

**HOMESTEAD FARMS SUBDIVISION
CONTRACT ZONING AGREEMENT AMONG
THE TOWN OF FALMOUTH, MAINE,
HOMESTEAD ACRES, LLC, AND TURNING POINT DEVELOPMENT, LLC**
Als comments 2-26-18, reconcile Phase numbers!!!

This Contract Zoning Agreement made this ____ 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 (hereinafter, collectively, the “Developer”).

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 (hereinafter the “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, Tax Map U43 as lots 10B and a portion of 12A, 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, all as shown on Exhibit 1 (hereinafter the “Property”); and

WHEREAS, the Developer desires to develop the Property as Homestead Farms Subdivision, a development containing a mixture of single- and two-family dwellings, retail, commercial and additional dwelling units as part of the retail and commercial area, with the development to include entry-level housing, age restricted housing and market rate housing (the “Project”); and

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

WHEREAS, following initial conceptual review of the proposal by the Community Development Committee, the Town Council referred the proposal to the Planning Board pursuant to Section 19-26.5.8.3 of the Zoning Ordinance; and

WHEREAS, the Planning Board, after notice, held a public hearing on the proposal as required by Section 19-26.5.8.4 of the Zoning Ordinance and 30-A M.R.S.A. § 4352(8); and

WHEREAS, the Town Council, pursuant to Section 19-26.5.8.5 of the Zoning Ordinance held a public hearing on this proposal on _____, adopted findings and determined that that this Contract Zoning Agreement and the resulting development to be permitted by the Agreement (1) are consistent with the Town’s Comprehensive Plan; (2) allow uses that are consistent and compatible with the existing, permitted and conditional uses within the underlying zoning district; (3) include only conditions and restrictions that relate to the physical development or operation of the property; and (4) provide public benefit that would not exist under the current zoning; 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, a copy of which is on file at the Falmouth Town Hall and which is incorporated as part of the Zoning Ordinance by Section 19-2, by adopting the zoning map change amendment shown on Exhibit 1.

2. **Homestead Farms Contract Zone.** For purposes of this Agreement, the Homestead Farms Contract Zone (hereafter also referred to as the “Contract Zone”) means the development of the Property as established by the terms of this Agreement and generally consistent with the Concept Plan set forth in Exhibit 2. Exhibit 2 is intended solely to illustrate the concept of the proposed development and does not create specific rights or obligations, other than those specific requirements set forth in this Agreement. The area of the public park, open space and the general location and size of the residential lots portion of the Contract Zone shall be consistent with those areas set forth in Exhibit 2 and the use of those areas as a public park, open space and residential lots shall be a specific requirement of this Agreement. The Planning Board may approve minor revisions to boundaries of these areas as part of subdivision or site plan review. 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 Exhibit 2 may occur through subdivision or site plan review without the need for amendment to this Agreement, except for those items and conditions specifically mandated by this Agreement. Any changes to the allowed uses, dimensional requirements, maximum number of permitted units 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. Does this have to follow the ordinance provisions except for conceptual review? Perhaps that should be stated.

3. **Permitted Uses and Restrictions on Uses.** The Developer is authorized to utilize the Property for the following uses:

- a. Uses allowed in the area shown as residential lots on Exhibit 2:
 - i. Single Family Dwellings on lots similar to those depicted on Exhibit 2.
 - ii. Two Family Dwellings similar to those depicted on Exhibit 2. The minimum number of Two Family Dwelling units will be 12, with a maximum number of 24 units within the project.
 - iii. Entry Level Housing, which shall be sold originally 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). No Accessory Dwelling Units (ADU) will be allowed in Entry Level Housing and the deeds for Entry Level Housing lots will contain a restriction prohibiting any 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 Dwellings will be 32. Entry Level Housing may also be provided in Two-Family Dwelling units.

Commented [AS1]: Note to EC, DE and JB – this will require a detailed permit tracking system to administer.

b. Any ~~non-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 ~~contract zone area~~ development site.

c. Publicly accessible spaces including parks, open space and ~~pedestrian~~-trails.

~~d. Accessory uses and structures, including but not limited to maintenance facilities, parking areas, utility services, storm water management systems and site amenities.~~

~~e. Signage for Homestead Farms Subdivision and/or proposed commercial area.~~

Commented [AS2]: We do not have a commercial category of use in the ordinance.

4. Site Design Requirements

- a. One public park for the Town's use, which will be designed with approval by the Parks and Community Programs Director, will be paid for by the Developer, and will be conveyed to the Town prior to the issuance of the 31st occupancy permit; ~~for the Town's use and future maintenance. The town will be responsible for future maintenance.~~
- b. Two passive recreation areas, which will remain privately owned, shall be approved by the Planning Board and maintained by the developer until conveyed to the Home Owners Association (HOA). The Town shall be granted an easement for public access to the passive recreation areas.
- c. Open space in the general area shown on Exhibit 2, which shall be owned by the Developer until conveyed to the HOA. This area will be established as part of the HOA documents, which will be approved by the Planning Board as part of the required subdivision approval. The Town shall be granted an easement for public access to the open space.
- d. Trails will be built and maintained by the Developer, with the Land Management and Acquisitions Committee to determine final layout and design. The trails shall be generally woods trails except for the interurban line, ~~which will be ADA accessible~~. The final location of trails will be determined during the Planning Board approval process and the Town will be granted ~~a~~ public easement for the trails. The Developer shall provide some ADA accessible trails within and near the public park.
- e. The trail system shall connect to the sidewalks as well as to abutting properties and Marston Street. The Developer shall assist the Town in acquiring a License Agreement with the Maine Turnpike Authority (MTA) to facilitate access during Phase 1.
- f. All landscaping within the roadways will be installed by the Developer and trees and shrubs shall be native species.
- g. The Developer will develop and execute a detailed invasive species eradication plan in cooperation with the Town's roadside program, which will be included as part of the application for subdivision approval and paid for by the Developer.
- h. On-street parking areas shall be determined as part of the Planning Board subdivision review. The street design in residential areas shall accommodate informal on-street parking on at least one side of the street. The street segment

