

1 **Working Draft [as of Jan 10, 2016]**

2 **DISMISSAL AGREEMENT**

3 **THIS AGREEMENT**, entered into effective as of the 6th day of February, 2016, by and between THE  
4 PRESBYTERY OF SOUTHERN NEW ENGLAND, INC., a Connecticut non-stock corporation (hereinafter referred to as  
5 “Presbytery”), and THE PRESBYTERIAN CHURCH OF OLD GREENWICH INCORPORATED, a Connecticut non-stock  
6 corporation (hereinafter referred to as “PCOG”).

7 **WITNESSETH:**

8 **WHEREAS**, PCOG was prior to the Effective Date of this Agreement a congregation of the Presbyterian Church  
9 (U.S.A.) (“PCUSA”) and a church within the bounds of Presbytery; and

10 **WHEREAS**, on March 23, 2010, PCOG announced its desire to formally enter the PSNE “Discerning the way”  
11 process to consider PCOG’s possible disaffiliation from PCUSA and Presbytery; and

12 **WHEREAS**, at a meeting of its congregation called on the 21<sup>st</sup> day of March, 2010, the members of PCOG voted to  
13 request permission from the Presbytery to dismiss PCOG with certain property (both real and personal) from the Presbytery  
14 and the PCUSA; and

15 **WHEREAS**, the members of PCOG intend to unite with the *Covenant Order of Evangelical Presbyterians*  
16 (hereinafter referred to as “ECO”) pursuant to the requirements of the Constitution of the PCUSA; and

17 **WHEREAS**, at the February 6, 2016 meeting of Presbytery, the Presbytery agreed to dismiss those members of  
18 PCOG intending to unite with the Receiving Presbytery with certain real and personal property pursuant to the Constitution  
19 of the PCUSA upon satisfaction by PCOG of certain conditions as specified herein; and

20 **WHEREAS**, Presbytery and the PCUSA have rights and ownership interests in the real and personal property of  
21 PCOG under the Constitution of the PCUSA, which rights and interests PCOG recognizes;

22 **NOW THEREFORE**, in consideration of the premises and mutual covenants herein contained, the parties agree as  
23 follows:

- 24 1. This Agreement shall be effective as of February 6, 2016 (the “Effective Date”).
- 25 2. Presbytery releases all rights and interest in the name “Presbyterian Church of Old Greenwich” and  
26 Presbytery and PCOG agree that PCOG will have unrestricted use of this name.
- 27 3. Presbytery may, at its election made on or prior to 60 days after Effective Date and at PCOG’s expense,  
28 receive copies of all the books and records of PCOG that shall be in existence prior to the Effective Date, including without

29 limitation, all of the financial and corporate records of PCOG and all of the historical records that tell the story of this  
30 particular ministry, baptismal and confirmation records; birth, death and marriage records; session minutes, committee  
31 minutes, and corporate minutes and records; and membership rolls, each of which shall be certified as true, correct, and  
32 complete by PCOG. PCOG may keep the originals of any of these records, including the historical records, recognizing that  
33 up until now, the history of PCOG and the Presbytery has been shared.

34 4. PCOG shall transfer and deliver to the Presbytery all items of tangible property that bear any insignia,  
35 logos, symbols, or names of the PCUSA or Presbytery, and after, Effective Date PCOG shall cease to use the seal, symbol  
36 and name, "Presbyterian Church USA" or use any signs, banners, logos, stationery, websites, business cards, or other items  
37 or means of communication that shall identify it or any of its pastors, ministers, staff or personnel as affiliated with the  
38 PCUSA. Non-promotional material such as library books that bear the logo of PCUSA will have the logo deleted.

39 5. Presbytery waives all right, title and/or interest it may have in the tangible and intangible personal property  
40 except as set forth on Exhibit A. Property set forth on Exhibit A shall be removed from PCOG premises at Presbytery's  
41 expense no later than 30 days following the Effective Date of this agreement.

