



AGENDA
CITY OF CHARLEVOIX CITY COUNCIL SPECIAL MEETING
Monday, April 13, 2020- 11:00 AM
Virtual Meeting via Zoom

- 1. Pledge of Allegiance**
 - A. Zoom Log-in Instructions
- 2. Roll Call**
- 3. Presentations**
- 4. Inquiry Regarding Conflicts of Interest**
- 5. Consent Agenda**
- 6. Public Hearings and Actions Requiring Public Hearings**
 - A. Conditional Rezone Request for 904 May Street
- 7. All Other Actions and Requests**
- 8. Reports and Communications**
 - A. Public Comment
 - B. City Manager Comments
 - C. Mayor and Council Comments
- 9. Other Council Business**
- 10. Adjourn**

The City of Charlevoix will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting upon one weeks' notice to the City of Charlevoix. Individuals with disabilities requiring auxiliary aids or services should contact the City of Charlevoix Clerk's Office in writing or calling the following: City Clerk, 210 State Street, Charlevoix, MI 49720 (231) 547-3250.

CHARLEVOIX CITY COUNCIL

Pledge of Allegiance

TITLE: Zoom Log-in Instructions

DATE: April 13, 2020

BACKGROUND:

This meeting is being held as a virtual meeting pursuant to Executive Order 2020-15 and is in compliance with the Michigan Open Meetings Act as ordered by the Governor.

Topic: Special City Council

Time: [Apr 13](#), 2020 11:00 AM Eastern Time (US and Canada)

Join Zoom Meeting

<https://zoom.us/j/572977342?pwd=eEx6bldVNHBTL1NYOFQ5aktlUmZ0dz09>

Meeting ID: 572 977 342

Password: cvxspecial

One tap mobile

+13126266799,,572977342#,,#446722# US (Chicago)

Dial by your location

+1 312 626 6799 US

Meeting ID: 572 977 342

Password: 446722

Find your local number: <https://zoom.us/u/adHK0WWc1g>

Special accommodations can be made for people with disabilities upon request by contacting the City Clerk at (231) 547-3250.

Persons wishing to make a comment may use the raise hand feature and those who have dialed in may wait and the Mayor will call on you to give you a chance to speak. There is no obligation to speak but the opportunity is accorded to you. The Michigan Attorney General has issued a reminder of the criminality of those who attempt to use virtual public meetings to air lewd comments and images.

CHARLEVOIX CITY COUNCIL

Public Hearings and Actions Requiring Public Hearings

TITLE: Conditional Rezone Request for 904 May Street

DATE: April 13, 2020

PRESENTED BY: Jonathan Scheel, Zoning Administrator

BACKGROUND:

Clerk's Note: Pursuant to the City Charter, all Council members are required to be in attendance in order to vote on an ordinance. The public hearing was held on March 2, but Council was not in full attendance and it was agreed to re-address this item at a later meeting.

This is a request for a Conditional Rezone of a large R-1 Single Family lot located at 904 May Street to R-4 Multi Family High Density. The subject property is in the R-1 district. The proposed conditional rezone is for the west 122 feet of the 213 foot lot existing parcel. The subject lot is approximately 100' x 122' or 12,233.52 square feet. An approximate 1,200 square foot building exists on the lot. The adjoining properties to the north and the south are used for single family residential purposes.

The conditions of the rezone consist of;

1. The exterior of the existing building will not change get larger in footprint or height.
2. The existing building will have new siding installed
3. There will be a maximum of three (3) apartments in the existing building
4. New landscaping to meet ordinance standards will be installed

If approved, the project must meet all regulations of the R-4 zoning district.

The City of Charlevoix Planning Commission has recommended approval.

Council is aware that there has been an effort to develop a deed restriction program to encourage and promote year-round, permanent housing in our area. Housing North lead by Sarah Lucas has negotiated the purchase of a deed restriction for this property that would require the three units created be restricted for year-round occupancy. This change aligns this project quite well with the goals Council has set to promote housing.

RECOMMENDATION:

Motion to adopt Ordinance 816 of 2020 approving the conditional rezoning request for 904 May Street.

