

Contract Zone Agreement
by and Between
Alrig USA Development, LLC and the CITY OF SACO

DRAFT FOR SUBMISSION 6-15-2021

_____, 2021

THE CITY OF SACO HEREBY ORDAINS

I. That the City of Saco Zoning Ordinance adopted January 11, 2021 is hereby amended by adopting this contract by and between the City of Saco and Alrig USA Development, LLC with a mailing address of 30200 Telegraphs Road, Suite 205, Birmingham Farms, Michigan 48025 (the "Applicant") and its successors and assigns:

1. The Applicant proposes a multi-tenant commercial building to be located at 507 Main Street.
2. Said property ("Subject Property") is identified as Tax Map 33, Lot 2-1 on the City of Saco tax maps, and is in a Highway Business (HB) zoning district.
3. Right, title and interest is demonstrated with the submittal of a Quitclaim Deed with Covenant dated February, 2010, recorded in Book 15819 Pages 490-493 at the York County Registry of Deeds, and a redacted copy of the purchase and sale between the current owner and purchaser, Alrig USA Development, LLC, or its assigns.
4. The subject property is currently improved with a structure that would be demolished and replaced, subject to the terms and conditions of this Agreement.
5. The uses proposed for the future commercial building include:
 - a. A proposed Food and Drink use, "Eating Establishment," that would occupy 1,440 square feet of floor space. Food and Drink is a permitted use in the Highway Business (HB) zone.
 - b. A proposed Retail use that would occupy 1,360 square feet of floor space. Retail is a permitted use in the Highway Business zone.
 - c. A proposed Eating Establishment that would occupy 2,563 square feet of floor space. This Eating Establishment proposes to include Drive-through window service. Drive-through window service is a permitted use in the Highway Business zone.

II. The Applicant proposes a zoning amendment in the form of a contract zone that would allow the proposed development with certain deviations from Zoning Ordinance requirements. The contract zone would address the following issues:

- a. Use allowance: One of the commercial units is planned to be a Chipotle Mexican Grill restaurant, which arguably meets the definition of a fast-food restaurant under the Zoning Ordinance. The Property is located in the HB district, which allows for eating establishments (defined as, "a business which sells prepared food and which does not serve alcoholic beverages"), but does not allow "fast-food restaurants." Prior to the most recent Zoning Ordinance amendment in January, the Ordinance did allow a fast-food restaurant in this location. The applicant requests that a fast-food use (Chipotle or similar business) be permitted at this location due to the fact that this property was a heavily takeout-based restaurant in its last use, and because it is currently located between two other fast-food restaurants, including a Kentucky

Fried Chicken immediately to the property's south, and a Dunkin' Donuts immediately to the Property's north. The proposed Chipotle is therefore very much in keeping with surrounding uses. Fast-food use is well suited to this location and will not detract from surrounding properties, all of which are similarly used.

- b. Parking between building and Main Street: The lot as currently developed uses the area between the Main Street sidewalk and the front of the building for two rows of parking and a travel lane. The proposed development would similarly use this space for two rows of parking and a travel lane. Prior to the January 2021 revisions to the Zoning Ordinance, lots fronting on Main Street were permitted to have no more than one row of parking spaces or 25% of the total required number of parking spaces between the front of the building and the street. Under the recent amendments, codified at Section 230-X2(F)(3), lots fronting on Main Street are no longer permitted to have any parking between the front of the building and the street. Where this Property is currently nonconforming as to both the prior standard and the newly adopted standard, and where its immediate abutter, Dunkin' Donuts, also includes two rows of parking and a travel lane in front of the building, this request will have no appreciable impacts on the neighborhood.
- c. Parking setback: §230-X2(E) requires that parking spaces and access drives be at least five feet from any side or rear lot line. This proposal includes an access lane for the pick-up window that will fall within this five-foot setback on the northerly property line. Where the setback at issue is with an abutting property that is also a fast-food use, and will be immediately adjacent to other parking on that property, the impact of the modification on surrounding properties will again be minimal.
- d. As stated in §XVII5.A, "Occasionally, competing and incompatible land uses conflict; and traditional zoning methods and procedures, such as variances, conditional use permits, and alterations to the zone boundaries, are inadequate to promote desirable growth. In these special situations, more flexible and adaptable zoning methods are needed to permit differing land uses in both developed and undeveloped areas, and at the same time recognize the effects of change.
- e. Recognizing the use and dimensional restrictions imposed by the Zoning Ordinance, the Applicant hereby makes application for a Contract Zone that would allow a Fast Food Restaurant with Drive-Through Window Service to be established and to operate on the Subject Property, and for certain dimensional requirements to be modified as outlined herein.
- f. Recognizing certain recommendations pertaining to improving traffic management in the Main Street corridor found in the 2005 Main Street Access Study and the 2011 Comprehensive Plan, a long term goal of the City is establishing alternatives to Main Street in the form of parallel connecting streets and way. With the proposed redevelopment of the Subject Property comes the potential for establishing a so-called "Connector Road" between and linking Smith Lane and Stockman Avenue. City and applicant have engaged in discussions to that end with an anticipated end result that will include advantages for each, for neighboring properties, and for the City's long term traffic management goals.

