

STATE OF NEW YORK  
SUPREME COURT, COUNTY OF WESTCHESTER

In the Matter of the Application of

CONCORDIA COLLEGE

**VERIFIED PETITION**

Index No. \_\_\_\_\_/2021

Petitioner,

For Leave to Sell Real Property, pursuant to Sections  
510 and 511 of the Not-for-Profit Corporation Law

TO: THE SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

Petitioner, Concordia College, by its attorneys, Cullen and Dykman LLP, for its Verified Petition herein as verified by John A. Nunes, its President, respectfully alleges and states as follows:

**Introduction and Background**

1. Concordia College (the "Petitioner" or "College") is a New York not-for-profit, education corporation with its principal office located at 171 White Plains Road, Bronxville, New York 10708.

2. The Petitioner has operated since 1881. It was incorporated under a Provisional Charter in 1936 which was made an Absolute Charter by the Board of Regents of the University of the State of New York on May 7, 1940. Attached hereto as **Exhibit 1** is a copy of the Petitioner's Charter and all amendments thereto.

3. The purposes of the Petitioner are to operate postsecondary degree programs registered with the State Education Department and to confer degrees authorized by the Board of Regents of the University of the State of New York in connection with such programs.

4. The Petitioner's Bylaws are attached hereto as **Exhibit 2**. The Petitioner is deemed a charitable corporation under the New York Not-For-Profit Corporation Law (N-PCL) and it does not have any members.

5. The Petitioner's Board of Regents ("Board") has 17 voting members as set forth on the List of Voting Members of Board of Regents attached hereto as **Exhibit 3**. The principal officers and senior staff are set forth in the Petitioner's Organizational Chart attached hereto as **Exhibit 4**.

6. Petitioner is currently in the process of winding down its operations as an institution of higher education. Academic instruction ceased on August 26, 2021. This decision was compelled by steadily declining enrollment figures over recent years and rising competitive costs which have created increasingly difficult financial and operating circumstances for the Petitioner.

7. It has been widely publicized that the large number of colleges and universities in the northeast United States combined with a shrinking demographic pool of high school graduates has resulted in an extremely challenging operating environment for smaller, tuition-dependent, private colleges such as the Petitioner. These challenges were made worse and accelerated by the prolonged, negative impact of the COVID-19 global pandemic.

8. In early 2020, the Petitioner's Board and President undertook a deliberative, thoughtful and strategic review process that included exploring and evaluating an array of potential future options and alternatives from remaining as an independent institution to potentially merging with another institution of higher education. Unfortunately, no viable, sustainable path to continuing as an independent college could be identified, nor did

discussions with other colleges and universities about possible mergers or affiliations yield any actionable results.

9. Ultimately, the Petitioner's Board determined that because of the extremely challenging present and projected financial circumstances and forecasts of declining future enrollment, it was prudent and in the best interests of its students, faculty and staff, to plan for an orderly closure of the school.

10. Petitioner began discussions with Iona College ("Iona") in early 2020. First, the entities explored ways they could work together and offer programming that would be suitable to the similar missions of both institutions. As these talks proceeded, the enrollment and financial situation of Petitioner continued to decline.

11. Iona indicated that it would be interested in purchasing the campus of Petitioner to use as campus for its expanding programs and student body.

12. The parties entered into a due diligence period and ultimately each engaged appraisal firms to help determine a fair market value estimate of the Petitioner's campus real estate as described below.

13. Based upon the ongoing discussions throughout 2020 between the Petitioner and Iona, the Petitioner's Board passed a Resolution on January 23, 2021 authorizing the Petitioner to negotiate a definitive agreement with Iona to sell Petitioner's Bronxville campus to Iona and to provide a path for the continued education of Petitioner's students through a teach-out process. A copy of said Resolution is attached hereto as **Exhibit 5**.

14. Iona's similar mission, faith-based foundation, strong financial position and close geographic proximity were all important factors in this decision by the Petitioner's

Board. Iona is literally only three (3) miles away from Petitioner's campus in Westchester County.