42 6. Presbytery shall grant to PCOG a release in the form of Exhibit C foregoing any claim of beneficial interest  
43 in PCOG's real property located at 30 and 38 West End Avenue, Old Greenwich, Connecticut, as set forth in paragraph 9  
44 hereof. If all or any part of the real estate is sold within 16 years after the Effective Date PCOG shall pay to Presbytery 25%  
45 of the gross sales price, which sum shall not affect the payments to Presbytery, as set forth below, provided, that the parties  
46 agree that the cumulative amount paid from the sale of real estate over the 16 year period shall not exceed \$1,750,000, and  
47 provided, further, that the foregoing provisions of this sentence shall not apply to any sale of such property the proceeds of  
48 which are invested or reinvested in real property (or capital improvements thereon), whether located at 30 and 38 West End  
49 Avenue, Old Greenwich, Connecticut. The parties further agree that the residence of PCOG's Pastor at 33 Deep Gorge,  
50 Greenwich, Connecticut 06831, title to which is in the name of William and Susan Gestal JTWROS, and in which PCOG  
51 holds a financial interest and not a property interest, shall be excluded from payment of the aforesaid percentage of gross  
52 sales price were such property to be sold. The balance sheet used to determine the dismissal payment (see Paragraph 7  
53 below) includes an amount for PCOG's financial interest in such property.

54 7. PCOG shall pay to Presbytery the sum of \$200,000 which shall be paid in 16 equal annual installments of  
55 \$12,000, and a final installment of \$8,000, with no interest charged, the first of which shall be paid by December 31, 2016  
56 with each successive payment due and payable by December 31 of the following year on the outstanding balance. There shall

57 be no prepayment for 10 years, after which prepayment may be made without penalty. If an annual installment is not paid by  
58 December 31 of the year it is due, then compound interest shall accrue at 6% per annum on amount in arrears.

59 8. Promptly following admission to membership in ECO, PCOG shall remit to Presbytery the full amount of  
60 unpaid per capita assessed for the years 2014, 2015 and 2016. Such amount is agreed to be \$13,650.13.

61 9. Upon receipt of the first payment of \$12,000, Presbytery shall tender to PCOG the executed release in the  
62 form of Exhibit C. PCOG shall cause this Agreement (or a memorandum thereof) to be recorded in the property records of  
63 the office of the Town Clerk of Greenwich, CT. All payments to Presbytery are to be made in gratitude and recognition of  
64 PCOG's long and historic witness to Christ and to the mission of PCUSA and its presence in Connecticut and the other  
65 terms, conditions, and promises in this Agreement.

66 10. Other than purchases in the ordinary course of conducting its ministry and mission, PCOG represents and  
67 warrants to that there are no known purchase orders, notes, mortgages, instruments, contracts, lease agreements, and other  
68 contractual arrangements related to PCOG or to which PCOG is a party or by which PCOG is bound, and which involves  
69 anticipated future expenditures or payment by PCOG on or after Effective Date. PCOG acknowledges that there is no  
70 indebtedness owed on the real and personal property located at 30 and 38 West End Avenue, Old Greenwich, Connecticut.  
71 PCOG agrees hereby to indemnify and hold Presbytery and the PCUSA harmless from the payment of any and all such  
72 obligations which might otherwise arise.

73 11. PCOG agrees to hold harmless and indemnify Presbytery and PCUSA from any claim made by any of  
74 PCOG's personnel or staff, whether paid or volunteer, whether ordained or not ordained, in connection with any matter  
75 pertaining to any employment by or services performed for PCOG at any time prior to the Effective Date. PCOG further  
76 agrees to assume any and all responsibility and liability for, and to hold Presbytery and PCUSA harmless from and  
77 indemnify each of them against any claim for any accrued wages, salary, commission, bonus, pension, benefit and other  
78 employee compensation payments for all periods prior to the Effective Date. In addition, PCOG shall pay and be solely  
79 responsible for providing all employee compensation and benefits for any PCOG personnel for all periods prior to the  
80 Effective Date, all in accordance with applicable law, and PCOG shall satisfy all obligations imposed by applicable federal  
81 or state law, including without limitation obligations under the Consolidated Omnibus Budget Reconciliation Act of 1985, as  
82 amended, relating to pension or health benefit contribution privileges of any former employee of PCOG whether terminated  
83 by PCOG incident to this Agreement or otherwise.

84 12. As of the Effective Date of reception of PCOG into the Receiving Presbytery, PCOG shall provide

85 Presbytery a list naming each person who has established membership in the Receiving Presbytery. Pursuant to the  
86 Constitution of PCUSA, by their act of joining another denomination, all such persons, whether members, ordained Elders or  
87 Deacons in PCUSA, shall have renounced jurisdiction of PCUSA. Each such person shall have no rights as members or  
88 ordained Elders or Deacons in PCUSA.

