O. TRANSFER OF DEVELOPMENT RIGHTS

1. Purpose

The purpose of the Transfer of Development Right (TDR) Ordinance is to provide an alternative means for the preservation of Developable Farmland, Working Farms, Open Space, and/or Developable Open Space properties with historic structures all known as Giving Parcels, while encouraging development in exchange for allowing investment in parcels that contribute to the promotion of economic development through an increase in the development potential within designated parcels. The principal behind TDR is to preserve designated Giving Parcels by allowing these properties to transfer the ability to develop such land (known as Development Rights) to an appropriate, designated commercial parcel site (Receiving Parcel). Once the ability to develop a Receiving Parcel has been sold to a Receiving Parcel an Agricultural Preservation Restriction (APR) or Conservation Restriction (CR) shall be placed upon the portion transferred from the Giving Parcel's land in perpetuity.

The intent of TDR is to allow for appropriate development on commercial sites while preserving parcels of land that might be lost to development. The TDR Ordinance is a consistent land use application as indicated by the goals and objectives of the Framingham Master Land Use Plan and Open Space & Recreation Plan and may be amended from time to time.

2. Definitions

a. Definitions associated with Section V.O. of these Ordinances are located in Section I.E. Definitions. Such definitions include Agricultural Preservation Restriction (APR), Conservation Restriction (CR), Developable Farm, Developable Open Space Parcel, and Transfer of Development Rights (TDR) Rights Priority Development Site, and Transfer of Development Right Yield Plan (TDR Yield Plan).

3. The Giving Parcel

Developable Farm and/or Developable Open Space parcel in exchange. The intent of the TDR special permit is consistent with the goals and objectives of the Town's Master Land Use Plan and Open Space & Recreation Plan. Parcels shall undergo the following process, as outlined in Section V.O.3 of these Zoning Ordinances.

1. Applicability

The Giving Parcel

a. Determination by the Planning Board
An owner of a potential Giving Parcel seeking consideration as such under the TDR Zoning Ordinances,

i. The Planning Board shall determine the allowable Development Rights that may be transferred to a Receiving Parcel. To determine the total Development Rights allowed to be transferred, the owner of the Giving Parcel shall prepare a Transfer of Development Rights (TDR) Yield Plan.

ii. The owner of the Giving Parcel shall submit the TDR Yield Plan and an application for Giving Parcel Application to the Planning Board for review. The plan and determination as to whether the parcel of land qualifies for such designation.

iii. The Planning Board shall review the Giving Parcel Application for completeness. Giving Parcel Applications require the following documentation:

a. Giving Parcel Application;

b. A TDR Yield Plan

c. Once a Giving Parcel Application is deemed complete, the owner of Planning Board Administrator shall follow the Giving Parcel Application submittal for completeness. Giving Parcel Applications require the following documentation:

a) Giving Parcel Application;

b) A TDR Yield Plan

c) The administrator shall follow the Giving Parcel Public Notification Procedures outlined in Article 26 of the Planning Board Rules and Regulations.

iv. During the public hearing process, the Planning Board shall make the following determinations and findings:

3. a) Confirmation of the number of developable lots based on the Giving Parcel Application and the TDR Yield Plan represents a true and accurate representation of the Giving Parcel.

3. The TDR Yield Plan will be reviewed during a posted public hearing; notice of the public hearing shall be made in accordance with G.L. c. 40A, §11.

3. The total Development Rights of the residential building as denoted in the TDR Rights Residential Building Size Chart within the specific zoning district that the Giving Parcel is located of land (example: Parcel is located of land in The total five buildable lots: five Lots*10,000 sq. ft. = 50,000 sq. ft. of Development Rights to be transferred)

4. b) TDR Residential Building Size Chart shall be multiplied by the total number of building lots allowed by right to determine the total area to be transferred to a Receiving Parcel and placed under an APR and/or CR.
Transfer of Development Rights Residential Building Size Chart

<table>
<thead>
<tr>
<th>Giving Parcel Zoning District</th>
<th>Residential Building Size</th>
<th>Number of Giving Parcel Lots</th>
<th>Equals</th>
<th>Development Rights to be Transferred per Lot**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Residential (R-4)</td>
<td>1</td>
<td>6,500,10,000 square feet</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Single Family Residential (R-3)</td>
<td>1</td>
<td>1,000,000 square feet</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Single Family Residential (R-2)</td>
<td>1</td>
<td>5,000,750 square feet</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Single Family Residential (R-1)</td>
<td>1</td>
<td>5,000,750 square feet</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Residential (G)</td>
<td>1</td>
<td>4,500,750 square feet</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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b. The APR and/or CR placed on the Giving Parcel shall be as follows:

* The TDR Residential Building Size Chart (Section V.0.3.a.iv.d of these Ordinances) shall be multiplied by the total number of building lots as determined by the Planning Board, resulting in a total amount of Development Rights to be transferred to a Receiving Parcel. The associated lots are then placed under an Agricultural Preservation Restriction (APR) and/or Conservation Restriction (CR).

**Development Rights shall be sold as a whole Giving Parcel Lot, half of a Giving Parcel Lot may not be sold. (Example – a developer needs 35,000sf from a R-4 Giving Parcel, the developer would need to buy four Lots for a total of 40,000sf)

b. Giving Parcel Inventory

i. Upon a determination by the Planning Board the Giving Parcel Application shall be placed in the Giving Parcel Inventory.

ii. Giving Parcel determinations shall be retained in the Giving Parcel Inventory for three years from the date of the Planning Board's Decision.

a) If upon expiration of the three-year period the landowner intends to maintain the Giving Parcel's status as a potential Giving Parcel, the applicant shall update the application and/or send a letter confirming that all information on the original application is still accurate and that the intention is to continue such status for an additional three-year period.
- **In the event** for Giving Parcels transferring all Development Rights: At the expense of the owner of the Giving Parcel, the entire Developable Farm and/or Developable Open Space Parcel shall be placed under an APR and/or CR in perpetuity. The entire Giving Parcel shall include all areas identified as non-buildable areas which include: wetlands, wetland buffers, and Moderate Slopes, in addition to the buildable lots as identified in the TDR Yield Plan.

- **For Giving Parcels** transferring a portion of Development Rights: At the expense of the owner of the Giving Parcel, the portion of the Developable Farm and/or Developable Open Space Parcel associated with the square footage to be transferred shall be placed under an APR and/or CR. This shall include all buildable lots—associated with the residential building unit square footage; infrastructure and roadways associated with the building lots; and all non-buildable areas excluding: wetlands, wetland buffers, and Moderate Slopes as identified in the TDR Yield Plan. For fractions of residential building unit square footage, all fractions shall be rounded up to the nearest whole number. The portion of the land to be placed under an APR and/or CR shall be selected with the intent of creating contiguous blocks of land and—where possible—continuous with existing farm land and open space land.

6. **All lands** deemed non-buildable on the Giving Parcel, such as wetlands, wetland buffers, and Moderate Slopes as identified in the TDR Yield Plan, shall be placed under an APR and/or CR at the same time as the first Development Rights are placed under an APR and/or CR.

b. **Development Rights on a Giving Parcel that have not been transferred to a Receiving Parcel shall remain eligible for future transfer or development** that a Giving Parcel is sold, transferred, or modified in a way that would affect the Giving Parcel’s application, then the landowner is required to provide written notification outlining said changes and/or modifications. At the time of notification, the Planning Board shall make a determination as to whether a modification to the original Decision is necessary.

4. **The Receiving Parcel**

Receiving Parcels shall only include TDR Priority Development Sites, or additional sites as provided for in Section 6. The following information details the procedures required for each type of Receiving Parcel.

a. **Use of Development Rights**

i. The owner or proponent of a Receiving Parcel may assemble Development Rights from multiple Giving Parcels. All Giving Parcels must be included in the Receiving Parcel Application.

ii. **Development Rights Use by Receiving Parcels**

<table>
<thead>
<tr>
<th>Receiving Parcels</th>
<th>Increase in Lot Coverage of an Additional***</th>
<th>Maximum Increase in FAR***</th>
<th>Maximum Increase in Building Height/Additional Floors***</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>75%</td>
<td>1.68</td>
<td>35%</td>
</tr>
</tbody>
</table>