from Route 100 to the roundabout as shown on Exhibit 2 shall be designed to accommodate designated on-street parking on both sides of the street.

- i. Sidewalks shall be located on at least on one side of the street on all proposed roads within the subdivision.
- j. As part of the street acceptance the Developer shall offer to the Town a 5-foot wide easement adjacent to the street within the residential lots and open spaces for purpose of street maintenance.
- k. The Developer shall grant ~~road~~public street, trail and open space easements for each phase to the Town prior to the issuance of the first certificate of occupancy within that phase. ~~Road~~Street easements shall be granted upon the placement of the base course of pavement.
- l. The Developer shall construct a trail connection from the southerly ~~P~~Phase 2 area to the northerly phase 1 area prior to issuance of the first certificate of occupancy in the southerly ~~P~~Phase 2 area, generally as shown on Exhibit 3.
- m. The trail connection from phase 1 to the church property shall be constructed prior to the issuance of the first certificate of occupancy within ~~P~~Phase 1.
- n. Fees
 - 1) General impact fee - \$1,300 includes growth permit fee for all lots.
 - 2) Wastewater connection fees - \$2,000 per unit.

o. The Town will accept wastewater from the development.

op. Architecture

- i. Several home designs have been submitted to the Town; 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.

pq. The Developer will construct a minimum of 3,000 ~~s.f.~~square feet of ~~Retail/Commercial~~non-residential use in a building(s) 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 use.

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. Onsite septic systems are prohibited.
- b. Water supply ~~may~~shall 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 all structures, lots on which manufactured homes are located.

- d. Telephone and cable service, to the extent provided, shall be underground throughout the Project.
- e. The developer shall pursue natural gas as an energy option.
- f. Street lighting on Road B from Route 100 to the roundabout shall be consistent with that utilized by the Town in the reconstruction of Route 100, as determined by the Planning Board or someone else?:-

6. Zoning, Subdivision and Site Plan Requirements; Rate of Residential Growth Development Permits.

a. Except as modified by Exhibit 4 and any express terms of this Agreement, the Project shall be subject to ~~the all~~ applicable zoning, subdivision and site plan requirements.

b. Rate of Residential Growth Requirements:

- i. Any dwelling unit sold to one or more owners who are 55 or older shall be exempt from the requirement of a rate of residential growth development permit.
- ii. Growth permits issued for dwellings that are sold to one or more owners who are 55 or older shall be transferable and not counted toward the Town’s annual growth cap in effect at the time of first sale.
- iii. A minimum of 32 single family dwellings within the subdivision shall be ~~considered~~ “Entry Level Housing” which shall mean that they are 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). It is anticipated that this amount will may increase over the life of the subdivision. A deed restriction shall limit any subsequent sale to the original sale price for a period of three years from the date of the original sale. ~~No accessory dwelling units will be allowed on lots with entry level dwelling units.~~

Commented [AS3]: This section will require a specific tracking system for administration.

7. Commencement/Phasing Schedule/Bonding. The development shall be approved and constructed in phases, with the construction as noted on Exhibit 3. Unless extended by the Town Council, the construction of required improvements in the initial Phase shall commence and be completed within two (2) years after the Developer’s receipt of final land use approvals for Phase I of the Property. Phases I, II, and III shall be completed in that order. Multiple phases may be pending and under construction at the same time. The 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. Should we add a requirement of reporting to the Council on a yearly basis the status of the project?

The Developer shall 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’s Subdivision Ordinance, the start date for the running of the period of completion shall commence with the

commencement of physical construction of each Phase. This is still confusing to me when read with the preceding paragraph.

8. General.

- a. The Developer 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 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.
- c. This Agreement shall be enforced pursuant to 30-A M.R.S.A. § 4452 and Section 19-167 of the Zoning Ordinance, or through legal action for specific performance of this Agreement.
- d. In the event that any of the restrictions, provisions, conditions, or portions of this Agreement is for any reason determined to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct and independent provision and such determination shall not affect the validity of the remaining portions hereof.

WITNESS:

TOWN OF FALMOUTH

By: _____
Nathan Poore, Town Manager

WITNESS:

HOMESTEAD ACRES, LLC

By: _____
David Chase, Its Manager

WITNESS:

TURNING POINT DEVELOPMENT, LLC

By: _____
Andrea Ferrante, Its Manager

State of Maine
County of Cumberland, ss.

_____, 2018

Then personally appeared the above-named Nathan Poore, in his capacity as 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