Memorandum

To: Detroit Annual Conference of the United Methodist Church (“DAC”) file; West Michigan Annual Conference of the United Methodist Church (“WMC”) file; Bishop Kiesey; Cabinet

From: Renard J. Kolasa, Chancellor DAC; Andrew J. Vorbrich, Chancellor WMC

Re: Guidelines for Merging/Consolidating United Methodist (“UM”) Churches in Michigan

Date: June 7, 2013

 This memorandum is intended to provide general guidelines for the merger or consolidation of United Methodist churches in Michigan. A form agreement is included. This material should not be used without the guidance of an attorney, who may need to make significant changes based on the circumstances of those involved.

1. The Agreement of Merger must include at least the following items, which will be needed for State of Michigan filings noted below:

A. Name and address of each merging entity.

B. Name of the surviving entity or the new consolidated entity.

C. The terms and conditions of the proposed merger. This includes a description of: how assets and members are being transferred to the surviving entity; voting rights of members; and how the Board of Directors (Trustees) is to be made up. For example: “All assets and liabilities are being transferred and assumed by the surviving entity”; “All members are being transferred and will have voting rights and privileges according to The United Methodist Book of Discipline (the “Discipline”); “The initial Board of Trustees of the surviving entity shall be all the current Trustees of the merging entities/surviving entity (choose one)”.

D. The wording of the Articles of Incorporation and Bylaws of the surviving entity must be included or attached. It is easiest to say that one of the two entities will survive, using its Articles and Bylaws. If one entity survives with the other merging into it, the Articles of the surviving entity may continue with the state, with an amendment filed if the name or other items in the Articles change. If two entities are consolidated, a new entity results and complete new Articles of Incorporation will need to be prepared and filed with the state. Form Articles of Incorporation for a UM church in Michigan are attached.

2. Civil law requirements should be met for the merger approval. (Only selected statutes have been noted below; see Discipline paragraph 2506. Michigan has an Ecclesiastical Corporation Act, 450.178 and following (“ECA”), and a Nonprofit Corporation Act, 450.2101, and following (“NCA”). These defer to certain church practices and the latter does not apply to the extent inconsistent with prior incorporating Acts. 450.178, 450.185, 450.2123.)

A. Articles may be amended by majority vote of members “present” at a meeting called for such purpose. MCL 450.182. MCL 450.2611(4) allows a majority vote of those “entitled to vote” or, with 20 days notice, a majority vote of those members “present”. Proxy voting is permitted.

Thus, give all members 20 days written notice of the meeting for the merger vote, which will involve of necessity an amendment to some of the Articles of Incorporation.

B. Board (Trustees) approval of the Agreement and Plan of Merger is needed. MCL 450.2701(2). A 10 day prior notice is appropriate as Articles will be amended. MCL 450.2611(3).

C. Merger approval is needed from members “entitled to vote”. MCL 450.2703. The only members entitled to vote at a church conference are those present at the meeting. Discipline paragraphs 248, 2540. The Discipline constitutes the Bylaws for UM churches, and MCL 450.2304(3) and 2441 provide the Bylaws may limit voting rights of members. A list of those entitled to vote at the meeting must be prepared at the meeting.

Further, MCL 450.185 provides the statute is not to interfere with practices of any church heretofore established. MCL 450.183 provides the right to convey real property shall be subject to such restrictions and conditions as may be prescribed by the rules of discipline, articles or by-laws of the church corporation involved. The NCA provisions (for example, 450.2703) only apply “to the extent not inconsistent with the act under which a corporation is or has been formed.” (MCL 450.2123(1). As noted below, only members present at a church conference are entitled to vote under Discipline 2540.

These statutory provisions support interpreting members “entitled to vote” on UM church mergers as those present at the church conference. These statutes defer to practices followed in UM churches using the Discipline as Bylaws. Interpreting members “entitled to vote” as all members of a local church (all those who have been baptized or profess their faith under Discipline 215) has not been church practice and is wholly impractical.