15. Petitioner believed this to be the best viable option for its community and students. Together, Petitioner and Iona issued joint communications, held town halls, and provided information to students and parents regarding admissions, tuition, and information for students to transfer throughout the 2021 spring semester. Iona committed staff, created a webpage FAQs and a dedicated email address for Petitioner's students to seek information after Petitioner formally notified students, faculty and staff of its intent to close and partner with Iona to facilitate the transition. <https://www.iona.edu/admissions-financial-aid/transfer-admissions/concordia-student>. Academic teams from both schools met regularly and developed a crosswalk of programs and pathways to completion for each program offered and for each student. The Admissions teams worked together to ensure transfer and teach-out students would be able to complete their degrees at Iona.

16. The Petitioner's Board also adopted a Resolution on March 6, 2021 to cease academic instruction by August 31, 2021 and to seek approval from the Middle States Commission on Higher Education and the New York State Education Department to allow Petitioner's degree granting authority to continue until December 31, 2021. A copy of that Resolution is attached hereto as **Exhibit 6**.

17. Petitioner and Iona executed a Teach-Out and Transfer Agreement dated March 31, 2021 (the "Teach-Out Agreement") providing for Iona to make certain educational programs available to Petitioner's students. A copy is attached hereto as **Exhibit 7**.

18. Iona's comprehensive array of programs and degrees, including nursing and education, two of the largest programs offered by Petitioner, does not require additional approvals by the New York State Education Department ("NYSED"), the U.S. Department of Education ("USDOE"), the Middle States Commission on Higher Education ("MSCHE") or any programmatic accreditor which further helps support the Teach-Out Agreement and the ability for students to transfer or be taught out by Iona starting in the Fall of 2021.

19. The Teach-Out Agreement has allowed the significant number of Petitioner's students who are being taught-out by Iona or who are transferring to Iona to have a seamless transition and access to educational programs at Iona which have been determined by both the Petitioner and Iona to align with Petitioner's current offerings and programs. The Teach-Out Agreement with Iona was part of Petitioner's overall Teach-Out Plan which also includes three other area institutions (College of Mount St. Vincent, College of Westchester and Manhattanville College) as teach-out partners in addition to Iona. Copies of the Teach-Out Agreements with College of Mount St. Vincent, College of Westchester and Manhattanville College are attached hereto as **Exhibits 8, 9 and 10**, respectively.

20. In March 2021, Petitioner submitted its Teach-Out Plan and Agreements to its primary accreditor, MSCHE, and received a "Teach-Out Plans and Agreements Review Report" from MSCHE on May 13, 2021, which included the following excerpts:

"The documentation submitted indicates that Concordia College has developed a comprehensive and sensitive plan for the closing of the institution, providing reasonable opportunities for students to complete their academic studies, the disposition of assets and property, the preservation and availability of student records, and the surrender of accreditations and the charter."

"The institution is communicating with Department of Education representatives regarding various required matters, all of which are either in progress or will be scheduled as the actual closing date approaches."

21. The MSCHE approved the Petitioner's Teach-Out Plan on June 24, 2021 and Petitioner received formal notification from MSCHE on July 7, 2021. The comprehensive Teach-Out Plan will ensure that there are reasonable opportunities for all of Petitioner's students to complete their studies and obtain a degree. Additional teach out partners were necessary because Iona did not have approval to offer certain programs (i.e., radiology technology) and NYSED discouraged seeking approval for teach-out purposes only. Moreover, Petitioner had offered classes at locations other than the Bronxville campus and the additional teach-out partners are advantageous for students to complete their degrees closer to where they were taking classes with Petitioner. A copy of Petitioner's Teach-Out Plan is attached hereto as **Exhibit 11**.