III. This Contract Zone, specifically and exclusively for the parcel at 507 Main Street, would allow the applicant to establish and operate a Fast Food Restaurant with Drive-Through Window Service on the Subject Property, subject to the following Conditions and Restrictions, as provided for in Section XVII5 of the Zoning Ordinance.

Reference is made to the “Site Plan Set for Proposed Multi-Tenant Commercial Building, Map 033 Lot 2-1, 507 Main Street (U.S. Route 1) (County Route 5) City of Saco, York County, Maine” dated 2/17/21, revised through 5/14/21, and again revised through 6-18-2021 (for purposes of this Agreement) prepared by Stonefield Engineering and Design, 1 Beacon Street, 15 Floor, Boston ME 02108 on behalf of the Applicant.

1. A Fast Food Restaurant with Drive-Through Window Service as proposed and described by the Applicant shall be allowed to operate as a permitted use on the parcel identified herein as the Subject Property, it being understood that Chipotle Mexican Grill is expressly authorized at Subject Property, regardless of classification of its food service.
2. Notwithstanding §X2.F.3 of the Zoning Ordinance, Applicant shall be allowed to design and construct two rows of parking spaces and a travel lane between the front of the building and Main Street as depicted on the site plan.
3. Notwithstanding § X2.E. of the Zoning Ordinance, Applicant shall be allowed to design and construct an access drive associated with the proposed Drive-Through Window that is less than five (5) feet from the northerly property line, as depicted on the site plan.
4. The Applicant shall adhere to all other applicable provisions of the Highway Business zoning district and of the City of Saco Zoning Ordinance and Site Plan Review Ordinance.
5. The site shall be developed in accordance with the site plan as detailed hereinabove and as revised through May 14, 2021, and again revised June 18, 2021, except as modified by requirements of the Saco Planning Board not mandated in this Agreement. The final site design shall be determined during site plan review by the Saco Planning Board.
6. Within a reasonable time after closing on the purchase of the Property (but in no event more than sixty (60) days thereafter), the Applicant shall deliver to the City’s attorney a “Quitclaim Deed” in a form agreed upon by the City’s attorney, conveying an approximately 50 foot by 184 foot strip of land as shown on the above referenced site plan to the City of Saco, which strip of land shall be used for the purpose of installing a connector street between Smith Lane and Stockman Ave., and which deed shall further be subject to an easement for Applicant’s continued use of stormwater detention facilities. This deed will be fully executed as a condition of this agreement, but will be held in escrow by the City’s attorney subject to an escrow agreement between the Applicant, City, and City’s attorney. The Escrow Agreement shall permit the City to record the deed upon (1) giving notice to Applicant that development of the road (design and construction) is being undertaken within a reasonable time period, and; (2) confirming that the City, at its cost, will both relocate Applicant’s entrance from Smith Lane, to an entrance from the new connector street, and close the prior Smith Lane entrance. For the avoidance of doubt, the City’s purpose for receiving the deed from Applicant is to design, construct and establish a City street that would exist in part within said strip of land that would improve access for customers of the Applicant and of adjacent

