

Agreements on the Use of Congregation Facilities

Adopted by the PCC, March 24, 2009

Received by PA, April 21, 2009

Minutes, p. 19231

PRESBYTERY OF CHICAGO POLICY ON AGREEMENTS FOR THE USE OF CONGREGATION FACILITIES

Introduction

To help cover expenses and expand the ministry of the congregation, many congregations permit third parties to use congregational facilities (the building, the parking lot, the manse or other property). These arrangements can lead to the imposition of real estate taxes on those facilities. Such a result can cause grave financial distress to the congregation involved.

Exempt Use

Illinois property tax law provides for the exemption of property used exclusively for religious purposes or for school and religious purposes. There are other categories of exemption, such as property exclusively used for charitable or beneficent purposes. The law expressly provides that exempt property be used exclusively for the exempt purpose or purposes and also provides that it not be "leased or otherwise used with a view to profit." Accordingly, a manse used by an individual not the pastor of the congregation for a monthly payment or a "donation" would not be exempt. Not only is that property not used exclusively for religious purposes, but also it is being used by the congregation for profit, as would be the case with any rental property.

Payments by Third-Party Users

The prohibition against using the property with a view to profit does not prevent a congregation from charging a third party for the use of congregational facilities. Under established case law, a third party user of a congregational facility may share in the expenses for the operation of that facility without causing the loss of the real estate tax exemption if two tests are met: (1) use of the property would qualify for a real estate tax exemption if the user owned the property; and (2) the third-party user shares in operating expenses such as heat, electricity, water, janitorial services, repairs and the other expenditures incurred in operating a building such that the congregation does not derive a "profit" from the arrangement.

For example, if a pre-school (being an exempt use under the property tax code) uses a congregation's basement 5 days a week for its pre-school program and it qualifies as a Section 501(c)(3) tax exempt organization, so that the property would be exempt from real estate taxes if the pre-school owned the property, the pre-school can pay the congregation a fair apportionment of the congregation's expenses without affecting the real estate tax exemption of the congregation's building and associated property. The opposite result would occur if the user were a gymnastics organization run privately by an owner as his or her business or if an exempt user was paying the congregation so much that the congregation derived a "profit" from the arrangement. In the case of the gymnastics use, the basement would be used with a view to profit (the profit of the business owner), making the congregation's facilities subject to tax. In the case where the congregation received more than its expenses, the congregation would be receiving a "profit", thereby violating the provision that the property not be used with a view to profit.

Section 501(c)(3) Organizations

A 501(c)(3) organization will only be exempt from State of Illinois real estate tax if its purposes fall specifically within the uses described under Exempt Use above. Section 501(c)(3) status, therefore, is only evidence that helps to establish that the organization qualifies for real estate tax exemption as a religious, charitable or educational institution. The

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Minutes, p. 19231

same, in many respects, may be said for a Sales Tax Exemption from the State of Illinois. When qualifying for a real estate tax exemption, an organization must be prepared to demonstrate that it qualifies in all particulars for the exemption it claims. In addition to being exempt from income tax and sales tax, the charter, by-laws, constitution, financial information and all other documentation and relevant evidence may be required to convince the Illinois Department of Revenue that a third party organization would be entitled to a real estate tax exemption and hence, its use of a congregation's property will not trigger the revocation of the congregation's real estate tax exemption. The amount being paid and the rationale for the determination of that amount may be subject to scrutiny. The question of such an inquiry is whether there is any "profit" being derived by the congregation from the arrangement.

Equitable Share of Expenses:

Central to avoiding complications with regard to the real estate tax exemption of a congregation's property is the process of determining an equitable share of building expenses to be paid by a Program that will not violate the "view to profit" restriction. Congregations should base their determination of the maximum allowable share for a Program using the Presbytery of Chicago: Sample Calculation of Share of Expenses between Congregation and 2 Programs (copy attached) based on the actual annual expense allocable to the spaces used and times used by the Program. For a previously existing program, this allowable share may be more or less than previously agreed. If less, the adjustment downward should be made at the time of the next annual renewal.

Use of Presbytery Form of Agreement

When a congregation intends to enter into an arrangement with a third-party user of any part of its facilities, the Director of Business Affairs of the Presbytery should be informed and the Presbytery's Agreement for Use of Congregational Facilities (see the attached) should be used as a model for the agreement. Where a lease or a "donation" -based (see Footnote) understanding already exists, each should be replaced with the Presbytery's Agreement for Use of Congregation Facilities at the earliest opportunity, certainly at the next renewal of the arrangement.

