

**HOMESTEAD FARMS SUBDIVISION  
CONTRACT ZONING AGREEMENT AMONG  
THE TOWN OF FALMOUTH, MAINE,  
HOMESTEAD ACRES, LLC, AND TURNING POINT DEVELOPMENT, LLC**

Original Date: June 30, 2017  
Revision Dates: January 10, 2018  
January 24, 2018  
February 2, 2018  
February 7, 2018

This Contract Zoning Agreement made as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by and among the Town of Falmouth, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter the “Town”); Homestead Acres, LLC, having a mailing address of 50 Gray Road, Falmouth ME 04105; and Turning Point Development, LLC, having an address of 13 Greta Way, Falmouth, ME 04105; pursuant to the Contract Zoning provisions of Part II Code of Ordinances (the “Ordinance” or “Zoning Ordinance”), Chapter II-19 Zoning and Floodplain Management, Division II-19-1-3. Establishment of Districts, Section 19-26.5 Contract Zoning. Homestead Acres, LLC, Turning Point Development, LLC, Maurice and Patricia Hothem Charitable Remainder Unitrust, Maurice and Patricia Hothem and West Falmouth Free Baptist Church are collectively referred herein as the “Owners”; Homestead Acres, LLC and Turning Point Development, LLC are collectively referred herein as the “Developers.” The Town and the Developers are collectively referred to herein as the “Parties.” Capitalized terms not otherwise defined herein shall have the meaning set forth in the Ordinance.

WHEREAS, Homestead Acres, LLC, Turning Point Development, LLC, Maurice and Patricia Hothem Charitable Remainder Unitrust, Maurice and Patricia Hothem and West Falmouth Free Baptist Church (“Owners”) are the owners of certain real estate located off of the Gray and Mountain Roads in Falmouth, Maine consisting of approximately 40 acres, and identified on Town Assessor’s Tax Map R07 as lots 156, 157, 158 and 158A, Tax Map U42 as a portion of lot 15 (as shown on Exhibit 5, Tax Map U43 as lots 10B and a portion of 12A (as shown on Exhibit 5) and Tax Map U44 as Lot 35C and as described in instruments recorded in the Cumberland County Registry of Deeds at Book 33354, Page 233, Book 33742, Page 111, Book 33736, Page 184, Book 3069, Page 56 and Book 22980, Page 325. Said real estate as shown on Exhibit 1 is the subject of this Agreement (the “Property”); and

WHEREAS, the Village Mixed Used Zoning District (VMU) and the present zoning requirements of the Ordinance which affect the various parts of the Property, do not permit the necessary dimensional criteria for the proposed development; and

WHEREAS, Developers desire to develop the property as Homestead Farms Subdivision, a development containing a mixture of single family residential homes, Two-Family, and multi-family living units including Entry Level housing, age restricted housing and market rate housing (the “Project”); and

WHEREAS, Developers have requested a rezoning of the Property to permit the dimensional criteria necessary for proposed development of the Property; and

WHEREAS, the Property contains certain wetlands and environmental features that will be maintained and preserved; and

WHEREAS, the Community Development Committee, the Planning Board and the Town Council of Falmouth held meetings that were noticed, held and conducted pursuant to Section 19-26.5.7 of the Zoning Ordinance and 30-A M.R.S.A. § 4352(8); and

WHEREAS, the rezoning provided in this Agreement has been determined to be consistent with the Policies of the Town of Falmouth Comprehensive Plan; and

WHEREAS, the Town of Falmouth, by and through its Town Council, pursuant to Part II Code of Ordinances, Chapter II-19 Zoning and Floodplain Management, Division II-19-1-3. Establishment of Districts, Section 19-26.5 Contract Zoning and 30-A M.R.S.A. § 4352(8), and after notice and hearing and due deliberation thereon made on the \_\_\_ day of \_\_\_\_\_, 2018 found and concluded as set forth in its Legislative Facts that that this Contract Zoning Agreement (1) is consistent with the Town of Falmouth Comprehensive Plan, (2) is consistent and compatible with the existing and permitted uses within the existing zoning district classifications of the Property, (3) is in the public interest, and (4) will have beneficial effects on the Town as a whole which would not result if the Property were developed under the existing zoning district classifications, and authorized the execution of this Contract Zoning Agreement.