properties, and improve traffic conditions on Main Street/U.S. Route One by connecting Smith Lane and Stockman Ave.. The deed must contain all mortgage holders advance release of right and consent to record, and applicant covenants not to burden or suffer further claim or lien against the subject transferred parcel thereafter. If risk of such lien or claim should arise in the City's sole opinion, then the City shall have the right to record its deed when it deems necessary without further consent or approval of applicant. For the avoidance of doubt, **Applicant shall retain its right to use the stormwater detention facility within the Subject Property, and the deed to be held in escrow shall reserve a right for the same, it being understood that the City's subsequent construction of a road will require the City to incorporate into its stormwater management plan at its cot runoff to such pond.** The Applicant and City agree that a memorandum evidencing the existence of the Deed and the rights under this Agreement shall be recorded forthwith after Applicant acquires title in the property.

7. Conveyance of said strip of land to the City by the Applicant allows the City to address a longstanding goal of traffic management in the Main Street corridor. It is not the City's intent to penalize the Applicant for the conveyance and the resulting loss of lot area. While the conveyance has no effect on Applicant's ability to design, construct and operate the proposed multi-tenant commercial building, it may have an effect on a future proposal to add or convert to a residential use. Accordingly, , the City agrees that, for all purposes under its ordinances, and for all purposes related to the calculation of square footage, net developable area, impermeable surfaces, setbacks, and the like, the Applicant, its successors and assigns, shall be permitted to include the roughly 72,359 parcel given to the city as if it were part of the current lot. Further, upon relocation of the access drives, any parking spaces lost as a result of relocation shall nonetheless be credited to the Applicant as still existing.
8. The Applicant shall incorporate in the site plan submitted for Planning Board review a note as follows: "The applicant agrees to the future relocation of the access from Smith Lane to the Subject Property up to two additional curb cuts on the Subject Property. An alternate driveway entrance detail from the Connector Road to the Subject Property is provided in this plan set, showing two new entrances from the Subject Property as requested by City staff. If and when the Connector Road is constructed, then the access driveway to the Subject Property shall be relocated from Smith Lane to the Connector Road per the detail provided in this plan set. The City shall bear the cost of such relocation, along with the cost of closing the current Smith Lane access, all in a fashion in keeping with the then-current landscaping and other site features."
9. The building design, signage and all other issues customarily addressed as part of site plan review shall be determined by the Saco Planning Board. The Applicant is also responsible for any and all permits, licenses or approvals to which the project may be subject by any regional, state or federal agencies.
10. All details shown on the submitted plans and application materials are hereby incorporated into this contract by reference. The proposed use shall be operated substantially in

conformance with those plans. Amendments to the plan that occur after site plan approval is issued by the Planning Board shall be submitted to the Planning Board for review and approval. If it is also determined by the City Planner in consultation with the City's Counsel, that the proposed changes constitute an alteration of the expectations and undertakings described herein then the Applicant shall also be required to obtain City Council approval for the amendment.

11. The Applicant shall submit an application for site plan review to the Planning and Development Department for review and approval by the Planning Board within one (1) year of the approval of this Contract Zone. Failure of the Applicant to submit a site plan application within said time period shall render this Agreement null and void. In the event that permits or approvals are delayed due to circumstances beyond the control of the Applicant, this deadline may be extended by the City's Director of Planning and Development by twelve (12) months upon written request submitted by the Applicant. For the avoidance of doubt, this condition is met if Applicant has already submitted an application to the Planning Board, and the terms of this Agreement shall apply to any such pending application, as may be hereafter modified to incorporate the terms hereof.
12. Except as addressed in this Contract Zoning Agreement, the project shall adhere to all other applicable provisions of the City of Saco Zoning Ordinance. This Contract Zone shall affect only the Subject Property and shall bind the parties, as well as their successors and assigns.
13. This contract and its provisions shall specifically and exclusively apply to the Contract Zone request submitted by the Applicant. Any proposed change of use for the Subject Property shall be subject to site plan review by the Planning Board.
14. This Contract Zone, and benefits derived hereunder shall not be transferable prior to development of the site, except to a limited liability company or similar entity related to the Applicant, without approval by the City Council, which approval shall not be unreasonably denied.
15. Breach of these conditions, restrictions and/or Agreement by the Applicant shall constitute a breach of the contract. Said breach of contract shall constitute a zoning violation, subject to enforcement action by the City of Saco under the provisions of 30-A M.R.S.A. Section 4452.
16. If the applicant does not take fee title to the premises within one year of the date of this Agreement, this Agreement shall become null and void unless the City Council expressly agrees in writing to an extension of its terms..