FOOTNOTE: Previous arrangements of space-use in exchange for agreed "donations" have tended to obscure the quid-pro-quo nature of these arrangements; without the donation the space would not have been made available: in other words, a rental lease by another name.

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Minutes, p. 19231

AGREEMENT FOR USE OF CONGREGATION FACILITIES

This Agreement is made this _____ day of _____, 20____, by and between _____ ("Congregation") and _____ ("Program").

WHEREAS, this Agreement is made by the Congregation and Program with the shared goal and purpose of increasing the religious, charitable and educational use of the Congregation's facilities in a manner which, in the sole judgment of the Congregation, conforms to the religious aims and polity of the Presbyterian Church (U.S.A.).

WITNESSETH:

That in consideration of the Program's covenants and agreements herein contained, the Congregation hereby grants a license to the Program to use:

The area designated on the floor plan attached hereto as Exhibit A (the "Premises") and located in the building(s) (said building(s) being referred to herein as the "Facility"). The Premises and the Facility are part of the Congregation's real property (the "Property") located at _____.

TO use the same for a term of _____, commencing _____ and expiring on _____, unless previously terminated, as hereinafter provided ("Term"), during the following times: _____ [*Specify the days of the week and the beginning and ending time for each day.*].

IN CONSIDERATION of this Agreement, the Program covenants and agrees with the Congregation as follows:

A. PAYMENT

Program agrees to pay Congregation a portion of the monthly expenses for the operation of the Premises, the amount of which is payable in monthly installments of \$_____ ("Share of Expenses") in advance upon the first day of every calendar month of the Term, and all of said payments shall be made at the office of Congregation, as set forth above or at such place as the Congregation may from time to time designate. Payment for any partial month shall be prorated on a per diem rate based on the prior or succeeding month's payment for a fraction of a month if the Term begins or ends on any day other than the first or last day of a calendar month. If the Term is longer than twelve (12) months, adjustments to the Share of Expenses, payable monthly, shall be made on the first anniversary date of this Agreement and annually thereafter including any extension period, if applicable. Any such adjustments shall be the result of changes in operating costs based on the percentage increase or decrease in the operating expenses of the Facility over the prior year.

B. USE

The Premises shall not be used with a view to profit. The Program shall use and occupy the Premises for religious, educational and charitable purposes, specifically for _____

Agreements on the Use of Congregation Facilities

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Minutes, p. 19231

and for no other use or purpose; and the Program shall, at its own expense, keep the Premises and those parts of the Facility it uses in good repair and in a useable, clean and orderly condition during the times it uses the Premises or Facility, replacing at its own expense, any and all broken glass with glass of same size and quality and repairing any other injury or damage caused by its use or the activities of its employees, agents, clients or other persons entering the Premises or the Facility invited or permitted to so enter by the Program. If not included in the Share of Expenses, the Program shall be responsible for janitorial services for the Premises and those parts of the Facility it uses for the times it so uses such parts.

C. CONDITION OF PREMISES

No representations, except those that are expressly stated herein, have been made to the Program respecting the condition of the Premises. The taking possession of the Premises by the Program shall be conclusive evidence as against the Program that the Premises were in good and satisfactory condition when possession of the same was so taken; and the Program will, at the termination of this Agreement by lapse of time or otherwise, return the Premises to the Congregation in as good condition as when received, loss by fire and ordinary wear excepted.

D. TRANSFER OF PROGRAM'S INTEREST

The Program shall not assign this Agreement or any interest hereunder and will not transfer its interest under this Agreement or the use of the Premises or any part thereof; and will not permit the use of the Premises by any parties other than the Program, employees, agents, clients or other persons served by the Program, except with the written consent of the Congregation. If the Program shall at any time during the Term become insolvent, or if proceedings in bankruptcy shall be instituted by or against the Program, or if a receiver or a trustee of the Program's property shall be appointed, or if the Program shall make an assignment for the benefit of creditors, or if this Agreement and the Program's license to use the Premises shall, by operation of law, devolve upon or pass to any person or persons other than Program, then and in each of said cases the Congregation, at the Congregation's election, may terminate this Agreement and re-enter the Premises and take possession thereof without the service of any notice or demand whatever.

