

LAND USE

120 Attachment 7

Town of Windham

Appendix G

Village at Little Falls Contract Zone

Copies of the recorded contract zone may be obtained from the Windham Town Manager's Office or the Cumberland County Registry of Deeds.

VILLAGE AT LITTLE FALLS
CONTRACT ZONING AGREEMENT

This Contract Zoning Agreement dated as of June 1, 2005, between and among the **TOWN OF WINDHAM**, a body of corporate and politic, located in the County of Cumberland and State of Maine (the "Town") with a mailing address of 8 School Road, Windham, Maine, and **VILLAGE AT LITTLE FALLS, LLC**, a Maine limited liability company ("VLF, LLC") with a mailing address of 2 Market Street, Portland, Maine 04101, and **SOUTH WINDHAM HOUSING CORPORATION**, a Maine non-profit corporation ("SWHCorp") with a mailing address of 307 Cumberland Avenue, Portland, Maine 04101 (VLF, LLC and SWHCorp are collectively referred to herein as "Owner" or "Owners").

WHEREAS the Town is authorized to enter into contract zoning agreements pursuant to the Windham Shoreland Zoning Ordinance (Section 199-8(B)(2)), the provisions of the Windham Land Use Ordinance incorporated therein by reference (Section 140-5.1) (*Renumbered to Sec. 108 as of October 22, 2009*) and the provisions of 30-A M.R.S.A. Section 4352(8);

WHEREAS, VLF, LLC either owns or has entered into contracts to purchase parcels of real estate located on Route 202 and Depot Street Windham, Maine fronting on the Presumpscot River consisting of approximately 9.1 acres, generally being shown on the Town's Tax Map 38, Parcels 6, 7 and 8, and SWHCorp has separately entered into a contract to purchase a portion of Parcel 7, all of which property is shown on the attached Exhibit A (collectively hereinafter the "Property");

WHEREAS, the Property is currently located in the Shoreland Zone General Development District Zone ("GD Zone"), a portion of the Property having been heretofore rezoned from the Industrial Zone by action of the Town Council;

WHEREAS the poor condition and squalid appearance of the derelict industrial building, which is currently the most prominent portion of the Property, constitutes a blight preventing the development of the Property and is inhibiting the redevelopment of other properties in the South Windham Little Falls neighborhood;

WHEREAS, Owner proposes to construct an attractive mixed-income multi-unit residential development with attached and senior housing and apartments (the "Project");

WHEREAS the existing industrial uses are designated as being "marginally useful" under the Town's Comprehensive Plan, and the cost of demolition of the derelict industrial building has prevented the Project from moving forward;

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WHEREAS the proposed residential use is in keeping with the historic close knit pattern of development in the South Windham Little Falls neighborhood and the abutters have expressed a strong desire to see the existing derelict building eliminated;

WHEREAS the Town's Comprehensive Plan cites the "potential to expand high density residential development" and historic settlement pattern which creates a "neighborhood feel" for the Little Falls neighborhood, but notes the lack of a critical mass of nearby residential development;

WHEREAS, the Project serves the goals of the Comprehensive Plan by using public sewer and water facilities;

WHEREAS, the roads within the development will remain private and maintenance and plowing will be the responsibility of the then owners of the Property, further minimizing the Town's costs;

WHEREAS, the rezoning provided in this Agreement, therefore, would be consistent with the Windham Comprehensive Plan; and

WHEREAS, the Town of Windham, by and through its Town Council, therefore, has determined that the said rezoning would be pursuant to and consistent with the Town's local growth program and Comprehensive Plan adopted pursuant to Title 30-A, Maine Revised Statutes, Chapter 187, Sub-part 6-A, and consistent with the existing and permitted uses within the GD Zone and has authorized the executive 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 Windham, by adopting the zoning map change amendment shown on Exhibit B.
2. **Village at Little Falls Contract Zoning District.** The Town hereby creates a Village at Little Falls Contract Zoning District as defined herein which shall apply to the Property. For purposes of this Agreement, the Village at Little Falls Contract Zoning District means a residential development which may include multi-unit residences (apartment and condominiums), age restricted senior housing with traditional short blocks and interconnecting local streets, enhanced river views, and space and bulk standards consistent with traditional village design, all as further set forth in this Agreement.

The general schematic street layout, open space and distribution of uses in the Project shall conform to the Contract Zone Plan as hereinafter defined.

3. **Permitted Densities, Uses and Dimensional Criteria.**

- A. **Density:** The density of the Project shall be as follows:

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Up to 24 apartment units located in one building on a separate Lot, reserved for residents with persons 55 years of age or older or households with at least one resident who is 55 years of age or older; and

Up to 85 residential units located in multi-unit buildings on a separate Lot, one of which buildings may contain up to 16 units and with the remaining buildings containing up to 4 units each, with no age restrictions for any of these 85 units.

The Project shall be connected to public sanitary sewer services.