ATTACHMENTS:

- ▣ Application
- ▣ Ordinance
- ▣ Agreement
- ▣ Draft Deed Restriction



CITY COUNCIL AGENDA ITEM

AGENDA TITLE: Conditional Rezone Application. Project 2019-01 RZ 904 May Street

HEARING DATE: Monday, February 17, 2020 6:00 PM

PRESENTED BY: Jonathan Scheel City Zoning Administrator

ATTACHMENTS:	1. Application from the applicant 2. Project file 2019-01 RZ and all contents 3. City of Charlevoix Zoning Ordinance.
---------------------	---

I: GENERAL INFORMATION:

Applicant: Robert Jess

Property Owner: Bible Baptist Church
05855 M-66 N
Charlevoix, MI 49720

Requested Action: Conditional Rezone

Zoning: R-1

Project Location: 904 May Street

Legal Description: In the City of Charlevoix, Charlevoix County, Michigan, Commencing at a concrete monument on the North line of Section 35, Town 34 North, Range 8 West, being the Southwest corner of the Plat of Meadowlane as recorded in Liber 2, Page 35 of Plats, Charlevoix County Records; thence along said North line North 89° 51' 42" West, 9.88 feet (recorded as 10.00 feet) to the East line of May Street; thence along said East line South 0° 23' 42" East 99.83 feet (recorded as 100.00 feet) to a ½" iron rod being the POINT OF BEGINNING; thence continuing along said East line South 0° 23' 42" East 99.83 feet (recorded as 100.00 feet) to a ½" iron rod; thence South 89° 54' 19" East, 122.36 feet to a ½" iron rod; thence North 0° 07' 48" West, 99.77 feet to a ½" iron rod; thence North 89° 52' 36" West, 122.82 feet to the Point of Beginning, being a part of Lots 39 and 41, J Milo Eaton's addition to Charlevoix as recorded

in Liber 1, Pages 54 & 55 of Plats, Charlevoix County Records and containing 0.281 acres (12,233.52 square feet) Subject to the rights of the public and of any governmental unit in any part thereof taken, used, or deeded for street, road, or highway purposes.

Project Site Size:	21,100 Square feet
Existing Land Use:	Building used for storage with one apartment
Adjacent Land Uses:	All immediate surrounding property is single family detached homes. Multiple blocks to the northwest is the new elementary school complex. Multiple blocks to the southwest are apartments and condominiums.
Adjacent Zoning:	All immediate surrounding property is zoned R-1 Single Family Residential. Multiple blocks to the northwest is zoned Public. Multiple blocks to the southwest is zoned R-4 High Density Residential

II. PROJECT DESCRIPTION/LOCATION:

This is a request for a Conditional Rezone of a large R-1 Single Family lot located at 904 May Street to R-4 Multi Family High Density. The subject property is in the R-1 zone district. The proposed rezone is for the west 122 feet of the 213 foot lot pictured above. The subject lot is 12,233.52 square feet. An approximate 1,200 square foot building exists on the lot. The adjoining properties to the north and the south are used for single family residential purposes.

The conditions of the rezone consist of;

1. The exterior of the existing building will not change get larger in footprint or height.
2. The existing building will have new siding installed
3. There will be a maximum of three (3) apartments in the existing building
4. New landscaping to meet ordinance standards will be installed

If approved, the project must meet all regulations of the R-4 zoning district.

Aerial photo from 2016.



Photo taken 9/24/2019.



The purpose of this Staff Report is to evaluate this proposal against the procedures and criteria outlined in Section 153.007 of the City of Charlevoix Zoning Ordinance.

III. TIMING AND AUTHORITY:

The Special Land Use application was submitted on September 16, 2019. The notice for the public hearing was advertised in the Charlevoix Courier on September 27, 2019. Notice of the hearing was sent to adjoining landowners and tenants within 300 feet of the property on September 25, 2019. A public Hearing was held on October 14, 2019 in front of the City of Charlevoix Planning Commission.

The Planning Commission is a recommending body in regard to Rezoning applications. Rezoning applications are forwarded to the City Council under the Zoning Ordinance after a Planning Commission hearing. A decision as to whether or not to grant approval for Rezoning is a City Council decision.

The permitted uses by right and the Special Land Uses allowed in the R-1 Low Density Single Family Residential District are listed in Chapter 153.071 Table 153.071 Allowed Uses in Residential Zones. The uses permitted by Right are as follows:

- a. Single Family Detached Dwellings.
- b. Rentals
- c. Churches,
- d. Public Parks/Playgrounds,
- e. Wind Energy Conversion Systems,
- f. Solar Panels,
- g. Accessory uses, buildings and structures, and
- h. Minor Home Occupations
- i. Site Condominium

The uses allowed as Special Land Uses are as follows:

- a. Bed and Breakfasts
- b. Boat Houses
- c. Day Care
- d. Foster Care
- e. Adult Foster Care Small Group Homes
- f. Major Home Occupations
- g. Boarding/Rooming Houses, and
- h. Day care center/nursery

IV.