MCL 458.28, a statute initially applicable to Methodist Episcopal churches, requires a 2/3 vote of all members of the quarterly conference to amend Articles of Incorporation. This could be interpreted to require a 2/3 vote of the administrative council/charge conference.

Twenty (20) days advance notice of a meeting concerning a merger proposal is needed, in spite of ten (10) day notice requirements in the Discipline. MCL 450.2703; Discipline 2539, 2541.

3. Requirements of the Discipline should be met for the merger.

A. Follow the Disciplinary procedures preliminary to any merger recommendation. Discipline 2546, 201-205.

B. The Trustees should approve the merger, having responsibility in dealing with church property. Discipline 2533.

C. The charge conference has final authority on church property and approves mergers. Discipline 246-247; 2540, 2545. The members of the charge conference are the members of the church council (administrative board) “or other appropriate body”. 246.2. However, a church conference is recommended, and approval of the members present is needed to approve property transfers. 2540. A church conference is broader in representation and a charge conference may be called as a church conference via 246.7.

D. The senior pastors of each involved church and the District Superintendent thereof must sign the Agreement and Plan of Merger.

4. A Certificate of Merger/Consolidation, form BCS/CD-550, must be filed with the Michigan Department of Licensing and Regulatory Affairs, Bureau of Commercial Services. The document is effective on the date filed or a date specified in the document within 90 days after the filing. It is to be signed on behalf of all involved corporations.

5. When two or more churches are merging, a written notice confirming the merger may be sent to the Michigan Attorney General’s office. A dissolution of a charitable purpose corporation requires notice to the Attorney General. Arguably, a merger does not constitute a dissolution of the corporations involved.

A consent to the merger, or a written statement that the consent is not required, must be obtained from the Consumer Protection and Charitable Trusts Division, Michigan Attorney General, P.O. Box 30214, 525 W. Ottawa, Lansing, MI 48909 (517) 373-1152 and submitted when a nonprofit charitable purpose corporation merges or consolidates into a for profit corporation or a foreign nonprofit corporation that does not have a Michigan certificate of authority. This would typically not apply to Michigan UM church mergers.

6. A number of due diligence legal and potential liability matters should be addressed before a merger of churches, in addition to the required reviews under the Discipline. These should include at least the following:

A. Confirm with the State of Michigan the names and good standing of the churches involved. Get copies of the Articles of Incorporation and last Michigan Annual Report from the state.

B. A complete list of the assets of each entity should be prepared.

C. A copy of the title to all real estate should be obtained. Is the title clear? Are there reverters? A title search and title insurance should be considered. Are there any environmental concerns regarding any real estate? If so, do not combine in the merger problem property with property there are no concerns over. The new owner would be liable for required environmental cleanup. Phase I environmental reviews should be considered. The UM GCFA website has an extensive checklist of concerns to consider regarding real estate transfers.

E. The contracts (employment, leases, utilities, services, product purchases, insurance, employee benefits, warranties, deferred compensation agreements, etc.) for each entity should be reviewed. The new entity is assuming these. Be sure there are no insurance gaps in coverage. Be sure approvals required are obtained.

F. Confirm there is no pending litigation for any entity.

G. Confirm all taxes, apportionments, ministry shares, bills, and other obligations of each entity are paid to date.

H. Confirm whether there are any mortgages. Do lenders need to approve a merger under the documents?

I. A list of financial accounts and a copy of signature authorizations should be obtained. These will need to be changed when the merger occurs.

J. The business records of each entity should be obtained and reviewed before the merger occurs.

K. The federal identification number of each entity should be obtained.

L. Keys, safe combinations, security access codes and the like should be listed before the merger.

M. All insurance should be listed, reviewed with the providers, coordinated and then continued for the surviving entity.

7. The UM Church GCFA legal department should be notified if and when a new church entity is incorporated and asked to add it to our IRS group tax exempt ruling.