22. In March 2021, Petitioner also submitted its Teach-Out Plan and Agreements to the NYSED and provided periodic updates to the NYSED's Office of College and University Evaluation and Office of Professions throughout the spring semester. Petitioner formally notified NYSED on July 7, 2021 of MSCHE's approval of the Teach-Out Plan and Agreement. NYSED acknowledged receipt and contemporaneously provided program approval to Iona to offer two Master's in Education Programs to fulfill the Teach-Out Agreement.

23. The Petitioner and Iona have also informed the New York State Higher Education Service Corporation ("HESC") of the Petitioner's decision to close and the Teach-Out Plan in order to avoid loss of any New York State student financial aid or

grants. Petitioner notified HESC on July 20, 2021 that the Teach-Out Plan had been approved by MSCHE.

24. At the conclusion of the 2021 Spring semester, Petitioner had approximately 788 enrolled students of whom 265 graduated in May and 90 graduated in August 2021, leaving 433 students who needed to continue at another school. As of the date hereof, 163 of those 433 students applied to Iona and 92 of them registered for classes there in Fall 2021. All of Petitioner's students are eligible to attend one of the other area institutions serving as Petitioner's teach-out partners and approximately 63 have done so to date. It is believed that most of the remaining students have or will enroll at another institution and Petitioner continues to work toward accomplishing that goal.

25. On behalf of Petitioner, Dr. Rachel Eells, Vice President for Academic Affairs, and Christopher D'Ambrosio, Associate Dean of Enrollment Services & Academic Operations, will be available through December 31, 2021, to assist Petitioner's former students who transferred to a teach-out partner school in case they have questions or difficulties in the transition process.

26. The Petitioner had created a program for high-functioning participants with disabilities known as "Impact U.", which was a two year, non-matriculated program. Therefore, Petitioner was not required to include this program in its Teach-Out Plan. There were fourteen (14) students enrolled in the Impact U. program in Spring 2021, nine (9) of whom finished the program and received a certificate of completion. Petitioner tried to find placements for the other five (5) participants and two (2) of them transferred to a similar program at the College of Mount Saint Vincent.

## Proposed Sale of Real Estate

### A. Monetary Consideration

27. Petitioner and Iona entered into an Asset Purchase Agreement dated as of May 6, 2021 (the "APA"), for the sale to Iona of Petitioner's main campus and certain ancillary real estate (athletic fields and tennis facility). The APA is conditioned upon the Petitioner satisfying the requirements of Sections 510 and 511 of the N-PCL. A copy of the Petitioner's Board Resolution adopted at a meeting duly called and held on May 1, 2021 approving the APA and authorizing its execution is attached hereto as **Exhibit 12**. There was a quorum of 15 of the 17 members of the Board present and all 15 members voted in favor of said Resolution. A copy of the fully-executed APA, dated May 6, 2021, is attached hereto as **Exhibit 13**.

28. The Petitioner proposes to sell its main campus at 171 White Plains Road, Bronxville, NY, and related parcels consisting of a total of approximately 28 acres of real estate located in Westchester County, New York, comprised of eight tax parcels: Parcel I (Section 7.J Block 1, Lot 1), Parcels II & III (Section 6 Block 1 Lots 1 & 1.A), Parcels IV & V (Section 31 Block 4 Lot 50 and Section 31 Block 2 Lot 50.A), Parcels VI & VII (Section 77 Block 2 Lots 175 & 176), Parcel VIII (Section 77 block 2 Lot 177), also known respectively as 182 White Plains Road, 187 White Plans Road, 193 White Plains Road, 200 White Plains Road, 18 Winslow Circle, 2 Crawford Street, 10 Crawford Street & Rose Avenue, Bronxville and Tuckahoe, NY (collectively, the "Campus Real Estate"). The Campus Real Estate that Petitioner proposes to sell to Iona is described more particularly in the Deeds and legal descriptions at **Exhibit 14** attached hereto.

