

Introduced:  
Public Hearing:  
Adopted:  
Effective:

**VILLAGE OF PENTWATER**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP  
OF SECTION 19.09 OF THE VILLAGE OF PENTWATER ZONING ORDINANCE**

THE VILLAGE OF PENTWATER ORDAINS:

The Official Zoning Map is hereby amended to conditionally rezone the following described property from R-2, Single Family Residential District, to C-4, Hotel Resort District:

Lot 10, 11 and 12 of the “Re-Plat of Block 30, and part of vacated Lake Street, of Plat of Middlesex, Village of Pentwater”, being located on Government Lot 3 of Section 14, Township 16 North, Range 18 West, Pentwater Township, Oceana County, Michigan. (The “Property”).

Parcel Number: 64-044-430-010-00

Common Address: 10 North Channel Lane, Pentwater, Michigan.

**CONDITIONAL REZONING AGREEMENT**

This Conditional Rezoning Agreement (the “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the VILLAGE OF PENTWATER, a Michigan municipal corporation, with its offices at 327 South Hancock Street, Pentwater, Michigan (the

“Village”), and CHANNEL LANE INN, LLC, a Michigan limited liability company, with its principal offices located at 10 Channel Lane, Pentwater, Michigan (“Channel Lane Inn”), and LISA M. MCKINNEY, individually and as trustee of the LISA M. MCKINNEY TRUST u/a/d March 9, 2009, as amended, of 10 Channel Lane, Pentwater, Michigan (“McKinney”).

THE PARTIES RECITE THAT:

WHEREAS, the Village is a municipal corporation organized and existing under and pursuant to The General Law Village Act, Act 3 of 1895, as amended (codified as MCL 61.1, *et seq*), and exercising all of the powers provided therein; and

WHEREAS, Channel Lane Inn is a Michigan limited liability company organized and existing in good standing under and pursuant to the Michigan Limited Liability Company Act, Public Act 23 of 1993, as amended (codified at MCL 450.4101, *et seq*), and exercising all of the powers provided for therein; and

WHEREAS, Channel Lane Inn and McKinney own certain real property located within the Village of Pentwater located at 10 North Channel Lane, which is currently zoned R-2, Single Family Residential District; and

WHEREAS, the Property is currently being operated as a hotel/motel as a lawful nonconforming use pursuant to a Consent Judgment entered by the 27<sup>th</sup> Circuit Court for the County of Oceana, Case No. 94-4717-CB, and recorded at the Oceana County Register of Deeds at Liber 1995, Page 6932; and

WHEREAS, Channel Lane Inn and McKinney desire to rezone the Property to C-4, Hotel Resort District, to remove the nonconforming use status;

WHEREAS, under and pursuant to Section 405 of the Michigan Zoning Enabling Act, 2008

PA 110, as amended (codified at MCL 125.3405, *et seq*), certain conditions voluntarily offered by the owner of land, including an agreement between the Village and Channel Lane Inn/McKinney, may become a condition of rezoning of the Property;

WHEREAS, on September \_\_\_\_, 2018, Channel Lane Inn/McKinney submitted a Rezoning application for the Property to the Village;

WHEREAS, on October 17, 2018, the Village Planning Commission held a Public Hearing on the Rezoning Application;

WHEREAS, on December 12, 2018, Channel Lane Inn/McKinney submitted a supplemental amendment to the Rezoning Application voluntarily offering, in writing, certain conditions to rezone the Property from R-2, Single Family Residential District, to C-4, Hotel Resort District, with conditions as set forth in this Agreement;

WHEREAS, on \_\_\_\_\_, \_\_\_\_\_, the Village Planning Commission held a public hearing on the Amended Rezoning Application and voted to recommend approval of the request for Conditional Rezoning to the Pentwater Village Council based upon this Agreement; and

WHEREAS, on \_\_\_\_\_, \_\_\_\_\_, the Village Council voted to approve the request for Conditional Rezoning and adopted Ordinance No. \_\_\_\_\_ based upon the conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises hereinafter set forth, the Village and Channel Lane Inn/McKinney agree as follows:

1. **Zoning Use District Regulations.** Except as modified herein, the zoning use district regulations for the Property shall be the C-4, Hotel Resort District, regulations of Chapter 12A of the Village Zoning Ordinance, and the Property shall remain subject to all other

district use and development standards and all other regulations of the Village Zoning Ordinance, the Village Code of Ordinances (codified ordinances), and all other applicable state and local laws, regulations, and requirements for land development.

2. **Additional Conditions.**

- a. The operation of a restaurant on the Property is prohibited.
- b. The operation of a retail business on the Property is prohibited. Nothing in the preceding sentence shall preclude the Property owner/operator from marketing and selling hotel gift shop related merchandise from the Property's office or reception area. The marketing and selling of such hotel gift shop merchandise shall be subordinate and incidental to the operation of the Property as a hotel.
- c. The maximum lot coverage for the Property shall be no greater than 75% of the Property's lot area.