Form Agreement and Plan of Merger

Agreement and Plan of Merger

 Pursuant to the Michigan Revised Nonprofit Corporation Act (the “Act”) and The Book of Discipline of The United Methodist Church (“Book of Discipline”), this Agreement and Plan of Merger is made as of \_\_\_\_\_\_\_\_\_\_ between and among the following Michigan ecclesiastical or nonprofit corporations:

 (List all the involved Churches)

\_\_\_\_\_\_\_\_\_\_\_\_\_United Methodist Church (“\_\_\_\_\_\_\_\_\_\_\_\_\_ Church”), a Michigan nonprofit corporation with its principal office at [address], Michigan, a Merging Church; and

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ United Methodist Church, Inc. (“\_\_\_\_\_\_\_\_\_\_\_\_ Church”), a Michigan nonprofit corporation with its principal office at [address], Michigan, a Merging Church;

(together sometimes referred to as the “Merging Entities”, “Merged Churches” or “Merging Churches”); and

 (Name the Surviving Entity or the new consolidated entity)

\_\_\_\_\_\_\_\_\_\_\_\_\_ United Methodist Church (the “Surviving Entity”, the “Surviving Church” or “\_\_\_\_\_\_\_\_ United Methodist Church”), a Michigan nonprofit corporation with its principal office at [address], Michigan, the surviving or new consolidated entity.

Recitals

 WHEREAS, the Merging and Surviving Entities are Michigan nonprofit or ecclesiastical corporations organized exclusively for the same or similar religious, educational and charitable purposes, as more fully set forth in the Book of Discipline, including;

A. To help people accept and confess Jesus Christ as Lord and Savior and to live their daily lives in light of their relationship with God;

B. To minister to persons in the community where the church is located;

C. To provide appropriate training and nurture to all;

D. To cooperate in ministry with other local churches;

E. To defend God’s creation and live as an ecologically responsible community;

F. To participate in the worldwide missions of the church;

G. To be a connectional society of persons who have been baptized, have professed their faith in Christ, and have assumed the vows of membership in The United Methodist Church;

H. To receive, hold, and disburse gifts, bequests, and funds arising from all sources for such purposes;

I. To acquire, own, maintain and dispose of real, personal, tangible and intangible property incidental, necessary, or proper to carry out said purposes;

J. To do any and all things necessary or incident to the accomplishment of such purposes;

K. To do all of the above in accordance with and subject to the doctrines, laws, usages, and ministerial appointments of The United Methodist Church.

(These may be changed, but items h through k should not be modified or deleted)

 WHEREAS, in accordance with the Act and the Book of Discipline, the Boards of Directors (also known as the Boards of Trustees) of the Merging Churches have duly-adopted this Agreement and Plan of Merger and, deeming it advisable and in the best interest of the Merging Churches and their members that the Merging Churches be merged with and into the Surviving Entity, have recommended its approval by their respective members in a Charge and/or Church Conference of each entity; and

 WHEREAS, in accordance with the Act and the Book of Discipline, the members of each Merging Church acting have duly approved this Agreement and Plan of Merger by the affirmative vote of a majority of members present at duly-constituted and duly-noticed meetings (also known as Charge or Church Conferences) held for that purpose; and

 WHEREAS, in accordance with the Act and the Book of Discipline, the Board of Directors of the Surviving Entity has duly-adopted this Agreement and Plan of Merger;

 NOW, THEREFORE, the Merging and Surviving Entities hereby agree that the Merging Churches shall be and are hereby merged into the Surviving Entity as of the Effective Date on and subject to the following terms, conditions and agreements:

1. The Merger and the Purpose of the Merger.

 Upon the terms and subject to the satisfaction of the conditions contained in this Agreement and Plan of Merger, at the effective date, the Merging Churches shall be merged with and into the Surviving Entity, which shall be the surviving or consolidated corporation. The merger shall be effected pursuant to the provisions of the Michigan Nonprofit Corporation Act, as amended (“MNCA”), applicable Michigan law, and the Book of Discipline. Upon the consummation of the merger, the separate existence of the Merging Churches shall cease, the corporate existence of the Surviving Entity with all of its purposes, powers and objectives shall continue unaffected and unimpaired pursuant to its governing instruments, and the Merging Church(es) and the Surviving Entity shall be a single corporation.