The following section is taken directly from Chapter 153.007 of the Zoning Ordinance with staff suggested findings of fact below each criterion in italics. The Planning Commission or City Council is under no obligation to follow the Staff suggested findings. Staff's suggested findings are developed with the thought of providing the Planning Commission and City Council members with potential ideas as to where to begin their discussions. The Planning Commission or City Council may delete, add to, or modify the findings of fact as they feel are appropriate. The Planning Commission and City Council must find that this proposal meets all of the following criteria before considering a motion to approve.

(A) An applicant requesting a rezoning may voluntarily offer a conditional zoning agreement along with an application for rezoning before, or following, the public hearing for a proposed rezoning. A decision to submit a conditional zoning agreement shall be pursuant to the Zoning Act and this chapter.

Meets standard

(B) The conditional zoning agreement shall be in writing, executed by the applicant and the city and recorded with the county's Register of Deeds.

City will record after approval

(C) The conditional zoning agreement may include limitations on the uses permitted on the property in question, specification of lower density or less intensity of development and use; may impose greater restrictions on the location, size, height or other measure for buildings, structures,

improvements, setbacks, landscaping, buffers, design, architecture and other features; or may provide for financing and installation of public works necessary to serve the proposed project.

Meets standard. Proposal is to keep existing building to exact exterior size and shape. The applicant is proposing to install new siding with other aesthetic exterior improvements

(D) (1) The conditional zoning agreement shall not authorize uses or developments of greater intensity or density, or uses and developments that are not permitted in the proposed zoning district.

Meets standard. Rezoning to R-4 with proposed 3 apartments. R-4 would allow a greater density than proposal.

(2) The conditional zoning agreement may not permit variations from height, area, setback or similar dimensional requirements that are less restrictive than the proposed zoning district; however, any variance approved by the Zoning Board of Appeals in accordance with 153.035 through 153.042 of this chapter may be allowed as part of a conditional rezoning agreement.

Meets standard. Setbacks, height standards, lot coverage for R-4 District will all be met.

(3) If a special land use or site plan review is required by this chapter for the use proposed or subject to conditions within the rezoning agreement, the use(s) shall comply with the review and approval requirements as applicable prior to establishing or commencing the use(s).

A site plan review and approval is required

(E) The conditional zoning agreement shall include conditions that bear a reasonable and rational relationship and/or benefit to the property in question. The conditional zoning agreement may include conditions related to the use and development of the property that are necessary to:

(1) Serve the property with improvements including, but not limited to, the extension, widening or realignment of streets; construction or extension of utilities and other infrastructure improvements serving the site; or the construction of recreational facilities serving the site or uses thereon;

Meets standard. No new services are expected

(2) Minimize the impact of the development on surrounding properties and the city overall; or

Meets standard. The minimal amount of additional residential units proposed on the lot should not affect the surrounding properties or the city.

(3) Preserve natural features and open space beyond what is normally required.

Meets standard. There is no open space or natural features on the proposed lot

(F) In addition to any limitations on use or development of the site, preservation of site features or improvements described above, the conditional zoning agreement shall also include the following:

(1) An acknowledgment that the conditional zoning agreement was proposed voluntarily by the applicant;

Meets standard (see application)

(2) A statement that the property shall not be developed or used in any manner that is not consistent with the conditional zoning agreement;

Meets standard (see application)

(3) A statement that the approval of the rezoning and the conditional zoning agreement shall be binding upon and inure to the benefit of the property owner and the city, and also their respective heirs, successors, assigns, receivers or transferees. Where the applicant for rezoning is acting on behalf of the landowner through some form of purchase agreement or other mechanism, then the landowner must also consent and sign the agreement;

Meets standard (see application)

(4) A statement that, if a rezoning with a conditional zoning agreement becomes void in accordance with this section, that no further development shall take place and no permits shall be issued unless and until a new zoning district classification for the property has been established;

Meets standard (see application)

(5) A statement that no part of the conditional zoning agreement shall permit any activity, use or condition that would otherwise violate any requirement or standard that is otherwise applicable in the new zoning district;

Meets standard (see application)

(6) A legal description of the land to which the agreement pertains; and

Meets standard (see application)

(7) Any other provisions as are agreed upon by the parties.

Meets standard (see application)

(G) The conditional zoning agreement shall be reviewed concurrently with the petition for rezoning following the process in' 153.006(C) above and the following.

(1) The conditional zoning agreement may be submitted prior to or following the Planning Commission public hearing. If the agreement is provided following the public hearing it must be reviewed by the Planning Commission prior to the Planning Commission making its recommendation on the rezoning to the City Council. The conditional zoning agreement shall be reviewed by the City Attorney to determine that the conditional zoning agreement conforms to the requirements of this section and the Zoning Act and shall confirm that the conditional zoning agreement is in a form acceptable for recording with the county's Register of Deeds.

