

## EQUITY SHARING AGREEMENT

This Equity Sharing Agreement (the "Agreement") is entered into as of the date set forth below by and between \_\_\_\_\_ a California nonprofit corporation (the "Church"), and \_\_\_\_\_ (the "Occupant").

### RECITALS

- A. Occupant is employed on the staff of the Church.
- B. The parties desire to provide for the ownership, management, and disposition of the real property commonly known as \_\_\_\_\_, \_\_\_\_\_, California (the "Property"), on a shared equity basis.
- C. The parties intend to hold the Property for investment purposes and use as a personal residence by the Occupant, and for investment purposes of the Church, and they wish to have an agreement by which their respective rights, obligations, and responsibilities are governed.

NOW, THEREFORE, the parties agree as follows:

### ARTICLE ONE

#### INTRODUCTORY

**1.1 Term.**

The term of this Agreement shall commence on the date escrow closes on Occupant's acquisition of the Property and shall continue until terminated in accordance with the provisions of Section 6.3 of this Agreement.

**1.2 Title.**

During the term of this Agreement, title to the Property will be held in the name of Occupant. At the termination of this Agreement, the parties agree to transfer title in a manner consistent with the provisions of this Agreement.

**1.3 Tax Matters.**

(a) The parties intend to be excluded from the provisions of the Internal Revenue Code relating to partnership reporting requirements. The parties agree to report their respective shares of the items of income, deduction, and credit on any required income tax returns in a manner consistent with the exclusion of the jointly owned property from such provisions of the Internal Revenue Code.

(b) The parties intend that this Agreement qualify as providing for “qualified residence interest” for a “qualified residence” of Occupant pursuant to Section 163 of the Internal Revenue Code, and any regulations issued thereunder.

**ARTICLE TWO**

**FINANCIAL CONTRIBUTIONS**

**2.1 Initial Contributions and Ownership Bases.**

The total purchase price of the Property (including ordinary closing costs, but excluding any prepayments of mortgage interest, property taxes, or insurance and excluding any financing costs) as of the date of this Agreement is agreed to be \$\_\_\_\_\_. Occupant, as its contribution, shall acquire financing in the amount of \$\_\_\_\_\_, and shall make a cash contribution of \$\_\_\_\_\_ for a down payment and closing costs, for a total contribution of \$\_\_\_\_\_ (“Occupant’s Ownership Basis”). Obtaining and paying for the financing shall be the sole obligation of Occupant. The Church shall make a cash contribution of \$\_\_\_\_\_ for a down payment and closing costs (“Church’s Ownership Basis”). Any prepayments of mortgage interest, property taxes, or insurance and any financing costs shall be the sole responsibility of Occupant and shall not be included for purposes of computing Occupant’s Ownership Basis.

**2.2 Additional Contributions.**

(a) Church shall not be required to make additional contributions on the Property except as set forth in Section 2.2(b) or 2.2(c) below.

(b) Occupant agrees to pay all costs for preserving, maintaining, and repairing the Property; provided, that if the cost of any single repair, replacement, or maintenance item (or group of related items) exceeds \$1,000 then the cost of that repair, replacement, or maintenance item shall be paid by the parties according to their respective equity shares in the Property pursuant to Section 4.1 of this Agreement, or in such other manner as the parties shall mutually agree. The above notwithstanding, in the case of damage caused by Occupant (including but not limited to pet damage or kitchen fires) or by Occupant’s failure to perform routine maintenance

(collectively, the “Occupant Damage”), as opposed to damage caused by ordinary wear and tear, Occupant shall pay all costs for repairing such damage regardless of the amount.

(c) Occupant shall pay for any improvements to the Property costing \$1,000 or less. Church shall have the option of whether to contribute toward the cost of improvements costing more than \$1,000. If Church elects to participate, then the cost of such improvements shall be paid for by the parties according to their respective equity shares in the Property pursuant to Section 4.1 of this Agreement, or in such other manner as the parties shall mutually agree. If Church does not elect to participate, then Occupant shall have sole responsibility for paying for such improvements. Occupant agrees to consult with Church before making any Improvements costing more than \$1,000. In the case of improvements costing more than \$1,000, there must be a reasonable connection between the cost of the improvements and the increase in the value of the Property resulting from the improvements.

(d) Each party shall be solely responsible for any costs and attorneys’ fees incurred by such party in connection with the negotiation and preparation of this Agreement.

Any work pursuant to Section 2.2(b) or 2.2(c) above with a cost in excess of \$1,000 shall require the prior written approval of Church, regardless of whether the Church is contributing to the cost of the work, provided that the Church shall not unreasonably withhold its consent. Unless agreed otherwise in writing by the parties, any such work shall be performed by a licensed contractor. Before such work is commenced, Occupant shall obtain bids from at least two contractors. The choice of the contractor to perform such work shall require the prior written approval of Church, not to be unreasonably withheld.