29. Pursuant to the APA, Iona would be purchasing only the Petitioner's Campus Real Estate, including the improvements, buildings, and fixtures located thereon necessary



to occupy and use the buildings and facilities for their intended educational purposes. Separate from the Campus Real Estate being purchased under the APA, Iona will be purchasing certain classroom furniture and appliances from Petitioner.

30. Most of Petitioner's remaining furniture, office equipment, books, inventory and other personal property, along with six residential properties owned by Petitioner that are not part of the Petitioner's Campus Real Estate, have been or will be sold in order to raise additional revenue to help fund the payment of Petitioner's debts and the costs of an orderly winding down and closing of the school. Such retained real estate is described in **Exhibit 15** attached hereto ("Retained Parcels").

31. The purchase price to be paid by Iona under the APA for the Campus Real Estate is Thirty Million Forty-One Thousand Seven Hundred Ten Dollars and 00/100 (\$30,041,710.00) (the "Purchase Price").

32. The terms and conditions of the APA were intensely negotiated at arms' length over a three month period. For the reasons explained below, Petitioner believes that the Purchase Price represents fair market value for the Campus Real Estate. In addition, the proposed sale to Iona also allows Petitioner to avoid having to pay substantial broker commissions and marketing expenses.

33. Petitioner has only one significant secured creditor, the Lutheran Church Extension Fund – Missouri Synod ("LCEF"), which has outstanding loans to Petitioner with an aggregate principal balance of \$24,158,529, plus accrued interest and expenses as of the date hereof in the amount of \$1,268,230, secured by first mortgage liens recorded in the Westchester County Clerk's Office against the Petitioner's Campus Real Estate.

34. LCEF is an independent, nonprofit organization that provides customized loans and financial support services. Its primary mission since being founded in 1978 is to support The Lutheran Church—Missouri Synod and affiliated entities by offering funding and financial resources where appropriate and fiscally prudent.

35. LCEF engaged Valbridge Property Advisors, one of the largest independent national commercial real estate valuation and advisory firms in North America, to prepare an Appraisal Report (the “Valbridge Report”) of the Petitioner’s real estate for the joint use and benefit of LCEF and the Petitioner. Valbridge appraised the value of the Petitioner’s Campus Real Estate as of September 30, 2020 at Thirty-Nine Million One Hundred Thousand Dollars (\$39,100,000.00). A copy of the Valbridge Report is attached hereto as **Exhibit 16**.

36. Cushman & Wakefield (“C&W”), an international real estate broker and real estate services firm engaged by Iona, also prepared an Appraisal Report (“C&W Report”) which appraised the Campus Real Estate’s fair market value as of November 4, 2020 at Thirty Million Dollars (\$30,000,000). A copy of the C&W Report is annexed hereto as **Exhibit 17**.

37. There is no prior relationship between either Petitioner or Iona and either Valbridge or C&W.

38. It is believed that the discrepancy in appraised value between the Valbridge Report and the C&W Report can be explained by square footage amount and value per square foot.

39. Both appraisals used roughly the same land square footage numbers, the same number of buildings (27) and comparable price per square foot. C&W used a \$100

price per square foot and Valbridge used \$120. However, C&W used an improved square footage amount of 279,929 square foot as provided by Petitioner, whereas Valbridge used 348,721 of improved square footage based on its own methodology which resulted in almost 70,000 more improved square footage included in Valbridge's appraised value.

40. Valbridge also included as comparable sales two schools in Massachusetts with considerably higher dollar value per square foot. Interestingly, Valbridge did not include the sale of The College of New Rochelle (CNR) campus located in New Rochelle, New York which is more recent in time (January 31, 2020), closer in geography and was valued at \$71 per square foot. The CNR sale was included in the C&W valuation and its price per square foot was averaged in with several other sales of campuses located in New York State. Both appraisals concluded that the highest and best use for the Campus Real Estate would be to continue to use it as a campus.

