INTEGRATION AGREEMENT

This Agreement is made as a Deed on the 5th day of March 2020

Between:

Her Majesty the Queen in right of New Zealand acting by and through the **Minister of Education** ("**the Minister**")

and

THE ROMAN CATHOLIC BISHOP OF HAMILTON ("**the Proprietor**"),

together **the Parties**.

Background

A. The Proprietor intends to establish and integrate **Suzanne Aubert Catholic School, Papamoa, Tauranga** ("**the School**").

B. The School will be a co-educational school for students from Year one (1) to Year six (6) offering education with a special character as defined in the Act and described in this Agreement.

C. The Proprietor is the owner of the School premises specified in Schedule 2.

D. The Parties have agreed to enter into this Agreement pursuant to the Act, to establish the School as a State integrated school.

Terms of agreement

Definitions

1 In this Agreement, unless the context requires otherwise, terms not otherwise defined in this Agreement have the meanings specified in the Act and:

(a) *Act* means the Education Act 1989 as amended or replaced from time to time and includes all regulations and rules made under the Act;

(b) *Agreement* means this Integration Agreement, as amended by any Supplementary Agreements from time to time;

(c) *Depreciation Rate* means four percent (4%) of the depreciated value of state school buildings as set out in the "Statement of Accounting Policies" in the Ministry of Education's Annual Report;

(d) *Effective Date* means 1 March 2020;

(e) *Minister* means the person holding the office of Minister of Education from time to time and also includes any other Minister of the Crown who is responsible for the administration of Part 33 of the Act;

(f) *Supplementary Agreement* means any supplementary agreement entered into by the Parties in writing to amend this Agreement;

(g) *Works* means the capital works specified in Schedule 3.

A reference to a particular provision in the Act includes any provision that is intended to be a replacement or substitute for that provision.

Special character

2 As from the Effective Date, the School is established as a State integrated school under Part 33 of the Education Act 1989 to provide education with a special character (through its teaching and conduct) that is, or is based on, the following description:

The school is a Roman Catholic School in which the whole school community, through the general school programme and its religious instruction and observances, exercise the right to live and teach the values of Jesus Christ. These values are expressed in the Scriptures and in the practices, worship and doctrine of the Roman Catholic Church, as determined from time to time by the Roman Catholic Bishop of Hamilton.

3 The Proprietor has (and must at all times during the term of this Agreement continue to have):

(a) responsibility for -

(i) determining the special character of the School; and

(ii) supervising the maintenance and preservation of that special character[1];

(b) the right to determine what is necessary to preserve and safeguard the special character of the education provided by the School.

(c) the right to access to the School at all reasonable times to ensure that the special character of the education provided by the School is being maintained.

4 The Proprietor may specify (by notice in writing to the board of trustees of the School) what the Proprietor considers to be necessary to provide, maintain, preserve and/or safeguard education with the special character of the School.

5 The Proprietor shall regularly monitor the operation of the School to ensure that education with the special character is at all times provided, maintained, preserved and safeguarded by the School.

6 The Proprietor may invoke the powers conferred upon a proprietor by Part 33 of the Act if, in the opinion of the Proprietor:

(a) the special character of the School has been, or is likely to be, jeopardised; or

(b) education with that special character is no longer being preserved and safeguarded.

For this purpose, "jeopardise" includes when the School is not acting consistently with any notice provided by the Proprietor under clause 4.

---

[1] The Proprietor does not have sole responsibility for maintaining the school's special character but has ultimate responsibility for this.

School programme

7 The parties agree that religious observances and religious instruction form part of the education with a special character provided by the School. The instruction and observances that are to form part of the School's programme after integration are religious instruction and observances appropriate to the special character of the School.

School premises

8 As at the Effective Date the Proprietor is the owner of all the land and improvements specified in Schedule 1 ("**the Proprietor's land**").

