

## DISMISSAL AGREEMENT AND RELEASE

This Dismissal Agreement and Release (“Dismissal\_Agreement” or “Agreement”) is made by and between the Presbytery of Santa Barbara, a California corporation (“PSB”) on the one hand and El Montecito Presbyterian Church, a California corporation (previously known as First Presbyterian Church of El Montecito) (“ELMO”), on the other hand, as of \_\_\_\_\_, 2018, in order to consummate the dismissal of ELMO to another reformed denomination.

1. **RECITALS:** This Agreement is made with reference to the following facts:
  - a. The 218<sup>th</sup> General Assembly of the Presbyterian Church (U.S.A.) (2008) adopted Resolution Item 04-28, Book of Order 2001/2013 (**G-3.0301a**) that PSB develop a process that exercises the responsibility and power “to divide, dismiss, or dissolve churches in consultation with their members”.
  - b. After a first reading, during the March 21, 2017, meeting of the PSB, the duly called meeting of the PSB on May 20, 2017, adopted “Presbytery of Santa Barbara Guidelines for a Process for Reconciliation or Gracious Separation of a Congregation from the Presbyterian Church (U.S.A.)” (the “Current Guidelines”) replacing previous Guidelines dated May 4, 2013 (the “Original Guidelines”).
  - c. Following receipt of a formal letter from ELMO requestion dismissal, a PSB Response Team (“Original PRT”) was appointed in accordance with the Original Guidelines, and another PSB Response Team (“Current PRT”) was appointed on June 7, 2017, in accordance with the Current Guidelines.
  - d. The ELMO Session and the Original PRT met as required by the Original Guidelines March 18, 2015 and March 14, 2016, and the ELMO Session and the Current PRT met as required by the Current Guidelines June 29, 2017.
  - e. Both the Original PRT and the Current PRT gathered all of the actions and processes required under either the Original Guidelines or the Current Guidelines, and the Current PRT evaluated the information obtained in accordance with the Current Guidelines.
  - f. The Original PRT called the initial congregational gathering for May 1, 2016. The then membership on ELMO rolls was 235. As permitted by PSB, the required attendance was one-half, 118 congregants. The actual attendance was 131 congregants, of which 122 voted yes and 9 voted no.
  - g. The Current PRT met with ELMO congregants in open forums for discussions and assessments on July 26, 2017, and July 30, 2017, in addition to prior meetings with the ELMO congregation by the Original PRT.

- h. The Current PRT called the second congregational gathering for November 5, 2017. The then membership on ELMO rolls was 181. As permitted by PSB, the required attendance was one-half, 91 congregants. The actual attendance was 113 congregants, of whom 110 voted yes and 3 voted no.
- i. The first reading of the then proposed terms by PSB was on November 14, 2017.
- j. As a result of the devastation to Montecito, first, from fires, and then, from flooding and mudslides, the second reading of the terms by PSB was postponed from February 10, 2018, to May 19, 2018. At the February 10, 2018, PSB meeting, an update on the ELMO dismissal process was provided and the following four motions were passed by PSB:
  - (1) The PRT moves that the dismissal vote be deferred, at the request of El Montecito Presbyterian Church, from today's Feb 10 presbytery meeting to the May 19 presbytery meeting in Paso Robles.**
  - (2) The PRT moves that a Third Congregational Gathering be approved so that, together with the previously held second Congregational Gathering (11/5/17), all Gracious Dismissal Policy requirements for the second gathering would be satisfied, including the approval of the final Dismissal Agreement and the Reversionary Deed.**

GDP says:

378 The Session will outline in detail the terms of the proposed dismissal including the financial  
379 terms. A written copy of these terms shall be provided to all attendees at the meeting.

- (3) The PRT moves that the time of day for the Third Congregational Gathering be set for 1 p.m. (on a date to be determined) to allow PRT members and others time to travel to the meeting and to allow the congregation to remain on campus following worship, given that only two roads in and out of Montecito are now open.**

GDP says:

361 The gathering shall take place after 3:00 p.m. in the  
362 church sanctuary to give the members of the PRT and those traveling from other places  
sufficient  
363 time to attend.

