

**HOMESTEAD FARMS SUBDIVISION
CONTRACT ZONING AGREEMENT AMONG
THE TOWN OF FALMOUTH, MAINE,
HOMESTEAD ACRES, LLC, AND TURNING POINT DEVELOPMENT, LLC**
Base document March 19, 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 mixed use areas, with the development to include entry-level 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, Showing Entire Project in CZA, of Homestead Farms Subdivision, dated May 10, 2018.~~[add date and title]~~

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, Conceptual Plan, of Homestead Farms Subdivision, dated May 10, 2018 ~~[add date and title]~~. 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 of the public park and open space as shown on Exhibit 2 are also specific requirements of this agreement.

The ~~final Planning Board may approve minor revisions to~~ boundaries of ~~the residential lots, public park and open space area shall be approved by the Planning Board~~ as part of subdivision or site plan review without the need for an amendment to this agreement. The Town Council may approve by Order either an extension of time for construction of Phase 1 as set forth in Section 7 or a change in ownership as set forth in Section 8.b; these items shall not require 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.

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 except as stated specifically in this Agreement, and
4. Any other specific requirements of this Agreement.

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/-uses
 - ii. Two Family Dwellings and accessory buildings/uses. The minimum number of Two Family Dwelling units ~~will~~shall be 12 and the maximum number shall not exceed 22 units
 - iii. Entry Level ~~Housing~~Single Family Detached Dwelling, which shall be defined as ~~housing~~single family detached dwelling 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). A minimum of 6 and a maximum of 15 Entry Level ~~Housing~~Single Family Detached Dwellings shall be developed on ~~single family house~~ lots in each phase in Development Area 1 shall account for a minimum of 6 and maximum of 15 within each phase of Development Area 1. The minimum number of Entry Level Single Family Dwellings for the total project shall be 32. A deed restriction shall limit any subsequent sale to the original sale price, plus financing and sale costs incurred by the seller/seller/property owner during the period of ownership at the time of the initial sale -and as part of the sale, for a period of ~~three~~five years from the date of the original sale. ~~should not include interest paid~~
 - 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. This restriction shall not apply to the existing structures in Development Area 3.
 - 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.
- c. Publicly accessible spaces including parks, open space and trails.
- d. The ~~maximum~~ number of dwelling units for the entire project shall ~~be not exceed~~ 151 139.
 - i. Development Area 1 shall ~~have a maximum of~~not exceed ~~125~~ 123 dwelling units.
 - ii. Development Area 2 shall ~~have a maximum of~~not exceed ~~8~~ 6 dwelling units.
 - iii. Development Area 3 shall ~~have a maximum of~~not exceed ~~18~~ 10 dwelling units.

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. A general concept plan of the public park is attached as Exhibit 6.

- b. Two passive recreation areas, which will remain privately owned, shall require approval 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, shall be owned by the Developer until conveyed to the HOA. This area will be established as part of the HOA documents, which 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 and over 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, except that dangerous trees may be removed.
- d. Trails shall be built and maintained by the Developer, until conveyed to the Homeowners Association, which shall be responsible for maintenance after the conveyance, and shall require approval from the Planning Board with input from the Land Management and Acquisitions Committee on the final layout and design. 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 to Marston Street during Phase 1.
- f. Trees and shrubs within street rights-of-way shall be native species. Street trees shall be provided in the following manner:
 - 1) In Development Area 1 one tree for every lot created with locations approved by the Planning Board.
 - 2) A street tree for every 60 feet of frontage shall be installed on the following street segments as shown on Exhibit 2. Specific locations shall be as approved by the Planning Board.
 - a) the entrance street off Mountain Road to the roundabout in Development Area 1,
 - b) the northerly entrance street off Route 100 beside Development Area 2 to the roundabout in Development Area 2, and
 - c) the southerly entrance street off Route 100 in Development Area 3.
- 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 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, the Developer shall offer to the Town a 5-foot wide easement adjacent to the street within Development Area ~~1~~for 1 for purpose of street maintenance.
- k. The Developer shall grant to the Town easements for public access to and use of the streets, sidewalks, trails and open space for each phase prior to the issuance of the first certificate of occupancy within that phase. Street easements shall be offered to the Town within 30 days of the placement of the base course of pavement.
- l. The trail connection from Phase 1 to the West Falmouth Baptist Church property (U42-18) shall be constructed prior to the issuance of the first certificate of occupancy within Phase 1.
- m. Fees
 - i. General impact fee - \$1,300 per dwelling 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 shall be paid for all dwelling units, including those exempt under 6.b.i and 6.b.iii, and are included in the general impact fee in Item i.
 - iii. Wastewater connection fees - \$2,000 per dwelling unit. Connections for commercial development shall be as required by existing ordinance requirements. Section 18-233 of the Utilities Ordinance shall not apply to the Project.
- n. The Town will accept wastewater from the development at the connection point with the public sewers if the sewers within the Project remain private.
- o. Architecture, House siting and Lot Design
 - i. Architecture general. Several house designs have been submitted to the Town and are attached as Exhibit 7?? to illustrate, by way of example, the general architectural style to be constructed. ~~and are attached as Exhibit 7;~~ ~~Other~~ options may be utilized as long as they conform to the general architectural style of these plans and meet the requirements of subsection iv.
 - ii. Landscaping and Site Design – The Planning Board, during the subdivision review process, shall require that site design and landscaping meet the following objectives in addition to those articulated in the Subdivision Ordinance.
 - 1. A landscaping plan for the street ~~R-O-W~~row, front yard and side yard areas shall be submitted as part of a Planning Board application for subdivision. The purpose of the landscaping plan is to provide delineation between lots and add visual interest to the streetscape.
 - 2. Lots in Development Area 1 are located on curvilinear streets wherever possible to avoid creating a uniform street front.
 - ii. ~~No more than two single family 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.