All buildings shall have an automatic fire sprinkler system installed by the Owners, contractors or developers. The construction of the system shall meet the standards of the National Fire Protection Agency as determined by the Chief of the Town of Windham's Fire and Rescue Department. The location and number of hydrants within the Project shall be subject to the approval of the Fire Chief.

B. Uses. The permitted uses in the Project shall be:

One Family and Multi-Family Dwellings;

Elderly Housing;

Those Uses and Special Exceptions to the extent allowed and subject to the conditions and restrictions applicable to the underlying GD Zone as it may be amended, subject to such review which would otherwise be required if the Property were not subject to this Agreement, and excluding Industrial and Manufacturing uses;

Home Occupations, Residential Recreational Facilities and community building and Association office maintenance facilities;

Public Utilities Facilities; and

Accessory Uses.

C. Residential Dimensional, Parking and Design Criteria.

- i) Multi-Family Lot Size: No restriction on lot size or number of Dwelling Units per lot, but no more than 24 Dwelling Units per building for Elderly Housing and 16 dwelling units per building for other Multi-Family Dwellings shall be allowed.
- ii) Minimum front Setback all buildings: five feet.
- iii) Minimum side Setbacks all buildings: five feet.
- iv) Minimum rear Setbacks all buildings: five feet.

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- v) Presumpscot River setback and frontage: New Dwelling Units and accompanying improvements may be built in the locations as shown on Contract Zone Plan as they may be subsequently varied with Planning Board approval under Section 5, without need for Code Enforcement Officer approval under Section 199-12 of the Ordinance for the demolition of the existing nonconforming structures, the construction of the new structures shown on the Contract Zone Plan and change in use to multi-unit residential. In addition, existing utility lines located on the Property may be relocated closer to the river in order to lower their visual profile. Applicable minimum shore frontage per family shall not apply to the number of dwellings permitted under this Agreement.
 - vi) Maximum structure, parking and non-vegetated surface coverage: 75% measured over the Project as a whole.
 - vii) Height: 65 feet, measured from the mean "as completed" finished grade to the highest point on the roof for the 24 unit and the 16 unit buildings and 35 feet for all other buildings, such measurement otherwise to be in accordance with the Ordinance.
 - viii) Notwithstanding the construction of multiple structures on a single lot, the compliance with dimensional requirements shall be calculated for each structure with respect to the lot as a whole and not with respect to each structure and dwelling separately.
 - ix) The style of the buildings shall be substantially in accordance with the proposed building elevation plans prepared by Gawron Turgeon Architects dated June 1, 2005 attached hereto as Exhibit D, as they may be further approved and amended from time to time in accordance with the Town's Site Plan Ordinance and Subdivision Ordinance and with this Agreement (the "Elevation Plans").
- D. Parking.** The dimensions of the parking spaces shall be a minimum of nine feet by 18 feet but need not measure more than a minimum of nine feet by 18 feet (except as otherwise required by law for handicapped parking). Parking spaces shall include garage spaces and spaces located in private driveways leading into garages, notwithstanding the otherwise applicable provisions of the Ordinance. For Elderly Housing, no more than one parking space per unit shall be required, and for a multifamily structure of more than three floors, no more than 1 1/2 parking spaces per unit shall be required.
- E. Streets, Roads and Sidewalks.** All streets and roads within the Project shall remain private, and shall not be maintained by Town. The paved surface for private streets and internal travel aisles may range from 22-30 feet in width, exclusive of turn around and pull off parking areas, in accordance with the Contract Zone Plan for the Property. The required "right of way" for each street under the Subdivision Ordinance including the pavement, sidewalk and utility installation area need only be a minimum of 30 feet in total width, which need not be centered on the pavement, and may otherwise have the locations and dimensions as shown on the Contract Zone Plan notwithstanding the otherwise applicable Ordinance requirements for such streets.

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Each Owner shall construct the sidewalks as shown on the Contract Zone Plan, including without limitation the sidewalks running along the Town's abutting Depot Street right of way and the sidewalks located within the Project.

The then owners of the Property shall be responsible for the maintenance of the streets, roads and sidewalks. The portions of the Property in common ownership shall be considered a single lot notwithstanding their separation by private streets and roads.

Streets, roads and sidewalks providing access to a permitted Structure, parking and pedestrian walkways and other improvements shown on the Contract Zone Plan shall be permitted, even if located within 100 feet of the Presumpscot River. Use of existing drainage lines and structures shall be permitted.

4. **Contract Zone Plan.** The Property shall be generally developed and used in accordance with the Contract Zone Plan, reduced copies of which are attached hereto as Exhibit C as it may be further approved and amended from time to time pursuant to the provisions of the Windham Site Plan Ordinance and Subdivision Ordinance and this Agreement (the "Contract Zone Plan"). Notwithstanding any other provisions of the Ordinance, the physical layout, dimensions, setbacks, parking and proposed uses and improvements shown on Contract Zone Plan as they may be varied in accordance with Section 5 shall be permitted under the Ordinance.