41. The New York State Attorney General's Office suggested that the Petitioner obtain a third, more recent, independent appraisal of the Campus Real Estate. Accordingly, Petitioner engaged Goodman-Marks Associates Inc., a New York licensed, commercial real estate appraisal firm. A copy of their appraisal ("Goodman Report") is attached hereto as **Exhibit 18**. One notable aspect of the Goodman Report is that it took into consideration seven other regional education campus sales occurring between 2016 and 2021. The Goodman Report concludes that the fair market value of the Campus Real Estate as of August 11, 2021 is Thirty Million Dollars (\$30,000,000).

42. Based on the above, the Petitioner believes that the Purchase Price provided for under the APA is fair and reasonable under the circumstances, and that the proposed

sale of the Campus Real Estate would promote the Petitioner's educational and charitable purposes. See N-PCL § 511(d).

#### **B. Non-Monetary Consideration**

43. In addition to the above cash valuation, there are important non-cash considerations.

44. As stated, the Petitioner ceased academic instruction on August 26, 2021 because its financial situation could not support operating costs for another full academic year. Following the Petitioner's cessation of academic instruction, the only way that many of Petitioner's current students will see their education completed without enduring significant hardships of having to repeat courses and/or re-earn credits received from the Petitioner is through other institutions of higher education, particularly Iona, accepting Petitioner's students as teach-out and transfer students.

45. The Petitioner also believes that the proposed sale is fair and reasonable not simply because of the amount of the Purchase Price, but because of the non-monetary benefits that will be realized by selling the Campus Real Estate to Iona (a New York State accredited college) as opposed to other potential buyers such as a real estate developer. The Campus Real Estate will continue to serve similar higher education purposes and missions if sold to Iona. Concordia and Iona are both faith based institutions prioritizing transformative educational experiences with an emphasis on empowering first-generation students – especially those from a diversity of backgrounds.

46. Furthermore, the convenience and ease of continuity for Petitioner's students provided by Iona's close proximity (almost walking distance) and similar degree and program offerings cannot be over-stated. The proposed sale presents a very special

opportunity for the Petitioner and Iona that simply cannot be quantified in monetary terms alone.

47. Additionally, the Campus Real Estate is a unique asset located within the Village of Bronxville. The Petitioner's proposed sale to Iona will ensure that the Campus Real Estate continues to be used in furtherance of the educational, cultural and charitable purposes that provide all of the wonderful, ancillary benefits that flow to a host community from such uses.

48. For example, the Concordia Conservatory which sponsors concerts, music and visual arts programs and events, and provides music instruction to people of all ages, not just college students, will continue utilizing the Petitioner's campus under Iona to serve the Bronxville community.

49. It is respectfully submitted that the Court should grant this Petition because the proposed sale of the Campus Real Estate is based on fair and reasonable monetary consideration enhanced by the non-monetary value and benefits to students and the community which underscores the appropriateness of the transaction.

#### **Additional Components of Transaction**

50. A copy of the Petitioner's most recent audited financial statements ending FY2020 are attached as **Exhibit 19**, and a copy of the Petitioner's Statement of Receipts and Disbursements as of September 28, 2021 is attached as **Exhibit 20**.

51. As of the date hereof, the Petitioner's five largest creditors are LCEF (claim of \$25,635,803); Ellucian Company L.P. (claim of \$310,000); Presidio Networked Solutions Group, LLC (claim of \$272,368); Beis Sefer Gevoha Lebanos a/k/a Sara Schenirer (claim of \$178,891); and Konica Minolta Business Solutions USA Inc. (claim of \$152,000). A list

of all of the Petitioner's secured and unsecured creditors is attached hereto as **Exhibit 21**. Petitioner was eligible for and received Paycheck Protection Program (PPP) loans from the Small Business Association (SBA) through Sterling National Bank during the first draw period in the amount of \$2,746,200 (PPP 1), and during the second draw period in the amount of \$2,000,000 (PPP 2). Petitioner believes that it qualifies for full loan forgiveness for PPP 1 and for full or partial loan forgiveness for PPP 2, so they are not included in the five creditors identified above. The SBA is currently reviewing Petitioner's application for full loan forgiveness for PPP 1. All creditors shall be provided with notice of this Petition.

