

# **[PROPOSED]**

## **Cumberland Farms, Inc. Contract Zone**

### **Contract Zone Agreement by and among Cumberland Farms, Inc. and the Town of Gray Regarding a 1.35 Acre Parcel of Land with addresses at 10, 12, and 14 Main Street, Gray, Maine**

This Contract Zone Agreement (the “Agreement”) is made this \_\_\_ day of \_\_\_\_\_, 2017, by and between the Town of Gray, a Municipal Corporation with a place of business in Gray, Maine (the “Town”), Cumberland Farms, Inc. (“CFI”), a Delaware corporation with a with offices located at 165 Flanders Road, Westborough, Worcester County, Massachusetts, Garth R. Adams and Jeanne B. Adams (“Adams”), and Keith H. Harriman (“Harriman”), pursuant to Conditional and Contract Rezoning Provisions set forth in 30-A M.R.S.A. Section 4352 (the “Act”) and Section 402.9.9 of the Gray Zoning Ordinance (as amended) (the “Zoning Ordinance”). Property owners Adams and Harriman have authorized Cumberland Farms, Inc. (hereafter referred to as the “Applicant”) to seek this Contract Zone Agreement. Said Authorizations are attached hereto and made a part hereof, as Exhibit A.

#### **Recitals:**

1. The property subject to this Agreement consists of an approximately 1.35 acre parcel which is comprised of three individual parcels (collectively hereafter referred to as the “Property”), located at 10, 12 and 14 Main Street (Tax map 43, Lots 405-5, 405-6, and 405-7). An existing Cumberland Farms store and fuel service facility (defined in the Gray Zoning Ordinance as an “Auto Service Station”) is located on the 10 Main Street parcel; residential structures are presently located on the two other parcels. The three individual parcels are shown on a January 27, 2017 survey, attached hereto and made a part hereof, as Exhibit B. The three parcels are presently held in ownership, as follows:

- A. Cumberland Farms, Inc. dated December 31, 1980 recorded in the Cumberland County Registry of Deeds in Book 4720, Page 173.
- B. Garth R. Adams and Jeanne B. Adams dated March 24, 2006 recorded in the Cumberland County Registry of Deeds in Book 23811, Page 103.

- C. Keith H. Harriman dated February 22, 2000 recorded in the Cumberland County Registry of Deeds in Book 15348, Page 162.
2. The Property is located in the Village Center Proper Zoning District (“VCP Zone”) as established in Section 402.4.1 of the Zoning Ordinance.
3. Table 402.5.3 lists Retail Trade as a permitted use in the VCP; Auto Service Stations are presently not a permitted use in the VCP.
4. The Town of Gray developed the Gray Comprehensive Plan (“GCP”) which was duly adopted by the Town on August 5, 2003.
  5. The stated objectives of the GCP are to: (1) Retain and expand the range of convenience stores and services available in Gray; (2) Increase the share of convenience spending done in Gray by residents of the local trade area; and (3) Improve the image of Gray as a desirable community in which to located a business.
  6. The Applicant desires to demolish the existing structures, and to construct a “New England” styled Cumberland Farms retail store and fuel service facility, which would include an outdoor eating area, professional landscaping, and an expansion of its convenience store and fuel service area (hereafter referred to as the “Project”). A conceptual site plan describing the proposed redevelopment and dated January 27, 2017 is attached hereto as Exhibit C, and made a part hereof; plans showing the proposed new retail store structure, fuel service canopy and signage are attached hereto as Exhibit D, and made a part hereto.
  7. As a part of its redevelopment plan, the Applicant desires to provide an easement to the Town of Gray across the rear of the Property, within which the Town would be authorized to use, maintain and repair a public bike/pedestrian pathway to be constructed by the Applicant.
  8. The proposed redevelopment of the Property is not inconsistent with the GCP.
  9. In order for the Project to proceed, certain amendments with respect to use, setbacks, and signage standards of the Zoning Ordinance are required.
  10. The parties wish to enter into a Contract Zoning Agreement relating to the Property, subject to the terms and conditions set forth herein.