NOW, THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

**1. Zoning Map Amendment.** The Town hereby amends the Zoning Map of the Town of Falmouth, by adopting the zoning map change amendment shown on Exhibit 1.

**2. Homestead Farms Contract Zone.** The Homestead Farms Contract Zone is hereby created, as defined herein, for the Property described in Exhibit 1. For purposes of this Agreement, the Homestead Farms Contract Zone (hereafter also referred to as the "Contract Zone") means the development of the property similar to the submitted Concept Plan to be designed and built as set forth in this Agreement and Exhibit 2.

The schematic plan shown on Exhibit 2 is intended as a concept of the proposed development and does not create specific rights or obligations, other than those specific items set forth in this Agreement. Approval of the contract zone does not waive or eliminate the need for subdivision and site plan approval as required by those ordinance provisions. Revisions to the Exhibit 2 may occur through subdivision or site plan review without the need for amendment to this Agreement, except for those items specifically mandated by this Agreement. Any changes

to the allowed uses, dimensional requirements or other specific requirements of this Agreement shall require an amendment to this Agreement, including final approval by the Town Council after review and recommendation by the Planning Board.

**3. Permitted Uses.** The Developers are authorized to establish and maintain uses of the Property as follows:

- A. Single family residential homes available for sale similar to the lots depicted on Exhibit 2.
- B. Two-Family residential units for sale or lease similar to those depicted on Exhibit 2. The minimum number of Two-Family units will be 12 with a maximum number of 24 units, within the project.
- C. "Entry Level Housing" shall be originally sold at a price of no more than that considered as affordable under Sec. 19-69-d-4 (calculated by Maine State Housing Authority at \$280,000.00 in 2016). Entry level housing will not include Accessory Dwelling Units (ADU). Entry Level Housing on single family house lots will account for a minimum of 6 and maximum of 15 within each phase. The total project minimum number of Entry Level Single Family House Lots will be 32.
- D. Any residential and/or commercial use as allowed in the VMU Zoning District for the Retail/Commercial areas depicted on Exhibit 2. Residential uses in the retail/commercial areas shall not be subject to the dwelling unit limitations set forth in Section 3.B. and 3.C, but they shall meet the net residential area, which shall be calculated utilizing the entire development site.
- E. Public spaces including parks and pedestrian trails.
- F. Accessory uses and structures, including but not limited to maintenance facilities, parking areas, utility services, storm water management systems and site amenities.
- G. Signage for Homestead Farms Subdivision and/or proposed commercial area.

#### **4. Site Design Requirements**

- a. One public park – will be designed with approval by the PCP Director, will be paid for by developer, and will be conveyed to the Town, prior to the issuance of the 31<sup>st</sup> occupancy permit, for the Town's use and future maintenance.
- b. Two private passive recreation spots – will remain private, approved by the Planning Board and maintained by the developer until conveyed to the Home Owners Association (HOA)
- c. Open space – owned by the developer until conveyed to the HOA with public access and maintenance easement to the Town. This will be established as part of the HOA documents which will be approved by the Planning Board as part of their approval.
- d. Trails open to public, developer to build and maintain trails – LMAC to determine final layout and design, generally woods trails except for interurban line which will be ADA accessible. Final location will be determined during the Planning Board approval process.
- e. The trail system connects to the sidewalks as well as abutting properties and Marston Street. Developer shall assist with Town in acquiring the License Agreement with the Maine Turnpike Authority (MTA).

