

## MERGER AGREEMENT

This Merger Agreement (this “Agreement”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2019 by and between the Ballou Channing District of the Unitarian Universalist Association, Incorporated, a Massachusetts non-profit corporation under Chapter 180 of the Massachusetts General Laws (“Ballou Channing”), and the Unitarian Universalist Association, a Massachusetts non-profit corporation under Chapter 180 of the Massachusetts General Laws (the “UUA”). Ballou Channing and the UUA shall each be referred to hereinafter as a “Party” and collectively as the “Parties”.

WHEREAS, Ballou Channing is affiliated with the UUA, but has determined that it no longer wishes to operate as an entity distinct from the UUA; and

WHEREAS, the corporate members of Ballou Channing and the board of directors of the UUA have each determined, in a manner consistent with the requirements of Section 10 of Chapter 180 of the Massachusetts General Laws, that merger of Ballou Channing into the UUA is advisable and in their mutual best interests, on the terms and conditions set forth below;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The Merger. Ballou Channing will be merged with and into the UUA in accordance with this Merger Agreement and Chapter 180 of the Massachusetts General Laws (the “Merger”). From and after the Effective Date (as defined in Section 2 below), the separate existence of Ballou Channing will terminate and the UUA will continue in existence as the surviving corporation (the “Surviving Corporation”).

2. Effective Date. The Merger shall be effective as of the date specified in the Articles of Merger filed with the Secretary of the Commonwealth of Massachusetts (the “Effective Date”).

3. Articles of Organization and By-Laws of Surviving Corporation. From and after the Effective Date, the purposes and governing documents of the UUA will be the purposes and governing documents of the Surviving Corporation. No amendments or changes in the governing documents of the Surviving Corporation will be effected by the Merger.

4. Directors and Officers. The persons who were the directors and officers of the UUA immediately prior to the Effective Date will be the directors and officers of the Surviving Corporation.

5. Availability of Merger Agreement. A fully executed copy of this Agreement will be kept with the books and records of the UUA.

6. Termination or Abandonment. This Agreement and the Merger may be terminated and/or abandoned at any time before the Effective Date, and/or the consummation of the Merger may be deferred for a reasonable period (not to exceed twelve months), by written notice of Ballou Channing or the UUA to the other. In the event of any termination or abandonment of this Agreement and the Merger, this Agreement will become void and of no effect, without any

liability on the part of the parties hereto, their members, directors, or officers, or any other person or entity.

7. Representations and Warranties of Both Parties. Each Party represents and warrants, with respect to itself, as follows:

(a) *Organization, Good Standing, Power and Authority.* Each Party is a charitable corporation duly organized, validly existing and in good standing under the corporate laws of the Commonwealth of Massachusetts and has all requisite corporate power and authority to own, operate and lease its properties and to carry on its business as now being conducted. Neither party has any subsidiaries.

(b) *Compliance with Laws.* Each Party is in compliance in all material respects with all laws, regulations, orders, or injunctions applicable to such Party or to the ownership and use of such Party's properties and assets, including without limitation (i) all environmental laws and regulations, (ii) all consumer protection laws and regulations, (iii) all equal employment practices, laws and regulations, (iv) all applicable requirements of the Employee Retirement Income Security Act of 1974, as amended and (v) all federal and state laws applicable to non-profit organizations described in section 501(c)(3) of the Internal Revenue Code and operating in the Commonwealth of Massachusetts.

(c) *Power, Due Authorization.* (i) Each Party has the power and authority to execute and deliver this Agreement and to perform all of its obligations hereunder in accordance with the terms hereof, and (ii) all necessary corporate action to authorize the consummation of the transactions contemplated by this Agreement has been duly and effectively taken, including without limitation, the approval thereof by the members of Ballou Channing. No further consent, authorization, approval, waiver or agreement of any person, party, court, government or entity is required to be obtained in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby. This Agreement has been duly executed and delivered by each party and is the valid and binding obligation of each Party, enforceable against it in accordance with its terms.