89 13. Presbytery, by execution of this Agreement, and by acceptance and ratification of its terms at a duly called  
90 meeting of Presbytery, dismisses the members of PCOG desiring dismissal from the bounds of the Presbytery and PCUSA.  
91 The parties understand that PCOG will be accepted and admitted to ECO which will officially notify the Stated Clerk of  
92 Presbytery when it has formally accepted PCOG into its membership.

93 14. Presbytery represents and warrants, and all persons signing this Agreement on behalf of Presbytery  
94 represent and warrant, that (a) the execution of this Agreement and the other agreements, documents, and instruments  
95 contemplated hereby, and the consummation of the transactions contemplated hereby or thereby have been duly authorized  
96 by all necessary action of Presbytery; and (b) this Agreement and all of the documents and instruments required hereby to be  
97 executed and delivered by Presbytery are or when delivered will be legal, valid and binding obligations of Presbytery  
98 enforceable in accordance with their respective terms.

99 15. PCOG represents and warrants, and each person signing this Agreement on behalf of PCOG represents and  
100 warrants, that (a) PCOG has the requisite corporate power to execute and deliver this Agreement and to consummate the  
101 transactions contemplated therein; (b) the execution and delivery by PCOG of this Agreement and the other agreements,  
102 documents, and instruments contemplated hereby, and the consummation of the transactions contemplated hereby and  
103 thereby has been, or will at the Effective Date have been, duly authorized by all necessary corporate action on the part of  
104 PCOG; and (c) this Agreement and all other instruments required hereby to be executed and delivered by PCOG will, when  
105 executed and delivered, be legal, valid and binding obligations of, PCOG enforceable against PCOG in accordance with their  
106 respective terms.

107 16. PCOG represents and warrants that its affairs have been and are being conducted in all material respects in  
108 accordance with all applicable laws, rules or regulations of all governmental authorities. The representations and warranties  
109 of PCOG in this paragraph specifically include but are not limited to compliance by it with child protection, environmental  
110 rules, State laws, employment, tax, and other regulations and requirements.

111 17. PCOG represents and warrants that attached hereto collectively as Exhibit D are the financial statements  
112 (balance sheets and income statements) of PCOG and a schedule of all accounts or instruments in which PCOG claims any

113 interest or benefit, including all restricted and unrestricted accounts, pledges, foundations, endowments, bequests, gifts,  
114 grants, trusts and similar accounts or instruments, for the calendar years 2013, 2014 and 2015 and PCOG represents and  
115 warrants that Exhibit D presents fairly in all material respects the financial condition of PCOG.

116 18. PCOG represents and warrants that it has filed all federal, state and local tax returns, including  
117 informational returns, required to be filed by it, and has paid all federal, state, and local income, sales, use, property, payroll,  
118 and other taxes and assessments (including interest and penalties) to the extent that such have become due.

119 19. PCOG represents and warrants that prior to the Effective Date, PCOG continuously maintained property  
120 and casualty insurance on all tangible property and PCOG agrees to hold harmless and indemnify Presbytery and the PCUSA  
121 from any claims for personal injury associated with such property and to continue such insurance for a period not less than  
122 five years following the Effective Date. In the event of a casualty loss, all proceeds from such insurance shall be used to  
123 remedy the loss. In addition, PCOG agrees to maintain directors and officers insurance coverage and to designate Presbytery  
124 as an insured for a period of not less than five years following the Effective Date.

125 20. PCOG shall obtain, and provide copies thereof to Presbytery, of any and all consents, assignments or  
126 approvals necessary to permit the transfer of property under this Agreement, including without limitation the assignment of  
127 leases, agreements, and other contractual arrangements described in Exhibit A hereto, without breach thereof.  
128 Notwithstanding the above, however if any such consent, assignment or approval is not obtained prior to the Effective Date,  
129 the parties shall cooperate to effectuate this Agreement, and PCOG shall indemnify and hold harmless Presbytery and  
130 PCUSA from any obligations or liabilities for which such consents, assignments or approvals cannot be obtained.

131 21. Presbytery shall be responsible for preparing the Release contemplated herein and included in this  
132 Agreement as Exhibit C, in recordable form, and any bills of sale, assignments and other documents of transfer reasonably  
133 required to transfer title to property consistent with the terms of this Agreement.

134 22. Except as otherwise specifically provided herein, each party shall pay all of the costs and expenses incurred  
135 by it in negotiating and preparing this Agreement, all other agreements, certificates, instruments and documents executed in  
136 connection therewith, in performing its obligations under this Agreement, and in otherwise consummating the transactions  
137 contemplated by this Agreement, including its attorneys' fees.

