

**DRAFT #3**

**Property Management Agreement between Toronto Conference and The Toronto United Church Council**

The Toronto United Church Council (Council) has been asked to act as interim property management agent for named Toronto Conference (Conference) properties on a fee for service basis. The duties to be carried out will include the interim management and supervision of Conference properties awaiting sale, and acting as Conference's agent to facilitate the divestment of the properties.

The parties acknowledge and agree that legal title to the property is held by The United Church of Canada in trust for the Conference as the sole beneficial owner. Nothing in this Agreement changes the legal or beneficial ownership of the property, and all responsibilities and liabilities of ownership of the property remain with the Conference.

This Agreement details the duties and responsibilities of the two parties.

**The Toronto United Church Council agrees to the following:**

Council will act as property management agent for named Conference properties in both the interim and divestment stages.

*Interim Site Management of Named Conference Properties*

Tasks will include:

- Monitoring site as required and agreed with Toronto Conference & its insurer.
- Effecting necessary maintenance and emergency action when required in a timely manner.
- Liaising with the trustee/management group appointed by Conference for a named property.
- Receipt, review, and payment of bills for site utilities and other services from an operations fund to be provided to Council by Conference.
- Enter into lease or rental agreements on behalf of Conference during the term of this Agreement, and to enforce the provisions of same, and to institute legal action or other proceedings to collect rents and sums due, and to dispossess tenants and other persons from the Conference properties on behalf of Conference.
- Ensuring proper management of property rentals including the collection, and accounting of income from rentals (Note: Rental income on properties will accrue to Conference).

- Recording and reporting income received for named properties, and disbursements for the maintenance and oversight of the named properties, to Conference on an agreed time frame.
- Timely reporting of any unusual property management or capital improvement requirements to Conference with recommendations for resolution and implementation, and effecting such recommended actions on written direction from Conference.
- Engaging other professionals and services providers, including but not limited to accounting, legal, and building maintenance services, as deemed necessary by Council in order to carry out interim site management tasks

#### *Management of Divestment of Named Conference Properties*

Council will act as the facilitating agent for the divestment of named Conference properties, working with the trustee/management group appointed by Conference.

Tasks will include:

- Establishing good title to property in conjunction with legal counsel appointed by Conference, and other parties as required and determined by Council.
- Requesting, receiving, reviewing divestment proposals from appropriate marketing professionals.
- Recommending a marketing proposal to Conference and/or its appointed trustees for a property.
- Engaging consultants required for completion of the offering package (e.g. planners, environmental consultants) as deemed necessary by Council.
- Receiving and reviewing Offers to Purchase.
- Recommending Agreement of Purchase & Sale to Conference and /or its appointed trustees for the property.
- Management of sale transaction to close, including ensuring appropriate disbursements are made.

#### **Toronto Conference agrees to:**

- Identify and appoint trustee/management committees for the named properties.
- Provide Council with written direction regarding the interim management and divestment of named properties (and any restrictions on use or sale), as may be requested by Council.
- Provide required means of access to designated properties (keys, codes etc.).

- Provide all forms of authorization required for Council to carry out its duties.
- Direct all utility and service contracts to Council for administration during management and divestment period.
- Maintain 'in-force' property loss and liability insurance until sale closing.
- Add Council as 'also insured' under liability coverage.
- Provide Council with written rider from insurer.
- Provide Council with an adequate operating fund to cover ongoing costs of property management (utilities, small repairs, etc.) – the minimum level of the fund to be determined by mutual agreement between Conference and Council.
- Respond to requests for other payments in a timely fashion.

## **Other Matters**

### *Limitation of Council's Liability*

Conference agrees to indemnify and hold harmless Council its officers, directors, employees, volunteers, successors and assigns (collectively the "Indemnified Parties") from and against all claims, costs, expenses, fines, demands, losses, damages, actions, suits or proceedings and all other liabilities including bodily injury and death to any person or loss or damage to property, and expenses including all legal fees and disbursements that arise out of or are attributable to the acts or omissions of Council, its subcontractors, suppliers, agents, employees, officers, directors and all other persons and all other entities for whose acts Council may be liable or for whom it is responsible in law, but shall not include any claims arising solely from the active negligence of the "Indemnified Parties." The indemnity obligations of Conference under this Agreement shall survive the expiry or other termination of the Agreement.

### *Compensation to Council*

(1) During the interim management phase:

- Council will charge Conference for the actual hours worked by Council staff in fulfillment of property management duties. The hourly rate to be charged in 2017 will be \$100 per hour.
- In addition Council will invoice Toronto Conference for travel associated with the carrying out of duties at the rate of 41c per km.
- A meal allowance of up to \$30 will be charged for work involving more than four hours away from the office.
- A worksheet identifying these costs will accompany each invoice

(2) During the divestment phase:

- (i) Property management duties carried out during the divestment phase will be charged as in (1) above.