In Process

(2) Following the public hearing for a proposed zoning amendment, the Planning Commission shall make a recommendation to the City Council based upon the criteria listed in division (D)(1) above. In addition, the Planning Commission shall consider whether the proposed conditional zoning agreement:

(a) Is consistent with the intent of this section;

(b) Bears a reasonable and rational connection or benefit to the property being proposed for rezoning;

Meets standard. The existing historically used commercial building will be developed into a complete residential use in a residential neighborhood.

(c) Is necessary to ensure that the property develops in such a way that protects the surrounding neighborhood and minimizes any potential impacts to adjacent properties;

Meets standard. Proposed minimal density increase in a single family residential neighborhood

(d) Is necessary to allow the rezoning to be approved, in that the property could not or would not be rezoned without the proposed conditional zoning agreement;

Meets standard. Regular R-4 zoning would allow a high density use in an R-1 district.

(e) Leads to a development that is more compatible with abutting or surrounding uses than would have been likely if the property had been rezoned without a conditional zoning agreement or if the property were left to develop under the existing zoning classification; and

Meets standard. Regular R-4 zoning would allow a high density use in an R-1 district.

(f) Is clearly in the public interest and not inconsistent with the recommendations of the city's Master Plan.

Meets standard. The proposed conditional zoning would be a compatible use in an R-1 district.

(3) If a conditional zoning agreement has been offered by the applicant and recommended for approval by the Planning Commission, the City Council may approve the conditional zoning agreement as a condition to the rezoning if it meets all requirements of division(G)(2) above. The conditional zoning agreement shall be incorporated by attachment or otherwise as an inseparable part of the ordinance adopted by the City Council to accomplish the requested rezoning.

(4) If the rezoning and conditional zoning agreements are approved, the zoning classification of the rezoned property shall consist of the district to which the property has been rezoned and a reference to the conditional zoning agreement. The Official Zoning Map shall specify the new district, plus a parenthetical ACZ to indicate that the property is subject to a conditional zoning agreement (i.e., AR1 (CZ). The City Clerk shall maintain a listing of all properties subject to conditional zoning agreements and shall provide copies of the agreements upon request.

(5) The approved conditional zoning agreement shall be recorded with the county's Register of Deeds.

(6) Any uses proposed as part of a conditional zoning agreement that would otherwise require approval of a special land use or site plan approval shall be subject to the applicable review and approval requirements of " 153.230 through 153.239 and 153.250 through 153.257 of this chapter.

(H) (1) The rezoning and conditional zoning agreement shall expire one year after adoption of the rezoning and conditional zoning agreement, unless substantial construction on the approved development of the property pursuant to building and other required permits issued by the city commences within the one-year period and proceeds diligently to completion, unless extended by the City Council for good cause.

(2) In the event that substantial construction on the approved development has not commenced within one year, the conditional zoning agreement shall be void.

(3) Should the conditional zoning agreement become void, all development on the subject property shall cease and no further development shall be permitted. Until action satisfactory to the city is taken to bring the property into compliance with the conditional zoning agreement, the city may withhold or, following notice to the applicant and being given an opportunity to be heard, revoke permits and certificates, in addition to, or in lieu of, any other lawful action to achieve compliance.

(4) Notwithstanding the above, if the property owner applies in writing for an extension of the conditional zoning agreement at least 30 days prior to the expiration date, the City Council may grant an extension of up to one year. Further extensions may be granted by the City Council, although the number of previous extensions granted to a particular conditional zoning agreement shall be considered in relation to the diligent effort of the land owner to satisfy the conditions of the agreement.

(I) If the rezoning and conditional zoning agreement becomes void as previously outlined, then the land shall revert back to its prior zoning classification as set forth in the Zoning Act. The Zoning Administrator or designee shall initiate the rezoning to the prior zoning classification and notify the land owner and/or developer of the reversion of zoning by registered letter.

(J) Provided that, all development and/or use of the property in question is in compliance with the conditional zoning agreement, an authorized use or development may continue indefinitely; provided that, all terms of the conditional zoning agreement continue to be met.

(K) The conditional zoning agreement may be amended by the city with the landowner's consent in the same manner as was prescribed for the original rezoning and conditional rezoning agreement.