2. Name, Location, Duration, Effective Date, Articles.

 2.1 The name of the Surviving Entity shall be \_\_\_\_\_\_\_\_\_\_\_\_ United Methodist Church.

Its principal office shall be located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Michigan, or such other location as may be properly designated from time to time.

 2.1 The duration of the Surviving Entity shall be perpetual.

 2.3 Once the conditions to the merger set forth in this Agreement and Plan of Merger and the Book of Discipline are satisfied, the Surviving Entity and the Merging Churches shall cause a Certificate of Merger conforming to Michigan law to be filed with the Michigan Department of Licensing and Regulatory Affairs in the manner provided by Michigan law.

 2.4 The merger shall become effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (which must be when the Certificate of Merger is filed or a date specified in the document within 90 days after the filing).

3. Members.

 The members of the Merging Churches shall be members of the Surviving Entity, and the Surviving Entity shall add such members to its membership records. All such members shall have only such voting and other rights as existed immediately prior to their approval of this Agreement and Plan of Merger, and as may hereafter be amended or changed by the Book of Discipline. Members shall be admitted or removed from the Surviving Entity pursuant to the Book of Discipline and only members present at any meeting shall be considered “entitled to vote” thereat.

4. Articles and Bylaws.

 The Articles of Incorporation of the Surviving Entity are attached hereto and shall be the Articles of Incorporation until amended or repealed pursuant to applicable law and the Book of Discipline.

 The Book of Discipline shall constitute the Bylaws of the Surviving Entity, except to the extent other Bylaws consistent with the Book of Discipline are duly adopted thereby.

 The relationship of the Surviving Entity with the United Methodist Church may not be changed in any manner not authorized by the Book of Discipline and the Articles of Incorporation of the Surviving Entity may not be amended to permit otherwise.

5. Purposes, Powers and Mission Statement.

 The Surviving Entity shall be operated exclusively for religious, educational and charitable purposes, as set forth in the recitals hereto, and as more fully set forth in the Book of Discipline and its governing instruments. The Surviving Entity may engage in any lawful act or activity and shall enjoy all of the powers, duties and privileges set forth in or authorized by the Book of Discipline and Michigan law.

(Additional powers or statements of mission could be added here.)

6. Trustees, Church Council and Committees.

 Upon approval of the merger, the initial Church or Administrative Council, Board of Trustees (Board of Directors), and other administrative groups of the Surviving Entity shall be (chose one or otherwise specify):

 A. Formed and constituted by the Surviving Entity in accordance with the Book of Discipline.

 B. The current organizations, committees and members of the Surviving Entity.

 C. As determined by the church council of the Surviving Entity, which is to include an equal number of members from each of the Merging Churches, to the extent practical and possible. The initial members from each Merging Church shall be those designated by the vote of the charge or church conference of such Merging Church. Vacancies may be filled by the remaining members of the Lead Team or the charge conference of the Surviving Entity. The Lead Team will act in conformance with the Book of Discipline as a church council, and will have full governing authority over all programs and facilities, subject to the Book of Discipline. The Lead Team shall constitute the initial Board of Directors and Board of Trustees of the Surviving Entity.

 D. The following named organizations and committees and the individuals named to serve thereon.

 E. (Some other arrangement spelled out in detail.)

7. Property.

 7.1 Between the time the merger is approved and the effective date, no party will dispose of any cash, stock, bonds, real estate, or other liquid assets, except in the ordinary course of paying business obligations, but may distribute items of tangible personal property that constitute “artifacts” as determined by the Board of Trustees of the entity involved. Each entity shall prepare an inventory of assets as of the date of the merger approval thereby.

 7.2 On the Effective Date, in accordance with applicable Michigan law, the separate existence of the Merging Churches shall cease. All the property, rights, privileges, licenses, powers, obligations due, causes of action, and other assets of every kind and description of the Merging Churches shall be transferred to, and vested in the Surviving Entity without further act or deed and all property, rights, and every other interest of the Surviving Entity and the Merging Churches shall be the property of the Surviving Entity as effectively as if they were the original property of the Surviving Entity. All archives and records of the Merging Churches shall become the responsibility of the Surviving Entity, pursuant to the Book of Discipline. Title to any property vested in any of the Merging Churches shall not revert or be in any way impaired by reason of the merger.

