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MEMORANDUM

Date: April 7, 2005

TO The Rev. Arabella Meadows-Rogers, Executive Presbyter
Reade H. Ryan, Jr., President of Board of Trustees

FROM Frank Patton and John Lipsett

Re: Presbytery of New York City

You have asked whether the Presbytery's consent to a proposed sale of real property by a congregation is to be given by action of the Board of Trustees of the Presbytery corporation or by the Ecclesiastical Presbytery itself. This memorandum responds to that inquiry.

The New York Religious Corporations Law, §12, requires court consent for a sale of real property by a church. In the case of a congregation which is part of the Presbyterian Church (USA), the Religious Corporations Law §12(5-a) requires the consent of the congregation's Presbytery before the court application may be made.

A Presbytery may by its own established rules assign to its Council responsibility for action between meetings of Presbytery on such specific areas of its responsibilities as it shall deem appropriate (Book of Order G-11.0103v). Among the responsibilities of a Presbytery is to consider and act upon requests from congregations for permission to take the actions regarding

real property (including the sale of real property) as described in Book of Order G-8.0000. See Book of Order G-11.0103-y.

The Presbytery of New York City has adopted Standing Rules which were approved January 28, 1997, and updated August, 1999. The Standing Rules in Section III-H establish a General Council. There is no indication in the Standing Rules or other documentation reviewed that the Presbytery has delegated authority to the General Council to give the consent to a sale required under the Religious Corporations Law.

As to whether the consent to sale of real property should be given by the Board of Trustees of the Presbytery corporation, the Presbytery's Standing Rules, Section III-m (entitled "Board of Trustees of Corporate Presbytery") provides in part in subsection 4 as follows:

- "4. The responsibilities of the Board of Trustees are as provided under civil law and in the Bylaws of the corporate Presbytery and include the following by way of example:
 - b. Receive and review requests from the churches of the Presbytery for permission, as required under G-8.0501 and 8.0502. to sell, mortgage, lease, or purchase any real property, or take title to any real property either currently encumbered or to become encumbered as a consequence of taking title, and report the Board's recommendations to the ecclesiastical Presbytery."

(A note to that subsection M states it is included in the Standing Rules for reference purposes only.) We do not find a corresponding provision as to the responsibilities of the Trustees in the bylaws of the Presbytery corporation. Nevertheless, the foregoing provision indicates an understanding that the role of the Board of Trustees is to review a congregation's request to mortgage or sell property and to make a recommendation to the ecclesiastical Presbytery.

Neither the certificate of incorporation (certificate of merger) or by-laws of the Presbytery corporation deal expressly with the matter of giving consent to a sale of property of a constituent church. The role of the Presbytery corporation, as contrasted with the role of the ecclesiastical Presbytery, is that of a civil body exercising civil authority over property and assets of the Presbytery. The task of consenting to the sale of property by a constituent church does not involve the exercise of authority or judgment by the corporation in regard to property owned or under the control of the corporation, and hence does not appear to be within the normal authority of the corporate Board of Trustees. Also, the task of consenting to such sale of property is not explicitly or impliedly given to the Board of Trustees by either the corporate bylaws or the ecclesiastical Standing Rules. Indeed, the Standing Rules (as quoted above) strongly indicate the role of the Board of Trustees on this issue is to be advisory only.

For these reasons it does not appear that the board of trustees of the corporation is the body which should give consent to a sale of property by a constituent church.

In the absence of any delegation of authority by the ecclesiastical Presbytery with respect to consent to a sale of real property by a church, it appears that such consent should be given by action taken at a meeting of the ecclesiastical Presbytery in accordance with the procedures set forth in Section V-B of the Standing Rules and Book of Order G-9.0300, after receiving the recommendations of the corporate board of trustees on the matter.

Our view that consent should be given by the vote of the ecclesiastical Presbytery itself is consistent with a reading of RCL Sec. 12(5-a)), providing for consent by the Presbytery. In that section the consent is to be given by the Presbytery, without specifying any official or entity within the Presbytery. In contrast, related provisions of Section 12 of the Religious Corporations

Law, concerning consents by the denominational bodies of other congregations, are in several instances very specific as to the particular officer or entity within the denomination which is to give consent. In the case of an Episcopal church (RCL Sec. 12(2)), consent is to be given by the Standing Committee and the Bishop of the Diocese. In the case of a Roman Catholic church (RCL Sec. 12(3)), consent is to be given by the Bishop or Archbishop of the Diocese. In the case of a United Methodist church (RCL Sec. 12(5-b)), consent is to be given by the District Superintendent.