**Now, therefore,** pursuant to the provisions of 30-A M.R.S. § 4352(8) and Section 402.9.9 of the Zoning Ordinance (as amended), the Gray Town Council finds that this Contract Zoning Agreement:

1. Is consistent with the Comprehensive Plan duly adopted by the Town of Gray on August 5, 2003; and
2. Establishes a Contract Zone Area consistent with the existing and permitted uses in the original zone of the area involved; and
3. Only includes conditions and restrictions which related to the physical development and future operation of the Project; and
4. Imposes those conditions and restrictions which are necessary and appropriate for the protection of the public health, safety and general welfare of the Town of Gray; and
5. Advances desired land use objectives that promote a clear public purpose and benefit, including bringing private investment into the VCP District, and by assisting the Town in its efforts to: (a) identify the Town of Gray as an essential gateway to Western Maine and the Sebago Lakes Region; (b) reclaim the village as a lively hub for residents, visitors, workers, and shoppers who can safely get around by foot, bicycle and vehicle; and, (c) re-establish Gray Village as the marketplace in the region for commerce and creativity.

The parties agree as follows:

1. **Contract Zone.** The Town hereby agrees that the Property as described herein shall be a contract zone (the “Contract Zone”) pursuant to the provisions of 30-A M.R.S. § 4352(8) and Section 402.9.9 of the Zoning Ordinance.
2. **Proposed Project.** The Town and Applicant recognize that the plan submitted for contract zone review is representative of the existing and proposed site layout, but is subject to change as a result of site plan review conducted by the Planning Board. If it is determined by the Town Planner that the changes constitute a significant change in the Agreement, then the Applicant shall also be required to obtain Town Council approval of the change.
3. **Permitted Uses Within the Contract Zone.** The development permitted within the Contract Zone shall be as follows:
  - A. Any permitted or conditional uses permitted on the Property pursuant to the Agreement, or as added by subsequent amendment to the Zoning Ordinance. Except as set forth herein, all performance criteria presently contained in both Chapter 406 (Sign Ordinance) and the Zoning Ordinance (Chapter 402) with respect to the VCP Zone shall apply to the Contract Zone.

B. In addition to the allowed uses in the VCP Zone, the Applicant shall be permitted to construct, use and maintain an Auto Service Station/fuel service facility at the Property.

4. **Restrictions within the Contract Zone.**

A. **Spatial Criteria.**

- (a) The side yard setback for installation of underground storage tanks shall be five (5.0) feet from any property line.
- (b) The Maximum Impervious Surface shall be eighty (80) percent.

B. **Signage.** The Signage within the Contract Zone, as compared to the Zoning Ordinance for the VCP Zone shall be as follows and as described on the Signage Plans, Exhibit D, hereto:

	<b>VCP Zone Requirements</b>	<b>Contract Zone</b>
FREESTANDING SIGN AREA, HEIGHT & SETBACK	24 SF MAX., 5' SETBACK, 12' MAX. HEIGHT	60.0 SF PUSH-THROUGH, 10' SETBACK, 15' HIGH
WALL SIGN AREA	TOTAL AGGREGATE OF ALL SIGNS IS NOT TO EXCEED 56 SF (2) WALL SIGNS ALLOWED = 24 SF MAX. (2) CANOPY SIGNS ALLOWED = 9% MAX. SF/SIDE	(1) 37.6 SF PUSH-THROUGH WALL SIGN FACING MAIN STREET (1) 37.6 SF PUSH-THROUGH WALL SIGN FACING SOUTH  TOTAL WALL SIGNAGE = 75.2 SF
CANOPY SIGNS	TWO CANOPY SIGNS 9% OF TOTAL SF OF THE SIDES OF THE CANOPY	TWO PUSH-THROUGH CANOPY SIGNS 11 SF EACH = 22 SF
TOTAL AGGREGATE SIGNAGE	56SF	157.2 SF
DIRECTIONAL GROUND SIGNS	(1) EXIT AND (1) ENTRANCE PER CURB CUT NO INTERNAL ILLUMINATION NO CORPORATE LOGO DOES NOT COUNT AGAINST AGGREGATE SIGNAGE	(1) EXIT AND (1) ENTRANCE PER CURB CUT INTERNAL ILLUMINATION PUSH-THROUGH CORPORATE LOGO UP TO 5 SF EACH AND UP TO 3 FEET TALL
GAS PRICE TOPPERS (ON PUMPS)	ALLOWED IF NOT DIGITAL	AMBER ELECTRONIC GAS PRICE TOPPERS
ELECTRONIC MESSAGE BOARD INTERNAL ILLUMINATION	NOT PERMITTED NOT PERMITTED	NONE SEE ATTACHED SIGNAGE PLAN (AMBER ELECTRONIC GAS PRICES; OTHER SIGNAGE WITH PUSH-THROUGH LIGHTING

5. **Development Standards.** Development Standards shall be consistent with the present standards found in the Zoning Ordinance, or less restrictive standards, should the Zoning Ordinance be so amended.