 7.3 The Merging Churches agree from time to time, as and when requested by the Surviving Entity or by its successors or assigns, to execute and deliver or cause to be executed and delivered all such deeds and instruments and to take or cause to be taken such further or other action as the Surviving Entity may deem necessary or desirable in order to vest in and confirm to the Surviving Entity title to and possession of any property of the Merging Churches acquired or to be acquired by reason of or as a result of the merger herein provided for and otherwise to carry out the intent and purposes hereof, and the proper officers of the Merging Churches and the proper officers of the Surviving Entity are fully authorized in the name of the Merging Churches or otherwise to take any and all such action.

 7.4 As of the Effective Date, in accordance with applicable Michigan law, the Surviving Entity shall be responsible and liable for all the liabilities and obligations of the Merging Churches, and any claim existing or action or proceeding pending by or against the Merging Churches may be prosecuted against the Surviving Entity. Neither the rights of creditors nor any liens on the property of the Merging Churches shall be impaired by the merger, and all debts, liabilities, and duties of the Merging Churches shall attach to the Surviving Entity, and may be enforced against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by it.

 7.5 All designated funds, endowments and memorial funds held by the Merging Churches shall continue to be held and disbursed by the Surviving Entity in accordance with the terms and conditions of each such fund or endowment and consistent with the practice of the Merging Churches. Until the first annual charge conference following the merger, such funds and endowments shall continue to be administered by the same committee members responsible for administration prior to the merger. At the first annual charge conference following the merger, each committee shall report on the status of each fund or endowment, and make recommendations for consolidation of funds and endowments as may advisable. Said charge conference may re-constitute the committees and elect new committee members.

 7.5 The parties respectively, shall take all such action as may be reasonably necessary or appropriate in order to effectuate the transactions contemplated by this Agreement and Plan of Merger. If after the Effective Date any further action is necessary or desirable to carry out the purposes of this Agreement and Plan of Merger, the officers and directors of the Surviving Entity have the authority to take that action.

 7.6 The Merging Churches acknowledge that one or more of the existing church properties, including personal property contained therein may be sold or otherwise disposed of following the Effective Date of the merger by the Surviving Entity.

 7.7 The Board of Trustees of the Surviving Entity are authorized to record an appropriate short-form Memorandum of this Agreement and Plan of Merger against the title to any or all real property owned by or registered in the name of any of the Merging Churches or their predecessors in title. This Memorandum may recite that, as of the Effective Date, title to any such real property vested as a matter of law in the Surviving Entity subject to the trust clause provisions of the Book of Discipline.

 7.8 See Attachment A for a projected budget of the Surviving Entity. As of the Effective Date, the Surviving Entity shall record the initial values and amounts of all assets and liabilities reflected on the books and records of the Merging Churches and may make such adjustments as deemed necessary in order to place such assets and liabilities on a uniform basis.

 7.9 No Trustee of the Surviving Entity shall be personally liable for monetary damages for breach of fiduciary duty as a Trustee except that the foregoing shall not eliminate or limit the liability of a Trustee to the Surviving Entity for monetary damages for any of the following matters:

 A. Any breach of a Trustee’s duty of loyalty to the Surviving Entity;

 B. Any acts or omissions not in good faith or which involved intentional misconduct or a knowing violation of law;

 C. Acts specified in applicable statutes; or

 D. Any transaction from which the Trustee derived improper personal benefit.

This provision shall not, however, eliminate or limit the liability of a trustee to the Surviving Entity for monetary damages for any act or omission occurring prior to the date when the provision becomes effective.

8. Representations and Warranties of the Surviving Entity.

 The Surviving Entity represents and warrants to the Merging Churches that as of the Effective Date:

 8.1 Organization; Power; and Qualification. The Surviving Entity is duly organized and validly existing under the laws of the State of Michigan and has all requisite power and authority and all governmental licenses, authorizations, consents and approvals necessary to own, lease and operate its properties and to carry on its business as it is now being conducted. The Surviving Entity is qualified to do business and is in good standing in each jurisdiction in which the character and location of the assets or the nature of its business make such qualifications necessary.

