



Congregational Meeting
October 7, 2012

Dismissal Agreement and **License Agreement**

for the approval of the Congregation
on October 28, 2012

For it is God who works in you to will and to act in order to fulfill his good purpose. Do everything without grumbling or arguing, so that you may become blameless and pure, "children of God without fault in a warped and crooked generation." Then you will shine among them like stars in the sky.

(Philippians 2:13-15)

**AGREEMENT RE. DISMISSAL
OF FREMONT PRESBYTERIAN CHURCH
AND MUTUAL RELEASE OF CLAIMS**

THIS AGREEMENT re. DISMISSAL OF FREMONT PRESBYTERIAN CHURCH in Sacramento, California from the Presbyterian Church (U.S.A.) to the Evangelical Presbyterian Church and Mutual Release of Claims (hereafter, "**Agreement**"), is entered into by the **Fremont Presbyterian Church**, a California nonprofit religious corporation ("FPC") and all affiliated, subsidiary, and related persons or entities, on the one hand, and by **Presbytery of Sacramento, California**, a California nonprofit religious corporation ("Presbytery") and all affiliated, subsidiary, and related persons or entities, on the other (hereinafter collectively referred to as "the Parties").

R E C I T A L S

WHEREAS, FPC is a California non-profit religious corporation, and FPC is a church within the Presbyterian Church (U.S.A.) (hereafter "**PC(USA)**") located in the City of Sacramento, County of Sacramento, State of California, and

WHEREAS, Presbytery is a California non-profit religious corporation and an ecclesiastical body of the PC(USA), the geographical jurisdiction of which includes Sacramento County, California, and

WHEREAS, On or about October 16, 2011, the FPC congregation, at a duly-called congregational meeting, voted to seek dismissal, with property from the PC(USA) and to be dismissed to the Evangelical Presbyterian Church (hereafter, "**EPC**") specifically, and

WHEREAS, a perceived schism within the FPC prompted further discernment, resulting in the appointment of a mediation team representing all parties, which has met and addressed this concern, effecting the reconciliation reflected in this agreement, and

WHEREAS, Pursuant to G-4.0207 of the Book of Order, the Presbytery of Sacramento, by this agreement and in acknowledgement and performance of its fiduciary duties to its member churches and the responsibility of the Presbytery to foster the ministry and witness of the denomination, does effect reconciliation between the faction of Fremont Presbyterian church seeking to sever its relationship to the PC(USA), and the

faction of that congregation desiring to remain within the denomination, by the division of that congregation into two separate congregations, one of whom shall remain within the PC(USA), and the other of whom shall be dismissed from the denomination.

The parties to this agreement herewith affirm that the question of schism within the membership of the congregation at Fremont Presbyterian church has been fully considered and reconciled with and by the determinations and agreements of the parties regarding division of the Fremont Presbyterian church congregation, property and the financial and other terms of dismissal, in order to foster continuing relationships with each other in the work of mission and celebration of salvation through Jesus Christ, our risen Lord, and their mutual desires for gracious separation, and

WHEREAS, Presbytery is in the process of establishing a New Presbyterian Church (hereafter, “NPC”) whose charter members will include any members of FPC who desire to remain in a PC(USA) congregation and become members of the NPC, and

WHEREAS, Presbytery and FPC shall enter into a license agreement (“**License Agreement**”), substantially in the form attached hereto as **Schedule 1**, execution of which is contingent upon approval of this Dismissal Agreement, which provides appropriate facilities and support for the worship of the NPC on the campus of the FPC for a period of ten years from the Effective Date of Dismissal, and

WHEREAS, FPC, for its part, and Presbytery, for its part, desire to fully and finally resolve the terms of FPC’s dismissal from the PC(USA) to the EPC, as well as all issues and existing or potential disputes arising out of or related to dismissal of FPC from Presbytery and the PC(USA).

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

A. **Dismissal of FPC from PC(USA) to EPC.** Upon the Effective Date of Dismissal, as defined herein, dismissal of FPC from the PC(USA), with all property both real and personal, to the EPC shall be effective. This Agreement is admissible and subject to disclosure to enforce or uphold the terms of this settlement and this document is fully binding on all Parties.

