of the directors of OCCIF shall be both a) active members and b) have the ecclesiastical suitability certification of the Diocese.

6.3 No Fiduciary Duty. Notwithstanding any contrary provision of this Agreement (including but not limited to Section 8 hereof (Dissolution of OCCIF)) and for the avoidance of doubt, no provision of this Agreement or any transaction contemplated by this Agreement (including but not limited to the Loan Program) shall be construed to create or give rise to any fiduciary duty on the part of OCCIF or any affiliate thereof to the Diocese or the Orthodox Church in America or their respective affiliates or any Diocesan Borrower or any other person, and any such duties are expressly disclaimed.

7. Assignment; Binding Effect

7.1 Restrictions on Assignment No party shall have any right or power to assign or transfer or delegate, or shall assign or transfer or purport to assign or transfer (by operation of law or otherwise), this Agreement or any of its rights or obligations hereunder or any other interest in this Agreement without the prior written consent of the other party, which consent may be withheld in the sole discretion of such other party; provided however that OCCIF may assign or transfer or delegate this Agreement or any of its rights or obligations hereunder (a) to any affiliate of OCCIF provided that OCCIF shall remain primarily liable for the full performance of all such obligations, or (b) in connection with the reincorporation of OCCIF in another jurisdiction or in other internal reorganization or changes in corporate structure of OCCIF without the receipt of material consideration. Any purported assignment or transfer or delegation or other disposition (except as permitted herein) shall be null and void.

7.2 Binding Effect. Subject to the foregoing restrictions on assignment, this Agreement shall inure to the benefit of and be binding upon each of the parties and their respective affiliates, successors, and permitted assigns.

8. Dissolution of OCCIF.

In the event of the final dissolution and liquidation of OCCIF within fifty (50) years from the Effective Date hereof, all of its net assets remaining after payment (or provision for payment) of all debts and liabilities of OCCIF shall be distributed to (a) the Diocese of the West of the Orthodox Church in America or its nonprofit successor organization; or in the event such corporation or successor organization is not then in existence and legally competent to receive such assets, then (b) to the Orthodox Church in America or its nonprofit successor

organization. The foregoing shall not be applicable in the event of the final dissolution and liquidation of OCCIF at any time following such 50-year period.

9. **Force Majeure Event.**

No party shall be held responsible for any delay or failure in its performance hereunder because of government regulation or the involuntary order of any court or other competent tribunal, or by strike or other labor disputes, civil strife, riot, war, hostilities or acts of terrorism, declared or undeclared, or other calamities such as fire, explosion, flood, wind, earthquake, epidemic, accident or other acts of God, or because of other similar or dissimilar causes beyond the reasonable control of such party (collectively "Force Majeure Event"). The affected party shall notify the other party as soon as reasonably possible of the Force Majeure Event and shall resume its performance hereunder as soon as reasonably possible following cessation of the Force Majeure Event.

10. **Term and Termination**

10.1 Term. This Agreement shall commence on the Effective Date and shall terminate upon the expiration of fifty (50) years from the Effective Date, unless earlier terminated hereunder ("Term"). No party shall have the right to renew or extend the Term of this Agreement other than by the subsequent mutual written consent of the parties, which may be granted or withheld in their respective sole discretion.

10.2 Termination for Breach. Either party ("Notice Party") also may terminate this Agreement for cause by written notice of termination to the other party ("Defaulting Party") in the event the Defaulting Party breaches any of its material obligations under this Agreement; provided that such written notice must declare such breach and describe such breach in reasonable detail and provided further that the Defaulting Party shall have sixty (60) days from the date of the written notice from the Notice Party to either fully cure such breach or to substantially cure such breach and thereafter diligently proceed to complete such cure. [Such right to cure shall not be applicable to a series of the same or similar or related breaches by a party]. If any claimed breach is not cured within the applicable cure period, then upon expiration of such period this Agreement shall terminate.

10.3 Termination for Change in Mission. The Diocese shall also have the right to terminate this Agreement immediately by giving written notice of termination to OCCIF in the event that there is a material and permanent change in the Mission of OCCIF which is approved pursuant to the formal written resolution of the Board of Directors of OCCIF, provided however for such purposes that the expansion of the OCCIF Mission to include other dioceses or the Orthodox Church in America generally shall not be deemed a material change in the Mission.

