

## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (“Agreement”) is entered into as of \_\_\_\_\_, 2022, by and between Congregation Beth Shalom, a not-for-profit benevolent corporation organized under the laws of the state of Missouri (“Beth Shalom”) and Congregation Ohev Sholom, Inc., a not-for-profit corporation under the laws of the state of Kansas (“Ohev Sholom”) (hereinafter sometimes referred to collectively as the “Constituent Corporations”). This Agreement constitutes a binding contract between Beth Shalom and Ohev Sholom in accordance with the terms hereof and the applicable provisions of Missouri and Kansas law. The terms and conditions of the Agreement are as follows.

- 1. Names of Corporations.** The names of the corporations proposing to merge are:

Congregation Beth Shalom

and

Congregation Ohev Sholom, Inc.

**2. Merger.** On the Effective Date (defined below), Beth Shalom and Ohev Sholom will merge into a single corporation by Ohev Sholom merging with and into Beth Shalom.

**3. Name of Surviving Corporation.** Beth Shalom will be the surviving corporation (the “Surviving Corporation”) and its name will be the name of the Surviving Corporation.

**4. Effective Date.** The merger will be effective as of the close of business on the date a certificate of merger is issued by the Missouri Secretary of State. This date is referred to herein as the “Effective Date.”

- 5. Effect of Merger.**

(a) On the Effective Date, the separate existence of Ohev Sholom will cease. The existence of Beth Shalom will continue unaffected and unimpaired by the merger, and Beth Shalom will after the Effective Date have all of the rights, privileges, immunities and powers and will be subject to all of the duties and liabilities of a not-for-profit corporation organized under Missouri law.

(b) On the Effective Date, Beth Shalom will have and thereafter possess all the rights, privileges, immunities, powers and franchises, of a public as well as of a private nature, of each of the Constituent Corporations, and all property, real, personal and mixed, and all debts due on whatever account and all other choses in action and every other interest of or belonging to or due to either of the Constituent Corporations will be taken and deemed to be transferred to and vested or remain in Beth Shalom without further act or deed (and the title to any real estate, or any interest therein, vested in either of the Constituent Corporations will not revert or be in any way impaired by reason of the merger).

(c) Beth Shalom will, upon the Effective Date and thereafter, be responsible and liable for all the liabilities and obligations of each of the Constituent Corporations, and any claim existing or action or proceeding pending by or against either of such Constituent Corporations may be prosecuted to judgment as if such merger had not taken place or, in the case of Ohev Sholom, Beth Shalom may be substituted in its place. Neither the rights of creditors nor any liens upon the property of either of the Constituent Corporations will be impaired by the merger.

(d) The officers of Ohev Sholom (and any of them) are hereby authorized to execute all deeds, assignments and other documents which may be necessary to effect the full and complete transfer of the properties of such corporation to Beth Shalom. The officers of Beth Shalom (and any of them) are hereby authorized to execute and deliver any and all documents which may be required of it in order for it to assume or otherwise comply with any liability or obligation of Ohev Sholom. If at any time Beth Shalom determines that any further documents are necessary or desirable to vest in it, according to the terms hereof, the title to any property, rights, privileges, immunities, powers or franchises of Ohev Sholom, then Ohev Sholom will execute and deliver all such documents and do all things necessary to vest in and confirm to Beth Shalom title and possession to all such property, rights, privileges, immunities, powers and franchises, and to otherwise carry out the purposes of this Agreement.

**6. Articles of Incorporation; Bylaws; Directors; Officers.** The Articles of Incorporation and Bylaws of Beth Shalom will be the Articles of Incorporation and Bylaws of the Surviving Corporation. The directors and officers of Beth Shalom prior to the merger will continue in such offices of the Surviving Corporation after the merger unless otherwise specified in this Agreement. The Beth Shalom Bylaws shall be amended as necessary to incorporate the provisions of this Agreement and to incorporate additional changes mutually agreed to by the Joint Task Force as defined in Section 10(aa) and Exhibit G, attached hereto and incorporated herein.