B. **Incorporation of Recital Terms.** The Parties hereby incorporate as true all of the facts contained within the Recitals as though set forth in full herein and acknowledge that such incorporation is integral to this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and terms contained herein, the Parties hereto agree as follows:

1. **Effective Date of Dismissal**

- (a) The “**Effective Date of Dismissal**” as that phrase is used in this Agreement shall be **47 (forty-seven) days** from the approval of the terms of this Agreement by vote of the Presbytery. This Agreement shall be presented to the Presbytery for approval ("**Approval**") at a called meeting on **November 10, 2012**. If this Agreement is approved, such Approval shall also constitute Presbytery's approval of the documents described in **Paragraph 8** below, and Presbytery's authorization to its officials to concurrently execute this Agreement, and the documents described in **Paragraph 8**, shortly after such Approval. However, Presbytery shall not deliver the documents described in **Paragraph 8** except as stated therein.

2. **Church Records, Corporation, and Name**

- (a) All FPC church record books, registers and minute record books are to be provided to the Presbyterian Historical Society within 45 days of the Effective Date of Dismissal and Presbyterian Historical Society will create microfilm and digital copies of the materials. The master copies will be retained by the Presbyterian Historical Society; original documents and copies will be returned to and maintained by FPC.
- (b) FPC Heritage Society materials are to be maintained by FPC and made accessible upon request to the NPC.
- (c) FPC shall retain its existing nonprofit religious corporation, including without limitation, all corporate records, the State incorporation number, the Federal ID number, and the FPC name.

3. **Financial Terms**

Fremont Presbyterian Church shall enter into a license agreement with the Presbytery to provide worship, meeting and office space to the NPC for a period of 10 years. Fremont and the Presbytery agree that the value of this license is determined to be

\$50,000 per year for the duration of the license, for a total of \$500,000. In addition, Fremont shall make a special gift to the Presbytery in the amount of \$500,000, paid in equal annual installments of \$50,000 on or before January 31st of each year for ten years, commencing with a payment on or before **January 31, 2013**, with 9 annual installments on each anniversary of such date, ending with a final payment on or before **January 31, 2022**.

At its sole option, Fremont may make a lump sum payment of \$325,000, paid to the Presbytery of Sacramento within 6 months of the effective date of the Agreement. The parties agree that the amount of this option is discounted to account for its payment being made in full within 6 months of the effective date of the Agreement rather than over a 10 year period.

4. Pastor Ordination

(a) The Presbytery's Committee on Ministry has recommended to the Presbytery and the Presbytery approves the request of Reverend Dr. Donald H. Baird to transfer his ordination to the Evangelical Presbyterian Church.

(b) The Presbytery's Committee on Ministry has recommended to the Presbytery and the Presbytery approves the request of Reverend Dr. Daniel Willson to maintain his ordination with the PC(USA) as a member of the Presbytery of Sacramento and continue in validated ministry at Fremont Presbyterian Church. Dr. Willson will continue to participate in the life of the Sacramento Presbytery. The Committee on Ministry will assist Dr. Willson in transferring his ordination to another Reformed denomination.

5. Communication to FPC Congregation

Promptly upon approval of the terms of this Agreement by the parties hereto, a joint letter shall be sent from Presbytery and FPC to all active members on FPC's rolls informing them of their option to remain in the PC(USA), if they so desire, as well as the steps that they should take to remain in the PC(USA).

6. Indemnification

FPC shall defend, indemnify, and hold Presbytery harmless from any and all claims, damages, actions, causes of action, liabilities, judgments, liens, contracts, agreements, rights, debts, suits, obligations, promises, acts, costs and expenses (including but not limited to attorney's fees), damages and charges whatsoever arising from any

indebtedness which FPC now has, or may have in the future, arising from FPC's operations, both ecclesiastical and corporate.

7. Warranty re Endowments

Except as disclosed in writing to the Presbytery, FPC warrants that it does not hold any endowments naming the PC(USA) as a beneficiary, either primary or contingent.

8. Execution of Documents

The parties agree to cooperate in executing all necessary documents related to FPC's dismissal to the EPC. Concurrently with this Agreement, Presbytery shall execute and acknowledge the Quitclaim Deed, substantially in the form attached hereto as **Schedule 2**, conveying to FPC any present claim, right, beneficial interest, title, and title in trust to the real property of FPC, and Presbytery shall also execute the License Agreement, which contains a the Right of First Offer to Purchase the Fremont Campus. Presbytery shall hold both documents, and deliver them to FPC at the end of the 47 day period described in **Paragraph 1**, which the parties anticipate shall be approximately **December 28, 2012**, and FPC shall record the Quitclaim Deed at FPC's expense.