iv. (Additional language for review; need language from Amanda) The following guidelines shall be followed in the construction of single family and two-family dwellings. Building elevations shall be approved by the Land Use Planner prior to the review of a building permit.

1. Prominent covered front entry shall be included.

2. Windows should be primarily square or vertically oriented.

3. Corner and window trim molding shall be the wider architectural style.

4. Garages, either attached or detached shall be set back at least four feet behind the front edge of the house or a porch.

5. Roof pitches shall be no less than 6 in 12 pitch.

6. The front façade of homes shall consist of a mix of eave and gable end sections.

7. A separate garage door shall be provided for each parking bay.

8. Siting the garage on or near a side setback is encouraged.

iii-9. Siding shall consist of traditionally styled types and may include vinyl, cementitious or wood clapboard, brick and shingles.

- p. The Developer will construct a minimum of 3,000 square feet of non-residential use in one or more building(s) within Development Area 2 of the project.
- q. No more than 25% of the first floor of any building in Development Area 2 or 3 may be utilized for residential use.
- r. The developer will pay for any and all off-site improvements required as a result of this project and as approved by the Planning Board. It is recognized that the left-hand turn lane to serve the proposed northerly entrance to the development is shown on the Town's construction plans for the Route 100 improvements. This depiction is not in any way an approval of the left-hand turn lane or a representation of an improvement that will be paid for by the Town. If the left-hand turn land is constructed, the cost shall be borne by the Developer. 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 public right of way with the Town.

5. **Utilities:** All lots and dwelling 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 within the Project. Individual lots may be served by gravity or pumping systems. Onsite septic systems are prohibited. Sewers within the Project shall be built in conformance with Section 18-231 of the Utilities Ordinance; if sewers within the project are proposed to be publicly maintained, they shall comply with Section 18-232 of the Utilities Ordinance.

- 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 and new water supply mains within the Project. On site wells are prohibited.
- c. Electric service shall be provided underground from pad-mounted transformers to all structures. This requirement will not apply to existing buildings in Development Area 3 until site plan or subdivision review is required for those buildings or their replacements.
- d. Telephone and cable service, to the extent provided, shall be underground throughout the Project. This requirement will not apply to existing buildings in Development Area 3 until site plan or subdivision review is required for those buildings or their replacements.
- 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. Rate of Residential Growth Development Permits; Annual Limit on Number of Building Permits and Rate of Residential Growth Development Permit Exemptions.

a. Rate of Residential Growth Requirements:

- ~~a. 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, up to a maximum of 23 exemptions. 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. Housing that is exempt under Section 6.b shall not be subject to this limitation.~~
- b. 32 single family dwellings that are Entry Level Housing in Development Area 1 shall be exempt from the requirement of a rate of residential growth development permit. No more than 15 Entry Level Housing exemptions shall be allowed in any phase.

b. Annual limit on number of residential building permits and rate of residential growth development permits:

- i. No more than 35 building permits shall be issued annually for dwelling units in the entire project.
- ii. No more than 10 total exemptions from the requirements of a rate of residential growth development permit shall be allowed each year for the entire project.

7. Schedule for Commencement and Phasing; Performance Guarantee. The development shall be approved and constructed in phases, with the construction as

noted on Exhibit 3. The Developer shall apply for subdivision approval for all of the proposed lots in the Project at the same time subject to the phasing provided for in this Agreement. No changes shall be made to the phasing in a manner that would impact the street connectivity of the Project. Unless extended by Town Council Order, 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 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. Any change in ownership except to a corporate entity owned or controlled by the Developer shall require approval by the Town Council by Order to determine the technical and financial capacity of the new owner.
- 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. The owner of Development Area 3 shall not be liable for the development or violations in Development Areas 1 and 2 as long as Development Area 3 is under separate ownership that is not related to that of Development Areas 1 and 2. The owner of Development Areas 1 and 2 shall not be liable for violations in Development Area 3 as long as Development Area 3 is under separate ownership that is not related to that of Development Areas 1 and 2.
- 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
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 the Town of Falmouth.

Before me,

Notary Public/Attorney at Law
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 Homestead Acres, LLC.

Before me,

Notary Public/Attorney at Law
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 Turning Point Development, LLC.

Before me,

Notary Public/Attorney at Law
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
- Exhibit 6 - Public Park Concept Plan
- Exhibit 7 - Dwelling Unit Designs