**7. Conduct of Business by Ohev Sholom.** Prior to the Effective Date, Ohev Sholom will conduct its business in its usual and ordinary manner, and will not enter into any transaction other than in the usual and ordinary course of such business except as herein provided. Without limiting the generality of the foregoing Ohev Sholom will not, except as otherwise consented to in writing by Beth Shalom or as otherwise provided in this Agreement:

(a) Amend its Articles of Incorporation or bylaws;

(b) Undertake or incur any obligations or liabilities except current obligations or liabilities in the ordinary course of business and except for liabilities for fees and expenses in connection with the negotiation and consummation of the merger, to include expenses associated with the move and sale of the Ohev Sholom building;

(c) Enter into any new contracts;

- (d) Mortgage, pledge, subject to lien or otherwise encumber any realty or any tangible or intangible personal property;
- (e) Sell, assign or otherwise transfer any tangible assets of whatever kind, or cancel any claims, except in the ordinary course of business;
- (f) Sell, assign, or otherwise transfer any other intangible asset;
- (g) Default in performance of any material provision of any material contract or other obligation; or
- (h) Waive any right of any substantial value.

**8. Representations and Warranties of the Parties.** The parties covenant, represent and warrant to each other that:

- (a) It is on the date of this Agreement and will be on the Effective Date (i) a not-for-profit corporation qualified under section 501(c)(3) of the Internal Revenue Code, and with respect to Beth Shalom, duly organized, validly existing and in good standing under the laws of the State of Missouri and with respect to Ohev Sholom duly organized, validly existing and in good standing under the laws of the State of Kansas, and (ii) duly authorized under its Articles of Incorporation, as amended to date, and under applicable laws, to provide the services carried on by it; and
- (b) All federal, state and local tax returns, if any, required to be filed by it on or before the Effective Date will have been filed, and all taxes shown thereby to be required to be paid on or before the Effective Date will have been paid;
- (c) It has no undisclosed material liabilities of any nature except and to the extent reflected in its latest financial statement or otherwise disclosed in writing;
- (d) From the date of this Agreement through the Effective Date, there will not be any changes in its financial condition, assets or liabilities which, in the aggregate, will be materially adverse;
- (e) It has good and marketable title to all of its properties and assets;
- (f) There is no litigation or proceeding pending, or to its knowledge threatened against it which will have a material adverse effect on the financial condition of the corporation;
- (g) It will utilize its customary efforts to collect the accounts receivable owned by it on or prior to the Effective Date and will follow its past practices in connection with the extension of any credit prior to the Effective Date;

(h) Its Board of Directors and its members have authorized and approved the execution and delivery of this Agreement, and the performance of the transactions contemplated by this Agreement.

**9. Condition Precedent to Consummation of Merger.** The merger contemplated herein is subject to the following condition precedent: All obligations of Ohev Sholom under this Agreement will be performed or completed as of the Effective Date.

If the merger contemplated hereby is completed, all expenses incurred in consummating the plan of merger will, except as otherwise agreed in writing between the Constituent Corporations, be borne by the Surviving Corporation. If the merger is not completed, each of the Constituent Corporations will be liable for their own expenses incurred as a result of the contemplated merger.

Notwithstanding Board of Directors and membership approvals, at any time prior to the filing of the Certificate of Merger as contemplated by Section 2, such filing may be deferred from time to time by mutual consent of the respective Boards of Directors of each of the Constituent Corporations, and, to the extent provided in (a), (b), and (c) below, the merger may be abandoned:

(a) By the consent of either of the respective Boards of Directors of each of the Constituent Corporations;

(b) If in the judgment of the Board of Directors of either of the Constituent Corporations, any judgment is rendered relating to any legal proceeding not heretofore commenced or disclosed where the existence of such judgment will or may materially affect the rights of either Constituent Corporation to sell, convey, transfer or assign any of its assets or materially interfere with the operation of its business, and will thereby render the merger impracticable, undesirable or not in the best interests of the Constituent Corporations; or

(c) At the election of the Board of Directors of either Constituent Corporation if the taking of any steps necessary to effect the merger by either of the Constituent Corporations will be permanently or temporarily enjoined by a court having jurisdiction.

In the event of the abandonment of the merger pursuant to the foregoing provisions, this Agreement will become void and have no effect, without any liability on the part of either of the Constituent Corporations or its members or directors or officers in respect of this merger except the obligation of each Constituent Corporation to pay its own expenses.