(d) *No Breach or Violation.* Neither the execution and delivery by either Party of this Agreement nor the performance by such Party of its obligations hereunder will (i) violate any order, law, statute, rule or regulation applicable to such Party, in a manner which would materially adversely affect such Party or any of its assets or prohibit the consummation of the transactions contemplated hereby; (ii) conflict or result in a breach of any provision of the Articles of Organization or Bylaws of such Party or of any enforceable restrictions imposed by donors or otherwise on use of such Party's assets; or (iii) conflict with, result in any breach of, constitute a default under, or give to others any rights of termination, amendment, acceleration, suspension, revocation, or cancellation of, or result in the creation of an encumbrance of any kind on any of the properties or assets of such Party pursuant to, any note, bond, mortgage, contract, agreement, lease, license, permit, or other instrument or arrangement to which such Party is a party or by which such Party or any of its properties or assets is bound or affected.

(e) *Legal Proceedings; Orders.* Except to the extent already so disclosed by each Party, there are no actions, suits, proceedings or investigations pending with respect to such

Party or, to the knowledge of such Party, threatened against or affecting such Party, at law or in equity, or before or by any federal, state, municipal or other governmental or nongovernmental department, commission, board, bureau, agency or instrumentality, or any other person, and there are no outstanding or unsatisfied judgments, orders, decrees or stipulations affecting such Party or to which it may become a party. Neither Party has reason to believe that any such action, suit, proceeding or investigation may be brought or threatened against such Party.

8. Representations and Warranties. Ballou Channing represents and warrants to the UUA as follows:

(a) *Financial Statements.* Ballou Channing has delivered to the UUA (a) its unaudited balance sheet at June 30, 2018 and the related unaudited statements of income for the fiscal year ending on such date; and (b) its unaudited balance sheet at April 14, 2019 and the statements of income for the nine-month period ending on March 31, 2019. Such financial statements (the “Financial Statement”) fairly present the financial condition and results of operations as of such date, and for the periods their ending. In addition, Ballou Channing has delivered to the UUA: (i) its budget for FY2019; and (b) the Ballou Channing District Treasurer’s Report to the Annual Meeting, May 4, 2019, which report, among other things, fairly describes the extent to which actual operations diverged from the FY 2019 budget.

(b) *Books and Annual Records.* The minute books of Ballou Channing contain complete and correct records of all meetings held of, and actions taken by written consent of, the board of directors of Ballou Channing.

(c) *Real Estate/ Tangible Property.* Ballou Channing has not owned real estate since the sale of the so-called Cedar Hill property in 2009 and has not been party to a lease of real estate since June 30, 2014. Set forth on Section 8(c) of the Disclosure Schedule attached hereto as Exhibit A is a list of all tangible personal property owned by Ballou Channing.

(d) *No Undisclosed Liabilities.* Except as set forth in the Financial Statement or otherwise set forth in this Merger Agreement or in the Disclosure Schedule, Ballou Channing has no liabilities or obligations of any nature (whether known or unknown, and whether absolute, accrued, consistent or otherwise).

(e) *Absence of Certain Changes and Events.* Since the date of the FY 2018 financial statements, Ballou Channing has conducted its business and affairs only in the ordinary course, and has not suffered a material adverse change in its business, affairs or financial position and no circumstance exists that can reasonably be expected to result in a material adverse change.

(f) *Contracts.* Set forth in Section 8(f) of the Disclosure Schedule is a list of all contracts to which Ballou Channing is a party along with their respective expiration dates and the amounts payable under each.

(g) *Insurance.* Ballou Channing has delivered to the UUA accurate and complete copies of all policies of insurance to which it is a policy, an insured, or a beneficiary, or under which it or any directors or offices is covenant. All such policies of insurance are in full force and effect. There are no claims pending or contemplated under any such polices.

(h) *Employees.* Ballou Channing has not had any employees, whether full or part time since June 30, 2014. Ballou Channing has no independent contractors or consultants. There is no pending or threatened against Ballou Channing any claims or charges of discrimination or sexual harassment.