5. **Status of Approvals/Amendments.**

The Contract Zone Plan has received pre-application Site Plan - Subdivision review for the entire Property under the Town's Site Plan and Subdivision Ordinance. Any amendment which involves the following changes to the terms of this Agreement will require an amendment approved by the Town Council after a public hearing:

- i) Any change in the permitted uses; and
- ii) Any increase in the number of dwelling units beyond the maximum number permitted.

Except for the forgoing, any other changes and any subsequent site plan approvals or subsequent site plans and/or subdivision amendments need only be approved by either (i) the Planning Board after a public hearing in accordance with this Agreement, or (ii) for changes that would otherwise only require Code Enforcement Officer approval under the Ordinance, then the approval by such officer, all without need for further Town Council approval of such changes.

Following the approval of this Agreement, the Owner will then submit the detailed design, landscaping, traffic, and engineering plans and specifications for Planning Board review and approval in accordance with the otherwise applicable provisions of the Ordinance. Such review and approval shall include attention to the specifics of sewer and utilities, streets (including turning radii), sidewalks, drainage facilities, hydrants, street lighting, storm water and drainage systems, recreational facilities or impact fees, river safety, snow removal and disposal areas, on street parking designations and restrictions, trash removal, and

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landscaping, but the improvements and uses contemplated under this Agreement as they may be varied in accordance with the foregoing shall be allowed.

6. **Infrastructure.**

- A. General.** Within each lot it owns, each Owner shall construct or cause to be constructed sewer and utilities, streets, drainage facilities, esplanades, sidewalks, street lighting, drainage systems, and landscaping to the standards set forth in the final site plan/subdivision approval following the execution of this Agreement.

The streets shall remain private, subject to an easement for Town emergency access.

- B. Maintenance.** The infrastructure located on the Property shall be maintained by its respective Owner.
- C. Sewer Pump Station.** Owner shall grant to the Town of Windham or its designee title to land necessary for construction of an underground sewer pump station with accompanying easements for mains and access in a mutually agreed upon location to be coordinated with other proposed improvements.
- D. Depot Street Storm Drain.** Owner shall grant to the Town of Windham an easement for an underground storm drain running from Depot Street towards the Presumpscot River, which easement shall be coordinated with the location of the proposed improvements.
- E. Depot Street Sidewalk.** Owners shall construct a public sidewalk running along Depot Street in the public right of way area adjoining each portion of their Property.
- F. S D Warren Co. Easement and Fence.** Owners shall permit emergency vehicle access over the Property over the thirty-foot wide easement located on adjoining land of S.D. Warren Company (d/b/a "Sappi Fine Paper North America") originally reserved in a deed recorded in the Cumberland County Registry of Deeds in Book 2641, Page 44, which runs easterly from Route 202.

Owner shall construct and maintain a fence along the foregoing easement at the boundary of their Property with the land of S D Warren in order to prevent inappropriate public access to the dam area but shall construct an emergency access with traffic flow restriction devices approved by the Town Fire Chief on its Property permitting access by emergency vehicles through the fence.

7. **Commencement/Phasing Schedule/Bonding.** Unless extended by the Town, a building permit shall be issued and the construction of the initial Phase shall commence within two years after Owner's receipt of final land use approvals for the Property and shall complete the construction of the final Phase under this Agreement within 15 years of the date of receipt of such approvals.

An Owner need only post a performance guaranty in accordance with the Ordinance Section 140-39 (H) assuring the completion of "Required Improvements" for those Required

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Improvements to be constructed within each Phase or sub-Phase of the Property or which are required to be completed in conjunction with such Phase or sub-Phase under this Agreement.

8. **Definitions.** Note: Capitalized terms not otherwise defined herein shall have the meaning set forth in the Town of Windham Zoning Ordinance.

Agreement: This Contract Zoning Agreement entered into among the Owner and the Town.

Association: The nonprofit corporation which may be formed pursuant to the Maine Condominium Act to operate and administer a portion of the Property.

Contract Zone Plan: The plans entitled "Exhibit C - Contract Zone Plan" prepared by Northeast Civil Solutions dated May 11, 2005 consisting of sheets #1 (site) and #2 (phasing), the accompanying notes and related materials approved by the Town Council, reduced copies of which are attached hereto as Exhibit C, as they may be amended from time to time pursuant to the provisions of the Windham Site Plan Ordinance (Chapter 140-38) and Subdivision Regulations (the "Contract Zone Plan").

Lot: The Lots composing individual portions of the Property as shown on Exhibit C, designed for separate subsequent Planning Board approval, development and use as set forth herein.

Multi-Family Dwelling: A building with two or more Dwelling Units, subject to the limitations on numbers of units, units per building, location and age restrictions set forth in this Agreement.

Ordinance: The Town of Windham Land Use, Shoreland Zoning and as applicable the Subdivision Ordinances as set forth in Chapters 140 (now Section 900), 199 and 215 of the Town's Code of Ordinances.