**10. Miscellaneous.**

(a) The representations and warranties contained in this Agreement and any liability of one Constituent Corporation to the other for any default under the provisions of this

Agreement, will expire with, and be terminated and extinguished by, the merger under this Agreement on the Effective Date.

(b) All notices and other communications hereunder will be in writing and will be deemed to have been given if delivered in person or sent by prepaid first-class registered or certified mail, return receipt requested, as follows:

If to: Congregation Beth Shalom  
14200 Lamar Avenue  
Overland Park, KS 66223  
Attention: \_\_\_\_\_

With a copy to:

Michael J. Abrams  
Lathrop GPM LLP  
2345 Grand Blvd., Suite 2200  
Kansas City, MO 64105

If to: Congregation Ohev Sholom, Inc.  
5311 W. 75<sup>th</sup> Street  
Prairie Village, KS 66208  
Attention: Mike Silverman

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(c) Dues. Upon the execution of the merger, former Ohev Sholom members (identified on **Exhibit A – Membership List**) shall pay dues to Beth Shalom in the same amount as they paid to Ohev Sholom on the date of merger. Ohev Sholom Members shall not be compelled to pay any dues increases to Beth Shalom for a period of ten (10) years following the fiscal year of the merger. There may be situations when a dues decrease for a former Ohev Sholom member is appropriate. Requests for a dues decrease will be made in accordance with Beth Shalom policy.

(d) Building Assessments. Former Ohev Sholom Members shall be exempt from future Beth Shalom building assessments.

(e) Other Assessments. Former Ohev Sholom members shall be exempt from United Synagogue of Conservative Judaism fees and other charges and assessments, with the

exception of security as noted in 10(f), for a period of ten (10) years following the fiscal year of the merger.

(f) Security Charges. Former Ohev Sholom Members shall pay a security charge equal to the amount of the security charge assessed to Ohev Sholom Members in 2021 prior to the merger. Beth Shalom shall not charge former Ohev Sholom Members an amount in excess of the Ohev Sholom security charges except in the event that Beth Shalom's security charges exceed 8% of the security charges incurred by Beth Shalom during the period starting in March 1, 2019 through February 29, 2020 ("Base Fiscal Period"). For example, if the expense during the Base Fiscal Period was \$10,000 then no additional security expense will be due from Ohev Sholom Members until an increase exceeds \$10,800. In such event, the incremental security charges will be assessed on a per capita basis to the entire membership consisting of former Ohev Sholom members and Beth Shalom members.

(g) Board Members. The Beth Shalom Board of Directors, Executive Committee, and the Beth Shalom Foundation Board shall be populated with a proportionate number of seats based upon the actual number of Beth Shalom and Ohev Sholom (pre-merger) full member units as of the effective date of this Agreement. For example, should the number of full member units from each respective congregation be 480 (Beth Shalom) and 120 (Ohev Sholom) then the appropriate ratios would be 4:1. Under this example, if there are 16 board members on the Beth Shalom Board, four of those Board members should come from the roster of Ohev Sholom members on Exhibit A. The nominating committee shall include an Ohev Sholom member. This provision shall be in full force and effect for no longer than six (6) years after the Effective Date.

(h) Named Funds. The named funds currently maintained by each congregation shall be combined administratively but each of those fund names shall continue per their applicable donative restrictions and disbursement policy. The current Ohev Sholom named funds are referenced in **Exhibit B**, attached to and incorporated herein. It is intended that the account currently managed by the Jewish Community Foundation in the name of Ohev Sholom Sisterhood Endowment Fund shall continue in that name after the Effective Date of this Agreement. That account is listed herein in Exhibit B. In the event the administrator of the Fund deems it necessary to transfer title to said Fund into the name of Congregation Beth Shalom or any of its affiliates, it is specifically agreed and understood that the Fund shall continue to be used solely as specified in Exhibit B.

(i) Committee Eligibility. All Former Ohev Sholom Members shall be eligible to serve on Beth Shalom committees.

(j) Sisterhood. A sisterhood of Ohev Sholom and Beth Shalom shall be consolidated.