(i) *Bank Accounts.* Set forth in Section 8(i) of the Disclosure Schedule is a list of all bank accounts maintained by Ballou Channing (the “Bank Accounts”) together with approximate current balances in such accounts.

(j) *Trust Funds.* Ballou Channing manages three legacy trust funds that were created when three congregations in the district were dissolved; Olney, Sandwich and Woonsocket (the “Trust Funds”). Funds for these three trust funds are maintained with the UU Common Endowment Fund. Ballou Channing has provided the UUA with statements as of a recent date that set forth the balances in each of these funds. These trust funds are used to provide grants for congregations and simply put through the general fund.

9. Covenants and Conditions Precedent Prior to Closing.

(a) Between the date of this Agreement and the Effective Date, each Party will inform the other Party as soon as is practicable of any event or occurrence that would materially change any of the representations or warranties made pursuant to Section 7 or Section 8 above.

(b) Immediately prior to the Effective Date, Ballou Channing will close the Bank Accounts and transfer all cash balances in such accounts to the UUA per the directions of the UUA.

(c) *Administration of Trust Funds.* Ballou Channing will reasonably cooperate with the UUA in transitioning the administration of the Trust Funds to the UUA as of the Effective Date.

10. Miscellaneous.

(a) *Notices.* Any notice or other communication required or which may be given hereunder shall be in writing and shall be delivered personally, sent by electronic mail, or sent by a nationally recognized express delivery service such as Fed Ex charges prepaid to the other Party at such address or addresses as shall be specified from time to time by the other Party, and shall be deemed given upon receipt.

(b) *Waivers and Amendments.* This Agreement may be amended, and any term or condition hereof waived, only by a written instrument signed by the Parties or, in the case of a waiver, by the Party waiving compliance.

(c) *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.

(d) *Governing Law.* This Agreement shall be governed by, and construed in accordance with and subject to, the laws of the Commonwealth of Massachusetts.

(e) *Assignment; No Third-Party Beneficiaries.* This Agreement and the rights and

obligations set forth herein are not assignable by either Party. This Agreement shall inure to the benefit of and be binding upon the Parties and any successors and permitted assigns. Nothing in this Agreement will confer any rights or remedies on any person or entity other than each of the Parties and their respective successors-in-interest.

(f) *Severability.* To the extent any provision of this Agreement shall be invalid or unenforceable, it shall be considered deleted herefrom and the remainder of such provision and of this Agreement shall be unaffected and shall continue in full force and effect.

(g) *Government Filings.* The parties will cooperate with each other in the making of all filings and the giving of all notices as may be required under law that relate to the Merger.

*[Signatures on following page]*

Executed under seal as of the date first set forth above

BALLOU CHANNING DISTRICT OF THE UNITARIAN UNIVERSALIST ASSOCIATION,  
INCORPORATED

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

Name: Ralph E. Brown

Title: President

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

Name: Charles Donnelly

Title: Clerk

Address for Notices:

c/o Paul Sprecher

27 Grove Street

Scituate, MA 02066

Email: [psprecher@uua.org](mailto:psprecher@uua.org)

UNITARIAN UNIVERSALIST ASSOCIATION

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

Name: Susan-Frederick-Gray

Title: President

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

Name: Carey McDonald

Title: Clerk

Address for Notices:

Unitarian Universalist Association

Attn: Treasurer & CFO

24 Farnsworth Street

Boston, MA 02210-1409

Email: [tbrennan@uua.org](mailto:tbrennan@uua.org)

**EXHIBIT A:**  
**Disclosure Schedule**

Section 8 (c) (Tangible Personal Property):

- Ballou Channing does not own any tangible personal property

Section 8 (d) (Undisclosed Liabilities):

- None

Section 8 (f) (Contracts):

- Standard single users license/ contract  
for QuickBooks- fully paid through 8/31/19
- Standard single users license/contract  
for Zoom- fully paid through 11/17/19

Section 8 (i) (Approximate balances in Bank Accounts):

Eastern Bank:

- Non Profit Checking: \$15,415.77
- Business Savings: \$559.11