3. **Compliance with Conditions.** Channel Lane Inn/McKinney and their successors, assigns, and/or devisees shall continuously operate and maintain the Property in compliance with all of the conditions set forth in this Agreement. Any failure to comply with a condition contained herein shall constitute a violation of the Village Zoning Ordinance and be punishable accordingly against the owner and/or occupant of the Property. Additionally, any such violation shall be deemed a nuisance *per se* and subject to judicial abatement as provided by law. The Village shall be entitled to recover its actual costs and attorney fees incurred with respect to any action to enforce the terms and conditions of this Agreement.

4. **Transferability/Assignment.** This Agreement shall run with the land and bind the parties and their successors, heirs, assigns, devisees.

5. **Village Right to Rezone.** Nothing in this Agreement shall be deemed to prohibit or preclude the Village from rezoning all or any portion of the Property that is subject to this Agreement to another zoning classification. Any rezoning shall be conducted in compliance with the Village Zoning Ordinance, the Village Code of Ordinances, and the Michigan Zoning Enabling Act, MCL 125.3101, *et seq.*
6. **Entire Agreement.** This Agreement and the documents which are to be executed in accordance with the requirements hereof set forth all of the covenants, agreements, stipulations, promises, conditions, and understandings between the Village and Channel Lane Inn/McKinney concerning the rezoning of the Property as of the date hereof, and there are no covenants, agreements, stipulations, promises, conditions, or understandings, either oral or written, between them other than as set forth herein.
7. **Relationship of the Parties.** The relationship of the Village and Channel Lane Inn/McKinney shall be defined solely by the express terms of this Agreement, including any implementing documents, and neither the cooperation of the parties nor anything expressly or implicitly contained herein shall be deemed or construed to create a partnership, limited or general, or joint venture between the Village and Channel Lane Inn/McKinney, nor shall any party or their agent be deemed to be the agent or employee of any other party to this Agreement.
8. **Modification.** The terms of this Agreement shall not be modified, amended, or altered, except by written agreement duly executed by Channel Lane Inn/McKinney or their successors and the Village as authorized by the Village Council, after a public hearing and notification as required by the Michigan Zoning Enabling Act, MCL 125.3101, *et seq.*

Nothing in this paragraph shall be interpreted as prohibiting or precluding the Village from rezoning the Property pursuant to paragraph 5 above.

9. **No Waiver.** No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiver. No waiver by any party shall operate or be construed as a waiver regarding any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, or partial exercise of any right or remedy arising under this Agreement shall operate or be construed as a waiver, nor shall it preclude any other or further exercise of the waiver or the exercise of any other right or remedy.
10. **Waiver of Jury Trial.** Each party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any right to a trial by jury in any legal action, proceeding, cause of action, or counterclaim arising out of or relating to this Agreement.
11. **Venue.** By execution of this Agreement, the parties consent to venue in Oceana County of any action brought to enforce the terms of this Agreement.
12. **Governing Law.** This Agreement shall be governed by the laws of the State of Michigan.
13. **Recording.** The approved conditions of rezoning set forth in this ordinance and Agreement, or an affidavit or memorandum giving notice thereof, shall be filed by the Zoning Administrator with the Oceana County Register of Deeds.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first set forth above.

**LISA M. MCKINNEY, individually  
and as trustee of the LISA M.  
MCKINNEY TRUST u/a/d March  
9, 2009, as amended:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Lisa M. McKinney

**CHANNEL LANE INN, LLC, a  
Michigan limited liability company:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Lisa M. McKinney, Sole Member

**VILLAGE OF PENTWATER:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Jeffrey Hodges, Village President

DATE: \_\_\_\_\_

\_\_\_\_\_  
Christopher Brown, Village Manager

Approved as to Form:

\_\_\_\_\_  
Brian J. Monton, Village Attorney

The Village of Pentwater further ordains that this ordinance shall be published within 15 days after its adoption.

The Village of Pentwater further ordains that this ordinance shall become effective 7 days after it is published.

At a regular meeting of the Village Council of the Village of Pentwater, held at the Village Hall, 327

South Hancock Street, Pentwater, Michigan, on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at 6:00 p.m.

Members Present: \_\_\_\_\_.

Members Absent: \_\_\_\_\_.

The above ordinance and preamble were offered by Member \_\_\_\_\_ and supported by Member \_\_\_\_\_.

AYES: Members: \_\_\_\_\_.

NAYS: Members: \_\_\_\_\_.

ABSENT: Members: \_\_\_\_\_.

ORDINANCE DECLARED ADOPTED.

\_\_\_\_\_  
Rande S. Listerman, Village Clerk  
Village of Pentwater

STATE OF MICHIGAN     )  
  ) ss.  
COUNTY OF OCEANA     )

I hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the Village Council of the Village of Pentwater at a regular meeting held on the date first stated above, and I further certify that public notice of such meeting was given as provided by law.

\_\_\_\_\_  
Rande S. Listerman, Village Clerk  
Village of Pentwater



**CERTIFICATE OF APPLICANT**

The undersigned duly authorized representative of the applicant property owner does hereby certify that the conditions to rezoning set forth above in this ordinance and Agreement were freely and voluntarily offered by the property owner to the Village as required by MCL 125.3405(5).

**LISA M. MCKINNEY, individually  
and as trustee of the LISA M.  
MCKINNEY TRUST u/a/d March  
9, 2009, as amended:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Lisa M. McKinney

**CHANNEL LANE INN, LLC, a  
Michigan limited liability company:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Lisa M. McKinney, Sole Member