This Contract Zone, specifically and exclusively for the parcel at 507 Main Street, would allow the Applicant to develop the Subject Parcel with the limitations and modifications as proposed herein, subject to the herein conditions and restrictions.

IV. Pursuant to authority found in 30-A M.R.S.A. Section 4352(8), and the City of Saco Zoning Ordinance, Section XVII5, and after a public hearing held by the Saco Planning Board on _____, 2021, and by vote of the Saco City Council on _____, 2021, the following findings are hereby adopted:

A. The Property is uniquely located in that it is surrounded by other fast-food establishments with drive-through service. The proposed use is therefore compatible with its surroundings in a way that is unique to other parcels within the HB district. For the avoidance of doubt, operation by Chipotle Mexican Grill is expressly authorized, regardless of how its food service is characterized. As to the request for reduction of the parking and access drive setback, the property is unique in that it immediately abuts parking for another fast-food restaurant. There will therefore be no undue impact on the abutting property. As to the request for parking between the building and Route One, the parcel is unique because it already includes two rows of parking in this area. The proposed development will add no burdens and create no appreciable difference from the existing development. It will also be similar to the Dunkin' Donuts property to the north. The development will also reduce impacts on neighboring residential property by setting the development further back from that residential use.

Further, the land is of an unusual nature and location in that it is cited in the 2005 Main Street Access Study as being key to allowing the creation of a connector route parallel to Main Street/U.S. Route One that would link Smith Lane and Stockman Avenue, each an existing City street. Enhanced access from the Subject Property and from adjacent properties including the current Dunkin' Donuts, Starbuck's, and International House of Pancakes would be possible as a result of the connector route.

B. The proposed rezoning is consistent with the 2018 City of Saco Comprehensive Plan Update, based on the following goals and policies:

Section 6B(A) of the Comprehensive Plan describes the commercial district along Route 1 south of the I-95 spur as "a convenience goods and services center." It further notes that several properties in the area have been demolished and replaced with small-box fast-food type facilities. Section 6(E) states that this "commercial strip includes many national fast food restaurant chains as well as several full-service restaurants and lodging facilities." The proposed use fits perfectly with the Comprehensive Plan's goal of preserving and consolidating commercial uses along the Route 1 corridor, and is directly in line with the other types of uses envisioned for this corridor. The development is also an opportunity to replace the existing vacant building with a more modern, attractive building with improved landscaping and traffic circulation.

The proposed development is also quite consistent with permitted and existing uses within the original zone. As discussed above, the parcel is bordered on its north and south by fast-food restaurants with drive-through service. Similar eating establishments are found throughout the HB district.

"The City should explore developing parallel roadways on both the east and west sides of Main Street in order to reduce traffic pressure on Route One. This may include the purchase of private property or negotiating easements with current owners." – Section 3A: Transportation, Implementation Strategies, p. 68.

V. Based on the above findings, conditions and restrictions, the City Council hereby incorporates this Contract Zoning agreement into the Saco Zoning Ordinance by reference. By signing this contract, both parties agree to abide by the conditions and restrictions contained herein.

Adopted by the Saco City Council on _____, 2021.

Alrig USA Development, LLC

By: _____

Its: _____

CITY OF SACO

By: _____

Brian Kaenrath, Its City Administrator