(L) Nothing in the conditional zoning agreement, nor any statement or other provision shall prohibit the city from later rezoning all or any portion of the property that is the subject of the conditional zoning agreement to another zoning classification. Any rezoning shall be conducted in compliance with this chapter and the Zoning Act. (M) The city shall not require an owner to offer conditions as a requirement for rezoning. The lack of an offer of conditions shall not affect the owner's rights under this chapter.

(N) The city is not required or obligated to accept any or all conditions offered by a developer on a rezoning application. In no way is an offer of a conditional zoning agreement the basis for requiring the city to approve a rezoning application

V. CITY COUNCIL OPTIONS:

The City of Charlevoix City Council has the following options for Rezone 2019-01 SU:

1. Deny Rezone 2019-01 RZ based on specific findings of fact that the application does not meet the review criteria in Section 153.007
2. Approve Rezone 2019-01 RZ based on specific findings of fact that the application does meet the review criteria in Section 153.007

**CITY OF CHARLEVOIX
ORDINANCE NO. 816 of 2020**

AN ORDINANCE TO AMEND TITLE XV, CHAPTER 153, SECTIONS 153.055, OF THE CHARLEVOIX CITY CODE

THE CITY OF CHARLEVOIX ORDAINS:

SECTION 1. Title XV, Chapter 153, Section 153.055 (A) (1) (f) of the City of Charlevoix Code is hereby amended to include an R-4 Conditional Rezone as a District in the Zoning Use District Map as follows:

SECTION 2. Description of the amended Conditional Rezone District.

The Zoning Use District Map is hereby amended to conditionally rezone the following described area from R-1 Single Family District to R-4 Multi Family District: In the City of Charlevoix, Charlevoix County, Michigan, Commencing at a concrete monument on the North line of Section 35, Town 34 North, Range 8 West, being the Southwest corner of the Plat of Meadowlane as recorded in Liber 2, Page 35 of Plats, Charlevoix County Records; thence along said North line North 89 51' 42" West, 9.88 feet (recorded as 10.00 feet) to the East line of May Street; thence along said East line South 0 23' 42" East 99.83 feet (recorded as 100.00 feet) to a ½" iron rod being the POINT OF BEGINNING; thence continuing along said East line South 0 23' 42" East 99.83 feet (recorded as 100.00 feet) to a ½" iron rod; thence South 89 54' 19" East, 122.36 feet to a ½" iron rod; thence North 0 07' 48" West, 99.77 feet to a ½" iron rod; thence North 89 52' 36" West, 122.82 feet to the Point of Beginning, being a part of Lots 39 and 41, J Milo Eaton's addition to Charlevoix as recorded in Liber 1, Pages 54 & 55 of Plats, Charlevoix County Records and containing 0.281 acres (12,233.52 square feet) Subject to the rights of the public and of any governmental unit in any part thereof taken, used, or deeded for street, road, or highway purposes. Commonly known as 906 May Street.

SECTION 3. Severability.

No other portion, paragraph or phase of the Code of the City of Charlevoix, Michigan shall be affected by this Ordinance except as to the above sections, and in the event any portion, section or subsection of this Ordinance shall be held invalid for any reason, such invalidation shall not be construed to affect the validity of any other part or portion of this Ordinance or of the Code of the City of Charlevoix, Michigan.

SECTION 4. Effective Date.

This Ordinance shall become effective thirty (30) days after its enactment.

Ordinance No. 816 was adopted on the 2nd day of March, 2020 A.D., by the Charlevoix City Council as follows:

Motion by:

Seconded by:

Yeas:

Nays: None

Absent: None

State of Michigan } §
City of Charlevoix

Joyce M. Golding

Clerk

Luther Kurtz

Mayor

Conditional Rezone Agreement

This Conditional Rezoning Agreement (the "Agreement") is made this 2nd day of March, 2020, (the "Agreement") by and between the CITY OF CHARLEVOIX, a Michigan municipal corporation, with its offices at City Hall, 210 State Street Charlevoix, Michigan 49720 (the "City"), and Robert J. Jess, (the "Developer") with offices at 10963 Boyne City Road Charlevoix, Michigan 49720. THE PARTIES RECITE THAT:

WHEREAS, the City is a municipal corporation organized and existing under and pursuant to the Michigan Home Rules Cities Act, 1909 PA 279, as amended (codified at MCL 117.1 et seq.); and exercising all of the powers provided for therein and pursuant to Charlevoix City Charter, adopted, and as subsequently amended; and

WHEREAS, the Developer controls certain parcels of real property located within the City of Charlevoix at 906 May Street which is currently zoned R-1: Single family Residential District (as specifically listed and legally described in this agreement) (the "Property"), and desires to proceed with a development on the Property; and