9. Mutual General Release of Claims

Except for the obligations expressly set forth in this Agreement, the Parties hereby mutually release and forever discharge the other party and the other party's past, present and future successors, predecessors, subsidiaries, related or associated or affiliated entities, firms, corporations and organizations, administrators, assigns, officers, directors, partners, attorneys, representatives, employees, and any and all past or present officers and/or directors, and any of the affiliates, subsidiaries and any and all past or present officers and/or directors, as well as any and all persons and/or entities acting or allegedly acting by, under, through or in concert with any of them (hereafter referred to as "**Related Parties**") of and from and acknowledge full and complete satisfaction of any and all rights, claims, liabilities, demands, obligations, promises, acts, agreements, damages, actions and causes of action, of whatever kind or nature, whether presently known or unknown, suspected or unsuspected, in law or equity, (including but not limited to attorney's fees) which FPC may now have, or claims to have, against Presbytery and Related Parties as a result of any acts and/or omissions

undertaken, said, stated, or done by Presbytery and Related Parties, and which Presbytery may now have, or claims to have, against FPC and Related Parties as a result of any acts and/or omissions undertaken, said, stated, or done by FPC or Related Parties. With respect to any Claims by FPC against Presbytery or Related Parties, or by Presbytery against FPC or Related Parties, the Parties to this Agreement expressly waive the provisions of California Civil Code section 1542 which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

In that connection, the Parties realize and acknowledge that one or more Claims may include losses sustained by FPC on account of Presbytery or Related Parties, or by Presbytery on account of FPC or Related Parties, that are presently unknown or unsuspected, and that such losses as were sustained may give rise to additional losses and expenses in the future, which are not now anticipated. Nevertheless, the Parties acknowledge that this release has been negotiated and agreed upon and that in consideration for the rights and benefits under this Agreement, the Parties intend and hereby do release, acquit and forever discharge each other, and Related Parties, as set forth above, from any and all Claims, including those that are unknown, unsuspected, or unforeseen.

10. Execution by Facsimile/Counterparts

This Agreement may be executed in multiple counterparts by the Parties hereto, and all of said counterparts taken together shall constitute one and the same Agreement, and facsimile and scanned (PDF) signatures shall be the equivalent of original signatures.

11. Severability and Construction

If any provision of this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect and may be enforced to the fullest extent permitted by law.

12. Ambiguity

This Agreement is the result of negotiations between and among the Parties and each of them. It has been reviewed by the Parties and each of them and accordingly it shall be deemed to be the product of all of the Parties hereto and, no ambiguity shall be construed in favor of or against any one of the Parties hereto.

13. Entire Agreement

This Agreement constitutes the entire agreement between the Parties and, each of them. Any inducements, representations, warranties, promises, or understandings that are not expressly stated herein shall not be binding on the Parties or, any of them, or have any force or effect. This Agreement shall supersede any and all other agreements, writings, promises, representations, or understandings between the Parties and, each of them.

14. Amendment

The terms and conditions of this Agreement may be modified or amended at any time by agreement of the Parties. Any such amendment or modification as hereinafter may be made shall be ineffective to modify this Agreement in any respect unless in writing and signed by the party or parties against whom enforcement of the modification or amendment is sought.

15. Waiver

No waiver of any rights under this Agreement shall be effective unless it is in writing signed by the Party against whom such waiver is sought to be enforced. The failure by any Party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such Party.

16. Integrated Agreement.

This Agreement contains all representations and the entire understanding and agreement between the Parties. Correspondence, memoranda, and oral or written agreements that originated before the date of this Agreement are replaced in total by this Agreement unless otherwise expressly stated in this Agreement.

17. Representation of Authority to Settle

Each Party hereto represents and declares in executing this Agreement that they have the power and authority to settle the Claims as set forth herein and that each party's signatory is duly authorized and empowered to sign this Agreement on behalf of

their respective Party. The foregoing warranty and representation as to the Presbytery relates only to the Presbytery's own power and authority, as it may be granted or qualified under the current Book of Order.

The undersigned have read, understood, and hereby agree to all of the terms of this Agreement.