52. The Petitioner remains solvent. With the proceeds from the proposed sale of the Campus Real Estate to Iona, along with the separate sales of its Retained Parcels and certain personal property assets, and other revenue sources, the Petitioner believes there is sufficient funds to carry out an orderly closing of the institution and ultimately a voluntary dissolution. The net proceeds of the Purchase Price available at closing after satisfying the LCEF first mortgage of \$25,426,759, paying closing costs of approx. \$250,000 and funding the \$2 Million APA Escrow, will be used to provide an escrow amount of up to \$785,000 for employee separation payments, pay for anticipated record retention and storage expenses of approx. \$500,000 and paying creditors, including those described above in Paragraph 51. As of September 30, 2021, the Petitioner's total known debts and liabilities are \$27,049,636 (not including PPP).

53. The Petitioner must obtain approval of the proposed sale of the Campus Real Estate to Iona under the APA at the earliest possible date to allow Concordia to meet its financial obligations as it winds up its affairs prior to closing, and so that Iona can begin preparing for its academic operations at this new location. Iona intends to commence

classes at the newly established New York-Presbyterian Iona School of Health Sciences on the Campus Real Estate starting in the Fall of 2022 if renovations and preparations can be completed by then. Also, since August 31, 2021, the Petitioner's campus is no longer being used by Petitioner to conduct classes or house students, so Petitioner will have the financial and operational burden of maintaining the unused Campus Real Estate until it is sold.

54. On June 6, 2021, the USDOE advised Petitioner and Iona that it had reviewed the proposed transaction between Petitioner and Iona and determined that the transaction falls within the "White Knight" provision of federal regulations at 34 C.F.R. § 600.32(d). This positive determination allows Iona, a teach-out partner, to use the Campus Real Estate as an additional location for conducting approved academic programs without having to assume any of Petitioner's potential Title IV liabilities. This "White Knight" status is a recognition by the USDOE that the proposed transaction is beneficial.

55. The USDOE also informed the parties that it would require that part of the Purchase Price be transmitted to USDOE to cover potential, future student loan discharge liabilities of Petitioner as a closing institution. On August 18, 2021, the Department notified Petitioner that it had determined a letter of credit in the amount of \$616,263 should be posted by August 27, 2021, as security to protect against such potential liabilities. Petitioner complied with this requirement and posted the required Letter of Credit with USDOE on August 27th.

56. Thus, the Petitioner has concluded that the sale to Iona of the Campus Real Estate pursuant to the APA serves its purposes and is in its best interests.

### Petitioner's Employees

57. The Petitioner's Spring semester classes ended on May 6, 2021, and a limited number of courses were offered during the Summer semester which ended on August 26, 2021. That was the Petitioner's last and final date for providing academic instruction.

58. Following Petitioner's announcement on January 28, 2021 of the College's planned closure, its Board has worked diligently to limit the professional and personal impacts of the closure upon departing faculty and staff, and has sought to strike an appropriate balance between strategic stewardship of the College's finances and providing meaningful financial assistance its employees as they transition from employment with the College.

59. When layoffs began in February 2021 as a result of the Petitioner's decision to close the College, there was a total of approximately 290 employees, of whom approximately 180 were part-time, and 110 were full-time employees.

60. The original 290 employees were reduced by: (a) 28 layoffs on February 26<sup>th</sup>; (b) another 112 layoffs on May 31<sup>st</sup>; (c) another 27 layoffs on June 30<sup>th</sup>; and, finally, (d) 97 additional layoffs on August 31<sup>st</sup>.

61. The remaining 25 employees will continue for varying periods of time through the end of the year, with the possibility of a small number of these employees staying until sometime in mid-2022, or perhaps a bit longer, in order to effect an orderly closing process.