### **2.3 Remedies for Occupant’s Failure to Make Payments.**

(a) In the event Occupant shall fail to pay when due any tax or assessment on the Property, any payment on a loan secured by the Property, any premiums for insurance required by Section 2.4 below, any homeowner’s fees, or any amounts owing for work performed pursuant to Section 2.2(b) or 2.2(c) above, Church may at its option make such payments in order to prevent repossession or other detriment to the Property. In that event, such payment by Church shall be deemed to be a loan to Occupant (the “Loan”). Occupant shall continue to be entitled to take whatever tax deduction is attributed to such payment, and shall be obligated to repay the Loan to Church upon demand including interest at the rate of ten percent (10%) per annum from the date of such payment.

(b) If the Loan is not repaid upon demand, then Church shall have the option, by giving written notice thereof to Occupant, to (i) purchase the interest of Occupant as that interest is valued under the provisions of Article Six below, in which event the purchase price shall be reduced by the amount of the Loan (including interest), (ii) require that the Property be placed for sale pursuant to the provisions of Article Six of this Agreement, or (iii) have Church’s Ownership Basis increased by the amount of the Loan (including interest) and Occupant’s

Ownership Basis decreased by the amount of the Loan (including interest), in which event the Loan shall be deemed satisfied in full.

**2.4 Payment of Expenses.**

(a) Occupant shall not be obligated to pay rent to Church for the use of the Property. Occupant agrees during the period of such use to pay all utilities and perform routine maintenance of the Property and keep the Property in good condition and repair without cost to Church nor compensation from it except as otherwise set forth herein. Occupant also agrees to maintain full replacement value insurance on the Property and liability insurance in the amount of \$\_\_\_\_\_ at its sole expense, with Church named as an additional insured. Occupant also shall have sole responsibility for mortgage payments, payments for property taxes and assessments, and any homeowner's fees.

(b) Occupant shall be entitled to deduct for State and Federal income tax purposes all payments made by Occupant, to the extent authorized by law.

**ARTICLE THREE**

**MANAGEMENT**

**3.1 Control of Property.**

(a) Occupant shall be the managing party of the Property. Except as otherwise provided in this Agreement, Occupant shall be entitled to exclusive possession and control of the Property so long as payments due hereunder are current. Occupant agrees to not use or permit the use of the Property in any manner that would tend to create waste or a nuisance or that would be in violation of law. Occupant shall assume direction of routine maintenance and operation of the Property, subject to the provisions of Section 2.2 above.

(b) Occupant shall maintain books and records of the operation of the Property, which Church shall be entitled to review upon request. The Church may inspect the Property or otherwise enter upon the Property for any reasonable purpose upon forty-eight (48) hours advance written notice to the Occupant, except that no advance notice shall be required in the case of emergencies.

**3.2 Acts Requiring Unanimous Consent.**

Except as otherwise provided herein, the following shall be done only with the written consent of both parties:

(a) Transferring, hypothecating, compromising, or releasing any claim relating to the Property except upon payment in full.

- (b) Selling or entering into a contract to sell any of the Property.
- (c) Encumbering or otherwise hypothecating the Property or entering into any contract for such purpose.
- (d) Knowingly suffering or causing anything to be done whereby the Property may be seized or attached or taken in execution, or its ownership or possession otherwise endangered.
- (e) Renting all or a part of the Property to any person not a party to this Agreement.
- (f) Creating, continuing, or allowing any lien, mortgage, easement, or other encumbrance on the Property, other than the original financing acquired by Occupant as described in Section 2.1 above.
- (g) Any use of the Property other than as the primary residence of Occupant, including without limitation any business use of the Property by Occupant or others.

**ARTICLE FOUR**

**DETERMINATION OF EQUITY SHARES**

**4.1 Equity Shares.**

A party's equity share in the Property at any given time shall be determined by dividing such party's Ownership Basis (as adjusted) by the sum of that party's Ownership Basis (as adjusted) and the other party's Ownership Basis (as adjusted). The initial equity shares of the parties, based on their initial Ownership Bases as detailed in Section 2.1 above, are as follows:

Church:	_____%
Occupant:	_____%

**4.2 Changes in Ownership Bases.**

A party's Ownership Basis shall be increased from time to time by the amount paid by such party toward any repair, replacement, or maintenance item costing more than \$1,000 (as detailed in Section 2.2(b) above) or toward any improvement item costing more than \$1,000 (as detailed in Section 2.2(c) above), except that amounts paid by Occupant (a) to repair Occupant Damage pursuant to Section 2.2(b) above, or (b) for repair, replacement, maintenance, or improvement items not approved by Church pursuant to Section 2.2 above, shall not result in any adjustment to Occupant's Ownership Basis. The parties' Ownership Bases also may be adjusted

from time to time as provided in Section 2.3 above with respect to Loan amounts owing from Occupant to Church. The parties' Ownership Bases shall not be adjusted for any payments made by the parties except as specifically provided otherwise above.