9 The School premises will be the portion of the Proprietor's land (including any improvements) specified in Schedule 2 ("**the School premises**").

10 The Proprietor may make available for use by the School any other land, buildings, and/or associated facilities (not forming part of the School premises) that the Proprietor considers may assist with providing and maintaining the special character of the School.

11 The Proprietor must at all times during the term of this Agreement continue to own or lease the School premises or hold the School premises in trust (including on the basis that it may be applied for purposes provided for by, and consistent with, the terms of this Agreement).

12 The Proprietor must plan (including obtaining all consents and approvals required by law), implement and complete (consistent with all consents and approvals) and pay for:

(a) the Works; and

(b) such capital works and associated facilities at the School as the Minister may from time to time (by notice in writing to the Proprietor) approve, with a view to replacing, improving or enlarging the School, its buildings and its associated facilities in order to maintain the School premises at, or consistent with, the minimum standards specified by the Secretary for comparable State schools; and

(c) such capital works and associated facilities at the School as the Minister may from time to time (by notice in writing to the Proprietor) require (acting reasonably) because they are necessary in order to maintain the School premises at, or consistent with, the minimum standards specified by the Secretary for comparable State schools.

13 The Minister will support the Proprietor by providing, as a minimum, eighty-five percent (85%) of the non-integrated school funding rate of additional property costs resulting from future educational policy change. In-ground costs may be included if they are an integral part of delivering education as a result of the policy change. Funding eligibility is subject to the following:

(a) The funding to be provided will be determined by an assessment by the Minister of the investment the Proprietor would need to undertake to meet the requirements of the policy change;

(b) Funding is contingent on an assessment by the Minister that the school is sustainable and likely to remain open over the medium term (at least five to ten years).

14 At all times during the term of this Agreement the Proprietor (and not the Minister, the Secretary, the Ministry or any other person) will:

AH

(a) be solely responsible for complying with the terms and conditions (including making all payments, in full and on time) under any mortgage, lien, or other charge or security interest over or affecting the land and buildings making up the School premises; and

(b) maintain insurance for the School premises in accordance with sections 456(g) and (h) of the Act.

15 Nothing in clause 12 or 13 shall limit any right or entitlement the Proprietor may have to request, apply for or receive property funding from the Ministry.

Discharge of Maintenance Obligations

16 (a) The Minister will, after the Effective Date, pay to the Proprietor in each year the Sum as determined under Schedule 4 to:

17 assist the Proprietor in maintaining the School premises and the associated facilities in a condition equivalent to that of a comparable non-integrated state school;

18 provide for the maintenance of the School chattels as though the School were a non-integrated state school.

19 (b) The School will be entitled to such furniture and equipment as the Minister supplies from time to time to comparable non-integrated state schools.

20 The Minister may pay the Sum to the Proprietor in instalments on the same dates as the Minister provides operations funding to the Board of Trustees.

21 The Proprietor must on receipt of the Sum in each year undertake the maintenance of that part of the School premises not required to be undertaken by the Board of Trustees during the course of that year to the standard to which the Crown maintains comparable state schools.

22 The Sum shall be applied to meet the obligations in Clause 21. After the obligation in clause 21 has been met in full and if there is a balance of the sum remaining the Proprietor may apply the balance in the following ways:

(a) to capital works or other purposes directly related to the School;

(b) to maintenance, capital works or other purposes related to any other integrated school.

No liability for default in certain circumstances

23 Neither party will be liable for any act, omission, or failure to fulfil its obligations under this Agreement, if such act, omission or failure arises from any cause reasonably beyond its control including acts of war, epidemics, earthquakes, or other natural disasters or acts of God. ("Force Majeure Event").

24 The party unable to fulfil its obligations due to a Force Majeure Event shall:

(a) immediately notify the other in writing and provide full information concerning the Force Majeure Event including an estimate of the time likely to be required to overcome the event

(b) use its best endeavours to overcome the event; and

(c) continue to perform its obligations as far as practicable.