62. The Petitioner, based upon a careful and thorough analysis from counsel of the pertinent facts and circumstances, has concluded (and strongly believes) that it has no



contractual obligation to offer severance to any employees, and has developed and presented in that analysis compelling evidence in support of this position.

63. Nonetheless, Petitioner's Board and President have strived under extraordinarily challenging circumstances to identify and make available resources to provide financial support to Petitioner's employees impacted by the layoffs.

64. In an email distributed to the College's staff and faculty on May 24<sup>th</sup>, regarding separation pay and additional financial support available in connection with layoffs, President John Nunes announced that Petitioner's Board had approved separation payments to full-time faculty, in the amount of equivalent to two weeks' base salary per year of service, with a minimum of eight (8) weeks and a maximum of twenty-six (26) weeks base salary. Similarly, separation payments to full-time, non-faculty employees, equal to four (4) weeks base salary, was approved.

65. To fund these separation payments, Petitioner's Board directed approximately \$1.3 million of the College's operating budget be used. Petitioner also was counseled that it would be prudent to memorialize the separation arrangements in a writing, and to require that employees execute, within that writing, a general release in favor of the College as a condition of eligibility for the separation payments.

66. There are 110 full-time employees who were or will become eligible for and offered separation payments upon the termination of their employment. To date, 62 full-time employees who have been terminated have accepted and signed a release of claims. Of the remaining 48 eligible employees - 16 have not accepted the offer, 15 are employees who were terminated on August 31<sup>st</sup> or September 14<sup>th</sup> who have been offered the opportunity to receive separation agreements and payments but the forty-five

(45) day period to accept has not yet expired, and 17 are current employees who will be offered the opportunity to receive separation agreements and payments after their employment ends.

67. Separately, Petitioner's Board and the College's Advancement Office worked collaboratively to establish a Donors' Employee Support Fund. As a result of those efforts, on May 22, 2021, the Board approved donor support funds for gifts to all employees who were employed on January 28<sup>th</sup>, except for student workers and adjunct faculty with less than five years of service. Over \$1.1 Million has been provided to approximately 240 to employees.

68. Counsel for three former faculty members has disagreed with the Petitioner on whether severance payments are mandated, and has contended that his clients are entitled to severance in an amount greater than the separation benefits that were offered. The College disputes the legitimacy of this assertion, and in any event, believes that the separation and other payments described above can be fairly viewed under the law as a full-value compromise of any claims of entitlement to severance. Upon information and belief, one of these former faculty members purportedly commenced an action against Petitioner on September 29, 2021 alleging breach of contract for denying him severance, but the court docket indicates it was rejected because of a filing error.

69. Petitioner has fully complied with state and federal laws and regulations with respect to WARN Act notices and obligations.

70. The proposed sale of the Campus Real Estate to Iona is an arms-length transaction that does not violate N-PCL Sections 715 and 715-a, and none of the proceeds

of the proposed sale of Petitioner's assets will be used to pay severance or change of control packages.

71. While there is no relationship between Iona and Petitioner, the APA does provide that certain individuals who were or are employed with Petitioner may continue to live in Petitioner's campus housing for a limited transition period after the sale. Iona will provide these individuals with lease agreements. One of the individuals is Petitioner's President, Rev. Dr. John A. Nunes. Iona has agreed to allow him to continue residing in his current campus residence under a new lease through June 2023 as necessary to oversee the winding up of the Petitioner's business and to assist Iona as a liaison with the transition into the Bronxville community.

#### **The Court Should Grant the Petition**

72. As required by Section 511(d) of the N-PCL, the sale of the Campus Real Estate pursuant to the APA is in the best interests of the Petitioner and its students under the current circumstances. Section 511 (d) of the N-PCL sets forth two issues to be considered by the Court in authorizing a sale of real estate: (1) whether the terms are fair and reasonable to the Petitioner; and (2) whether the sale promotes the purposes of the organization.