- (ii) In addition, duties in relation to the divestment of a property will be remunerated by a fee of 1% of the final sale price plus travel expenses at 0.41c per km; or hours actually worked at a rate of \$100 per hour plus travel expenses at 0.41c; whichever is the higher.

When an hourly rate is charged, a worksheet identifying the costs will accompany invoices. When a percentage fee is applied this will be included in the closing adjustments.

All fees will be subject to applicable taxes (if any).

#### *The Operating Fund*

- As noted above, Conference will provide and replenish operating funds to be held by Toronto Council as a property reserve fund for ongoing costs associated with holding, maintaining and divesting the named properties.
- The amount to be held in the fund will be mutually agreed between the two parties and may be adjusted based on experience and numbers and types of properties under management.
- Council shall be entitled to apply operating funds in payment of any and all disbursements and costs reasonably incurred by Council in carrying out its tasks pursuant to this Agreement, including but not limited to the cost of supplies and materials, and fees charged by professionals and service providers engaged by Council.
- Operating funds shall not be used to pay compensation to Council for its fees, unless written authorization is given by Conference.
- Council will provide Conference an accounting of the fund within thirty days of the end of June and December.
- No interest will accrue to Conference on balances held in the fund.
- The following spending limits will apply to expenditures from the fund:
  - expenditures up to \$25,000. No approvals required.
  - expenditures over \$25,000 will be approved by Conference in a timely manner.
- At the termination of the Agreement any balance remaining in the fund will be repayable by Council to Conference (see below).

#### *Review of the Agreement*

- Council and Conference staff will liaise regularly to monitor the working of this Agreement.
- Amendments to this Agreement may be made by the mutual consent of the two parties.

*Duration of the Agreement*

- It is anticipated that this Agreement will be for two years (i.e. through 2017 and 2018). It may be extended by mutual agreement.

*Termination of the Agreement*

- The Agreement may be terminated by either party without cause on three months written notice to the other party.
- A final accounting of the operating fund deposited with Council will be made within thirty days of the termination of the Agreement.
- Reimbursement of the balance in the fund will be made once all outstanding payments to outside contractors/bodies have been made, and all Council invoices to Conference have been settled.

*Default and Remedy*

If a party has breached any of its obligations in this Agreement and, if such breach is capable of being remedied, after written notice from the party not in breach the offending party fails to remedy such breach within fifteen days, or if such breach cannot reasonably be remedied within fifteen days, the offending party fails to commence to remedy such breach within such fifteen days or thereafter fails to proceed diligently to remedy such breach, then an Event of Default shall have occurred.

In addition to any other remedies available at law, if an Event of Default has occurred, the party not in breach of its obligations may remedy or attempt to remedy the default of the offending party. The party not in breach shall not be liable to the offending party for any loss, injury or damages caused by acts of the party not in breach in remedying or attempting to remedy the Event of Default. The offending party shall pay to the party not in breach, on demand, all expenses incurred by such party in remedying the Event of Default, together with an administration fee of 15% of such expenses and interest at the rate of 18% per annum from the date such expense was incurred by the party not in breach.

Notices

Any notice, demand, statement or request required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, delivered by courier, mailed by registered prepaid post, or delivered by facsimile transmission or electronic mail, in the case of notice to Council, to it at the following address:

The Toronto United Church Council  
24-30 Wertheim Court  
Richmond Hill, ON L4B 1B9  
admin@tucc.ca

and in the case of notice to Conference, to it at the following address:

The Toronto Conference of the United Church of Canada  
65 Mayall Avenue  
Toronto, ON, M3L 1E7  
Fax: 416-241-2689  
tco-office@united-church.ca

Any such notice given in accordance with the above requirements shall be deemed to have been given, if mailed, on the fifth day following the date of such mailing or, if delivered, on the day on which it was delivered so long as such delivery was prior to 5:00 p.m. on a Business Day (and, if after 5:00 p.m. or if any such day is not a business day, then it shall be deemed to have been delivered on the next business day). Either party may from time to time by notice change the address to which notices to it are to be given.

Arbitration

If there is a dispute, difference or question between the parties under this Agreement, the parties agree that the matter shall be decided by arbitration alone and not by recourse at law. Arbitration shall be conducted by a single arbitrator chosen by the parties, or if they are unable to agree upon an arbitrator, an arbitrator shall be appointed pursuant to the Arbitration Act, 1991, S.O. 1991, c. 17. The arbitration award shall be final and binding on the parties and not be subject to appeal. Each party shall pay its own costs and one-half of the fees and expenses of the arbitrator. The arbitration shall proceed in accordance with the Arbitration Act, 1991.

IN WITNESS WHEREOF the parties hereto have executed this Agreement this    day of  
, 2017.

THE TORONTO UNITED CHURCH COUNCIL  
Per:

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Name:  
Title:

\_\_\_\_\_  
Name:  
Title:  
We have authority to bind the corporation

TORONTO CONFERENCE

Per:

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Name:

Title:

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Name:

Title:

I/We have authority to bind the corporation