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 City and the Developer, may become a condition of rezoning of the Property; and

WHEREAS, on September 25, 2019, the Developer and the owner of the Property submitted a Conditional Rezoning Application for the Property with a conceptual site plan (attached as EXHIBIT A), voluntarily offering, in writing, certain conditions to rezone the Property from "R-1" Single Family Residential District to "R-4" Multifamily District with conditions as set forth in this Agreement; and

WHEREAS, the City Planning Commission on October 14, 2019 held a Public Hearing on the Amended Conditional Rezoning Application; and

WHEREAS, the City Planning Commission on October 14, 2019 voted to recommend approval of the amended request for Conditional Rezoning based upon this Agreement and the attached exhibits; and

WHEREAS, the City Council on March 2, 2020 voted to approve the request for Conditional Rezoning and adopted Ordinance No. 816 of 2020 based upon the conditions set forth in this Agreement and the attached exhibits.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises hereinafter set forth, the City and the Developer agree as follows:

1) THE DEVELOPMENT PROJECT

a) Project Definition. The Developer agrees to construct three apartments in the existing building (the "Project") on the Property substantially conforming to the conceptual site plan attached as Exhibit A. All other permitted uses in Section 153.071 are prohibited.

b) Zoning Use District Regulations. Except as modified herein, the zoning use district regulations for the Property shall be the "R-4" Multi Family District regulations of Chapter 153 Section 153.071, of the City Code. The Property shall remain subject to all other district use and development standards, and all other regulations of the City Zoning Ordinance, and shall remain subject to all other state and local requirements for land development.

c) Additional Conditions.

i) The exterior of the existing building will not change get larger in footprint or height.

ii) The existing building will have new siding installed.

iii) There will be a maximum of three (3) apartments in the existing building.

iv) New landscaping to meet ordinance standards will be installed.

d) Compliance with Conditions. Upon the Developer establishing a development or commencing a use upon the property subject to this Agreement, Developer and its successors or assigns shall continuously operate and maintain the development or use 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 Charlevoix zoning ordinance and be punishable accordingly against the owner of the property. Additionally, any such violation shall be deemed a nuisance per se and subject to judicial abatement as provided by law.

2) TIMING. The City and the Developer agree that the following approvals and activities are conditions to this Agreement and if not completed in the following time limits the Property will be rezoned back to the "R-1", Single Family Residential District: 5:

a) The Developer obtains all of the necessary site plan and special use permit approvals; and building permits from the City and County for the Project within twelve (12) months of approval of this Agreement by the City.

b) The Developer commences construction of the Project within six months of issuance of building permits.

c) The Developer receives certificate of occupancy for the Project within eighteen (18) months of commencement of construction.

3) CITY RIGHT TO REZONE. Nothing in this Agreement shall be deemed to prohibit the City from rezoning all or any portion of the Property which is subject to this Agreement to another zoning classification. Any rezoning shall be conducted in compliance with the City's zoning ordinance – Chapter 153 – of the Charlevoix City Code and the Michigan Zoning Enabling Act, MCL 125.3405, et seq.; provided, however, that the City shall not rezone the property with a different zoning classification during the time period for commencement of the approved use as specified in Paragraph 2 above.

4) ENTIRE AGREEMENT. This Agreement, the exhibit attached hereto, and the instruments 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 City, and the Developer concerning the Project 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.

5) RELATIONSHIP OF THE PARTIES. The relationship of the City, and the Developer shall be defined solely by the expressed terms of this Agreement, including the implementing documents described or contemplated herein, and neither the cooperation of the parties 6 hereunder nor anything expressly or implicitly contained herein shall be deemed or construed to create a partnership, limited or general, or joint venture between the City and the Developer, nor shall any party or their agent be deemed to be the agent or employee of any other party to this Agreement.

6) MODIFICATION. This Agreement can be modified or amended only by a written instrument expressly referring hereto and executed by the City and the Developer.

7) MICHIGAN LAW TO CONTROL. This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with Michigan law.

8) DUE AUTHORIZATION. The City and the Developer each warrant and represent to the other that this Agreement and the terms and condition thereof have been duly authorized and approved by, in the case of the City, its City Council and all other governmental agencies whose approval may be required as a precondition to the effectiveness hereof, in the case of the Authority by its members and all other applicable governmental agencies, and as to the Developer, by the members thereof, and that the persons who have executed this Agreement below have been duly

authorized to do so. The parties hereto agree to provide such opinions of counsel as to the due authorization and binding effect of this Agreement and the collateral documents contemplated hereby as the other party shall reasonably request.