(k) Rabbi Padorr Contract. Beth Shalom shall assume the obligations of the October 18, 2018 Engagement Agreement of Rabbi Padorr attached hereto and incorporated herein as **Exhibit C** and the January 24, 2022 Engagement Agreement of Rabbi Padorr attached hereto as **Exhibit D**. Notwithstanding the above, Rabbi Padorr will serve as Associate Rabbi of Beth Shalom and will not act as Mara D'atra. Expenses associated with Rabbi Padorr's January 24, 2022 Engagement Agreement will be paid with funds from the dues of former Ohev Sholom members and the Ohev Sholom Shaw Endowment, referenced in Exhibit B.

(l) High Holidays. Former Ohev Sholom Members will be eligible for High Holiday seating and honors consistent with those of Beth Shalom Members.

(m) Past Presidents. Ohev Sholom past presidents will be afforded the same rights and privileges as past presidents of Beth Shalom.

(n) Ohev Sholom's Executive Director. Beth Shalom shall offer the current Ohev Sholom Executive Director, Steve Berman, a limited employment agreement and severance package attached hereto and incorporated herein as **Exhibit E**. Expenses associated with Steve Berman's limited employment agreement and severance package will be paid with funds from the Ohev Sholom Shaw Endowment, referenced in Exhibit B.

(o) Toni Page. Beth Shalom shall offer Toni Page a severance package under the terms set forth on **Exhibit F**, attached hereto and incorporated herein. Expenses associated with Toni Page's severance package will be paid with funds from the Ohev Sholom Shaw Endowment, referenced in Exhibit B.

(p) Yahrzeit Plaques. Ohev Sholom's Yahrzeit plaques shall be displayed in the same fashion to those of Beth Shalom.

(q) Memorabilia Room. Beth Shalom shall construct a respectful and dignified Ohev Sholom Memorabilia Room in the space currently occupied by the Beth Shalom library to display Ohev Sholom memorabilia. Beth Shalom will commence repairs of the space immediately following the date of the Agreement and will be completed within a reasonable amount of time. Expenses associated with repairs to the space will be borne by Beth Shalom. Expenses associated with improving the space will be paid with funds from the Ohev Sholom Shaw Endowment. In the event a dispute occurs on what constitutes a repair versus improvement, the issue will be submitted and ultimately resolved by the Joint Task Force.

(r) Confirmation Photographs. Beth Shalom shall display composites of Ohev Sholom's confirmation classes in the same or similar manner as the Beth Shalom confirmation classes.

(s) Northern location. Congregation Beth Shalom shall establish a location north of 79<sup>th</sup> street (Kansas or Missouri) commencing the first month following the Effective Date. A monthly musical Shabbat Service in a manner approved by the Conservative Movement

will be held. Until such time as a permanent location is decided upon, such services shall be conducted at Asbury United Methodist Church located in Prairie Village, Kansas, to the extent that location is available. Asbury Methodist shall continue as the site for the monthly service until such time as a committee, specifically formed for that purpose, shall designate an alternative location. It is also anticipated that this location will be used to expand the availability of Jewish religious, educational, social, and other experiences for current members and the general Jewish community. A joint committee shall provide recommendations to Beth Shalom on the location and uses of the Northern location. In addition, Congregation Beth Shalom will continue to provide a periodic service, located at 142<sup>nd</sup> and Lamar, utilizing musical services for worship services in a manner approved by the Conservative Movement.

(t) Sukkah and Courtyard. Beth Shalom shall construct a substantial and well-designed Sukkah and courtyard with the name Congregation Ohev Sholom Sukkah and Courtyard adjacent to the newly constructed addition to the current Beth Shalom building at 142<sup>nd</sup> and Lamar. The design of the Sukkah and Courtyard shall be mutually agreed upon by current representatives of Beth Shalom and Ohev Sholom. The Sukkah and Courtyard will be paid for out of the Ohev Sholom Sisterhood fund, the Ohev Sholom Sisterhood Endowment fund and/or the Shaw Endowment fund.

(u) Stationery. The stationery for the merged congregation shall reference the consolidation with Ohev Sholom, history of both congregations, and their shared values. The design and language will be mutually agreed upon prior to the Effective Date. The new stationery should be used starting with the announcement of the merger to both congregations.