6. **Bicycle/Pedestrian Pathway Easement.** Upon final approval of all permits required for the Cumberland Farms Project, and after any appeal periods have run, the Applicant shall provide a ten (10) foot wide easement to the Town, in the form attached to this Agreement as Exhibit E, and at a location to be selected by Applicant during the Town's Site Plan Approval process, for the purpose of the construction by the Applicant, at the time of construction of the herein-described Cumberland Farms Project, a five (5) foot wide gravel public bicycle/pedestrian pathway.

7. **Brick Sidewalk.** As a part of the Cumberland Farms Project, the Applicant shall replace the brick sidewalk that abuts the front property line of the 10, 12 and 14 Main Street Property.

8. **Historical Recognition.** Upon final approval of all permits required for the Cumberland Farms Project, and after any appeal periods have run, the Applicant shall:

- A. Excavate and remove the granite stone foundation at 14 Main Street. The Applicant shall attempt to remove said granite foundation without breakage or causing further damage to the stone, however cannot guarantee that no further damage shall occur due to age and condition of the foundation. Upon excavation, the Town of Gray shall transport the granite to another location to be selected by the Town.
- B. Provide funds for a memorial plaque to be designed by the Town of Gray, in consultation with the Historical Society, honoring the life and contributions of Henry Pennell. Said plaque shall be installed by the Town within the ten-foot Pedestrian/Bicycle Pathway Easement area described in Paragraph 6 of this Agreement, at a location to be selected by the Town.
- C. Remove and provide to the Town, the boot scraper from the front doorstep, and the granite door entry slab.
- D. Make a one-time payment of Ten Thousand (\$10,000.00) Dollars to the Town to be used and appropriated as the Town and Historical Society jointly deem appropriate to memorialize the 14 Main Street property.

9. **Stormwater Standards.** The Applicant shall adhere to the Maine Department of Environmental Protection, Chapter 500 stormwater regulations.

10. **Miscellaneous Provisions.**

A. **Survival Clause.** The terms and conditions of this Agreement shall run with the land and be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto. A true copy of this Agreement shall be recorded in the Cumberland County Registry of Deeds.

B. **Further Assurances.** In order to effectively and properly implement this Agreement, the parties agree to negotiate in good faith the terms and conditions of such further instruments and agreements as may be reasonably necessary from time to time to give effect to this Agreement.

C. **Maine Agreement.** This Agreement is a Maine Agreement, entered into in the state of Maine and shall be governed by and enforced in accordance with the laws of the State of Maine, without giving effect to conflicts of law principals.

D. **Binding Covenants.** The above-stated restrictions, provisions and conditions are an essential part of this Agreement and shall run with the Property, shall bind the parties, their successors and assigns with respect to possession or occupancy of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the Town, by and through its duly authorized representatives. This Agreement may not be amended except by mutual written agreement of the parties.

E. **Severability.** In the event any one or more clauses of this Agreement shall be held to be void or unenforceable for any reason by any court of competent jurisdiction, such clause or clauses shall be deemed to be severable and of no force or effect in such jurisdiction, and the remainder of this Agreement shall be deemed to be valid and in full force and effect, and the terms of this Agreement shall be equitably adjusted if possible so as to compensate the appropriate party for any consideration lost because of the elimination of such clause or clauses.

F. **Enforcement.** The Town shall also have the ability to enforce any breach of this Agreement or any other violation of the Zoning Ordinance through the provisions of 30-A M.R.S.A. Section 4452.

G. At such time as the Town of Gray has a detailed proposal to reconfigure vehicular access to the property located at 8 Main Street, the Applicant agrees to discuss

said proposal with the Town. This good faith agreement to enter into a future discussion regarding such access does not impose any further obligation on the Applicant.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed as of the day and year first above written.

TOWN OF GRAY

\_\_\_\_\_

By: \_\_\_\_\_  
Deborah S. Cabana, Town Manager

CUMBERLAND FARMS, INC.

\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Its \_\_\_\_\_