25 Despite clause 23, if in any year Parliament has not appropriated sufficient public money to enable the Minister to maintain non-integrated state schools, the Minister will not be required to pay the instalments of the Sum from that point onward until an appropriation is so made. In that event the Minister will only pay the instalments of the Sum due from the date on which that appropriation is made.

26 If the Sum is not paid as a result of Clause 25, the Minister's assistance to the Proprietor under this Agreement to maintain the School premises, from the point that Parliament decides not to appropriate the monies until an appropriation is made that enables the payment of the Sum to be recommenced, will not be discharged and the Minister will remain required to provide that assistance on the same basis as to other state schools.

Information

27 The Minister may by notice to the Proprietor, require the Proprietor to supply to the Minister any information including but not limited to accounting or banking records in the possession or control of the Proprietor (whether stored on electronic media or otherwise) relating to the performance of the Proprietor's obligations under clauses 16 – 25.

28 The Minister shall be entitled to make and retain copies of any information supplied to the Minister in accordance with Clause 27.

Disputes

29 The Minister and the Proprietor shall endeavour to resolve by negotiation any disputes that arise between them concerning clauses 16 – 26 within 30 days of one party advising the other of the existence of the dispute.

30 If the Minister and the Proprietor are unable to resolve a dispute by negotiation, they shall refer the matter to mediation, and shall choose jointly a mediator. If the parties are unable to agree on the appointment of a mediator then the mediator shall be appointed by the then New Zealand President of the Resolution Institute or, failing that, by the then President of the New Zealand Law Society. The mediation shall thereafter be conducted by the mediator in accordance with the usual practice for the Resolution Institute mediation.

31 The obligations of the Minister and of the Proprietor under clauses 16 – 25 shall not be affected by any dispute regarding these clauses, and each party shall continue to perform its obligations as if the dispute had not arisen.

32 Breach of obligations under clauses 16 – 26.

(a) If the Proprietor is in breach of its obligations under clauses 16 – 26, and if in the reasonable opinion of the Minister the breach is able to be remedied, the Minister may by notice to the Proprietor require that the breach be remedied within 60 days (or such further or other period as may be specified) of the date of the notice.

(b) If the breach is not remedied within the period specified in the notice, or if in the reasonable opinion of the Minister the breach is not capable of being remedied, the Minister may terminate clauses 16 –32 of this Agreement on giving 14 days notice to the Proprietor.

(c) If clauses 16 – 32 of this Agreement are terminated in accordance with this clause the balance of this Agreement shall continue to apply to both parties. .

(d) Nothing in this clause shall be construed as limiting or affecting the powers that the Minister has under the Act.

Proprietor's interest in the integrated property

33 The parties acknowledge the following principles in relation to the Proprietor's interests in the property:

(a) The Proprietor should have reasonable access to the use of the school for its own purposes when not in use for school purposes

(b) The Proprietor retains an interest in the use of the school property by third parties, particularly where such use might conflict with the Proprietor's /schools religious or philosophical character.

Enrolment

34 (a) The maximum number of students who may be enrolled in the School on opening is 100 with the following increases:

- 150 from January 2022
- 200 from January 2023
- 250 from January 2024.

(b) The increments for the period noted in paragraph (a) will be subject to projected growth in the area and the proposed roll increase having no adverse effect on the broader network of schools. Otherwise, this will take place automatically and will not require application from the Proprietor and approval by the Minister.

(c) For the purposes of matters noted in paragraph (b), the Proprietor will at least three months before January of the years 2022, 2023 and 2024 write to the Ministry's Bay of Plenty-Waiariki Office seeking confirmation that the roll increase for the relevant period will proceed as set out in paragraph (a).

(d) The Ministry will by written notice to the Proprietor either confirm that the roll increase will proceed as set out in paragraph (a), or that the projected roll growth in the area has not occurred, or the proposed roll increase will have an adverse effect on the broader network of schools.