(v) Religious Practices. Beth Shalom shall abide by the following ritual practices. Beth Shalom will use both its own and Ohev Sholom's prayer books for Shabbat services. Whenever practicable, Aliyot to the Torah will be limited to no more than two persons per Aliyah. Best efforts will be made to provide Aliyot to Kohanim and Leviim when practicable. Prior to the High Holidays, the Torah covers will be changed at a Shabbat morning service. It is also anticipated that Beth Shalom will try new melodies for Aleinu and alternate melodies when appropriate.

(w) This Agreement constitutes the entire agreement between the parties and supersedes and cancels any other agreement, representation or communication, whether oral or written, between the parties hereto relating to the transactions contemplated herein or the subject matter hereof.

(x) This Agreement will be governed by, construed and enforced in accordance with the laws of the State of Missouri, without regard to its conflicts of laws provisions.

(y) This Agreement will inure to the benefit of, and be binding upon, the parties hereto and their successors and assigns; provided, however, that any assignment by either



party of its rights under this Agreement without the written consent of the other party will be void.

(z) This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute the same instrument.

(aa) In the event a disagreement arises between the Constituent Corporations in the implementation of this Agreement, the members of the Joint Task Force (**Exhibit G**) shall meet to resolve the matter. If a member is unavailable, the remaining members representing the Constituent Corporations of the unavailable member, shall select a replacement. The Joint Task Force shall be required to meet within thirty (30) days of written notice to any member of the other Constituent Corporation that a dispute exists. The Constituent Corporations shall be required to meet until resolution is reached. The responsibilities noted herein shall be actively involved for a period not to exceed two (2) years from the Effective Date.

(bb) Each of the Constituent Corporations will take all actions and do all things necessary, proper, or advisable under the laws of the State of Missouri and the State of Kansas to consummate and make effective the merger contemplated herein including, but not limited to, filing the appropriate Articles of Merger with the Kansas and Missouri Secretaries of State.

[Signature page follows.]

IN WITNESS WHEREOF, this Agreement and Plan of Merger has been signed on behalf of Beth Shalom by \_\_\_\_\_, President, and on behalf of Ohev Sholom by \_\_\_\_\_, President, and such signatures have been attested to by the Secretary of each respective corporation, effective as of the date first above written.

**CONGREGATION BETH SHALOM, a  
not-for-profit benevolent Missouri  
corporation**

By \_\_\_\_\_  
\_\_\_\_\_, President

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, Secretary

**CONGREGATION OHEV SHOLOM,  
INC., a Kansas not-for-profit corporation**

By \_\_\_\_\_  
\_\_\_\_\_, President

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, Secretary

**EXHIBIT A**

**CONGREGATION OHEV SHOLOM MEMBERSHIP LIST**

**EXHIBIT B**  
**OHEV SHOLOM NAMED FUNDS**

**EXHIBIT C**

**OCTOBER 18, 2018 ENGAGEMENT AGREEMENT OF RABBI PADORR**

**EXHIBIT D**

**JANUARY 24, 2022 ENGAGEMENT AGREEMENT OF RABBI PADORR**

**EXHIBIT E**

**STEVE BERMAN LIMITED EMPLOYMENT AGREEMENT  
AND SEVERANCE PACKAGE**

**EXHIBIT F**  
**TONI PAGE SEVERANCE PACKAGE**



## **EXHIBIT G**

### **JOINT TASK FORCE**

The Joint Task Force, whose members are identified below, was formed in 2021 initially, to discuss the feasibility of consolidating Congregation Ohev Sholom and Congregation Beth Shalom, and subsequently, to negotiate an agreement to consolidate. The Presidents of each congregation appointed their respective members to the Joint Task Force in 2021 and have served as ad hoc members.

#### Congregation Beth Shalom Joint Task Force Members

Harold Kaseff

Jeff Katz

Debbie Sosland-Edelman

President Jason Krakow

#### Congregation Ohev Sholom Joint Task Force Members

Audrey Asher

Joel Levine

Mike Silverman

Past President Larry Gordon\*

\*Larry Gordon was President through December 31, 2021.