FREMONT PRESBYTERIAN CHURCH,
a California nonprofit religious corporation

DATED: _____, 2012

BY: _____
REV. DONALD BAIRD
Its Moderator of Session

DATED: _____, 2012

By: _____
ELAINE MOODY
Its Clerk of Session

PRESBYTERY OF SACRAMENTO, CALIFORNIA,
a California nonprofit religious corporation

DATED: _____, 2012

By: _____
REV. ROBERT YULE
Its Moderator

DATED: _____, 2012

BY: _____
REV. NANCY CLEGG
Its Stated Clerk

ATTACHMENTS:

Schedule 1 - License Agreement
Schedule 2 - Quitclaim Deed

SCHEDULE 1
LICENSE AGREEMENT

SCHEDULE 2
QUITCLAIM DEED

SCHEDULE 1
LICENSE AGREEMENT

If it is possible, as far as it depends on you, live at peace with everyone.

(Romans 12: 18)

I appeal to you, brothers and sisters, in the name of our Lord Jesus Christ, that all of you agree with one another in what you say and there be no divisions among you.

(1 Corinthians 1: 10)

We are therefore Christ's ambassadors, as though God were making his appeal through us. We implore you on Christ's behalf: Be reconciled to God.

(2 Corinthians 5: 20)



LICENSE AGREEMENT

This license agreement ("**Agreement**") is entered into effective the ____ day of December, 2012, by and between **FREMONT PRESBYTERIAN CHURCH**, a California nonprofit religious corporation ("**Fremont**"), and **PRESBYTERY OF SACRAMENTO, CALIFORNIA**, a California nonprofit religious corporation ("**Presbytery**").

RECITALS:

A. Fremont has been a member church of the Presbytery for many years. Effective December ____, 2012, Fremont has been dismissed from the Presbytery, which is a presbytery of the Presbyterian Church (U.S.A.) ("**PCUSA**"), to the Evangelical Presbyterian Church. The dismissal has been accomplished pursuant to a dismissal agreement ("**Dismissal Agreement**") executed by the parties.

B. A group of Fremont's members wish to remain members of the PCUSA denomination, and wish to form a new congregation in the Presbytery. However, the new PCUSA congregation ("**NPC**") entity has not yet been formed.

C. The purpose of this Agreement is to provide a meeting place on Fremont's campus for the NPC.

D. This Agreement is being executed by the parties pursuant to the Dismissal Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and in the Dismissal Agreement, and for other good and valuable consideration, the undersigned parties hereby agree as follows:

1. LICENSE. Fremont hereby grants a license to Presbytery for the NPC to use, in such manner as described herein, and in the attached **Exhibit A**, portions of the Fremont

campus located at 5770 Carlson Drive, Sacramento, California ("**Fremont Campus**"). Presbytery shall not allow, nor NPC shall allow, other groups or persons to use the Fremont Campus, except as stated herein.

2. LICENSE FEES AND EXPENSES. Presbytery shall not be required to pay a license fee, but Presbytery or NPC shall pay certain expenses as described herein.

3. TERM. The term of this Agreement will commence on January 1, 2013, and continue until December 31, 2022. Upon the expiration or earlier termination of this Agreement, Presbytery shall, without additional charge, upon request by Fremont, execute, notarize, and deliver a quitclaim deed to Fremont for the entire Fremont Campus, which document shall be prepared and recorded by Fremont at Fremont's cost.

4. SECURITY DEPOSIT. None.

5. CONDITION AND MAINTENANCE. Presbytery and NPC accept the Fremont Campus in its "AS-IS" condition. Fremont will not be required to construct any improvements to the Fremont Campus, but Fremont will maintain the Fremont Campus in a proper and safe condition.

6. REPAIR OF DAMAGE. Presbytery or NPC shall pay for repair of any damage to the Fremont Campus caused or suffered by Presbytery or NPC, including without limitation, damage to carpeting, chairs, or other furniture or equipment in the Fremont chapel ("**Chapel**").

7. ASSIGNMENT AND SUBLETTING. Neither Presbytery nor NPC may assign its interest under this Agreement, or sublet or sublicense any portion of the Fremont Campus.