(e) In the event that the Ministry confirms under paragraph (d) either that the projected roll growth in the area has not occurred or the proposed roll increase will have an adverse effect on the broader network of schools the roll increase will not proceed as set out in paragraph (a). For the avoidance of doubt, in such an event any roll increase will be conditional on the parties reaching agreement.

35 The children of parents who, in the Proprietor's opinion, have a particular or general philosophical or religious connection with the School must be preferred to other children for enrolment at the School.

36 The number of students who do not have preferential enrolment at the School under section 442 of the Act, but are required to be enrolled if places are available, is limited to ten (10) percent of the maximum roll.

Employees

37 Where any person employed at the School is paid (whether in whole or in part) out of money appropriated by Parliament:

(a) the Proprietor agrees that it will not, directly or indirectly:

(i) pay that person any remuneration in connection with their role as an employee of the School additional to that provided for by the Act; or

(ii) grant or permit that person any condition of service more favourable than that permitted for a person employed in the same (or a materially equivalent) position in a State school that is not a State integrated school; and

38 An advertisement for the position of principal of the School must state that a willingness and ability to take part in religious instruction appropriate to the special character of the School is a condition of appointment to this position. Any person appointed as principal of the School must accept this requirement as a condition of the person's appointment, and must accept and recognise a responsibility to maintain and preserve the special character of the School.

39 There will be a position of director of religious studies at the School. An advertisement for that position must state that a willingness and an ability to take part in religious instruction appropriate to the special character of the School is a condition of appointment to this position. Any person appointed as director of religious studies at the School must accept this requirement as a condition of the person's appointment, and must give guidance and provide effective leadership in religious instruction and observances throughout the School. A person appointed to the position of Director of Religious Studies at the School shall undertake such teaching duties, if any, as may be required by the Principal of the School.

40 The following proportion of teaching positions at the School will be positions of importance carrying a responsibility for religious instruction:

Sixty (60) percent to the nearest whole number of the Total Staffing Entitlement of the School as established pursuant to the Education Act 1989 excluding Principal and Director of Religious Studies.

41 An advertisement for such positions must state that a willingness and an ability to take part in religious instruction appropriate to the special character of the School is a condition of appointment to the position. Any person appointed to any of these positions at the School must accept this requirement as a condition of the person's appointment.

CH

42 Any advertisement for the position of deputy principal or assistant principal at the School must state that a willingness and an ability to take part in religious instruction appropriate to the special character of the School is a condition of appointment to the position. Any person appointed to these positions at the School must accept this requirement as a condition of the person's appointment.

43 The Proprietor may employ any person, whether as a chaplain or otherwise, for duties relating to religious instruction appropriate to the special character of the School. The provisions of section 470(2) and (3) of the Act apply to that person's appointment.

Attendance dues

44 The Proprietor may enter into an agreement with parents (or other person/s with legal responsibility for the education of a child) that provides that the parents (or such other person/s) must pay attendance dues as a condition of the child's enrolment and attendance at the School.

General

Delegates

45 The Minister may appoint any person to undertake the administration of this Agreement on the Minister's behalf and to do all things under this Agreement that are expressed or implied as able to be done by the Minister. Any change to the person holding office as the Minister will not affect any appointment previously made, unless such appointment is subsequently revoked.

Assignment or transfer

46 The Proprietor will not assign any of its rights or transfer any of its obligations under this Agreement unless that assignment or transfer is permitted by (and will comply with) all laws and has first been approved in writing by the Minister.

No agency

47 The Proprietor is not a representative or an agent of any of the Minister, the Secretary or the Ministry and may not hold itself out otherwise to any person.

Privity

48 Except as expressly set out in this Agreement, nothing in this Agreement is intended to confer any right, benefit, privilege or obligation on any third party.