9) ASSIGNMENT. It is understood and agreed that the Developer may assign all or a portion of its rights and duties hereunder to one or more entities.

10) NO PERSONAL LIABILITY. The obligations hereunder of the City and the Developer shall constitute solely the obligations of the respective entities to be satisfied solely from their respective assets, and no officer, agent, employee or partner of any of said entities shall have any personal obligation responsibility or liability for the performance of the terms of this Agreement.

11) RECORDING. The approved conditions of rezoning set forth in this Agreement, or an affidavit or memorandum giving notice thereof, shall be filed by the City Zoning Administrator with the Charlevoix County Register of Deeds.

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

[Property Owner]:

[Developer]:

CITY OF CHARLEVOIX:
By Luther Kurtz., Mayor

CITY OF CHARLEVOIX:
By Joyce Golding, City Clerk

DEED RESTRICTION AGREEMENT

THIS DEED RESTRICTION AGREEMENT (the "Agreement") is entered into this ____ day of April, 2020 (the "Effective Date") by and between Housing North, a Michigan nonprofit with a mailing address of P.O. Box 506, Traverse City, Michigan 49685 (the "Grantee"), and _____, an individual with an address of _____, ("Owner") (each a "Party" and collectively the "Parties").

WHEREAS, in exchange for compensation as set forth in a Deed Restriction Purchase Agreement, Owner has agreed to place certain restrictions on the use of the Property for the benefit of the Grantee by requiring occupancy of the Property according to the occupation obligations as described below.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein and as referenced in the Deed Restriction Purchase Agreement, the Parties agree as follows:

1. Property. The following real property is hereby burdened with the covenants and restrictions specified in this Agreement: _____, Charlevoix, Michigan 49720, as more specifically described in **Exhibit A**.

2. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

a. *Person* means a natural person, and excludes any type of entity.

b. *Principal Place of Residence* means the home or place in which one's habitation is fixed and to which one has a present intention of returning after a departure or absence therefrom. To determine a person's Principal Place of Residence, the criteria set forth in M.C.L. 168.11 shall apply.

c. *Qualified Household* means one Qualified Resident or a group of persons that contains at least one Qualified Resident. A Qualified Household may have occupants that are not Qualified Residents as long as at least one occupant is a Qualified Resident.

d. *Qualified Resident* means a person who occupies the Property as an owner or tenant for at least 10 months out of the year.

e. *Managing Entity*: Housing North shall act as the managing entity under this Agreement. As such, Housing North shall be responsible for receiving and maintaining the Annual Verification statements as described below in paragraph 5.

3. Occupancy Restrictions.

a. At least one Qualified Resident shall continuously occupy the Property as his or her principal place of residence.

b. Owner may rent the Property as long as the Property is continuously occupied by a Qualified Household.

c. A Qualified Resident may lease a room or rooms in the Property to one or more persons, provided that the Qualified Resident still occupies the Property as his or her principal place of residence. For purposes of this provision, no lease shall be less than one month.

d. If the Qualified Resident is renting the Property, the initial lease term must be for a minimum of twelve (12) months. After the initial 12 months, a lease agreement may be renewed for a shorter term, but no less than one month.

e. No business activity shall occur on or in the Property other than as permitted within the zone district applicable to the Property.

4. Annual Verification. No later than February 1st of each year, beginning in the year following this agreement, Owner shall submit a written statement to the Managing Entity including the following information and stating that such information is true and correct to the best of Owner's knowledge and belief:

a. Evidence to establish that the Property was occupied by a Qualified Resident during all of the prior calendar year;

b. If applicable, a copy of the lease form currently used for the Property; and

c. If applicable, a list of tenants who occupied the Property in the prior calendar year and the evidence submitted by each tenant to establish that they were a Qualified Resident, as set forth in the Qualification Guidelines.

5. Subdivision of Property. If the Property is subdivided or more than one dwelling is created or constructed on the Property, the requirements of this Deed Restriction Agreement shall apply to all new parcels created from the division of the Property and/or any dwelling unit constructed on the Property.

6. Breach.

a. It is a breach of this Agreement for Owner to violate any provision of this Agreement, or to default in payment or other obligations due to be performed under a promissory note secured by a mortgage encumbering the Property. Owner shall notify the Grantee, in writing, of any notification received from any lender of past due payments or defaults in payments or other obligations within 5 days of receipt.

b. If the Grantee has reasonable cause to believe Owner is violating this Agreement, the Grantee or its agent including the Managing Entity may inspect the Property between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing Owner with 24 hours written notice of the time and individual or individual(s) inspecting the Property. This Agreement shall constitute Owner's permission to enter the Property during such times upon such notice.