10.4 Other Termination. A party shall also have the right to terminate this Agreement immediately by giving written notice of termination to the other party upon: (a) the filing by the other party of a petition in bankruptcy or insolvency under any applicable law regarding insolvency or relief for debtors; (b) the filing of an involuntary petition in bankruptcy or insolvency for or against the other party under any applicable law regarding insolvency or relief for debtors, unless any such petition or proceeding shall be stayed or dismissed within sixty (60) days of such filing; (c) the appointment of a receiver for all or substantially all of the property of the other party; or (d) the making by the other party of an assignment for the benefit of creditors of all or substantially all of its property pursuant to applicable law.

10.5 Effects of Termination. Upon the expiration or earlier termination of this Agreement, all of the respective rights and obligations of the parties hereunder shall terminate; provided however that (a) Section 5.1 hereof (In General), Section 6.3 hereof (No Fiduciary Duties), Section 8 hereof (Dissolution of OCCIF), this Section 10 (Term and Termination), Section 11 (Arbitration and Related Matters; Governing Law), and Section 1 (Definitions) and Section 12 (In General); (b) any then existing Loans and the respective rights and liabilities of the parties thereto; and (c) any claim or cause of action for breach or violation of this Agreement existing as of the date of termination or expiration; each shall not terminate and shall survive and remain in full force and effect. No party shall be liable to the other for damages of any kind solely as a result of the expiration or termination of this Agreement in accordance with its terms.

11. Arbitration and Related Matters; Governing Law

11.1 Arbitration. Any dispute, claim, or controversy between the parties hereto arising out of or relating to or in connection with this Agreement, including the determination of the scope or applicability of the agreement to arbitrate, shall be settled exclusively by arbitration before a single neutral arbitrator. The arbitration (including selection of the arbitrator) will be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures (the “Rules”) from its San Francisco, California office (or any similar rules); provided that if JAMS is no longer in existence, then American Arbitration Association shall administer the arbitration hereunder in accordance with its rules. The arbitrator’s award will be final and binding on all parties, and neither party will have any right to contest or appeal the arbitrator’s award, except as expressly provided for by the United States Federal Arbitration Act (9 U.S.C. § 1 et seq. as amended or superseded) and United States Federal case law interpreting the same (the “Federal Arbitration Act”). Judgment on the award may be entered in any court having jurisdiction. This provision is self-executing, and in the event that either party fails without good cause to appear at any properly noticed arbitration proceeding absent a previously issued court order to the contrary, an award may be entered against the party notwithstanding the failure to appear.

11.2 Provisional Relief. Any party also may bring an action in a court of competent jurisdiction to compel arbitration under this Agreement or any enforcement of an arbitration award or for emergency injunctive relief pending the outcome of such arbitration.

11.3 Allocation of Fees and Costs. The party who demands arbitration will pay the arbitration filing fee, and each of the parties will advance one-half (1/2) of the fees of the arbitrator. The arbitrator may, in the award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees and costs of the prevailing party incurred in the arbitration.

11.4 Governing Arbitration Law. Notwithstanding any choice of law provision herein, all issues relating to arbitration or the enforcement of the within agreement to arbitrate will be governed exclusively by the Federal Arbitration Act. The parties will expressly agree not to be bound by any state rules on arbitration, including those relating to the site of arbitration.

11.5 Governing Law. Except to the extent governed by the Federal Arbitration Act with respect to the rights and obligations of the parties to arbitrate, this Agreement shall be interpreted and construed under and governed by and determined in accordance with the internal laws of the State of California (as permitted by Section 1646.5 of the California Civil Code as amended or superseded), without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties.

11.6 Jurisdiction and Venue. Subject to the foregoing arbitration provisions, the exclusive jurisdiction and venue for disputes between the parties will be the Superior Court for the State of California for San Francisco County (or, if federal jurisdiction exists, the Federal District Court for the Northern District of California), and each party consents to and waives any objection it may have to the personal jurisdiction or venue of the foregoing state and federal courts. Process in any such action or proceeding may be served on any party in any jurisdiction in the world.

11.7 Recovery of Fees by Prevailing Party. In any legal action or other proceeding hereunder not subject to the terms of Section 9.3 hereof, the prevailing party in any final judgment, or the non-dismissing party in the event of a voluntary dismissal by the party instituting the action, shall be entitled to be awarded its reasonable attorneys' fees and costs paid or incurred in good faith in connection with such action or proceeding.

12. In General.

12.1 Entire Agreement. This Agreement contains the entire agreement and understanding of the parties hereto in respect of the subject matter contained

herein. This Agreement supersedes any and all prior or contemporaneous agreements and understandings, inducements, conditions, representations, warranties, whether oral or written or express or implied, between the parties. The express terms of this Agreement further control and supersede any course of performance or usage of the trade inconsistent with any of the terms or conditions hereof.