Amendment

49 The Parties may amend this Agreement by one or more Supplementary Agreements. Any amendment to this Agreement will be effective from the date a Supplementary Agreement is executed by both Parties.

Costs

50 Each Party will bear its own costs in the preparation of this Agreement and any Supplementary Agreement.

Good faith

51 Each Party agrees to act in good faith in its dealings with the other Party under this Agreement.

Precedence

52 On and after the Effective Date the School will be a State integrated school in terms of the Act and part of the State system of education in New Zealand. In the event of any inconsistency between the terms of this Agreement and the provisions of the Act, the provisions of the Act will prevail. Nothing in this Agreement overrides or excludes the application of the Act in any way, including as regards the exercise of any right, power or discretion that the Minister, the Secretary or the Ministry may have under the Act or that the Proprietor may have under the Act. The Minister may (but will not be obliged to) exercise any rights and powers conferred by this Agreement at the same time as, or at any time in addition to, the rights, powers and discretions given to the Minister, the Secretary and the Ministry (as the case may be) under the Act.

Notices

53 All notices that are required to be sent under this Agreement or the Act must be in writing and sent to the following addresses unless otherwise agreed in writing between the Parties. For the purposes of this clause, "in writing" includes by email.

(a) All notices to the Minister must be sent to The Associate Deputy Secretary, Operational Delivery, Ministry of Education, PO Box 1666, Wellington, facsimile (04) 463 8252 or email suze.strowger@education.govt.nz

(b) All notices to be sent to the Proprietor shall be sent to The Roman Catholic Bishop of the Diocese of Hamilton, Chanel Centre, P.O. Box 4353, Hamilton 3247.

Execution

Signed on the 27th day of January 2020 by:

THE ROMAN CATHOLIC BISHOP OF HAMILTON by

Most Reverend Stephen Lowe,
Roman Catholic Bishop of the Diocese of Hamilton

+ S. L. Lowe

in the presence of:

Name: Shona Richards

Occupation: Personal Assistant

Address: Morrinsville
(Town/city)

SH

By signing this Agreement, each representative of the Proprietor confirms that s/he has the authority to sign for and on behalf of the Proprietor, and that the Proprietor is and will remain a body corporate with capacity to enter into this Agreement under s 421(3) of the Act.

Signed on the 5th day of March 2020 by:

Her Majesty the Queen in right of New Zealand, acting by and through **the Minister of Education**:

in the presence of:

Name: Jacque Bernstein

Occupation: Senior Private Secretary
Office of Hon Chris Hipkins.

Address:
(Town/city)

SCHEDULE 1: PROPRIETOR'S LAND

All that land, buildings and other improvements owned by the **ROMAN CATHOLIC BISHOP OF THE DIOCESE OF HAMILTON** situated at Golden Sands Drive, Papamoa East, being known as Suzanne Aubert Catholic School, and being more particularly described as follows.

All that freehold parcel of land containing 3 hectares and being part of Lot 525 DP472500 Certificate of Title Volume 649121 (South Auckland Registry).

Certificate of Title attached (includes Title Plan which delineates the portion of the land on which the school is to be built).

SCHEDULE 2: SCHOOL PREMISES

All that part of the Proprietor's land in Schedule 1 that is delineated in green on the Title Plan (Schedule 1) together with all the School buildings and other improvements in the attached Integration Plan which forms part of this Schedule 2.

SCHEDULE 3: WORKS

Works to be carried out by the Proprietor in relation to the School

The Proprietor is to plan and build the school.

These works are to be planned, executed and paid for by the Proprietor subject to the provisions of this Schedule in relation to the buildings and associated facilities, and constructed to meet minimum standards of a comparable state school. All work is to be carried out by a competent tradesperson in a workmanlike manner to comply with all the relevant New Zealand building codes, statutory requirements, and Territorial Local Authority and Ministry of Education standards.

.....

Buildings and Grounds: *per Integration Plan in Schedule 2*

Work to be completed by: *Term 1, 2021*