

## PLAN OF MERGER

**THIS PLAN OF MERGER** (this “Agreement”), is made on \_\_\_\_\_, 2018 by and between Central Wesleyan Church of Holland, Michigan (“CWC”), a tax-exempt section 501(c)(3) organization incorporated in the state of Michigan, and Overflow Community Church (“Overflow”), a tax-exempt section 501(c)(3) organization incorporated in the state of Michigan. The organizations are sometimes referred to singularly as “Party” or “Entity” and jointly as “Parties” or “Entities.”

On completion of the merger, Overflow will be dissolved, leaving CWC as the surviving corporation, which will continue as a state of Michigan tax exempt section 501(c)(3) nonprofit organization.

## RECITALS

**WHEREAS**, CWC is duly organized, validly existing, and in good standing under the laws of the state of Michigan,

**WHEREAS**, CWC is an established church of The West Michigan District of the Wesleyan Church with a Board of Elders acting as its Local Board of Administration,

**WHEREAS**, Overflow is duly organized, validly existing, and in good standing under the laws of the state of Michigan,

**WHEREAS**, Overflow is a developing church of The West Michigan District of the Wesleyan Church governed by the District Board of Administration (the “DBA”) of The West Michigan District of the Wesleyan Church,

**WHEREAS**, the affairs of each church are governed by “The Discipline” of The Wesleyan Church.

**WHEREAS**, the Elders of CWC and the DBA have concluded that the aims and purposes of their respective organizations can best be achieved if they merge as provided herein, and

**WHEREAS**, the Parties intend the merger to be a reorganization within the meaning of IRC §368(a)(1) (A) such that CWC is to be the surviving corporation to the merger described in this agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## TERMS AND CONDITIONS

### SECTION 1. Merger

1.1 Surviving Organization. Subject to the terms and conditions of this Agreement, on the

Effective Date set forth in Section 1.2 below, Overflow shall be merged with and into CWC, under the laws of the state of Michigan (the “Merger”). As a result of the Merger, the separate corporate existence of Overflow shall cease and CWC will be the surviving entity.

1.2 Effect of Merger. A Certificate of Merger shall be filed with the state of Michigan, effective as of \_\_\_\_\_, 2018 (the “Effective Date”). CWC will possess all the rights, privileges, and immunities of each of the Parties, all property belonging to Overflow including but not limited to all intellectual property, all bank accounts, endowment and other funds, and all real and personal property, will be transferred to and vested in CWC without further act or deed, unless otherwise required by applicable law or otherwise, and CWC will be responsible for all liabilities of each of the Parties. The West Michigan District of the Wesleyan Church will convey the real and personal property held by it for Overflow to CWC, subject to the trust clause in The Discipline. CWC will pay the mortgage debt(s) associated with such property.

1.3 Articles of Incorporation and Bylaws. The Articles of Incorporation of CWC shall be restated to read as set forth in the attached Articles. The Bylaws shall continue to be The Discipline of The Wesleyan Church.

1.4 Assumed Names. CWC will continue to use the assumed names used by each party to this Agreement and will also use the additional assumed name of Overflow Community Church. The Benton Harbor campus will use the name Overflow Community Church.

## **SECTION 2. Budget and Employees.**

2.1 Budgets. Each entity has a budget in effect for this fiscal year which ends May 31, 2019. As of the Effective Date, the Overflow budget for the remainder of its fiscal year will become part of the CWC budget.

2.2 Employees. Each employee of Overflow shall, upon the Effective Date, become an employee of CWC and be subject to the terms and rules of employment applicable to CWC employees. All employees of Overflow are listed on Schedule 2.2 with their name and position. All are at-will employees with no written employment contracts.

## **SECTION 3. Representations and Warranties**

Overflow and CWC each represents and warrants to the other the following as of the date of this Agreement and as of the Effective Date, and acknowledges and confirms, that each of the other Entities are relying on these representations and warranties in entering into this Agreement.

