

CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF GRAY, BRITTON MAINE PROPERTIES, LLC,
AND BRITTON LUMBER COMPANY, INC.

This is a Contract Zone Agreement (the “Agreement”) made as of the ___ day of _____, 2014 by and among the TOWN OF GRAY, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter the “Town”), BRITTON MAINE PROPERTIES, LLC, a Maine limited liability company and BRITTON LUMBER COMPANY, INC., a Vermont corporation with a business located at 218 Yarmouth Road, Gray, Maine, (collectively hereinafter the “Applicants”), pursuant to the conditional and contract zoning provisions set forth in Section 402.9.9 of the Gray Zoning Ordinance and 30-A M.R.S.A. § 4352(8).

WHEREAS, the property subject to this Agreement consists of an approximately 5 acre parcel of real estate owned by Britton Maine Properties, LLC and leased to Britton Lumber Company, Inc., located at 218 Yarmouth Road, identified on the Town Tax as Map 53, as Lot 38-7-1, and more particularly depicted on Exhibit “A” attached hereto and made a part hereof and recorded in the Cumberland County Registry of Deeds in Book 29241, Page 75 (the “Property”); and

WHEREAS, the Applicants or their predecessors have operated a building materials wholesale distribution business on the Property for more than thirty years; and

WHEREAS, the Applicants use the Property to warehouse lumber, roofing and other building materials for wholesale distribution to retail dealers, and there are currently three storage sheds and an office on the Property; and

WHEREAS, the Property is currently located in the Rural Residential & Agriculture District (RRA) under the Gray Zoning Ordinance (hereafter the Zoning Ordinance); and

WHEREAS, the RRA District does not presently allow, either as a permitted or conditional use, warehousing or wholesale trade, as shown in Table 402.5.3 of the Zoning Ordinance; and

WHEREAS, prior to the RRA District designation and at the time the existing use was established, the Property was located in the General Development District (GD), which allowed, as a conditional use, warehousing and outdoor storage, among other commercial uses; and

WHEREAS, the Applicants wish to continue to use and operate the Property for the warehousing and wholesale distribution of building materials, but wish to construct additional covered storage space to support the Applicants’ continued business operations; and

WHEREAS, in order for the construction of additional covered storage space to proceed, certain amendments with respect to use and lot coverage of the Zoning Ordinance are required; and

WHEREAS, the Applicants have requested a contract zone for the Property to permit such uses and operations, and

WHEREAS, the size, location and configuration of the Property permit a level of buffering and site design which will mitigate any impacts of additional covered storage space, and the continued operation of a wholesale distribution business is consistent with the use of the property for the last thirty years; and,

WHEREAS, the rezoning would be consistent with the policies of the Gray Comprehensive Plan, is consistent with the existing and permitted uses within the zoning classification, only includes restrictions which relate to the physical development or operation of the property, and is permitted pursuant to the Zoning Ordinance and Maine law.

NOW THEREFORE, in consideration of the mutual promises made by the parties to each other, the parties covenant and agree as follows:

1. Zoning Map: The Town hereby amends the Zoning Map of the Town of Gray, by adopting the map change amendment shown in Exhibit A.
2. Permitted Uses. Notwithstanding Table 402.5.3 of the Zoning Ordinance, as it may be amended from time to time, and in addition to the permitted and conditional uses in the RRA District, warehousing and wholesale distribution of building materials is a permitted use on the Property.
3. Building Construction Spatial Standards. Notwithstanding Table 402.5.4 B of the Gray Zoning Ordinance, the spatial standards for the Property subject to this this contract zone are as follows:

Maximum Building Coverage	Minimum Lot Line Setback Front	Minimum Lot Line Setback Side	Minimum Lot Line Setback Rear	Maximum Building Height
50%	50 ft.	25 ft.	50 ft.	35 ft.

4. Underlying Zoning Designation. Except as set forth above regarding the development and use of the Property, all other requirements of the underlying RRA District and the Zoning Ordinance, as may be amended from time to time, including Article 10, Site Plan Review, shall apply and shall govern the use and development of the Property.
5. 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 Applicants, their successors and assigns of the Property or any part thereof, and any party in possession or occupancy of the Property or any part thereof, and shall insure 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.

6. Enforcement. The Town shall have the power to enforce all conditions and restrictions of this Agreement through an enforcement action pursuant to 30-A M.R.S.A. § 4452 as it may be extended from time to time. In the event that the Applicants or their successors or assigns fail to use and operate the Property in accordance with this Contract Zone Agreement, or in the event of any other breach hereof, this Contract Zone Agreement may be terminated by vote of the Town Council after such notice as required by law. In that event, the Property may then be used only for such uses as are otherwise allowed by law.

7. Miscellaneous Provisions. In the event any provision of this Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, either in law or in equity. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Maine except any conflict of laws or provisions applying laws of any other jurisdiction.

This Agreement shall be recorded in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Gray Town Council.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

WITNESS:

TOWN OF GRAY

name of witness

By: _____

Deborah S. Cabana, its Town Manager (duly authorized by vote of the Gray Town Council on _____, 2014)

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

_____, 2014

Personally appeared the above named Deborah S. Cabana, Town Manager of the Town of Gray, and acknowledged the foregoing instrument to be her free act deed in her said capacity and the free act and deed of said Town of Gray.

Before me,

Notary Public/Attorney at Law

print name

WITNESS:

BRITTON MAINE PROPERTIES, LLC

name of witness

By: _____
Douglas G. Britton, its Managing Member

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

_____, 2014

Personally appeared the above named Douglas G. Britton, Managing Member of Britton Maine Properties, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity and the free act and deed of said Britton Maine Properties, LLC.

Before me,

Notary Public/Attorney at Law

print name

WITNESS:

BRITTON LUMBER COMPANY, INC.

name of witness

By: _____
Robert E. Moses, its President

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

_____, 2014

Personally appeared the above named Robert E. Moses, President of Britton Lumber Company, Inc., and acknowledged the foregoing instrument to be his free act deed in his said capacity and the free act and deed of said Britton Lumber Company, Inc.

Before me,

Notary Public/Attorney at Law

print name