## **ARTICLE FIVE**

### **DIVISION OF PROCEEDS**

#### **5.1 Rental Proceeds.**

The parties agree that in the event the Property is rented to a third party under the provisions of this Agreement, any rents paid by such third party shall be applied to the payment of any expenses or obligations of Occupant referred to in Section 2.2 or 2.4(a) above.

#### **5.2 Proceeds Upon Sale or Other Disposition.**

Upon sale or other disposition of the Property, the cash proceeds (after payment of closing costs or related expenses (including but not limited to realtor commissions) incurred in connection with the sale) shall be divided between the parties according to their respective equity shares in the Property pursuant to Section 4.1 of this Agreement, subject to the following:

(a) The unpaid balance (including interest) under the first deed of trust and any other liens and encumbrances on the Property owing from Occupant shall be paid and deducted from Occupant's share of the proceeds; and

(b) Any Loan amounts (including interest) owing from Occupant to Church pursuant to Section 2.3 above shall be deducted from Occupant's share and paid to Church.

## **ARTICLE SIX**

### **CHANGES IN OWNERSHIP**

#### **6.1 Restrictions on Transfer.**

Except as provided below, neither party's interest in the Property shall be transferred, in whole or in part, without the written consent of the other party, and any purported transfer of all or any part of a party's interest without such consent shall be void and of no effect against the other party, any creditor of the Property, or any claimant against the joint owners.

## **6.2 Occupant's Option to Purchase Church's Equity Share.**

Occupant shall have the right and option to purchase Church's equity share in the Property at any time by paying Church for its equity share in the Property either a negotiated amount or by delivering to Church a written notice that Occupant elects to exercise the option to purchase Church's equity share. If Occupant gives such notice, the fair market value of the Property will be determined by the method described in Section 6.5 below. This fair market value shall be multiplied by 93.5% (to account for hypothetical costs of sale) to determine the net fair market value of the Property. The purchase price shall be determined by applying to this net fair market value the Church's equity share pursuant to Section 4.1 of this Agreement.

## **6.3 Expiration of Term.**

The term of this Agreement shall expire on the earlier of (a) \_\_\_\_\_ days after the cessation of the employment of Occupant on the staff of the Church, voluntarily or involuntarily, with or without cause, including without limitation cessation of employment by reason of death, (b) the termination of Occupant's residence at the Property, except in the case of a rental of the Property mutually agreed to by the parties, (c) at the election of the Church, upon Occupant's failure to repay a Loan pursuant to Section 2.3 of this Agreement, or (d) the mutual agreement of the parties. Upon such expiration, the Property shall be valued and disposed of pursuant to Sections 6.4 – 6.7 below.

## **6.4 Option to Buy Upon Termination.**

Upon expiration of the term of this Agreement, the parties agree that Occupant shall have the first right to purchase the Property, by giving written notice to Church within thirty (30) days of such expiration date. In the event Occupant does not elect to exercise this right within such time period, or fails to complete the purchase as provided herein, then Church shall have the right to purchase the Property by giving written notice to Occupant within sixty (60) days of such expiration date. If either party exercises such purchase right, the fair market value of the Property shall be determined pursuant to Section 6.5 below. This fair market value shall be multiplied by 93.5% (to account for hypothetical costs of sale) to determine the net fair market value of the Property. The purchase price will then be determined by applying to this net fair market value the equity share of the selling party pursuant to Section 4.1 of this Agreement. In the event neither party purchases the Property pursuant to the purchase rights granted in this paragraph, then the Property shall be disposed of as provided in Section 6.7 below.

## **6.5 Valuation.**

(a) Within thirty (30) days after the event requiring appraisal, the parties shall attempt in good faith to agree on the fair market value of the Property. If agreement is not reached within such time period, Church and Occupant shall attempt in good faith to jointly appoint an appraiser for this purpose within fifteen (15) days thereafter. If such appointment is not made within such time period, each party shall separately designate an appraiser for this

purpose within fifteen (15) days thereafter. Within ten (10) days after their appointment, the two appraisers shall jointly designate a third appraiser. The failure of any party to appoint an appraiser within the time allowed shall be deemed equivalent to appointing the appraiser appointed by the other party.

(b) If within thirty (30) days after the appointment of all appraisers the majority of appraisers concur on the value of the interest being appraised, that appraisal shall be binding and conclusive. If a majority of appraisers do not concur within that period, the determination of the appraiser whose appraisal is neither highest nor lowest shall be binding and conclusive. Each party shall bear the expenses of the appraiser selected by that party. The expenses of the third designated appraiser, if any, shall be paid in proportion to each party's equity share in the Property pursuant to Section 4.1 of this Agreement.

