

**HOMESTEAD FARMS SUBDIVISION
CONTRACT ZONING AGREEMENT AMONG
THE TOWN OF FALMOUTH, MAINE,
HOMESTEAD ACRES, LLC, AND TURNING POINT DEVELOPMENT, LLC**
[Edits by Amanda Stearns March 9 and 12, 2018](#)

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 mixed use areas](#), 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 general location and size of the residential lots as set forth in Exhibit 2 are specific requirements of this agreement. The general location and size area of the public park and open space as shown on Exhibit 2 are also specific requirements of this agreement. 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 the residential lots, public park and open space area as part of subdivision or site plan review without the need for an amendment to 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 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.~~

~~The following items shall require an amendment to this agreement:~~

- ~~1. Any changes to the allowed uses,~~
- ~~2. Any dimensional requirements as established in Exhibit 4,~~
- ~~3. the minimum and maximum number of permitted units, and~~
- ~~4. or any other specific requirements of this Agreement. ~~an amendment shall require an amendment to this Agreement, including final approval by the Town Council after review and recommendation by the Planning Board.~~~~

Amendments to this Agreement must follow the procedural requirements of Section 19-26.5 of the Zoning Ordinance.

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 Development Area 1 on Exhibit 2:

- i. Single Family Dwellings and accessory buildings/~~and uses on lots similar to those depicted on Exhibit 2.~~
 - ii. Two Family Dwellings and accessory buildings/~~and uses similar to those depicted on Exhibit 2.~~ The minimum number of Two Family Dwelling units will be 12 ~~and, with a~~ maximum number ~~shall not exceed of~~ 24 units ~~within the project.~~
 - iii. Entry Level Housing, which shall be defined as housing 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 2017). Entry Level Housing on single family house lots ~~will shall~~ account for a minimum of 6 and maximum of 15 within each phase.~~The total project~~ minimum number of Entry Level Single Family Dwellings for the total project will shall be 32. Entry Level Housing may also be provided in Two-Family Dwelling units provided that the total number of entry level housing units in two-family dwellings does not exceed 50% of the total number of entry level units.
 - iv. There shall be no Accessory Dwelling Units (ADU) within the Contract Zone and the deeds for lots will contain a restriction prohibiting any ADU.
 - v. Notwithstanding the above, home occupations under Section 19-54a. of the Zoning and Site Plan Ordinance may be allowed in the same manner as permitted in the VMU District.
- b. Any residential and/or non-residential use as allowed in the VMU Zoning District in Development Areas 2 and 3 as depicted on Exhibit 2. Residential uses in Development Areas 2 and 3 shall not be subject to the dwelling unit limitations set forth in Section 3.a.ii and 3.a.iii, but they shall meet the net residential area requirement, which shall be calculated utilizing the entire contract zone area.
 - c. Publicly accessible spaces including parks, open space and trails.

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. The Town will be responsible for future maintenance. Add Exhibit ??? for park design???
- b. Two passive recreation areas, which will remain privately owned, shall require approval~~be approved~~ by the Planning Board and be 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~~shall require approval 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. A portion of the open space may be utilized for stormwater facilities as may be approved by the Planning Board. The remainder of the open space with the exception of trail development and invasive plant eradication treatment shall remain in its natural state.

- d. Trails ~~will~~ shall be built and maintained by the Developer, ~~with and shall require approval from the Planning Board with input from the~~ Land Management and Acquisitions Committee ~~to determine on final~~ the final layout and design. ~~The trails shall be generally woods trails except for the interurban line. 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~~ street rights of way will be installed and maintained 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. Should the Developer apply for street acceptance for any streets or portions of these streets in this project, 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 to the Town ~~public~~ easements for public access to and use of ~~for the~~ streets, trails and open space ~~easements~~ for each prior to the issuance of the first certificate of occupancy within that phase. Street easements shall be granted to the Town within 30 days of ~~upon~~ the placement of the base course of pavement.
- l. The Developer shall construct a trail connection from the southerly Phase 2 area to the northerly ~~phase~~ Phase 1 area prior to issuance of the first certificate of occupancy in the southerly Phase 2 area, generally as shown on Exhibit 3.
- m. The trail connection from ~~phase~~ Phase 1 to the ~~church property~~ West Falmouth Baptist Church property (U42-18) shall be constructed prior to the issuance of the first certificate of occupancy within Phase 1.
- n. Fees
 - i. General impact fee - \$1,300 ~~includes growth permit fee for all lots per residential unit, which shall include the growth permit fee to be paid prior to the issuance of any building permit for the same unit.~~
 - ii. Growth permit fees —growth permit fees shall be paid for all residential units and are included in the general impact fee in Item i.

- iii. Wastewater connection fees - \$2,000 per residential unit. Connections for commercial development shall be as required by existing ordinance requirements.
- o. The Town will accept wastewater from the development.
- p. Architecture
 - i. Several home-house designs have been submitted to the Town and are Exhibit ???; 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.
- q. The Developer will construct a minimum of 3,000 square feet of non-residential use in a-one or more building(s) within Development Area 2 of the project.
- r. No more than 25% of the first floor of ~~this~~ any building in Retail/Commercial Development Area 2 or 3 area will may be utilized for residential use.
- r.s. The developer will pay for any and all off-site improvements required as a result of this project. Off-site improvements will be determined as part of the Planning Board review of the projects. The Traffic Movement Permit shall be secured and a copy shall be provided to the Public Works Director prior to any start of construction. The developer shall coordinate improvements within the right of way with the Town's Route 100 improvement project.

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 within 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 shall be provided by a connection to existing water supply mains in the adjacent rights-of way of Gray and Mountain Roads to supply and new water supply mains through within the Project. On site wells are prohibited.
- c. Electric service shall be provided underground from pad-mounted transformers to all structures.
- 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 during site plan or subdivision review.

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 all applicable zoning, subdivision and site plan requirements.
- b. Rate of Residential Growth Requirements:
 - i. Any dwelling unit initially 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. No more than 25% of the dwelling units in each [phase](#) shall be entitled to this exemption. Housing that is exempt under Section 6.b iii shall not be subject to this limitation.
 - iii. A minimum of 32 single family dwellings within the subdivision shall be "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 2017). It is anticipated that this amount 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. Entry Level Housing shall be exempt from the requirement of a rate of residential growth development permit.

7. [Schedule for Commencement and Phasing; ~~Schedule/Performance Guarantee 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 substantially completed within two (2) years after the Developer's receipt of final land use approvals for Phase 1 of the Property. Phases 1, 2, and 3 shall be completed in that order. Multiple phases may be pending and under construction at the same time, but no building permits shall be [pulled-issued](#) for a phase until one year after the issuance of the first building permit for the prior phase.— 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.

The Developer shall only post a performance guaranty assuring the completion of improvements for those improvements to be constructed within each Phase or which are to be completed in conjunction with such Phase under this Agreement.

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 Ferrante, 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