12.2 Amendment. This Agreement may not be amended, restated or otherwise modified except by an agreement in writing signed by authorized representatives of each of the parties and specifically referring to the section or sections of this Agreement to be amended, restated or modified.

12.3 Waivers. A party may waive compliance by the other party with any term or condition of this Agreement; provided however that such waiver shall not operate as a waiver of or estoppel with respect to any other or subsequent failure. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver. No delay or failure on the part of any party in exercising any right or power or remedies hereunder, and no partial or single exercise thereof, will constitute a waiver of or estoppel with respect to such right or power or remedies or of any other rights or powers or remedies hereunder.

12.4 Further Assurances. Each party agrees to execute and deliver to the other parties such other documentation and to take or cause to be taken such other actions, as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the transactions contemplated by this Agreement.

12.5 Severability. If any material provision of this Agreement, or the application thereof to any person, place or circumstance, shall be held by the final judgment of a court of competent jurisdiction or a final arbitration award to be invalid, illegal or otherwise unenforceable, such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties, or, if incapable of such enforcement, shall be deemed to be deleted from this Agreement, and the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect. In such event the parties agree to amend and replace any invalid or illegal or unenforceable provision with a valid and legal and enforceable provision which most closely approximates the intent and economic effect of the invalid or illegal or unenforceable provision.

12.6 Notices. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received (a) upon actual receipt when delivered personally; (b) one (1) day following the day when deposited with a nationally recognized overnight courier service for delivery to the intended

addressee on a next day basis; (c) one (1) day following transmission by telefacsimile to the intended addressee if the writing is legible and sent from a telefacsimile machine providing written confirmation of receipt; or (d) five (5) days following the day when deposited with the United States Postal Service as registered or certified US Mail, postage prepaid; if addressed as set forth below:

IF TO OCCIF:

Facsimile Number: _____

IF TO THE DIOCESE:

Facsimile Number: _____.

Any party may change its notice address by notifying the other parties of such change of address in the manner prescribed above. For the avoidance of doubt, the use of electronic mail shall not be effective notice hereunder.

12.7 Representations and Warranties. Each party represents and warrants that (a) the execution and delivery of this Agreement by such party has been fully and validly authorized and approved by all requisite corporate action, including by the board of directors or other governing body of such party, and that no further action is necessary to make this Agreement and all acts and obligations contemplated hereby valid and binding on such party in accordance with the terms hereof; and (B) this Agreement has been duly executed and delivered by the authorized officer or representative of such party, and constitutes the valid and binding agreement and obligation of such party and is enforceable in accordance with its terms.

12.8 Interpretation. The captions and headings used in this Agreement are inserted for convenience only, do not form a part of this Agreement, and shall not be used in any manner to construe or interpret this Agreement. Whenever the context requires, references to the singular shall include the plural and the plural the singular and any gender shall include any other gender. As used in this Agreement, the words “include” and “including” and variations thereof shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation”; the words “hereof,” “herein,” “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement; and whenever the context requires, the word “or” shall include the words “and/or”. Section references contained in this

Agreement are references to sections in or to this Agreement unless otherwise specified. The language of this Agreement shall be construed as a whole according to its fair meaning. It is acknowledged and agreed that the parties and their respective legal counsel have participated jointly in the negotiation and drafting of this Agreement, and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

12.9 Number of Days. In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and holidays; provided however that if the final day of any time period falls on a Saturday, Sunday or holiday on which banking institutions in San Francisco, California are authorized or required by law to be closed, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or such holiday.

12.10 Remedies Cumulative. The rights and remedies of either party as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies now or hereafter provided by law or at equity.

12.11 No Third-Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors and permitted assigns, and the parties do not intend to confer third-party beneficiary rights upon any other person.

12.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which, together, shall constitute but one and the same agreement. The parties hereby acknowledge and agree that a telefacsimile copy of the executed original of this Agreement is sufficient to bind the parties.

IN WITNESS WHEREOF, the parties hereto each have entered into, executed and delivered this Agreement as of the Effective Date hereof.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto each have entered into, executed and delivered this Agreement as of the Effective Date hereof.

DIOCESE OF THE WEST OF THE ORTHODOX CHURCH IN AMERICA

By: _____

His Grace The Right Reverend Benjamin Bishop

Date Signed: _____, 2011

ORTHODOX CHURCH CAPITAL IMPROVEMENT FUND

By: _____

John della Monica, President

Date Signed: _____, 2011