8. INSURANCE. See attached **Insurance Addendum**.

9. UTILITIES AND SERVICES. Fremont shall pay for all utilities, janitorial services, and service charges related to NPC's regularly scheduled use of the Fremont Campus, such as NPC's Sunday services in the Chapel, and NPC's office use. Presbytery and NPC shall be responsible for additional costs to Fremont related to special events, and any use or service fees for special events as regularly charged by Fremont, which shall be arranged as stated on **Exhibit A**.

10. TAXES. Fremont shall pay all property taxes attributable to the Fremont Campus.

11. ALTERATIONS. Presbytery and NPC may not make any installations or alterations to any portion of the Fremont Campus without first obtaining Fremont's written consent from Fremont's designated Representative, as described in **Exhibit A, item 13**.

12. DEFAULTS; REMEDIES; ATTORNEYS' FEES. A party shall be in default hereunder if it fails to: (a) pay money, or deliver documents pursuant to **Sections 18 and 20**, within fifteen (15) days after written notice from the other party; or (b) perform any of such party's non-monetary obligations under this Agreement for a period of thirty (30) days after written notice from the other party; provided that if more than thirty (30) days are required to complete such performance, a party shall not be in default if it commences such performance within the thirty (30)-day period and thereafter diligently pursues it to completion. A default by the NPC shall be deemed a default by the Presbytery. Regarding

the payment of money, a party may not send the fifteen (15) day notice, described above, until thirty (30) days after such party has sent a billing statement to the other party.

In the event either party defaults under this Agreement, the other party may exercise any remedies available under California law, and this Agreement shall be considered a lease with respect to California unlawful detainer statutes and remedies. In any legal action brought by either party to enforce the terms of this Agreement, the prevailing party is entitled to all costs incurred in connection with such an action, including reasonable attorneys' fees. California law shall be applied in any such action, which must be brought in a California or Federal court located in Sacramento County, California.

13. RESOLUTION OF DISPUTES. The parties agree to make a good faith effort to resolve any disputes which arise between them, but the procedure outlined in this **Section 13** shall not be a condition precedent for a party to proceed under **Section 12** above. If a dispute arises between the parties, the Representatives which Fremont and the NPC have appointed, pursuant to **Exhibit A**, shall meet and confer and attempt to resolve the matter. If Presbytery is involved, the Presbytery's Representative shall be the Presbytery Moderator, or a person solely chosen by the Moderator. The Representatives for the parties involved shall meet within ten (10) days, or as they shall otherwise agree, to resolve the matter. Each Representative shall have the authority to settle the matter for his or her party (subject to Session approval for certain items as stated in **Exhibit A**).

14. TIME OF ESSENCE. Time is of the essence of each provision of this Agreement.

15. ENTIRE AGREEMENT; MODIFICATION. This Agreement, and the Dismissal Agreement, contain all the agreements of the parties and cannot be amended or modified

except by written agreement.

16. CONDITION OF FORMATION OF PCUSA CONGREGATION. Presbytery agrees that NPC's written acceptance of this Agreement shall be a condition precedent to formation of the NPC as a PCUSA congregation in the Presbytery, and such condition shall signify the NPC's agreement with this Agreement.

17. SERVICE OF NOTICES. For the purpose of service of notices and demands, the address, telephone and email addresses of the parties are as stated below. A notice shall be sent on the same day by email and regular US mail, postage prepaid, and shall be deemed received on the third day after deposit into a US Mail facility or collection box. Any party may change its contact information at any time, upon written notice to the other party.

Fremont Presbyterian Church

5770 Carlson Drive

Sacramento, CA 95819

(916) 452-7132

ATTN: Executive Minister

mark@fremontpres.org

Presbytery of Sacramento

9983 Folsom Boulevard

Sacramento, CA 95827

(916) 414-2080

ATTN: Stated Clerk

statedclerk@sacpresby.org

With a copy to:

NPC, c/o Joe Cavness

8556 Erinbrook Way

Sacramento, CA 95826

(916) 386-2257

jcavcom@juno.com

18. SUBORDINATION. The parties hereto, and NPC, agree this Agreement shall automatically be subordinate to any deed of trust or mortgage encumbering the Fremont Campus, any advances made on the security thereof and any renewals, modifications, consolidations, replacements or extensions thereof, whenever made or recorded. Presbytery and NPC shall cooperate with Fremont and any lender which has or may acquire a security interest in the Fremont Campus. Presbytery and NPC shall execute such further documents and assurances as such lender may require, provided that obligations under this Agreement shall not be increased in any material way (the performance of ministerial acts shall not be deemed material), and Presbytery and NPC shall not be deprived of any rights under this Agreement. Presbytery and NPC shall deliver such documents to Fremont within ten (10) days after Fremont's request. Presbytery's and NPC's license to use the Fremont Campus during the term of this Agreement shall not be disturbed if Presbytery and NPC pay charges due, if any (as stated herein), and perform all of their respective obligations under this Agreement.