7. Enforcement. This Deed Restriction Agreement may be enforced by Housing North any agent, successor, or assign. This Agreement may also be enforced by the City of Charlevoix, which is an express third-party beneficiary to this Agreement.

8. Delay in Enforcement. A delay in enforcement shall not be construed as a waiver of Grantee's right to enforce the terms of this Deed Restriction. Similarly, a decision not to enforce this Deed Restriction is not a waiver of the rights held by Grantee to pursue remedies in the future.

9. Remedies.

a. The Grantee or City shall have any and all remedies provided by law and in equity for a violation of this Deed Restriction, including without limitation: (i) damages; (ii) specific performance; and (iii) injunctions, including without limitation an injunction requiring eviction of the occupant(s) and an injunction to prohibit the occupancy of the Property in violation of this Deed Restriction. All remedies shall be cumulative.

b. The cost to the Grantee or City of any activity taken in response to any violation of this Deed Restriction, including reasonable attorney fees, shall be paid promptly by Owner.

10. Foreclosure.

a. In the event of a foreclosure, acceptance of a deed-in-lieu of foreclosure, or assignment, this Agreement shall remain in full force and effect.

b. Owner shall give immediate notice to the Grantee: of any notice of foreclosure under the mortgage or any other subordinate security interest in the Property; or when any payment on any indebtedness encumbering the Property is required to avoid foreclosure of the mortgage or other subordinate security interest in the Property.

c. Within 60 days after receipt of any notice described herein, the Grantee may (but shall not be obligated to) proceed to make any payment required to avoid foreclosure. Upon making any such payment, the Grantee may place a lien on the Property in the amount paid to cure the default and avoid foreclosure, including all fees and costs resulting from such foreclosure.

d. The Grantee shall have 30 days after issuance of the public trustee's deed or the acceptance of a deed in lieu of foreclosure by the holder in which to purchase by tendering to the holder, in cash or certified funds, an amount equal to the redemption price which would have been required of the borrower or any person who might be liable upon a deficiency on the last day of the statutory redemption period(s) and any additional reasonable costs incurred by the holder related to the foreclosure.

11. Miscellaneous.

a. Modification. This Agreement may only be modified by subsequent written agreement of the Parties.

b. Integration. This Agreement and any attached exhibits constitute the entire agreement between Owner and the Grantee, superseding all prior oral or written communications.

c. Runs with the Land. The benefits and obligations of the Parties under this Agreement shall run with the land, and Owner's obligations hereunder shall be binding on any subsequent holder of an ownership interest in the Property.

d. Severability. If any provision of this Agreement is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

e. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Michigan, and any legal action concerning the provisions hereof shall be brought in Charlevoix County, Michigan.

f. Agreement Binding; Assignment. This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the Parties.

g. Third Parties. The City of Charlevoix is an express third-party beneficiary to this Agreement. There are no other intended third-party beneficiaries to this Agreement.

h. No Joint Venture. Notwithstanding any provision hereof, the Grantee shall never be a joint venture in any private entity or activity which participates in this Agreement, and the Grantee shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

i. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

j. Recording. This Agreement shall be recorded with the Charlevoix County Clerk and Recorder.

k. Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Agreement are held to be unlawful or void for violation of: the rule against perpetuities or some analogous statutory provision; the rule restricting restraints on alienation; or any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated members of the Charlevoix City Council, their now living descendants, if any, and the survivor of them, plus 21 years.

12. Cessation of Existence. If the Grantee ceases to exist, then this Deed Restriction shall become vested in another entity, which shall be another Michigan nonprofit organization, which has similar organizational purposes as Grantee, and which agrees to assume Grantee's rights and responsibilities under this Deed Restriction. Owner shall be promptly notified of the name and contact information for the successor entity.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

HOUSING NORTH, a Michigan Nonprofit

_____, Executive Director

STATE OF MICHIGAN)
) ss.
COUNTY OF CHARLEVOIX)

The foregoing instrument was subscribed, sworn to and acknowledged before me this _____ day of April, 2020, by _____.

Notary Public
Certified in _____ County, Michigan
Acting in _____ County, Michigan
My commission expires: _____

OWNER

STATE OF MICHIGAN)
) ss.
COUNTY OF CHARLEVOIX)

The foregoing instrument was subscribed, sworn to and acknowledged before me this _____ day of April, 2020, by _____.

Notary Public
Certified in _____ County, Michigan
Acting in _____ County, Michigan
My commission expires: _____

EXHIBIT A
LEGAL DESCRIPTION

[Add in legal description]