 8.2 Authority; Power. The execution and delivery of this Agreement and Plan of Merger by the Surviving Entity have been authorized by all necessary corporate action on the part of the Surviving Entity. The Surviving Entity has the requisite corporate power and authority to execute and deliver this Agreement and Plan of Merger, and to take any and all other actions required to be taken, directly or indirectly, by it pursuant to the provisions of this Agreement and Plan of Merger. This Agreement and Plan of Merger constitutes the legal, valid and binding obligation of the Surviving Entity enforceable against the Surviving Entity in accordance with its terms.

 8.3 No Conflicts. The execution and delivery of this Agreement and Plan of Merger, and the fulfillment and compliance with the terms and conditions hereof will not, with or without the giving of notice or the lapse of time, or both, (a) conflict with or violate any provision of the Articles of Incorporation or Bylaws of the Surviving Entity, (b) violate, result in a breach of, constitute a default under, or give rise to any right of termination, cancellation, or acceleration under any of the terms, conditions or provisions of any note, lien, bond, mortgage, indenture, license, lease, contract, commitment, agreement, restriction, or other instrument or obligation to which the Surviving Entity is a party or by which the Surviving Entity’s properties or assets or its business may be bound, (c) violate any law, rule or regulation of any government or governmental agency or body, or any judgment, order, writ, injunction, or decree of any court, administrative agency, or governmental agency or body applicable to the Surviving Entity or any of its properties, assets, or outstanding shares or other securities, or (d) result in the creation of any lien upon any of the assets or properties of the Surviving Entity, or cause the maturity of any liability, obligation, or debt of the Surviving Entity to be accelerated or increased.

 8.4 Consents and Approvals. The execution, delivery, and performance of this Agreement and Plan of Merger by the Surviving Entity and the consummation by the Surviving Entity of the transactions contemplated hereby will not require any notice to, or consent, authorization, or approval from any court or governmental authority or any other third party that has not been given or obtained.

 8.5 Compliance with Laws; No Default or Litigation.

 A. The Surviving Entity is not in default or violation (nor is there any event which, with notice or lapse of time or both, would constitute a default or violation) in any respect (i) under any contract, agreement, lease, consent order, or other commitment to which it is a party or to which its business or its assets are subject or bound, or (ii) under any law, rule, regulation, writ, injunction, order or decree of any federal, state or local court or any federal, state, local or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

 B. Except as previously disclosed to the Merging Churches, there are no actions, suits, claims, investigations, or legal arbitration or administrative proceedings in progress, pending, or, to the best of the knowledge of the Surviving Entity, threatened by or against the Surviving Entity (or any of its assets or properties) whether at law or in equity, whether civil or criminal in nature, or whether before or by a federal, state, local or other governmental body or any commission, board, bureau, agency, or instrumentality, domestic or foreign.

 C. The Surviving Entity has not been charged with or received any notice of any violation of any rule, regulation, ordinance, law, order, decree, or requirement relating to the Surviving Entity, its respective properties or assets, or the transactions contemplated by this Agreement and Plan of Merger.

 D. No action, suit, or proceeding has been instituted or, to the best of the knowledge of the Surviving Entity, threatened to restrain, prohibit, or otherwise challenge the legality or validity of the transactions contemplated by this Agreement and Plan of Merger.

 8.6 Title to Property. The Surviving Entity has good, valid and marketable title to all of its properties, interests in properties and assets (other than those held by lease), real or personal, tangible or intangible, free and clear of all liens, except for liens of public record.

 8.7 Survival. All representations and warranties contained in this Agreement and Plan of Merger shall survive the execution, delivery, and performance hereof, and the Effective Date.