For the purposes of this Agreement, the phrases “Best Knowledge of each of the Entities” and, “to the knowledge of” or “known” means any matter of which the Entity has actual knowledge or could be expected to discover or become aware of by virtue of their position, duties or responsibilities with the Entity.

3.1 Organization and Standing. Each party is a 501(c)(3) non-profit corporation organized, validly existing, and in good standing under the laws of the State of Michigan. Except as set forth

in filings with the State of Michigan, no Entity uses an assumed name in connection with the conduct of its business.

3.2 Authorization. This Agreement has been approved by each Entity and is duly executed and delivered by each Entity. This Agreement constitutes legal, valid, and binding obligations of each Entity, enforceable against each of them in accordance with their respective terms, except as such enforcement may be limited under the law.

3.3 No Subsidiaries. Neither Entity has any subsidiaries, or owns directly or indirectly any interest in or have any investment in any other corporation, partnership, or other entity.

3.4 Permits and Licenses. Each Entity has all necessary permits, certificates, licenses, approvals, consents, and other authorizations known to such Entity to be required to carry on and conduct the affairs and to own, lease, use, and operate its assets at the places and in the manner in which the business is conducted.

3.5 Financial Affairs. Schedule 3.5 contains Overflow's current balance sheet along with the most recent financial statement prepared for it.

3.6 Bank Accounts. Schedule 3.6 contains a true and accurate list of Overflow's checking, savings and brokerage accounts along with the amounts contained in each account.

3.7 Real Estate. Schedule 3.7 contains a true and accurate list of all real estate owned by or for Overflow, including the real estate held by The West Michigan District of the Wesleyan Church.

3.8 No Undisclosed Liabilities. Except as otherwise disclosed on Schedule 3.8 or in the Financial Statements, Overflow does not have any debts, liabilities, or obligations of any kind or character whatsoever, whether accrued, absolute, contingent, matured, not matured, known, unknown, or otherwise.

3.9 No Adverse Changes. To the Best Knowledge of each of the Entities, except as otherwise disclosed in Schedule 3.9, since January 1, 2017 there has not been any occurrence, condition, or development that has adversely affected, or is likely to adversely affect, any of the Entities or their, condition (financial or otherwise), operations, affairs, or assets.

3.10 Employee Benefit Plans. Schedule 3.10 contains a true and complete list of all employee benefit, pensions, bonuses, deferred compensation, retirement, severance, hospitalization, insurance, salary continuation, and other benefit plans with respect to an employee.

3.11 Contracts and Commitments.

(a) Schedule 3.11 contains a true and complete list of all of Overflow's written, and a description of all of unwritten, contracts;

(b) To the Best Knowledge of each of the Entities, all Contracts and Commitments are in full force and effect, without any amendments (unless such amendments are clearly noted), and each Entity is and shall be entitled to all benefits under all Contracts and Commitments.

3.12 Litigation. There are no claims, disputes, actions, suits, proceedings, or investigations pending or, to the Best Knowledge of each of the Entities, threatened against or affecting any of the Entities except as listed in Schedule 3.12.

3.13 Environmental Matters.

(a) Except as described in Schedule 3.13, to the Best Knowledge of Overflow:

(i) Overflow and its Property are now and have at all times been in full compliance with all Environmental Laws and no Entity has any liabilities (whether accrued, absolute, contingent, matured, not matured, known, unknown, or otherwise) under or by virtue of any Environmental Laws.

(ii) There are no substances or conditions in or on the Property or adjoining property that may support a claim or cause of action against Overflow under any Environmental Laws.

(iii) There is not now and has not been at any time in the past any underground storage tank or pipeline at any Property.

(b) To the Best Knowledge of Overflow, no activity has been undertaken on the Property or adjoining property that would cause or contribute to (i) the Property becoming a treatment, storage, or disposal facility within the meaning of any Environmental Laws; (ii) a release or threatened release of any Hazardous Substances; or (iii) the discharge of pollutants or effluents into any water source or system or into the air, or the dredging or filling of any waters, where such action would require a permit under any Environmental Laws.