73. It is respectfully submitted that the proposed sale of Campus Real Estate to Iona under the APA is both fair and reasonable to the Petitioner and promotes the educational purposes of Petitioner by allowing current students to complete their education without enduring significant hardships.

74. Ultimately, likely during the first half of 2022 after the Petitioner's degree granting authority has expired on December 31, 2021, the Petitioner shall pursue a

voluntary dissolution with the New York State Board of Regents. In connection with that process, and in coordination with the New York State Attorney General's Office, the Petitioner will also file a Cy Pres petition with respect to the disposition of the Petitioner's restricted endowment funds which as of September 8, 2021 totaled \$14,747,944 and are held in the Common Fund, a well-respected asset management company specializing in educational endowments at private colleges and universities.

75. The Petitioner has notified the Lutheran Church - Missouri Synod of the proposed sale of the Campus Real Estate to Iona and the Petitioner's closure and future dissolution.

76. The proposed sale to Iona will permit Petitioner to carry out an orderly closing of the school. Petitioner represents that it shall submit a closing binder for the sale of the Campus Real Estate to the New York State Attorney General's Office post-closing.


77. No previous application for the relief prayed for herein has been made.

78. Accordingly, the Petitioner respectfully requests that the Court grant this Petition.

**WHEREFORE**, the Petitioner prays that this Court grant an Order, pursuant to

Sections 510 and 511 of the N-PCL, approving Petitioner's sale of the Campus Real Estate to Iona College pursuant to the terms and conditions of the APA as set forth herein, and granting such other and further relief as may be just and proper.

CULLEN AND DYKMAN, LLP


By:   
Kevin P. McDonough, Esq.  
100 Quentin Roosevelt Blvd.  
Garden City, NY 11530

ATTORNEYS FOR PETITIONER

VERIFICATION

STATE OF NEW YORK                    )  
                                                  ) ss.:  
COUNTY OF WESTCHESTER        )

JOHN A. NUNES, being duly sworn, deposes and says: that he is the President of CONCORDIA COLLEGE; that he has read the foregoing Petition and knows the contents thereof, that the same is true of his own knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters, he believes it to be true.

  
\_\_\_\_\_  
John A. Nunes, Ph.D., President

Sworn to before me this  
4th day of October, 2021

  
\_\_\_\_\_  
Notary Public

KEVIN P. McDONOUGH  
Notary Public, State of New York  
No. 02MC4957545  
Qualified in Nassau County  
Commission Expires Oct. 16, 2023

**LIST OF EXHIBITS TO PETITION OF CONCORDIA COLLEGE**

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3. List of Voting Members of Board of Regents of Concordia College
4. Organizational Chart of Concordia College
5. Resolution adopted January 23, 2021, authorizing Concordia College to negotiate a Definitive Agreement with Iona College
6. Resolution adopted March 6, 2021, authorizing the Concordia College to cease academic instruction by August 31, 2021
7. Teach-Out Agreement with Iona College
8. Teach-Out Agreement with College of Mount St. Vincent
9. Teach-Out Agreement with College of Westchester
10. Teach-Out Agreement with Manhattanville College
11. Petitioner's Teach-Out Plan and Agreement Form filed with MSCHE
12. Resolution adopted May 1, 2021, authorizing the Concordia College to execute an Asset Purchase Agreement with Iona College
13. Asset Purchase Agreement by and between Concordia College and Iona College dated May 6, 2021
14. Deeds and Legal Descriptions of Campus Real Estate
15. Description of Retained Parcels of Real Estate
16. Appraisal Report dated as of October 27, 2020 from Valbridge Property Advisors
17. Appraisal Report dated as of November 4, 2020 from Cushman & Wakefield
18. Appraisal Report dated as of August 11, 2021 from Goodman-Marks Associates, Inc.
19. Concordia College's Audited Financial Statements for the fiscal year ended June 30, 2020
20. Concordia College's Statement of Receipts and Disbursements prepared as of September 28, 2021
21. List of Secured and Unsecured Creditors as of September 29, 2021