- f. All landscaping within the roadways to be installed by the developer and to be native species.
- g. Developer is committed to working with the conservation commission, with a detailed invasive species eradication plan being submitted for subdivision approval.
- h. On-street parking areas shall be determined as part of the Planning Board subdivision review.
- i. Sidewalks located on at least on one side of the street on all proposed roads within the subdivision.
- j. As part of the street acceptance a 5 foot wide easement shall be offered to the town within the residential lots and open spaces for purpose of street maintenance.
- k. Road, Trail and Open Space Easements for each phase will be granted to the town prior to the first occupancy permit within that phase.
- l. A trail connection the southerly phase 2 area to the northerly phase 1 area will be constructed prior to the first occupancy permit issued in the southerly phase 2 area.
- m. The trail connection from phase 1 to the church property shall be constructed prior to the first occupancy permit within phase 1.
- n. Fees
  - 1) General impact fee - \$1,300 includes growth permit fee for all lots.
- o. Wastewater connection fees - \$2,000 per unit. The Town will accept wastewater from the development. Architecture
  - i. Several home designs have been submitted, additional building types of similar character may be used.
  - ii. No more than two houses in a row will have the same house design.
  - iii. Solar will not be excluded by the design covenants to be provided by the developer.
- p. The Developer will construct a minimum of 3,000 s.f. of Retail/Commercial use building within the northerly Retail/Commercial area of the project. No more than 25% of the first floor of this Retail/Commercial area will be utilized for residential.

**5. Utilities:** All lots and residential units in the Project shall be provided with electrical, water, and sewage disposal connections in accordance with applicable state and local rules and regulations. The Project shall be serviced by the following public utilities:

- A. Wastewater disposal shall be provided by a connection to existing or to be constructed sanitary sewers traversing the Project. Individual lots may be served by gravity or pumping systems. All new pumping stations shall be privately maintained.
- B. Water supply may be provided by a connection to existing water supply mains in the adjacent rights-of way of Gray and Mountain Roads to supply new water supply mains through the Project.

- C. Electric service shall be provided underground from pad-mounted transformers to lots on which manufactured homes are located.
- D. Telephone and cable service, to the extent provided, shall be underground throughout the Project.

6. **Plan.** The Property shall be generally developed and used in accordance with Exhibit 2, as approved by the Planning Board, as that plan may be further approved and amended from time to time pursuant to the provisions of the Town of Falmouth Site Plan Ordinance and Subdivision Ordinance and this Agreement. Notwithstanding any other provisions of the Ordinance, the physical layout, dimensions, setbacks, parking and proposed uses and improvements shown on Exhibit 2 and identified in this Agreement shall be permitted.

7. **Status of Approvals/Amendments.** Exhibit 2 to this Agreement is the Conceptual Plan. Any amendment to Exhibit 2 or this Agreement which involves the following changes to the terms of this Agreement will require an amendment approved by the Town Council:

- A. any change in permitted uses.
- B. any increase above 153 in the total number of dwelling units.

Except for the foregoing, any other changes to the Project and any subsequent site plan approvals or subsequent site plan and/or subdivision amendments need only be approved by the Planning Board after a public hearing in accordance with this Agreement without need for further Town Council approval, provided that the Planning Board shall not have the authority to waive the terms of this Agreement and provided any such changes are consistent with this Agreement.

8. **Commencement/Phasing Schedule/Bonding.** The development shall be approved and constructed in phases. Unless extended by the Town Council, the construction required improvements of the initial Phase shall commence and be completed within two (2) years after Developers' receipt of final land use approvals for Phase I of the Property. If changes of site plan or subdivision approvals are needed for development of subsequent Phases, such changes shall be subject to approval of the Planning Board and, if appropriate by the Town Council, all in accordance with Section 8 above. The Phases I, II, and III shall be completed in that order. Multiple phases may be pending and under construction at the same time. Developer shall be required to periodically update the Town with respect to commencement schedules of the next phase to be constructed in order to facilitate orderly planning on part of the Town.