E. REPAIRS AND ALTERATIONS

Program shall be solely responsible for and shall promptly repair any damage to the Premises due to any action or omission of Program. The Congregation may enter the Premises at all reasonable times for the purpose of making any required repairs or alterations thereon as Congregation shall deem necessary for the safety, preservation or improvement of the Premises or Facility. The Program shall make no alterations or additions to the Premises without first obtaining Congregation's written consent, and Program shall submit to Congregation upon request paid bills, contractors' affidavits and full and final lien waivers for any alterations or repairs made by Program. All erections, additions, fixtures and improvements, whether temporary or permanent in character, (except only the moveable office furniture of the Program) made in or upon the Premises, either by the Congregation or the Program, shall be the Congregation's property and shall remain upon the Premises at the termination of this Agreement, by lapse of time or otherwise.

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Minutes, p. 19231

F. PROGRAM NOT TO MISUSE PREMISES OR FACILITY

The Program shall not use or permit upon the Premises or the Facility anything that may be dangerous to life or limb; and will not store on the Premises or Facility any hazardous or flammable material, including, without limitation, any paint, gasoline, kerosene, cleaning solvents or other hazardous or flammable liquids; and will do nothing and suffer nothing to be done upon the Premises or the Facility in any way tending to create a nuisance or to disturb any other occupant of the Facility, or to injure the reputation of the Congregation, or to annoy occupants of any neighboring property; and will comply with all laws, ordinances and health and police regulations respecting the Premises; and will not use the Premises for lodging or sleeping purposes, or for any immoral or illegal purpose.

G. NON LIABILITY OF CONGREGATION

The Congregation shall not be liable for any damage, either to person or property, sustained by the Program or by other persons, due solely to any act or neglect of Program or any occupant of the Premises.

H. DEFAULT: CONGREGATION'S REMEDIES

In case the Program makes any default in respect to any of the its covenants under this Agreement, and fails to cure such default within thirty (30) days of Congregation's notice thereof, then the Congregation may, at its option, terminate this Agreement and upon such termination, the Program shall at once surrender possession of the Premises to the Congregation, and if such possession is not immediately surrendered, the Congregation may re-enter the Premises and repossess itself thereof and remove all persons and effects therefrom using such force as may be necessary without being deemed guilty of any manner of trespass or forcible entry or detainer. No receipt of moneys by the Congregation from the Program, after the termination of this Agreement, or after the giving of any notice, shall reinstate, continue or extend the Term or affect any notice given to the Program prior to the receipt of such money.

I. CONGREGATION'S LIEN

The Congregation shall have a first lien upon the interest of the Program under this Agreement and to all property of the Program in the Premises, to secure the payment of all moneys due under this Agreement, which lien may be foreclosed in equity at any time when money is overdue under this Agreement; and the Congregation shall be entitled to name a receiver of said interest, to be appointed in any such foreclosure proceeding, who shall take possession of the Premises and such property and who may transfer Program's interest and such property under the orders of the court appointing the receiver.

J. CERTAIN RIGHTS NOT GRANTED

This Agreement does not grant any estate or ownership rights in the Premises or the property of the Congregation to the Program. The interest of the Program is that of a mere licensee.

Agreements on the Use of Congregation Facilities

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Minutes, p. 19231

K. RETAINING POSSESSION

If the Program retains possession of the Premises or any part thereof after the termination of this Agreement by lapse of time or otherwise, then the Congregation may, at its option, within thirty (30) days after the termination of the Term, serve written notice upon Program that such holding over constitutes the creation of a month to month Agreement, upon the terms of this Agreement. Unless such written notice is given, it shall be implied that Program retains possession without permission, and all of the above provisions under "Default: Congregation's Remedies" shall be available to the Congregation's benefit. Program shall also pay to Congregation all damages sustained by Congregation resulting from retention of possession by Program.

L. EMINENT DOMAIN

If the Facility or any portion thereof containing the Premises shall be taken or condemned by any competent authority for a public use or purpose, the Term shall end upon the date when possession of the part so taken shall be required for such use or purpose, without apportionment of the award, and Program, as of such date, shall have no further obligations or benefits hereunder, and shall not be entitled to receive any portion of the award.