(c) In arriving at the valuation figure, the appraisers shall use the following basis for valuation: buildings and land shall be valued at fair market value, and the existence of a willing purchaser shall be assumed.

#### **6.6 Manner of Payment.**

Whenever a party having the right to do so chooses to purchase another party's interest, it shall pay for that interest in such manner, and upon such terms as the parties shall agree, and if the parties are unable to agree, then payment shall be in cash, within ninety (90) days after the purchase price has been agreed upon or the Property is appraised, as the case may be.

#### **6.7 Disposition of Property on Termination.**

Upon termination of this Agreement, unless the option to buy of either party is exercised pursuant to Section 6.4 above, the Property shall be disposed of as follows:

(a) The Property shall be listed by a duly licensed real estate broker as the parties may then mutually select, and placed on the multiple listing service.

(b) Unless the parties otherwise agree, the Property shall be listed for not less than its value as determined under Section 6.5 above. Any offer which is received by the parties with a purchase price equal to at least 90% of such value, which provides for a down payment of at least 20%, and whose remaining terms are commercially reasonable under the facts and circumstances then existing in the county where the Property is located, shall be accepted by both parties, unless both parties agree to decline such offer. Any other offer may be accepted upon mutual agreement of the parties. The parties shall thereafter convey the Property under the terms and conditions of the offer so accepted.

(c) Upon close of escrow, the proceeds of sale shall be divided in accordance with the terms of Section 5.2 of this Agreement.

**6.8 Equity Purchases.**

Either party may purchase all or a portion of the other party's equity share in the Property at any time during the term of this Agreement upon the mutual agreement of the parties as to price and payment terms. A party shall not be obligated pursuant to this Section 6.8 to sell all or a portion of its equity share without its consent. The above notwithstanding, the parties acknowledge and agree that a party may be obligated pursuant to various other provisions of this Agreement to sell its equity share without its consent.

**ARTICLE SEVEN**

**MISCELLANEOUS PROVISIONS**

**7.1 Further Assurances.**

Each party hereto agrees to perform any further acts and to execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

**7.2 Entire Agreement.**

This Agreement contains the entire agreement of the parties hereto relating to the matters provided for herein and supersedes any prior written or oral agreements between them concerning the same. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to such matters, which are not fully expressed herein.

**7.3 Amendments.**

This Agreement may be amended only by a written amendment signed by each of the parties hereto.

**7.4 Indemnification.**

Each party shall indemnify and hold harmless the other party from any and all expenses and liability resulting from or arising out of any negligence or misconduct on its part to the extent that the amount exceeds any applicable insurance.

**7.5 Binding on Successors.**

This Agreement shall be binding on and inure to the benefit of the respective successors, assigns, and personal representatives of the parties, except to the extent of any contrary provisions in this Agreement.

**7.6 Severability.**

If any term, provision, covenant, or condition of this Agreement is unenforceable under applicable law, the rest of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

**7.7 Notices.**

Any written notice to either party required or permitted under this Agreement shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed to the party to whom notice is to be given, prepaid, and addressed to the addressee at the address stated opposite the party's name at the end of this Agreement, or at the most recent address, specified by written notice, given to the sender by the addressee under this provision.

**7.8 Arbitration.**

Any controversy or claim arising out of, or relating to this Agreement, or the making, performance, or interpretation hereof, shall be settled by binding arbitration in \_\_\_\_\_ County, and any judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy. Except as expressly provided herein to the contrary, the arbitration shall be governed by Sections 1280 – 1294.2 of the California Code of Civil Procedure, as amended or superseded from time to time. The parties understand they are waiving their rights to a jury trial. Any arbitrator who conducts a hearing pursuant to this provision shall apply California law in the determination of the rights and obligations of the parties to such hearing. The arbitrator shall issue findings of fact and conclusions of law prior to or simultaneous with the award.

**7.9 Attorneys' Fees.**

In the event of any controversy, claim, or dispute between the parties arising out of or relating to this Agreement or the breach thereof, the prevailing party shall be entitled to recover, in addition to all other sums which may be due under the terms of this Agreement, all costs of suit, including reasonable attorneys' fees.

**7.10 Memorandum of Agreement.**

Contemporaneously with the execution of this Agreement, the parties shall execute a Memorandum of Equity Sharing Agreement evidencing the provisions of the Agreement. Such Memorandum shall be recorded in the Official Records of the County in which the Property is located.

**7.11 Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**7.12 Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on \_\_\_\_\_, 20\_\_\_\_.

**CHURCH**

Address: \_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_

**OCCUPANT**

Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_