19. ATTORNMENT. If Fremont's interest in the Fremont Campus is acquired by any beneficiary under a deed of trust, mortgagee, or purchaser at a foreclosure sale, Presbytery and NPC shall attorn to the transferee or successor to Fremont's interest in the Fremont Campus and recognize such transferee or successor as the property owner under

this Agreement.

20. ESTOPPEL CERTIFICATE. Upon Fremont's written request, Presbytery and the NPC shall execute, acknowledge and deliver to Fremont a written statement certifying: (i) that none of the terms or provisions of this Agreement have been changed (or if they have been changed, stating how they have been changed); (ii) that this Agreement has not been cancelled or terminated; (iii) the last date of payment of charges, if any, and the matters covered by such payment; (iv) that Fremont is not in default under this Agreement (or, if Fremont is claimed to be in default, stating why); and (v) such other representations or information with respect to Presbytery or NPC or the Agreement as Fremont may reasonably request or which any prospective encumbrancer of the Premises may require. Presbytery and NPC shall deliver such statement to Fremont within ten (10) days after Fremont's request. Fremont may give any such statement by Presbytery and NPC to any prospective encumbrancer of the Fremont Campus, and such encumbrancer may rely conclusively upon such statement as true and correct.

WHEREFORE, this Agreement is executed the day and year first above written.

FREMONT

FREMONT PRESBYTERIAN CHURCH,
a California nonprofit religious corporation

by _____

its _____

PRESBYTERY

PRESBYTERY OF SACRAMENTO, CALIFORNIA,
a California nonprofit religious corporation

by _____

its _____

NPC

The undersigned members of the to-be-formed NPC hereby agree with the above License Agreement, and are authorized to execute it on behalf of the NPC.

Authorized representative

Authorized representative

Authorized representative

Attachments:

Insurance Addendum

Right of First Offer

Exhibit A - Additional Terms of Campus Usage

Exhibit B - Quitclaim Deed

INSURANCE ADDENDUM

8. INSURANCE.

8.1 Payment For Insurance. Presbytery shall pay for insurance required under **Paragraphs 8.2(a) and 8.4.** Fremont shall pay for insurance required under **Paragraphs 8.2(b) and 8.3.**

8.2 Liability Insurance.

(a) Carried by Presbytery. Presbytery, at its sole cost, shall obtain and keep in force during the term of this Agreement a Commercial General Liability policy of insurance protecting Presbytery, NPC and Fremont (as additional insureds), against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the ownership, use, occupancy or maintenance of the Fremont Campus and all areas appurtenant thereto, including Counseling Professional's Liability coverage for professional employees. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than **\$2,000,000** per occurrence. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Agreement as an "insured contract" for the performance of Presbytery's indemnity obligations under this Agreement. The limits of said insurance required by this Agreement or as carried by Presbytery shall not, however, limit the liability of Presbytery nor relieve Presbytery of any obligation hereunder. All insurance to be carried by Presbytery shall be primary to and not contributory with any similar insurance carried by Fremont, whose insurance shall be considered excess insurance only. If such insurance coverage has a deductible clause, the deductible amount shall not exceed **\$5,000** per occurrence, and Presbytery shall be liable for such deductible amount in the event of an insured loss.

(b) Carried by Fremont. Fremont shall also maintain Commercial General Liability insurance, in addition to, and not in lieu of, the insurance required to be maintained

by Presbytery. Presbytery and NPC shall not be named as additional insureds therein.