- (4) The PRT moves that, consistent with actions of the May 20, 2017 Presbytery meeting establishing a quorum of 50% (instead of 75%) of the current congregational rolls, that the same 50% quorum be approved for the Third Congregational Gathering.**

GDP says:

364 There shall be at least 3/4 (three-fourths) of the current active  
365 membership in attendance.

- k. The PRT called a third congregational gathering for March 18, 2018. The then membership on ELMO rolls was 180. As permitted by PSB, the required attendance was one-half, 90 congregants. The actual attendance was 116 congregants, of whom 114 voted yes and 2 voted no.
- l. As approved by the ELMO Session, the terms presented and approved at the third congregational gathering differed from the terms approved at the second congregational gathering in that (i) the possibility of obtaining any discount upon any prepayment has been removed from the terms for which ELMO is requesting PSB approval, and (ii) the congregational approval was of this full document and the full Reversionary Deed, as defined below, rather than a summary.
- m. ELMO now seeks approval by PSB to be dismissed according to the following terms.
- n. ELMO and PSB each confirm on its own behalf that it is obligated to perform all of its obligations described in this Agreement.

2. **PAYMENTS**

- a. ELMO shall pay a total of **\$1,522,594** for all property held in trust for PC(U.S.A.), including, without limitation, the real property located at 1455 East Valley Road and 1460 A and 1460 B Hosmer Lane, Montecito, Santa Barbara County, California 93108 (the "Property") based upon the evaluation of all property by the PRT. All payments are to be made to:

Presbytery of Santa Barbara  
 6067 Shirrell Way  
 Goleta, CA 93109  
 Attention: Stated Clerk

- b. ELMO shall pay in full all amounts due for the Presbyterian Investment and Loan Program (with a current balance of approximately \$404,000) after the expiration of the ninety (90) day period for filing a remedial action with no such action being filed, but prior to the Dismissal Date, as defined in Paragraph 9 below.
- c. ELMO shall pay \$350,000 to PSB after the expiration of the ninety (90) day period for filing a remedial action with no such action being filed, but prior to the Dismissal Date.
- d. ELMO shall pay to PSB the balance of the **\$1,522,594 (namely \$1,172,594) over up to 10 years**, as described in this subparagraph 2d. The first annual payment shall be \$65,000 due on September 1, 2019, with each of the following annual payments due on each successive annual anniversary of the Dismissal Date:

September 1, 2020	\$71,500
September 1, 2021:	\$78,650

September 1, 2022:	\$86,515
September 1, 2023:	\$99,492
September 1, 2024:	\$114,416
September 1, 2025:	\$131,579
September 1, 2026:	\$151,315
September 1, 2027:	\$174,013
September 1, 2028:	\$200,114

ELMO has a 60 day grace period for each annual payment, without notice or an opportunity to cure thereafter, except as described in subparagraph 2e below. The foregoing dates are based upon the assumption of a Dismissal Date during August, 2018. These payment dates will be adjusted accordingly if the Dismissal Date is deferred.

- e. If a Condition Precedent, as defined in the Reversionary Deed (which is defined in Paragraph 4 below), occurs after the Dismissal Date but before the Release Date as defined in the Reversionary Deed, then ELMO may redeem the Property from PSB (a “Reverter Cure”) upon (i) curing the event that constituted the Condition Precedent and (ii) making payment to PSB of the following amount, in addition to the full payment of any remaining balance due under this Dismissal Agreement within thirty (30) days of the date ELMO receives written notice from PSB describing in detail the Condition Precedent that occurred (the “Reverter Date”):
- (i) If the Reverter Date is on or before the two (2) year anniversary of the Dismissal Date, the redemption amount shall be **Two Hundred Fifty Thousand Dollars (\$250,000)**.
  - (ii) If the Reverter Date is after the two (2) year anniversary but on or before the four (4) year anniversary of the Dismissal Date, the redemption amount shall be **Two Hundred Thousand Dollars (\$200,000)**.
  - (iii) If the Reverter Date is after the four (4) year anniversary but on or before the six (6) year anniversary of the Dismissal Date, the redemption amount shall be **One Hundred Fifty Thousand Dollars (\$150,000)**.
  - (iv) If the Reverter Date is after the six (6) year anniversary but on or before the eight (8) year anniversary of the Dismissal Date, the redemption amount shall be **One Hundred Thousand Dollars (\$100,000)**.
  - (v) If the Reverter Date is after the eight (8) year anniversary but on or before the ten (10) year four (4) month anniversary of the Dismissal Date, the redemption amount shall be **Fifty Thousand Dollars (\$50,000)**.

In the event that ELMO fails to effectuate a Reverter Cure within the time frame described above, PSB shall have the right to execute and record a Declaration on the terms described in the Reversionary Deed. Even after ELMO has cured the Condition Precedent by payment of the amounts described above, the grant provided in the Reversionary Deed shall remain in full force and effect until the Release Date as defined in the Reversionary Deed.