Developers need only post a performance guaranty assuring the completion of public improvements for those improvements to be constructed within each Phase or which are to be completed in conjunction with such Phase under this Agreement. For purposes of measuring the required date for completion of public improvements under the Town of Falmouth Subdivision Ordinance, the start date for the running of the period of completion shall commence with the commencement of physical construction of each Phase.

## 9. General.

- A. Developers shall record this Contract Zoning Agreement in the Cumberland County Registry of Deeds within 30 days after its execution by the Town Manager.
- B. The provisions of this Contract Zoning Agreement shall be deemed restrictions on the use of the Property, and this Contract Zoning Agreement may be amended by future written agreement among the Town of Falmouth and the Developers or their successors in interest without need for approval of any other party.
- C. The restrictions, provisions and conditions of this Agreement are an essential part of the rezoning, shall run with the Property, shall bind Developers, their successors in interests and assigns of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the Town of Falmouth.
- D. The Town shall have the power to enforce all conditions and restrictions of this Agreement, both through enforcement action pursuant to sections 7-14 and 19-167 of the Town of Falmouth Zoning Ordinance and through legal action for specific performance of this Agreement. In the event that Developers or their successors or assigns fail to develop the Project in accordance with this Contract, or in the event of any breach thereof, and such failure or breach continues for a period of thirty (30) days after written notice of such failure or breach cannot reasonably be remedied or cured within such thirty (30) day period, if Developers, their successors or assigns, fail to commence to cure or remedy such failure or breach within said thirty (30) day period and thereafter fails to diligently prosecute such remedy or cure to completion in a reasonable time, then the Town may enforce the performance of this Agreement and recover the costs and expenses of performance from such Developers or their heirs, successors or assigns violating this Agreement, which recovery may include the Town's reasonable attorney's fees and expenses.
- E. All references in this Agreement to the Town of Falmouth Zoning Ordinance, the Town of Falmouth Subdivision Ordinance and other ordinances, and provisions and classifications thereof shall be and mean the Zoning Ordinance, Subdivision Ordinance, other ordinances, and the provisions and classifications thereof in effect as of the date of adoption of this Agreement.

WITNESS:

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TOWN OF FALMOUTH

By: \_\_\_\_\_  
Nathan Poore, Town Manager

DEVELOPERS/OWNERS

By: \_\_\_\_\_  
Homestead Acres, LLC  
David Chase, Its Manager

By: \_\_\_\_\_  
Turning Point Development, LLC  
Andrea Ferrante, Its Manager

State of Maine

County of Cumberland, ss.

\_\_\_\_\_, 2018

Then personally appeared the above-named Nathan Poore, Town Manager of the Town of Falmouth and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Town of Falmouth.

Before me,

\_\_\_\_\_  
Notary Public

Print Name\_\_\_\_\_

Commission Expires\_\_\_\_\_

STATE OF MAINE

CUMBERLAND, ss.

\_\_\_\_\_, 2018

Then personally appeared the above-named David Chase, Manager of Homestead Acres, LLC, as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Limited Liability Company.

Before me,

\_\_\_\_\_  
Notary Public

Print Name\_\_\_\_\_

Commission Expires\_\_\_\_\_

STATE OF MAINE  
CUMBERLAND, ss.

\_\_\_\_\_, 2018

Then personally appeared the above-named Andrea Ferranti, Manager of Turning Point Development, LLC, as aforesaid, and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said Limited Liability Company.

Before me,

\_\_\_\_\_  
Notary Public

Print Name \_\_\_\_\_

Commission Expires \_\_\_\_\_

STATE OF MAINE  
CUMBERLAND, ss.

\_\_\_\_\_, 2018

- Exhibit 1 – Proposed Zoning Map Amendment
- Exhibit 2 - Conceptual Plan
- Exhibit 3 - Phasing Plan
- Exhibit 4 – Area Dimensional and Design Criteria
- Exhibit 5 - Roundabout