M. FIRE AND CASUALTY

If, during the life of this Agreement, the Premises shall be so injured by fire, explosion or other casualty, as to be untenable, then unless said injury be repaired within sixty (60) days thereafter either party hereto may cancel this Agreement, in which case the Share of Expenses shall be apportioned and paid to the day of such fire, explosion or other casualty.

N. UTILITIES

Congregation shall be solely responsible for the payment of all water, gas and electricity payments in connection with the Premises and the Facility. Congregation shall furnish to Program a reasonable amount of heat from October 1st to May 1st for the comfortable use of the Premises during the Program's business hours.

O. INSURANCE/INDEMNITY/WAIVER

At the Program's sole cost and expense, Program shall carry the following insurance naming the Program, the Congregation and its respective agents and employees as insureds in form and substance satisfactory to the Congregation in its sole discretion. A Comprehensive General Liability Insurance policy on the Premises without any deductible amount and with the following limits: not less than \$1,000,000.00 with respect to injury or death to a single person and an amount not less than \$2,000,000 with respect to any one occurrence, and for damage to property of not less than \$1,000,000. The Congregation shall be named as an additional insured as its interest may appear and certification shall be filed along with a copy of the endorsement adding additional insureds. The insurance policy shall provide that it will not be subject to cancellation, termination or change except after at least thirty (30) day's prior written notice to the Congregation. The policy or duly executed certificates for the same together with

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Minutes, p. 19231

satisfactory evidence of the payment of the premiums thereof shall be deposited with the Congregation, prior to occupancy of the Premises and thereafter not less than fifteen (15) days prior to the expiration dates of said policy or policies, Program shall provide copies of policies or certificates of insurance evidencing coverages required by this Agreement. Should the Program fail to obtain and maintain any such insurance, the Congregation may (but shall not be obligated to) obtain such insurance and keep the same in effect and the Program shall pay the premium cost thereof upon demand. Program hereby agrees to indemnify, defend (with Congregation having the right to retain counsel for the purpose of participating in such defense, at Program's sole cost and expense) and hold Congregation harmless from and against and with respect to any and all obligations, liabilities, claims, accounts, demands, liens or encumbrances, whether direct or contingent and no matter how arising in any way related to the use of the Congregation's property by the Program and arising or accruing on or after the use of the Congregation's property by the Program (including but not limited to, actions brought or claims made after the termination of this Agreement) or in any way related to or arising from any act, conduct, omission, contract or commitment of Program, at any time. In addition, Congregation and Program each waives its right of recovery against the other and each releases the other from any claim arising out of Joss, damage, or destruction to the Premises and/or Facility and other improvements on the Premises or Facility, or contents on or in the same, to the extent its respective property is covered by a policy of insurance whether or not the loss, damage, or destruction may be attributable to the negligence of either party or its respective agent, visitor, contractor, servant, or employee. Each policy shall include a waiver of the insurer's right of subrogation against the party who is not an insured under the policy.

P. TERMINATION

Either party may at any time during the Term, terminate this Agreement, upon _____ [ninety (90)] days' written notice to the other.

Q. RENEWAL

Program, at its sole option, may renew this Agreement for an additional _____ (the "Extension Period") upon the same terms and conditions contained herein other than payment, by giving Congregation written notice thereof no later than _____.

R. SALE OF FACILITY

Congregation hereby agrees that in the event the Facility is sold, Program, at its sole option, may terminate this Agreement effective at anytime between Congregation's notification to Program of such sale and the closing of such sale (the "Closing Date"). Congregation agrees that in the event Program does not terminate this Agreement on or prior to the Closing Date, Congregation shall require the purchaser or purchasers to purchase the Facility subject to this Agreement and to assume all of Congregation's obligations hereunder until the termination of the then applicable Term.

S. PARKING/SIGNS

Program may use ___ parking spaces in the parking lot of the Congregation during the times that Program uses the Premises. Program agrees to procure the prior consent of Congregation prior to placing any signs in or on the Premises, Facility or Property.