- f. From and after the third anniversary of the Dismissal Date, ELMO shall have the right to prepay in full or in part any amount not yet paid to PSB, which prepayment(s) shall be applied in reverse order in which the payments are due.

3. **JOINING OF ECO.** The first and second Conditions Precedent in the Reversionary Deed require ELMO to continue as a church in the reformed tradition as a member of a denomination in the reformed tradition and to use the Property as an asset dedicated to a church in the reformed tradition as a member of a denomination in the reformed tradition, each in a manner consistent with the principles under *The Constitution of the Presbyterian Church (U.S.A.)* (the "PC(U.S.A.) Constitution"). ELMO is in the process of becoming a member church of the Covenant Order of Evangelical Presbyterians ("ECO"), which PSB acknowledges to be within the reformed tradition in a manner consistent with the principles under the PC(U.S.A.) Constitution. Should ECO cease to exist before the 10 year anniversary of the Dismissal Date, then ELMO may continue to meet the membership requirement of the first two Condition Precedents by, prior to the cessation of ECO, joining another denomination that (i) is recognized by the World Council of Churches and (ii) is within the reformed tradition in a manner consistent with the principles under the PC (U.S.A.) Constitution, as confirmed by PSB.

4. **REVERSIONARY DEED.** ELMO will execute, have notarized, and, after confirmation by PSB that it is in acceptable form, cause to be recorded in the official records of the County of Santa Barbara a deed in favor of PSB in the form attached hereto as Exhibit "A" (the "Reversionary Deed"), providing to PSB a conformed copy of the recorded Reversionary Deed.

5. **RELEASE FROM TRUST CLAUSE.** PSB hereby confirms that, effective with the later of the Dismissal Date as defined below and of the payment of all amounts due from ELMO to PSB as stated in this Agreement, and except as provided in the Reversionary Deed, PSB (for itself, for the PC(U.S.A.) and otherwise) retains no right, title and interest in any of the Property or any of the other assets or liabilities of ELMO.

6. **ACTIONS AS TO INDIVIDUALS.** ELMO and PSB hereby confirm that Teaching Elder Rev. Barry Moller, Pastor, will remain within PC(U.S.A.) as a member in good standing of the Presbytery of San Diego for as long as he is serving at ELMO, and that there are no Inquirers or Candidates under care with ELMO. PSB and ELMO are working together to facilitate the interests of any member of ELMO who wishes to remain a member of PC(U.S.A.):

- a. PSB has prepared and delivered to ELMO a letter to the members of ELMO that (i) informs them of their options to be dismissed with the congregation or to remain in the PC(U.S.A.), (ii) invites any members of ELMO who desire to retain their membership in PC(U.S.A.) to attend a gathering with representatives of PSB to discuss the options of the members of ELMO, and (iii) provides means for those members who formally desire to retain membership in the PC(U.S.A.) of responding directly to PSB.
- b. ELMO bore the responsibility for effectuating the mailing, at the expense of ELMO.

- c. PSB insured contact was made and assistance provided in joining a new congregation to any member of ELMO who formally indicated the desire to retain membership in the PC(U.S.A.).

7. **GENERAL RELEASE.** Each Party, on its own behalf and on behalf of its heirs, executors, administrators, personal and legal representatives, successors and assigns agrees with the terms and conditions set forth in this Agreement and in consideration thereof hereby knowingly releases and forever discharges the other Party and any of its past and present affiliated, related, predecessor, successor, parent or subsidiary entities and its past and present representatives, members, employees, attorneys, officers, directors, members, insurers, accountants, predecessors, successors and assigns (hereafter collectively referred to as "RELEASEES"), from any and all claims, of any kind, nature and character, known or unknown, including any and all claims for attorneys' fees and costs which the Party may now have, or has ever had, against RELEASEES relating to the matters covered hereby or otherwise, which have transpired prior to the date this Agreement is executed, except as to the express obligations of RELEASEES as described in this Agreement.

This Release completely releases RELEASEES with respect to any and all claims, rights, demands and causes of action including, but not limited to, breach of any contract or agreement, oral or written, whether express or implied in fact or law, claims under either Party's policies, violations of *The Constitution of the Presbyterian Church (U.S.A.)*, breach of fiduciary duty, breach of the covenant of good faith and fair dealing, intentional or negligent infliction of emotional distress, fraud, retaliation, misrepresentation, defamation, violation of public policy, violation of privacy, interference with prospective economic advantage, or other claims arising under federal, state or local constitutions, laws, or regulations, and federal, state or local civil rights laws and regulations, except as to claims that cannot be released under applicable law and except as to the express obligations of RELEASEES as described in this Agreement.