Owner(s): Collectively, VLF, LLC and SWHCorp, and their respective successors and assigns.

Parking Space: See Subsection 3(E) regarding modifications to the otherwise applicable definitional restrictions under the Ordinance.

Phase: Each portion of the Property designated on Exhibit C to be separately developed in stages substantially as shown on Exhibit C.

Planning Board: The Planning Board of the Town of Windham.

Property: The real property located on Route 202 and Depot Street as described in Exhibit A.

SWHCorp: South Windham Housing Corporation, a Maine non-profit corporation, also being an Owner.

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<u>Town:</u>	The Town of Windham, a municipal corporation located in the County of Cumberland and State of Maine.
<u>Town Council:</u>	The Town Council of the Town.
<u>VLF, LLC:</u>	Village At Little Falls, LLC a Maine limited liability company, being an Owner.

9. **General.**

- A. Owners shall record this Contract Zoning Agreement in the Cumberland County Registry of Deeds within 30 days after receipt of final land use approvals for the development on the Property. For purposes of identification only, the Town Manager shall sign the full size copies of the plans attached hereto as Exhibits C and D, marked with the legend:

"Exhibit [C or D, as applicable] to the Village at Little Falls Contract Zoning Agreement dated June 1, 2005, subject to modification pursuant to said Agreement."

- B. The provisions of this Contract Zoning Agreement shall be deemed restrictions on the use of the Property, and this Contract Zoning Agreement may be amended by future written agreement between the Town of Windham and the Owner affected or its successors in interest without need for approval of any other party. In the event all or any portion of the Property is subjected to the Maine Condominium Act (33 M.R.S.A. Section 1601-101 et seq.), then the Association organized may act on behalf of all condominium owners.
- C. The provisions of this Contract Zoning shall operate as an "overlay" zone and all other requirements of the underlying Zoning District shall apply except as otherwise set forth herein.
- D. The restrictions, provisions and conditions of this Agreement are an essential part of the rezoning, shall run with the Property, shall bind Owners, their heirs, 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 of Windham.
- E. Except as expressly modified herein, the use and occupancy of the Property shall be governed by and comply with the provisions of the Land Use, Shoreland Zoning and Subdivision Ordinances of the Town of Windham (as applicable) and any applicable amendments thereto or replacement thereof, provided however that this Agreement and the Ordinance shall be interpreted so as to allow the improvements and uses shown on Exhibit C. The applicable provisions of the Town's Building Code Ordinances shall not be affected by this Agreement.
- F. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However the provisions of this Agreement are severable, and if any one clause or provision hereof shall be held

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invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

- G. The captions in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.
- H. No waiver of any of the terms of this Agreement no extension thereof will be deemed to have occurred, or to be effective unless in writing signed by the parties. No course of dealing heretofore or hereafter between the parties, or any failure or delay on the part of any party in exercising any rights or remedies under this Agreement shall operate as a waiver or preclusion of the exercise of any rights or remedies under this Agreement.
- I. The Town shall have the power to enforce all conditions and restrictions of this Agreement, both through enforcement action pursuant to 30-A M.R.S.A. § 4452 and through legal action for specific performance of this Agreement. In the event that an Owner or its heirs, successors or assigns fail to construct the Property in accordance with this Contract, or in the event of any other breach hereof, and such failure or breach continues for a period of 30 days after written notice of such failure or breach cannot reasonably be remedied or cured within such thirty-day period, if such Owner, its heirs, successors or assigns, fails to commence to cure or remedy such failure or breach within said thirty-day period and thereafter fails to diligently prosecute such cure or remedy to completion in a reasonable time, then the Town may enforce the performance of this Agreement and recover the costs and expenses of performance from such Owner or its, heirs, successors or assigns violating this Agreement, which recovery may include the Town's reasonable attorney's fees and expenses.

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Witness our hands and seals on June 1, 2005.

<u>Nancy D. Johnston</u> Witness <u>Denise C. Dyer</u> Witness <u>Dana Totman</u> Witness	TOWN OF WINDHAM by: <u>Anthony T. Plante</u> Anthony T. Plante, Town Manager VILLAGE AT LITTLE FALLS, LLC by: <u>Renee Lewis</u> Renee Lewis, its Manager SOUTH WINDHAM HOUSING CORPORATION by: <u>Dana Totman</u> Dana Totman, its President
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Exhibit A - Copy of Survey Plan

Exhibit B - Amended Zoning Plan

Exhibit C - Reduced Copies of "Exhibit C - Contract Zone Plan" prepared by Northeast Civil Solutions dated May 11, 2004, consisting of 2 sheets labeled "Phasing" and "Site."

Exhibit D - Reduced Copies of "Exhibit D - Proposed Elevations" prepared by Gawron Turgeon Architects consisting of two sheets.