8.3 Property Insurance--Building and Improvements. Fremont shall obtain and keep in force during the term of this Agreement a policy or policies in the name of Fremont, with loss payable to Fremont and to the holders of any mortgages, deeds of trust or ground leases on the Fremont Campus ("**Lender**"), insuring loss or damage to the Fremont Campus. The amount of such insurance shall be equal to the estimated replacement cost of the improvements on the Fremont Campus. However, any fixtures or equipment installed or owned by Presbytery or NPC shall be insured by Presbytery under **Paragraph 8.4** rather than by Fremont. If such insurance coverage has a deductible clause, the deductible amount shall not exceed **\$5,000** per occurrence, and Fremont shall be liable for such deductible amount in the event of an insured loss.

8.4 Presbytery's Property Insurance. Subject to the requirements of **Paragraph 8.5**, Presbytery, at its cost, shall maintain insurance coverage on all of Presbytery's and NPC's personal property, fixtures, and equipment (such as musical instruments) installed or owned by Presbytery or NPC in, on, or about the Fremont Campus, similar in coverage to that carried by Fremont under **Paragraph 8.3**. Such insurance shall be the estimated replacement cost coverage with a deductible not to exceed **\$1,000** per occurrence. The proceeds from any such insurance shall be used by Presbytery for the replacement of Presbytery's and NPC's personal property, fixtures, and equipment. Presbytery shall provide Fremont with written evidence that insurance required by this **Paragraph 8.4** is in force.

8.5 Insurance Policies. Insurance required hereunder shall be in companies duly licensed to transact business in California, and maintaining during the policy term a "General Policyholders Rating" of at least **A-, VIII**, or such other rating as may be required by a Lender having a lien on the Fremont Campus, as set forth in the most current issue of "Best's Insurance Guide." Neither party shall do nor permit to be done anything which shall invalidate the insurance policies referred to in this **Paragraph 8**. Upon request of the other

party, any party which is responsible for obtaining insurance coverage under this Agreement shall cause to be delivered to the other party copies of certificates of such insurance evidencing the existence and amounts of such insurance, with the insureds and loss payable clauses as required hereunder. A party shall only provide a copy of a policy if reasonably necessary to determine that the required insurance is in force. No such policy shall be cancelable or subject to modification except after thirty (30) days prior written notice to both parties. The party responsible for obtaining any insurance coverage hereunder shall at least thirty (30) days prior to the expiration of such policy(ies), furnish the other party with evidence of renewals or "insurance binders" evidencing renewal thereof, or the other party may, but shall not be required to, order such insurance and charge the cost thereof to the party originally responsible therefor, which amount shall be payable upon demand.

8.6 Waiver of Subrogation. Presbytery (including NPC), and Fremont each hereby release and relieve the other, and waive their entire right of recovery against the other for loss or damage arising out of or incident to the perils insured against which perils occur in, on or about the Fremont Campus, whether due to the negligence of Presbytery/NPC or Fremont or their agents, employers, contractors and/or invitees. Presbytery and Fremont shall, upon obtaining the policies of insurance required give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Agreement.

8.7 Indemnity. Except for the negligence or willful misconduct of Fremont, its agents, contractors, and employees, or Fremont's material breach of the terms or conditions of the Agreement, Presbytery and NPC shall indemnify and hold Fremont harmless from and against any and all liability, claims, demands, damages and costs arising out of or caused by Presbytery's or NPC's use of the Fremont Campus, or arising out of or caused by the conduct of Presbytery's or NPC's activities, or arising out of or caused by any activity, or things done, permitted or suffered by Presbytery in or about the Fremont Campus. Presbytery/NPC agrees that its liability to Fremont shall arise upon the occurrence of any event giving rise to a claim hereunder and not upon the actual realization of damages.

Presbytery shall defend Fremont (and shall indemnify and hold Fremont harmless from and against all defense costs including without limitation attorney's fees, court costs, discovery costs, expert witness fees, and related expenses incurred in such defense) against any claim, action or proceeding which alleges the sole negligence or sole willful misconduct of Presbytery or the NPC, or the negligence or willful misconduct of Fremont and Presbytery or NPC with respect to the actual use of the Fremont Campus by the Presbytery or NPC (such as the NPC Chapel services, office use, classroom use, and special events). Presbytery agrees that its liability to Fremont shall arise upon the occurrence of any event giving rise to a claim hereunder and not upon the actual realization of damages, and Presbytery shall pay such defense costs and fees as they accrue. Fremont shall retain the right to reject or augment defense counsel appointed by Presbytery, or its agent, and to appoint replacement or additional counsel at Fremont's sole cost and expense, and Presbytery and its counsel shall fully cooperate with Fremont's replacement or additional counsel.