8. **WAIVER OF UNKNOWN CLAIMS.** To effect a full and complete release as described above, each Party expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, and does so understanding and acknowledging the significance of such specific waiver of § 1542. Section 1542 of the Civil Code of the State of California states 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."

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of RELEASEES, each Party expressly acknowledges that this Agreement is intended to include in its effect, without limitation, all claims not known or suspected to exist in that Party's favor at the time of signing this Agreement, and that this

Agreement contemplates the extinguishment of any such claim or claims, except as to the express obligations of RELEASEES as described in this Agreement. Each Party knows of no actions at law or in equity, nor administrative proceedings currently pending, which concern allegations relating to the matters covered hereby or otherwise. Each Party warrants that it has read this Agreement, including this waiver of California Civil Code Section 1542, and that it has had the opportunity to consult counsel about this Agreement and specifically about the waiver of Section 1542, and that it understands the Agreement and the Section 1542 waiver, and so freely and knowingly enters into this Agreement. Each Party acknowledges that it may hereafter discover facts different from or in addition to those it now knows or believes to be true regarding the matters released or described in this Agreement, and each Party agrees that the releases and agreements contained in this Agreement shall be and will remain effective in all respects notwithstanding any later discovery of any such different or additional facts. Each Party hereby assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes, or controversies described in this Agreement or with regard to any facts which are now unknown to that Party relating to them.

9. **DISMISSAL DATE.** The dismissal of ELMO to ECO will be considered complete and effective (the "Dismissal Date") upon the last to occur of the following nine events, as confirmed in writing in advance by the Stated Clerk of PSB to the Clerk of Session of ELMO: (1) ninety (90) days following the approval of the terms of dismissal by PSB without the filing of a remedial complaint challenging that dismissal decision, (2) execution by PSB and ELMO of this Agreement, (3) receipt by the Stated Clerk of PSB and the Clerk of Session of ELMO of written confirmation that ELMO has been officially received as a member church by ECO, (4) full payment of the PILP loan, (5) payment of any sums due from ELMO to PSB on or before the Dismissal Date, (6) recordation by ELMO in official records of Santa Barbara County at ELMO's expense of the Reversionary Deed (fully executed and notarized by ELMO, in the form approved by PSB), and delivery to the PSB Stated Clerk of a conformed copy of the Reversionary Deed as recorded, (7) completion of the mailing described in Paragraph 6a above, (8) the delivery to the Presbyterian Historical Society in Philadelphia, PA, of all originals of the ELMO Session and Congregational minutes, the ELMO membership registers, and any other ELMO ecclesiastical records through the Dismissal Date as confirmed in writing to the Presbyterian Historical Society to the PSB Stated Clerk (with ELMO having the right to retain copies, at its own expense, of any such records), and (9) removal by ELMO of the official PC(U.S.A.) seal and the name Presbyterian Church (U.S.A.), PC(USA), and PC(U.S.A.) from all property, buildings, signs, stationary and/or any other public occurrence related to ELMO because the seal of the Presbyterian Church (U.S.A.) is a registered trademark and the name Presbyterian Church (U.S.A.) and its abbreviations are proprietary. If a remedial complaint challenging the dismissal decision is filed within ninety (90) days following the approval of the terms of dismissal by PSB, then the dismissal will be deferred unless and until the remedial complaint is finally resolved in favor of the terms of the dismissal. Following the Dismissal Date the Parties agree to confirm the date in writing.

10. **MISCELLANEOUS.**

10.1 **Governing Law and Venue.** This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced, and governed under the laws of that state, except that parole evidence shall not be admissible to vary or modify any of the terms of this Agreement. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties. The parties understand and agree that for the convenience of the parties and witnesses that any litigation in connection with this Agreement shall be determined by a court proceeding in California.

10.2 **Jurisdiction.** The parties hereto agree that the Superior Court for the County of Santa Barbara, State of California shall have sole and exclusive jurisdiction as any civil matter, sitting without a jury, to hear and determine any disputes that arise under or on account of this Agreement after the Dismissal Date. All matters arising under or on account of this Agreement prior to the Dismissal Date and any matters under church law shall be heard by the appropriate PC(U.S.A.) ecclesiastical judicial council, for which ELMO acknowledges jurisdiction, even if after the Dismissal Date. ELMO hereby acknowledges that *The Constitution of the Presbyterian Church (U.S.A.)* provides, under the Rules of Discipline, processes by which the stay of a presbytery action can be obtained through a remedial case and that the Dismissal Date is not (at the earliest) until ninety days after approval by PSB, in order to allow an adequate opportunity for anyone who believes there are grounds to object to the dismissal.