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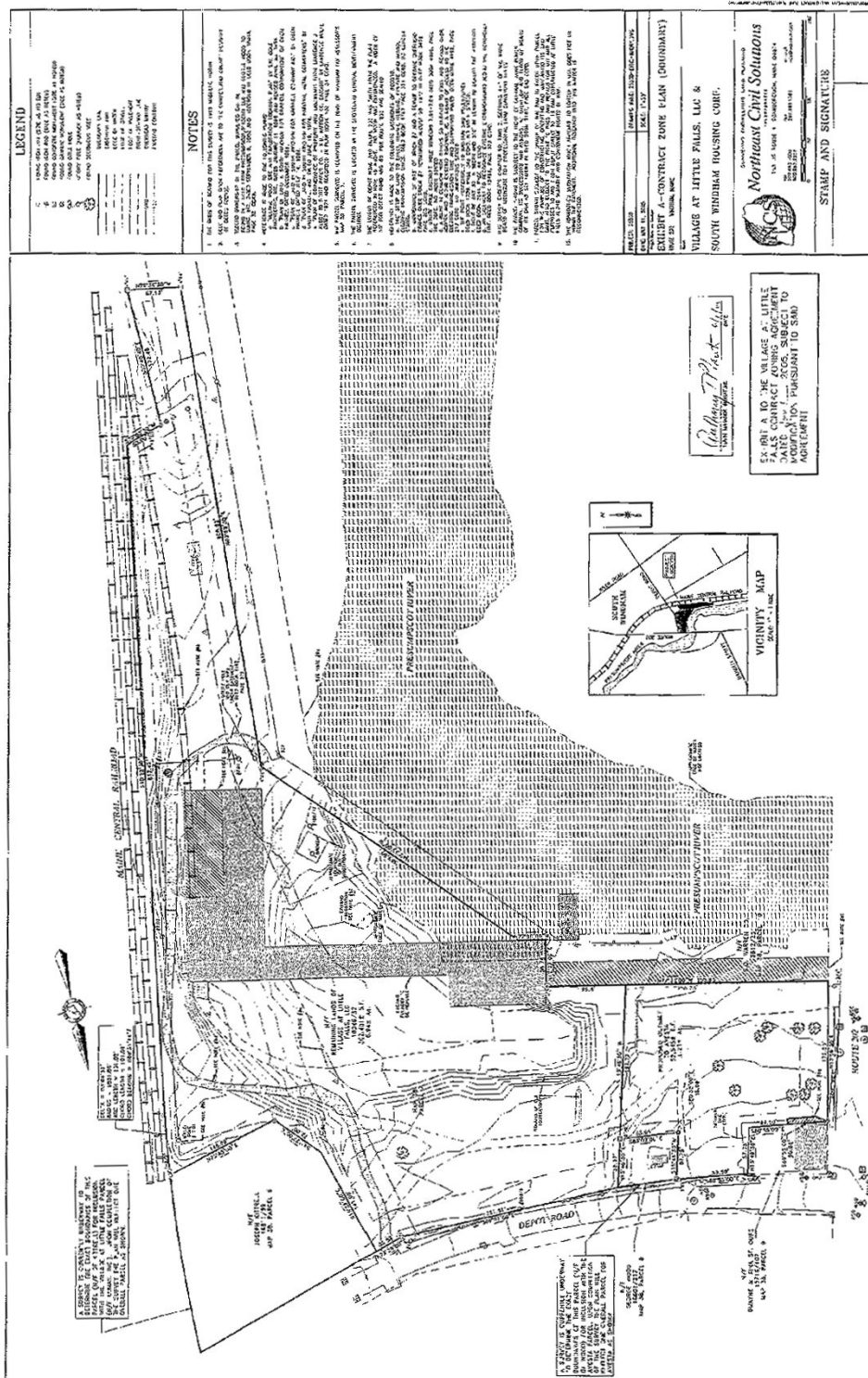
State of Maine
Cumberland, ss