9. Representations and Warranties of the Merging Churches.

 Each of the Merging Churches with regard to itself only represents and warrants to the Surviving Corporation that as of the date of execution hereof:

 9.1 Organization; Power; and Qualification. The Merging Church is duly organized and validly existing under the laws of the State of Michigan and has all requisite power and authority and all governmental licenses, authorizations, consents and approvals necessary to own, lease and operate its properties and to carry on its business as it is now being conducted. The Merging Church is qualified to do business and is in good standing in each jurisdiction in which the character and location of the assets or the nature of its business make such qualifications necessary.

 9.2 Authority; Power. The execution and delivery of this Agreement and Plan of Merger by the Merging Church have been authorized by all necessary corporate action on the part of the Merging Church. The Merging Church has the requisite corporate power and authority to execute and deliver this Agreement and Plan of Merger, and to take any and all other actions required to be taken, directly or indirectly, by it pursuant to the provisions of this Agreement and Plan of Merger. This Agreement and Plan of Merger constitutes the legal, valid and binding obligation of the Merging Church enforceable against of the Merging Church in accordance with its terms.

 9.3 No Conflicts. The execution and delivery of this Agreement and Plan of Merger, and the fulfillment and compliance with the terms and conditions hereof will not, with or without the giving of notice or the lapse of time, or both, (a) conflict with or violate any provision of the Articles of Incorporation or Bylaws of the Merging Church, (b) violate, result in a breach of, constitute a default under, or give rise to any right of termination, cancellation, or acceleration under any of the terms, conditions or provisions of any note, lien, bond, mortgage, indenture, license, lease, contract, commitment, agreement, restriction, or other instrument or obligation to which the Merging Church is a party or by which the Merging Church’s properties or assets or its respective business may be bound, (c) violate any law, rule or regulation of any government or governmental agency or body, or any judgment, order, writ, injunction, or decree of any court, administrative agency, or governmental agency or body applicable to the Merging Church or any of its properties, assets, or outstanding shares or other securities, or (d) result in the creation of any lien upon any of the assets or properties of the Merging Church, or cause the maturity of any liability, obligation, or debt of the Merging Church to be accelerated or increased.

 9.4 Consents and Approvals. The execution, delivery, and performance of this Agreement and Plan of Merger by the Merging Church and the consummation by the Merging Church of the transactions contemplated hereby will not require any notice to, or consent, authorization, or approval from any court or governmental authority or any other third party that has not been given or obtained.

 9.5 Compliance with Laws; No Default or Litigation.

 A. The Merging Church is not in default or violation (nor is there any event which, with notice or lapse of time or both, would constitute a default or violation) in any respect (i) under any contract, agreement, lease, consent order, or other commitment to which it is a party or to which its respective business or its assets are subject or bound, or (ii) under any law, rule, regulation, writ, injunction, order or decree of any federal, state or local court or any federal, state, local or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

 B. Except as previously disclosed to the Surviving Corporation, there are no actions, suits, claims, investigations, or legal arbitration or administrative proceedings in progress, pending, or, to the best of the knowledge of the Merging Church, threatened by or against the Merging Church (or any of its assets or properties) whether at law or in equity, whether civil or criminal in nature, or whether before or by a federal, state, local or other governmental body or any commission, board, bureau, agency, or instrumentality, domestic or foreign.

 C. The Merging Church has not been charged with or received any notice of any violation of any rule, regulation, ordinance, law, order, decree, or requirement relating to the Merging Church, its respective properties or assets, or the transactions contemplated by this Agreement and Plan of Merger.

 D. No action, suit, or proceeding has been instituted or, to the best of the knowledge of the Merging Church, threatened to restrain, prohibit, or otherwise challenge the legality or validity of the transactions contemplated by this Agreement and Plan of Merger.

 9.6 Survival. All representations and warranties contained in this Agreement and Plan of Merger shall survive the execution, delivery, and performance hereof, and the Effective Date.

10. Miscellaneous.

 10.1 Counterparts; Signatures. This Agreement and Plan of Merger may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties agree to accept facsimile copies of signatures to this Agreement and Plan of Merger as originals.