*** No increases in Lot Coverage or Floor Area Ratio (FAR) above the allowed use of Development Rights shall be permitted.
Example: Receiving Parcel is 20,000 sq. ft. With an allowed construction of 0.32 FAR, through the use of Development Rights the parcel can increase the FAR to a maximum of 2.0. If the same property utilizes TDR for an increase in lot coverage, then the property that would be allowed to cover 25 percent (or 5,000 sq ft) with the building and parking lot would be allowed to cover a maximum of 100 percent of the parcel through the use of Development Rights. Other requirements such as open space and landscaping, setbacks, etc. would still apply.

iii. Any use of Development Rights that results in demand for off-street parking above what can be accommodated on-site will need to either construct structured parking on-site, establish a Parking Program (Section IV.B.1.g of these Ordinances), and/or enter into a Cooperative or Shared Parking Agreement (Section IV.B.1.g.1 of these Ordinances).

iv. Development Rights that are not used by a Receiving Parcel may be sold to another Receiving Parcel owned by the owner of the Development Rights. Prior to the use of the Development Rights, the secondary Receiving Parcel shall be required to seek a Special Permit for the use of Development Rights from the Planning Board, as outlined in Section V.0.4 of these Ordinances.

v. Prior to the issuance of a building permit, the Giving Parcel and Receiving Parcel shall

b. The Receiving Parcel

1. The owner of the Receiving Parcel shall file an application for a TDR special permit with the Planning Board.

2. The owner of the Receiving Parcel shall enter into an agreement with the associated lots of the Giving Parcel for the transfer of the Development Rights prior to applying for a TDR special permit under an APR and/or CR as outlined in Section V.0.5 of these Zoning Ordinances. The Planning Board Administrator shall ensure provide written confirmation to the Building Department.

3. That the APR and/or CR has been placed on the Giving Parcel by the Receiving Parcel prior to the issuance of any occupancy and use permit-building permits.

4. The owner of the Receiving Parcel may assemble Development Rights from multiple Giving Parcels. The resulting development on a Receiving Parcel shall not exceed the allowable dimensional requirements as stated herein.

5. Parcels of land that are non-conforming lots that exceed allowed densities or that have received—variances for building heights, number of additional floors, lot coverage, or FAR—are not eligible to receive transferred Development Rights.
I. Planning Board

b. In the event of unused Development Rights the owner of the Receiving Parcel may Review

A parcel of land defined as a TDR Priority Development shall be permitted to sell any unused reviewed by the Planning Board for use of Development rights to another.

i. Filing of a Receiving Parcel—The Secondary Application

a) A Receiving Parcel shall be required to seek an application for a Special Permit with the Planning Board.

b) The applicant of the Receiving Parcel shall also apply for all other associated applicable applications as determined by the Building Commissioner, such as Site Plan Review (Section VI.F of these Ordinances).

c) The Planning Board Administrator shall follow the Transfer of Development Rights from Public Notification Procedures outlined in Article 26 of the Planning Board prior to Rules and Regulations.

6. During a public hearing of the use of Planning Board, the purchased Development Rights, Planning Board shall review and consider all the potential impacts for the use of Development Rights as outlined in Article 26 of the Planning Board Rules and Regulations.

5. Agriculture Preservation Restriction or Conservation Restriction Process

The Giving Parcel must meet the following requirements:

a. The APR and/or CR shall be placed upon the respective parcel of land prior to the issuance of a Building Permit from the City of Framingham.

b. Such parcel shall be placed under an APR and/or CR in perpetuity pursuant to state statute Chapter M.G.L. c. 184, Section 32 to ensure that said parcel will remain as agricultural land or open space in perpetuity. Once an APR and/or CR has been placed on the Giving Parcel, the parcel shall continue to be managed and maintained in perpetuity by the owner.

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Table:

<table>
<thead>
<tr>
<th>Chapter 43D Priority</th>
<th>Maximum Increase in Building Height/Additional Floors</th>
<th>Maximum Increase in Lot Coverage</th>
<th>Maximum Increase in FAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>35%</td>
<td>35%</td>
<td>50%</td>
<td></td>
</tr>
</tbody>
</table>

*Floor height shall not exceed the allowed maximum for all structures, including roof-top mechanical equipment or cisterns.*
c. Historic structures that have received such designation by the Historic District Commission or the Historical Commission are not required to be placed under an APR and/or CR but are required to comply with all regulations relative to structures possessing historic designation.

d. Historic structures that have received such designation by the Historic District Commission or the Historical Commission are not required to be placed under an APR and/or CR but are required to comply with all regulations relative to structures possessing historic designation.