June 1, 2005

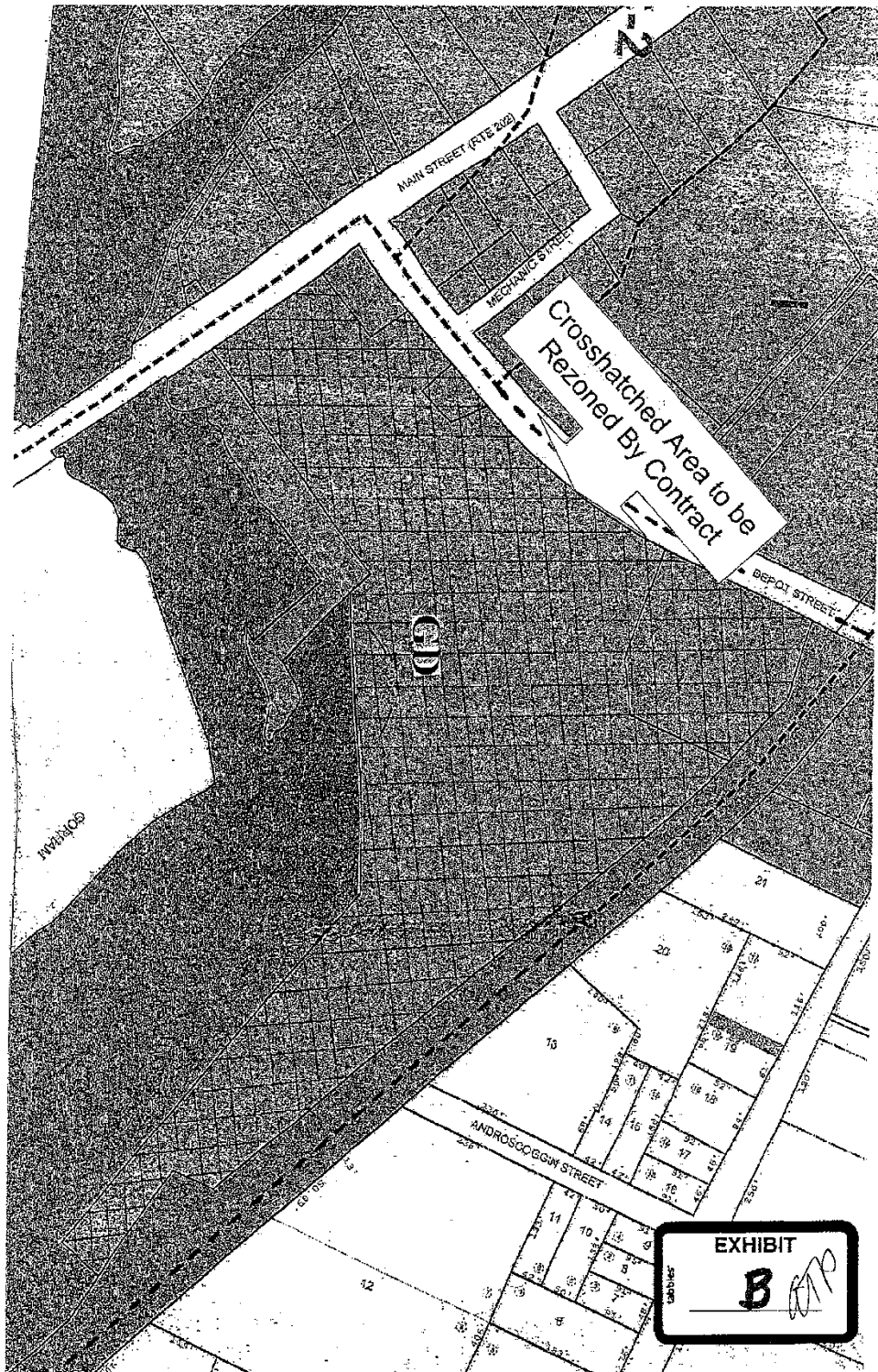
Then personally appeared before me the above named Anthony I. Plante in his said capacity and acknowledged the foregoing to be his free act and deed and the free act and deed of said town.