138 23. For a period of ten (10) years following the Effective Date of this Agreement, but in no event later than  
139 February 6, 2026, if PCOG shall cease to belong to an ecclesiastical body that conforms to the historic doctrines and order of  
140 the reformed protestant church, as contemplated by the Constitution of PCUSA, the real estate located at 30 and 38 West End

141 Avenue, Old Greenwich, Connecticut, shall revert to Presbytery and be held in trust by Presbytery pursuant to such  
142 Constitution. This reverter language may be included in the Release (Exhibit C) from Presbytery to PCOG. PCOG shall  
143 notify Presbytery of any change in its denominational status, being specifically agreed that any change to autonomous or  
144 independent status is unacceptable; therefore, the reverter clause shall be effectuated and the real estate then owned by PCOG  
145 shall revert to Presbytery in such event. For a period of ten (10) years from the Effective Date of this Agreement, but in no  
146 event later than February 6, 2026, it is further agreed that any proposed change in denomination from ECO must have the  
147 prior approval of Presbytery.

148 24. From time to time after the Effective Date, at the request of any party and without further consideration,  
149 PCOG and Presbytery will execute and deliver such other instruments and take such other actions as each may reasonably  
150 require to carry out the intent of this Agreement. It is expected that such actions will be accomplished within sixty (60) days  
151 after request.

152 25. All representations and warranties contained herein shall survive indefinitely the Effective Date and  
153 execution of this Agreement and the consummation of the transactions contemplated hereby.

154 26. This Agreement, including the Exhibits attached to this Agreement, constitutes the entire agreement and the  
155 understanding among the parties with respect to the transactions contemplated by this Agreement. All prior representations,  
156 understandings, and agreements between the parties with respect to the transactions contemplated by this Agreement are  
157 superseded by the terms of this Agreement, and each party represents that it has not relied in entering into the transactions  
158 described in this Agreement on any information provided by the other party except as described or referred to in this  
159 Agreement and the Exhibits attached thereto. Further, each party has had an opportunity to negotiate freely the terms of this  
160 Agreement, and each party has had the benefit of advice of counsel in entering into this Agreement and therefore this  
161 Agreement shall be enforced and construed without any presumption as to which party caused it to be drafted or written.

162 27. Any provision of this Agreement may be amended or waived only by a writing signed by the party against  
163 which enforcement of the amendment or waiver is sought.

164 28. The provisions of this Agreement shall, where possible, be interpreted so as to sustain their legality and  
165 enforceability, and for that purpose, the provisions of this Agreement shall be read as if they cover only the specific situation  
166 to which they are being applied. The invalidity or unenforceability of any provision of this Agreement in a specific situation  
167 shall not affect the validity or enforceability of that provision in other situations or of other provisions of this Agreement.

168 29. This Agreement shall be governed and interpreted by the law of the State of Connecticut and may be

169 executed in counterparts, each of which shall be considered an original.

170 30. The terms of this Agreement shall govern any discrepancies, disagreements or ambiguities between this  
171 Agreement and the Exhibits thereto.

172 31. This agreement shall not be assigned or transferred to any other party.

173 32. All notices given pursuant to this Agreement shall be in writing and shall be delivered by hand or sent by  
174 United States registered mail, postage prepaid, addressed as follows (or to another address or person as the party may specify  
175 in notice to the other).

176 If to PCOG: 38 West End Avenue

177 Old Greenwich, CT 06870

178 If to Presbytery: Executive Presbyter

179 Presbytery of Southern New England

180 P.O. Box 388

181 Chester, CT 06412

182 IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their duly  
183 authorized officers and representatives as of the date and year first above written.

184 ① BOARD OF TRUSTEES OF PRESBYTERY BY: Chairperson/Treasurer

185

186 ② PRESBYTERIAN CHURCH OF OLD GREENWICH BY: President of Board of Trustees & Corporation

187

188

189 Listing of Exhibits [to come]

190 Exhibit A --¶5 Schedule of tangible/intangible property claimed by Presbytery [PSNE to do]

191

192 Exhibit B – [Reserved.]

193

194 Exhibit C --¶9 Release of beneficial interest in real estate. [PSNE to do]

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196 Exhibit D --¶17 Balance Sheet & income statement and schedules of accounts/instruments, etc. in which PCOG has a  
197 beneficial interest – 3 years 2013, 2014 and 2015 [PCOG to do]

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199