8.8 Exemption of Fremont from Liability. Except for the negligence or willful misconduct of Fremont, its agents, contractors, and employees, Presbytery and NPC, as a material part of the consideration to Fremont, hereby assumes all risk of damage to property of Presbytery or NPC or injury to persons, in, upon or about the Fremont Campus arising from Presbytery's or NPC's use of the Fremont Campus, and Presbytery and NPC hereby waives all claims in respect thereof against Fremont. Presbytery and NPC, as a material part of the consideration to Fremont, hereby acknowledges that there is a risk of harm to Presbytery's and NPC's property and injury to persons in, upon or about the Fremont Campus, and Presbytery and NPC agrees to assume all such risks of harm and Presbytery and NPC hereby waives all claims in respect thereof against Fremont. Presbytery and NPC hereby agree that Fremont shall not be liable for injury to Presbytery's or NPC's property, Presbytery's or NPC's employees, invitees, customers, or any other person in or about the Fremont Campus, nor shall Fremont be liable for injury to Presbytery's or NPC's employees, agents or contractors, whether said damages or injury results from conditions arising upon the Fremont Campus, or from other sources or places,

such as parking lots which are adjacent to the Fremont Campus. Fremont shall not be liable for any damages arising from any act or negligence or willful misconduct of any other occupant or user of the Fremont Campus, nor from the failure of Fremont to enforce the provisions of any other agreement with respect to the Fremont Campus.

RIGHT OF FIRST OFFER TO PURCHASE THE FREMONT CAMPUS

Sale of Fremont Campus. Fremont shall not agree to sell the Fremont Campus ("Property") without first offering to sell ("**First Offer**") the Property to the Presbytery. This right is personal to the Presbytery, and may not be assigned to any other person or entity, without the advance written approval of Fremont.

First Offer. Prior to Fremont entering into a purchase and sale agreement with a third party buyer (party other than Presbytery or NPC), Fremont shall offer in writing to sell the Fremont Campus to the Presbytery, specifying the significant terms in a nonbinding letter of intent. If the parties agree on the terms, Fremont shall prepare a binding purchase and sale agreement ("**Purchase Agreement**") for the Presbytery's comment and approval. The purchase price shall be paid in cash at closing, except for any seller financing ("**Financing Terms**") which shall be stated in the letter of intent and in the Purchase Agreement. If the parties do not mutually approve the letter of intent within fifteen (15) days after Presbytery's receipt thereof, or the parties do not approve the Purchase Agreement within thirty (30) days after Presbytery's receipt thereof, Fremont may sell the Property to any third party for ninety percent (90%) or more of the purchase price, and on Financing Terms which are materially the same or more attractive to Fremont, than the price and terms stated in the letter of intent (if rejected) or Purchase Agreement (if rejected). If Fremont does not sell the Property within three (3) years after the later of the fifteen (15) day period, or the thirty (30) day period, stated above, and Fremont still desires to sell the Property, Fremont shall re-offer the Property to the Presbytery as stated above. In addition, Fremont may re-offer the Property to the Presbytery, as stated above, at any time during or after the three (3) year period, and if the Presbytery does not purchase the Property on the new terms, the three (3) year period shall commence once again.

Termination of Purchase Rights. If Presbytery elects not to purchase the Property

pursuant to the First Offer, and Fremont sells the Property, all of Presbytery's rights to purchase the Property shall terminate at close of escrow. If Presbytery executes the Purchase Agreement pursuant to the First Offer, but defaults under the Purchase Agreement, all of Presbytery's rights to purchase the Property shall terminate immediately upon such default. If the License Agreement term expires, or if the License Agreement is earlier terminated, all of Presbytery's rights to purchase the Property shall terminate.

EXHIBIT A

ADDITIONAL TERMS OF CAMPUS USAGE

EXHIBIT B

QUITCLAIM DEED

Therefore, as God's chosen people, holy and dearly loved, clothe yourselves with compassion, kindness, humility, gentleness and patience. Bear with each other and forgive one another if any of you has a grievance against someone. Forgive as the Lord forgave you. And over all these virtues put on love, which binds them all together in perfect unity. Let the peace of Christ rule in your hearts, since as members of one body you were called to peace. And be thankful.

(Colossians 3:12-15)