Attorney at Law
Name: _____

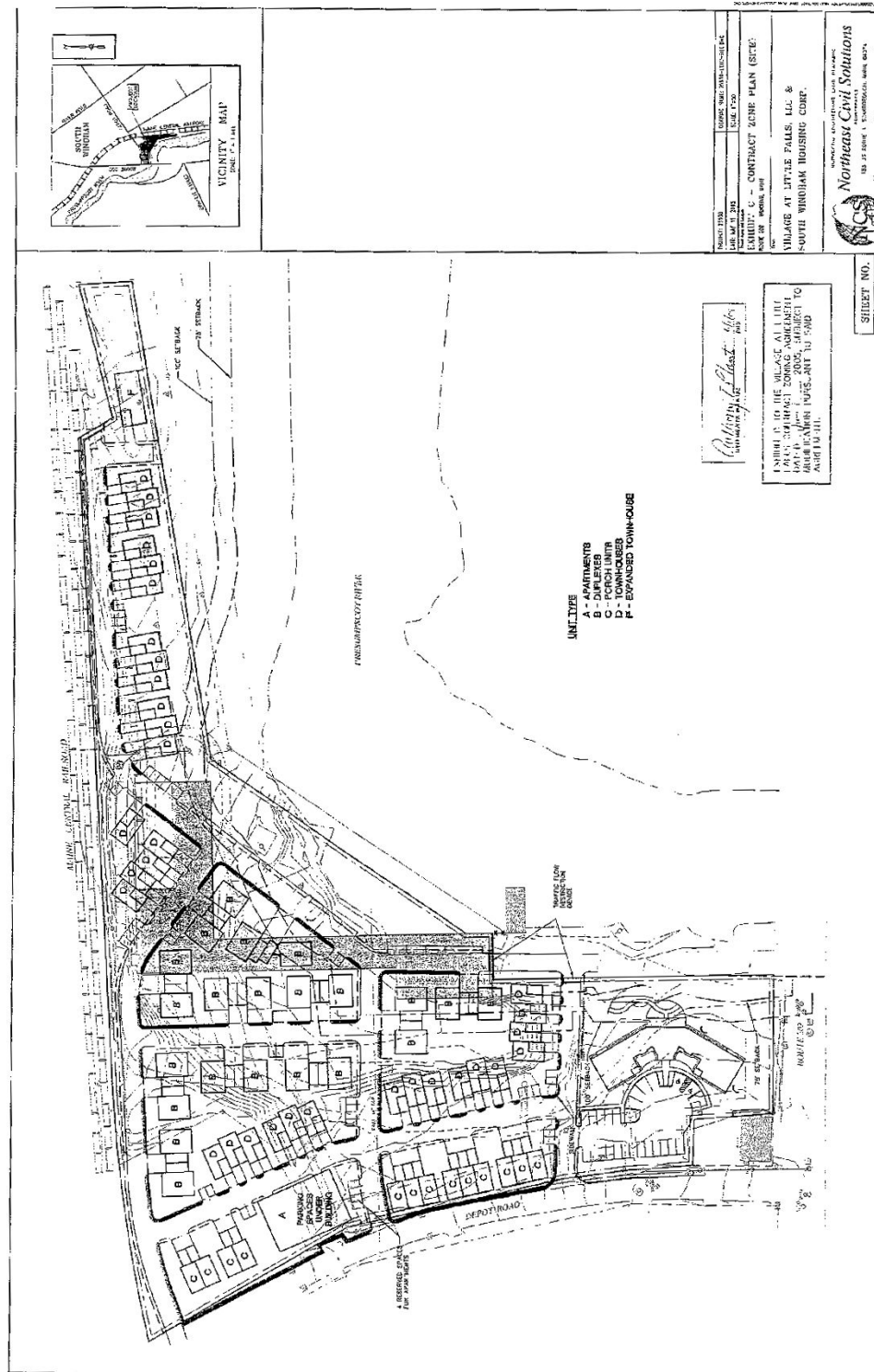
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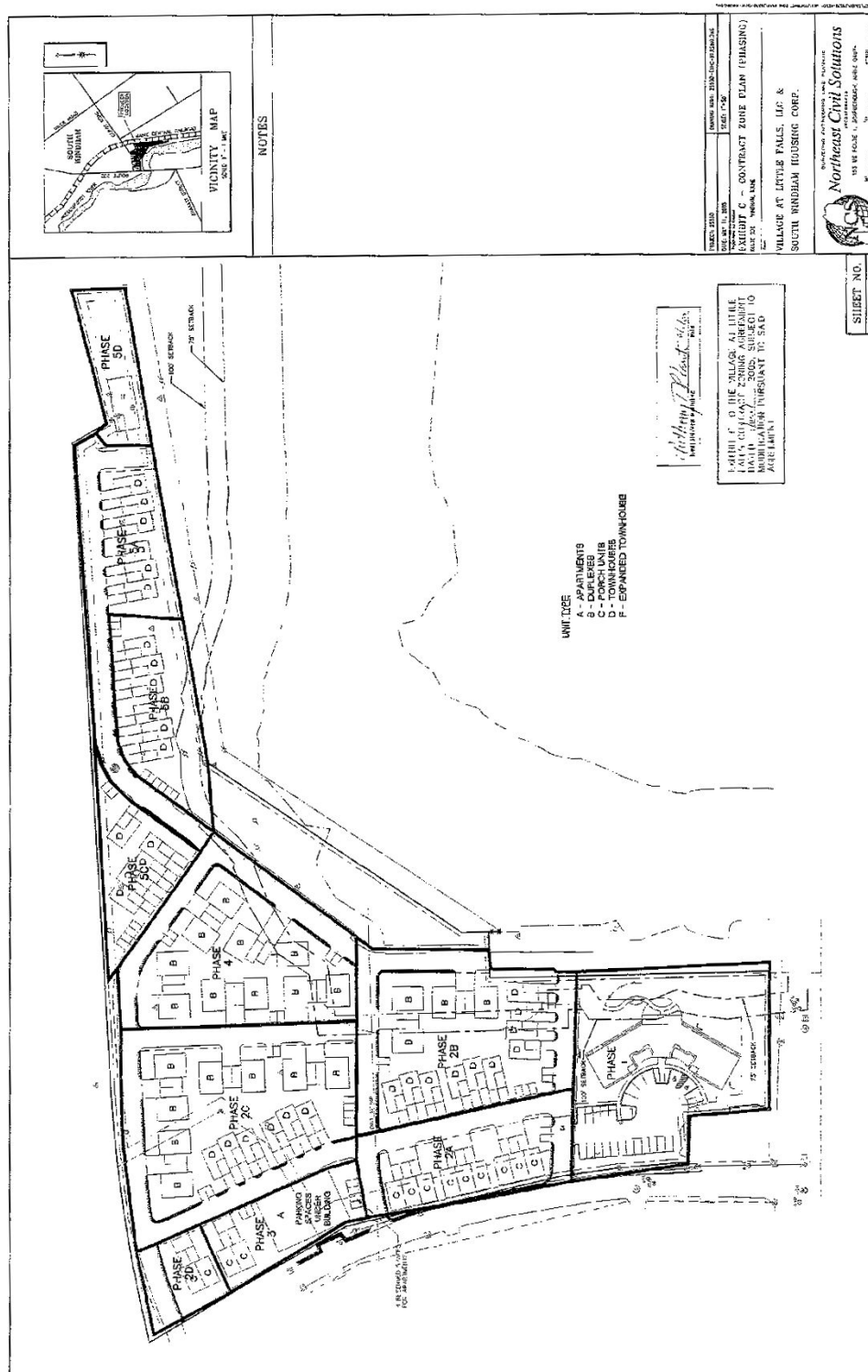