10.3 **Integration.** All of the agreements and representations of the Parties hereto are contained in this Agreement and in documents expressly referenced herein, which constitute a single integrated written contract expressing the entire agreement of the Parties hereto. No claims shall be made by any Party based upon or relating to any agreement or representation not expressly contained herein, it being the intention of the Parties to incorporate in this Agreement and in the referenced documents their full and complete understanding regarding the settlement of their disputes and the termination and dissolution of all their official relationships. There are no agreements, written or oral, express or implied between the Parties hereto other than the agreements set forth in this Agreement or expressly referenced herein. Each Party acknowledges that, other than as expressly set forth in this Agreement or expressly referenced herein, no representations of any kind have been made to it by the other Party, or by any of the RELEASEES to induce its execution of this document. Each Party further states that the only representations made in order to obtain its consent to this Agreement are stated above, that the contents of this document have been explained to it in full and that it is signing this Agreement voluntarily.

10.4 **Successors and Assigns.** This Agreement shall be binding upon each Party and upon each Party's heirs, administrators, representatives, executors, successors and assigns, and shall inure to the benefit of the other Party and each of them, and to each Party's heirs, administrators, representatives, executors, successors and assigns.

10.5 **Representation by Counsel; Fees and Expenses.** The Parties represent that they were represented by or had the opportunity to be represented by counsel of their own choosing in the negotiations leading to and the preparation of this Agreement, that they have read this Agreement, that they are fully aware of its contents and legal effect, and that they freely and voluntarily enter into it without coercion, intimidation or threat of retaliation. Each of the parties shall pay that party's own fees and expenses, including but not limited to attorneys fees, in connection with the matters described in this Agreement and the negotiation, execution and performance of this Agreement.

10.6 **Attorneys' Fees.** If any civil lawsuit, arbitration or other action or any appeal from any of the foregoing is instituted to enforce and/or defend any of the terms of this Agreement or based upon the breach of this Agreement, then the prevailing party therein shall be entitled to recover from the other all losses, damages, costs, expenses and fees (including without limitation court costs and reasonable attorneys fees) related thereto, whether by final judgment or by out of court settlement. There shall be no entitlement for the prevailing party to recover expenses and fees (including attorneys fees) for any matter heard within the ecclesiastical courts of the Presbyterian Church (U.S.A.).

10.7 **Headings.** The headings in this Agreement are intended for convenience of reference only and shall not affect its interpretation.

10.8 **Severability.** Any provision of this Agreement which shall prove to be invalid, void, illegal or unenforceable in no way affects, impairs or invalidates any other provision hereof, and such other provisions shall remain in full force and effect.

10.9 **Counterparts.** This Agreement may be executed in counterpart originals or by facsimile signature, each of which shall be deemed an original and taken together shall constitute one and the same agreement.

10.10 **Modification and Waiver.** No amendment, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the Parties to be bound thereby. No delay or omission on the part of either Party in exercising any right under this Agreement shall operate as a waiver of any such right or any other right.

*[Signature page follows.]*

PLEASE READ CAREFULLY. THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

THE PARTIES HAVE READ AND FULLY CONSIDERED THE RELEASE AND ARE MUTUALLY DESIROUS OF ENTERING INTO SUCH RELEASE. THE TERMS OF THE RELEASE ARE THE PRODUCT OF MUTUAL NEGOTIATION AND COMPROMISE BETWEEN THE PARTIES. THE PARTIES EACH ACKNOWLEDGE THAT IT HAS BEEN AFFORDED A REASONABLE AND SUFFICIENT PERIOD OF TIME TO CONSULT WITH AN ATTORNEY OF THAT PARTY'S CHOOSING PRIOR TO EXECUTION OF THIS AGREEMENT.

DATED as of \_\_\_\_\_, 2018

EL MONTECITO PRESBYTERIAN CHURCH, a California corporation

By: \_\_\_\_\_  
\_\_\_\_\_, President

By: \_\_\_\_\_  
\_\_\_\_\_, Secretary

DATED as of \_\_\_\_\_, 2018

PRESBYTERY OF SANTA BARBARA, a California corporation

By: \_\_\_\_\_  
\_\_\_\_\_, President

By: \_\_\_\_\_  
\_\_\_\_\_, Stated Clerk