(c) Overflow has disclosed and delivered to CWC all environmental reports and investigations, including but not limited to, copies and results of any studies, analyses, tests, or monitoring that any of them has in their possession or obtained or ordered with respect to the Property during the past five (5) years.

3.14 Insurance. All insurance policies covering Overflow's real and personal property and providing for liability coverage, and other insurance are described in Schedule 3.14 (which specifies the insurer, policy number, type of insurance, and any pending claims). Overflow is not in default with respect to any provisions contained in any such insurance policies and has not failed to give any notice or present any claim under any such insurance policy in due and timely fashion.

3.15 Reorganization. Neither Party has taken or agreed to take any action that would prevent the Merger from qualifying as a reorganization under IRC 368(a)(1)(A).

## **SECTION 4. Conditions and Other Terms**

4.1 The obligation of each Party to effect the merger is subject to the satisfaction or waiver of

each of the following conditions:

- a. The representations, warranties, and covenants made by each Party in Section 3 of this Agreement are true and correct as of the Closing Date;
- b. There is no material adverse change in the affairs or financial condition of either Party from the date of this Agreement through the Closing Date;

4.2 CWC shall notify the IRS of the Merger and that the operations of Overflow have ceased and merged into CWC as of the Effective Date.

4.3 For a period of not more than five months following the Effective Date, the authorized representatives of Overflow will execute and deliver such deeds, contracts, and other instruments, and will cause to be taken such further actions as will reasonably be necessary in order to vest or perfect in CWC title to and possession of all the property, interests, assets, rights, and privileges of each party.

#### **SECTION 5. Joint Statement**

The Parties may draft a joint statement regarding the merger to be released to the public. Any media release(s) pertaining to the transaction contemplated in this Agreement will be reviewed and approved by each Parties prior to its release.

#### **SECTION 6. Termination**

6.1 Termination. This Agreement may be terminated and the merger abandoned at any time before the Closing Date (a) by mutual written agreement of the Parties; (b) by any Party if any condition provided in this Agreement has not been satisfied or waived on or before the Closing Date; or (c) by any Party if there has been a material breach of this Agreement by the other Party.

6.2 Effect of Termination. Upon termination, this Agreement will become wholly void and of no effect, without liability or obligations on the part of either Party.

#### **SECTION 7. Miscellaneous Provisions**

7.1 Waivers. No waiver will be binding unless it is in writing and signed by the Party making the waiver. A Party's waiver will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.

7.2 Amendment. This Agreement may be amended at any time before the Closing Date with the approval of the Parties and subject to any further vote required by applicable law, but such amendments shall only be valid if set forth in writing and signed by the Parties.

7.3 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Michigan, without regard to conflict of laws principles.

7.4 Severability. If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.

7.5 Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning of this Agreement.

7.6 Survival. All provisions of this Agreement that would reasonably be expected to survive the termination of this Agreement will do so.

7.7 Entire Agreement. This Agreement constitutes the entire agreement among the Parties and supersedes any prior agreement or understanding among the Parties concerning its subject matter.

7.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one agreement. Furthermore, this Agreement may be executed by a Party's signature transmitted by facsimile or by electronic mail, and copies of this Agreement executed and delivered by means of faxed or electronic mail shall have the same force and effect as copies hereof executed and delivered with original signatures. All Parties hereto may rely upon faxed or electronic mail as if such signatures were originals.

7.9 Signature by The West Michigan District. The West Michigan District of the Wesleyan Church signs this Plan of Merger *solely* to (a) bind Overflow to the Agreement since it is a developing church, (b) signify The West Michigan District of the Wesleyan Church's approval of the merger and (c) to commit to convey the Overflow Real Estate it holds for Overflow as shown on Schedule 3.7.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement to be effective as of the day and year first written above.

CENTRAL WESLEYAN CHURCH OF  
HOLLAND, MICHIGAN

OVERFLOW COMMUNITY CHURCH

By: \_\_\_\_\_

By: \_\_\_\_\_

Its \_\_\_\_\_

Its \_\_\_\_\_