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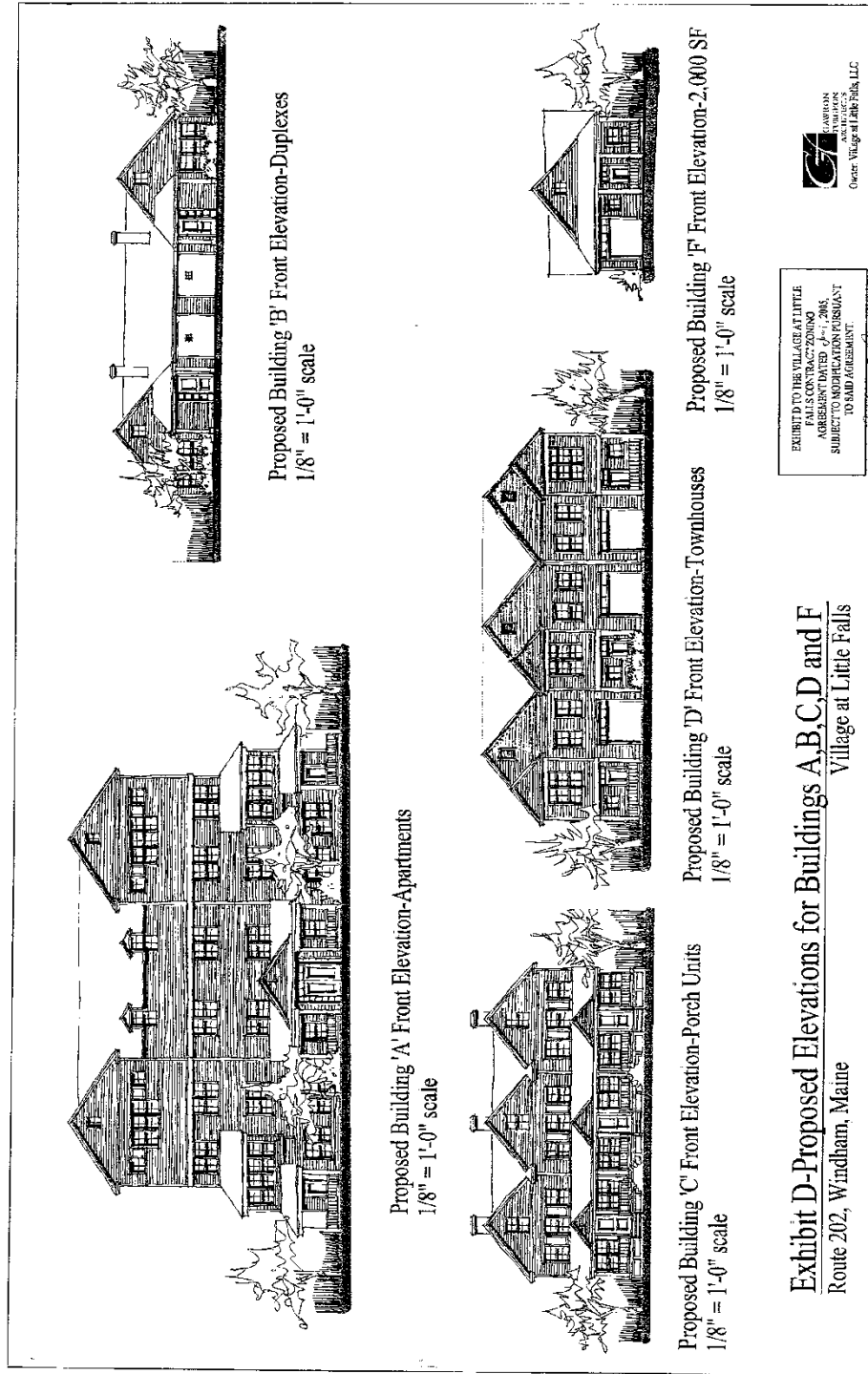
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