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Minutes, p. 19231

T. SECURITY DEPOSIT

Upon execution of this Agreement, Program shall deposit the sum of _____ [*list security deposit here, at least one month's Share of Expenses*] to be held as collateral security for the payment of amounts due to Congregation under this Agreement and for the faithful performance of all other covenants and Agreements hereunder. This amount, without interest, shall be returned to Program after the termination of this Agreement and provided Program shall have made all such payments and performed all such covenants and agreements. Upon any default by Program, all or part of said deposit may, at Program's sole option, be applied on account of such default and Program shall be responsible for restoring the resulting deficiency in said deposit. In addition, beginning on the first day of the second year of the Term of the Agreement, if applicable, and each year thereafter, Program shall increase the security deposit to equal the percent of increase in the Share of Expenses for the prior year. The security deposit may not be used for the payment of the last month's Share of Expenses.

U. REAL ESTATE TAXES

The Program represents that it is a charitable, religious or educational organization entitled to be exempt from real estate taxes under the law of Illinois. In the event that the Facility or the Premises are assessed for real estate taxes as a result of Program's use thereof, Program shall pay to the Congregation any and all such real estate taxes assessed on the property not later than fifteen (15) days prior to the due date of such real estate taxes.

V. MISCELLANEOUS

(1) All covenants, promises, representations and agreements herein contained shall be binding upon and inure to the benefit of Congregation and Program and their respective successors and assigns.

(2) The rights and remedies created hereby are cumulative and the use of one remedy shall not be taken to exclude the right to the use of another.

(3) The words "Congregation" and "Program" shall be construed to apply to firms or corporations, and the necessary grammatical changes shall be assumed in each case as though fully expressed.

(4) If any clause, phrase, provision or portion of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this Agreement.

(5) Program agrees to indemnify and hold harmless the Congregation from any and all claims, liabilities, damages or costs, including reasonable attorney's fees arising from Program's use of the Premises which cause a violation of Americans with Disabilities Act of 1980 (the "Act"). Program further acknowledges that Congregation is exempt from the coverage of the Act and that any resulting violation of the Act is the sole responsibility of Program.

(6) The Program, its agents and servants, at its own expense, shall at all times observe, perform and abide by all requirements of any federal, state and local regulatory authorities with

Agreements on the Use of Congregation Facilities

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Minutes, p. 19231

respect to the use of the Premises and shall obtain and maintain at its own expense any required licenses, certificates, or variations of the zoning laws, if applicable.

(7) The Program shall pay all reasonable attorney's fees and expenses of the Congregation incurred in enforcing any of the obligations of the Program under this Agreement, or in any litigation or negotiations against the Program in which the Congregation shall, without its fault, become involved through or on account of this Agreement.

(8) All property belonging to Program and its employees, agents and invitees or any occupant of the Premises that is in the Facility or the Premises, shall be there at the risk of Program or other person only, and Congregation shall not be liable for damage thereto or theft or misappropriation thereof.

(9) Each and every monthly payment on the Share of Expenses and every payment of other charges hereunder which shall not be paid when due shall bear interest at the prime rate as then established by the Northern Trust Company, which rate is effective from the date when the same is payable under the terms of this Agreement until the same shall be paid.

(10) Program agrees to recognize as owner of the Premises any person or persons or other entity purchasing or otherwise acquiring the Premises or any right therein or thereto at any sale, sales, or other proceedings under any mortgage, deed of trust, or liens or security interest affecting the shared Premises who may elect to continue this Agreement in full force and effect in the same manner and with like effect as if such person or persons had been named as Congregation herein, and in the event of such election this Agreement shall continue in full force and effect as aforesaid.

(11) Program has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, including, but not limited to, mechanics' liens, whether created by act of Program, operation of law or otherwise, to attach to or be placed upon the Facility or any part thereof, and any and all liens and encumbrances created by Program shall attach only to Program's rights under this Agreement.

(12) Notices under this Agreement shall be in writing and either hand delivered or sent by mail, facsimile transmission or email transmission to the party being notified at the address, facsimile number or email address appearing after the party's signature. Notices shall be deemed received: (i) when hand delivered; or (ii) two business days after mailing with postage prepaid; or (iii) when received if sent by facsimile or email transmission during normal business hours, and if receipt is electronically confirmed; or (iv) on the later of actual receipt or the next business day after transmission if sent by facsimile or email transmission outside of normal business hours, and if receipt is electronically confirmed.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and affixed their respective seals, the day and year first above written.

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Minutes, p. 19231

CONGREGATION:

By: _____

Its _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

PROGRAM:

By: _____

Its _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