 10.2 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given and received (a) upon delivery, if personally delivered; (b) on the fifth day after being deposited with the U.S. Postal Service, if sent by certified or registered mail, return receipt requested; (c) on the next day after being deposited with a reliable overnight delivery service; or (d) upon receipt of an answer back, if transmitted by facsimile, postage prepaid in all cases other than facsimile, addressed to the other party at their respective registered office in the State of Michigan, or facsimile numbers in the case of a facsimile.

 10.3 Entire Agreement. This Agreement and Plan of Merger and the agreements expressly contemplated herein, including the Exhibits and Schedules referred to herein which form a part of this Agreement and Plan of Merger, contain the entire understanding of the parties with respect to the transactions provided for in this Agreement and Plan of Merger and supersedes all prior agreements and understandings, written or oral, between the parties with respect to the transactions contemplated by this Agreement and Plan of Merger.

 10.4 Waiver of Compliance; Modifications. Any of the parties for whose benefit a warranty, representation, covenant or condition is intended may in writing waive any inaccuracies in the warranties and representations contained in this Agreement and Plan of Merger or waive compliance with any of the covenants or conditions contained herein and so waive performance of any of the obligations of any of the other parties hereto, and any defaults hereunder; provided, however, that such waiver shall not affect or impair the waiving party's rights with respect to any other warranty, representation or covenant or any default hereunder. No supplement, modification or amendment of this Agreement and Plan of Merger shall be binding unless it is in writing and executed by all of the parties hereto.

 10.5 Validity of Provisions. Should any part of this Agreement and Plan of Merger be declared by any court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Agreement and Plan of Merger, which shall continue in full force and effect as if this Agreement and Plan of Merger had been executed with the invalid portion thereof eliminated therefrom, it being the intent of the parties that they would have executed the remaining portions of this Agreement and Plan of Merger without including any such part or portion which may be declared invalid.

 10.6 No Intention to Benefit Third Parties. The provisions of this Agreement and Plan of Merger are not intended to, and shall not, benefit any person other than the parties to this Agreement and Plan of Merger, the provisions hereof are not intended to, and shall not create any third party beneficiary right in any person.

 10.7 Assignment. Except as set forth below, neither this Agreement and Plan of Merger nor any right, interest or obligation hereunder may be assignable or transferable by any of the parties, without the prior written consent of the other parties and any purported assignment without such consent shall be void and without effect.

 10.8 Parties in Interest. This Agreement and Plan of Merger shall inure to the sole benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. Nothing in this Agreement and Plan of Merger, express or implied, shall give or be construed to give to any person or entity, other than the parties hereto and their respective successors and permitted assigns, any legal or equitable right hereunder.

 10.9 Governing Law This Agreement and Plan of Merger shall be governed under the laws of the state of Michigan.

 In Witness Whereof, this Agreement and Plan of Merger has been signed by the Chair of the Trustees and the recording secretary of the Charge/Church Conference of each of the Merging Churches and the Chair and Secretary of the Trustees of the Surviving Entity as of the date first above written.

\_\_\_\_\_\_\_\_\_\_\_\_UNITED METHODIST CHURCH

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

 Trustee Chair Secretary

\_\_\_\_\_\_\_\_\_\_\_\_UNITED METHODIST CHURCH

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

 Trustee Chair Secretary

\_\_\_\_\_\_\_\_\_\_\_\_ UNITED METHODIST CHURCH

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

 Trustee Chair Secretary

Approval of Merger

 In accordance with the Book of Discipline, the senior pastors of the Merging Churches, the senior pastor of the Surviving Entity, and District Superintendent of the \_\_\_\_\_\_\_\_\_\_\_\_\_ District approve the merger contemplated by this Agreement and Plan of Merger.

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

Rev.

Senior Pastor

\_\_\_\_\_\_\_\_\_\_\_\_\_United Methodist Church

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

Rev.

Senior Pastor

\_\_\_\_\_\_\_\_\_\_\_\_United Methodist Church

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

Rev.

Senior Pastor

\_\_\_\_\_\_\_\_\_\_\_United Methodist Church

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

Rev.

District Superintendent, \_\_\_\_\_\_\_\_\_\_\_\_District

Of the United Methodist Church