3. The APR and/or CR may be held by the Town combination of at least two of the following entities: The City of Framingham, a land trust, or the qualified under Section 170(h) of the IRS code of 1986, as amended, and/or the Commonwealth of Massachusetts. The APR and/or CR is prohibited from being held by the owner of the Giving Parcel or the owner of the Receiving Parcel. The terms of the APR and/or CR shall be reviewed by the Town Council/the City Solicitor at the expense of the owner of the Giving Parcel and approved by the Planning Board.

4. The Giving Parcel may develop a trail system within the APR and/or CR lands, which may be accessible for public use.

f. Trail systems for public access intended for passive recreational use shall be developed within APR and/or CR encumbered land of the Giving Parcel(s) except where a waiver has been granted by a four-fifths vote of the Planning Board. Trail systems for public access shall not be required where land is actively in use for livestock and crops.

6. Farming rights on any land subject to the APR and/or CR may be sold or leased to another farmer for the purpose of continuing or creating Agricultural and/or Farm use of the land; in accordance with State law and statute.

6. Developable Open Space may be utilized at a future date for Agriculture and/or Farm use— and—

i. Development Rights on a Giving Parcel that have not been transferred to a Receiving Parcel shall remain eligible for future transfer for development.

i. The APR and/or CR placed on the Giving Parcel shall be as follows:

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All of the above restrictions shall be made part of and included as additional provisions contained within the APR and CR documentation.
(a) For Giving Parcels transferring all Development Rights: The entire Developable Farm and/or Developable Open Space Parcel shall be placed under an APR and/or CR in perpetuity at the expense of the Giving Parcel. The entire Giving Parcel shall include all areas identified as non-buildable areas, wetlands, potential and certified vernal pools, wetland buffers, vernal pool buffers, Moderate Slopes, and easements, in addition to the buildable lots as identified in the TDR Yield Plan.

(b) For Giving Parcels transferring only a portion of Development Rights: Developable Farm and/or Developable Open Space Parcel associated with the lot to be transferred shall be placed under an APR and/or CR at the expense of the owner of the Giving Parcel or proponent. This shall include all buildable lot areas associated with the residential building unit square footage, infrastructure, and roadways associated with the building lots, and all non-buildable areas, including but not limited to areas identified as non-buildable, wetlands, potential and certified vernal pools, wetland buffers, vernal pool buffers, Moderate Slopes, and easements. For fractions of lots/square footage to be transferred, all fractions shall be rounded up to the nearest whole number. The lots to be placed under an APR and/or CR shall be selected by the owner with the intent of creating contiguous tracts of agricultural or open space land and, where possible, contiguous with abutting farm land and open space land.

6. Variance

The owner of a Receiving Parcel who seeks to increase the development potential of a Receiving Parcel through an increase in height and/or lot coverage and/or an increase in FAR may apply for a Variance under M.G.L. c. 40A, § 10. Any increase in height and/or lot coverage and/or an increase in FAR shall be limited to ten (10) percent of the maximums set forth in Table of Dimensional Regulations in Section IV.E.2 of these Ordinances unless the provisions of this TDR Ordinance are used.

3. Application Review

The review procedure for the TDR special permit application shall be in accordance with M.G.L. c. 40A, Sections 9 and 11, and Section V.E. of the Framingham Zoning Ordinance, Planning Board Rules and Regulations, and other permitting and approval processes as may be applicable.

The Planning Board may at its discretion require the Applicant to fund a Peer Review Consultant to assist in the technical review as outlined herein, in accordance with Article 16 of the Planning Board's Administrative Rules and Regulations and M.G.L. ch. M.G.L. ch 44, Section 53D.

3. Variance Limitation

The Planning Board may issue a TDR special permit in accordance with the additional requirements and standards specified within Section V.O., only if the receiving parcel is not a pre-existing non-conforming property and no variance has not ever been issued from the requirements of this Section V.O for the Receiving Parcel. A pre-existing non-conformity or a variance from the provisions of Section V.O. shall render a property ineligible for the filing of a TDR special permit application and TDR special permit.
8. Limitations

The provisions of this Ordinance, Section V.O shall not be used for the development of housing in the Receiving Parcels, including Multifamily Developments or Mixed-use Developments with residential.