

DECLARATION OF FOWNES MILL CONDOMINIUM
Gagne Street, Rochester,
Strafford County, New Hampshire

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DECLARATION
OF
FOWNES MILL CONDOMINIUM

Gagne Street
Rochester, County of Strafford,
State of New Hampshire

Fownes Mill Development, LLC, with an address of 95 Blackwater Road, Rochester, County of Strafford, State of New Hampshire (hereinafter, with its successors and assigns, who come to stand in the same relation to the Condominium as their predecessors, called the "Declarant"), hereby declare:

1. Submission of Property. The Declarant hereby submits the land located on Gagne Street, Rochester, New Hampshire, and more particularly described in Exhibit A, attached hereto (hereinafter referred to as the "Land"), together with the buildings, all improvements heretofore or hereafter constructed thereon, and all easements, rights, and appurtenances thereto described in said Exhibit A, all of which are owned by the Declarant, to the provisions of the Condominium Act of the State of New Hampshire, Chapter 356-B of the Revised Statutes Annotated, in order to create a plan of condominium ownership in such property. The condominium shall initially consist of no more than seventy-one (71) units. The units shall be located in seven (7) buildings. There shall be three (3) duplex buildings of two (2) units each. There shall be one (1) triplex building containing three (3) units. There shall be two (2) town house buildings: one containing five (5) units and one containing six (6) units. There shall be a main building, three stories in height, containing fifty-one (51) units. The Declarant reserves the right to expand the condominium by the addition of up to three (3) more units, with the total number of units which may be declared hereunder to be seventy-four (74) units. The expandable land which may be added to the Condominium is described in Exhibit B.

2. Definitions. As provided in Section 12, I of the Condominium Act, capitalized terms not otherwise defined herein, or in the By-Laws recorded herewith, shall have the meanings specified in Section 3 of the Condominium Act. The following terms are expressly defined herein:

(a) "By-Laws" mean the By-Laws of Fownes Mill Condominium Unit Owners' Association providing for the self-government of the Condominium, recorded herewith, as amended from time to time.

(b) "Common Area" means all parts of the Property other than the Units, as more fully set forth in Paragraph 3(e) of this Declaration, and includes any Limited Common Area.

(c) "Condominium" means Fownes Mill Condominium, the condominium established by this Declaration.

(d) "Condominium Act" means Chapter 356-B of the New Hampshire Revised Statutes Annotated, as amended.

(e) "Land" shall have the meaning set forth hereinabove.

(f) "Majority of the Owners" means the Owners of the Units to which more than fifty (50%) percent of the votes in the Unit Owners' Association appertain. Any specified percentage of the Owners means the Owners of Units to which the specified percentage of the votes in the Unit Owners' Association appertain.

(g) "Owner or Unit Owner" means any Person or Persons, who holds or hold fee simple title to a Unit. No mortgagee shall be deemed to be an Owner until such mortgagee has acquired such title pursuant to foreclosure or any procedure in lieu of foreclosure.

(h) "Percentage Interest" or "Undivided Percentage Interest" means a fractional share or undivided interest of each unit in the Common Area, as further set forth in Exhibit D.

(i) "Property" means the land and buildings and all other improvements heretofore or hereafter constructed thereon, and all easements, rights, and appurtenances thereto, and all articles of personal property intended for common use in connection therewith, except as any of the foregoing may be limited in Exhibit A attached hereto.

(j) "Registry" means the Strafford County Registry of Deeds.

(k) "Rules" means those rules and regulations adopted from time to time by the Board of Directors of the Association relative to the use of the Condominium, provided they are not in conflict with the Condominium Act, the Declaration, or the By-Laws.

(l) "Site Plan and Floor Plans" or "Plan" means the plat of the entire property described in this Declaration, and all floor plans relative thereto, recorded simultaneously herewith or recorded subsequently.

(m) "Unit" means a unit as defined by the Condominium Act, which is bounded and described as shown on the Plans of the Condominium and as provided in Paragraph 3(d) hereof.

(n) "Unit Owners' Association", or "Fownes Mill Condominium Unit Owners' Association," or "Association" means all the Owners acting as a group in accordance with this Declaration and/or the By-Laws.

3. Statutory Requirements. The following information is provided pursuant to the provisions of Section 16 of the Condominium Act:

(a) Name. This condominium shall be known as "Fownes Mill Condominium."

(b) Location. This condominium is located on Gagne Road, Rochester, County of Strafford, State of New Hampshire.

(c) Description of Land. A legal description by metes and bounds of the Land submitted to the Condominium is contained in Exhibit A. The Expandable Land is described in Exhibit B. See Exhibit C for a description of the Expandable Land Provisions of the Condominium. The Land may be subject to easements for the benefit of adjacent developments.

(d) Description of Units.

(i) Buildings. This Condominium shall consist of a maximum of seventy-four (74) units. The Site Plan approved by the City of Rochester Planning Board which depicts the entire development is recorded at the Strafford County Registry of Deeds. The units shall be located in a maximum of eight (8) buildings. There shall be three (3) duplex buildings of two (2) units each. There shall be one (1) tri-plex building containing three (3) units. There shall be two (2) town house buildings: one containing five (5) units and one containing six (6) units. There shall be a main building, three stories in height, containing fifty-one (51) units. The location and dimensions of these building are shown on the Site and Floor Plans. If the Condominium is expanded to the Expandable Land, there shall be one (1) additional tri-plex building containing three (3) units.

(ii) Units. Each of the Units is hereby declared to be held in fee simple and may be retained, occupied, conveyed, transferred, encumbered, inherited, or devised in the same manner as any other parcel of real property independent of the other individual Units. Annexed hereto and made a part hereof as Exhibit D is a list of the Units and their respective identifying numbers or Unit designations, and the undivided percentage interest in the Common Area appurtenant to each. Exhibit D-1 indicates how the undivided percentage interest will be changed if the Condominium is expanded into the Expandable Land

(iii) Unit Boundaries:

The boundaries of each Unit with respect to floors, ceilings, walls, doors, and windows thereof are as follows:

- (A) Floors: The upper surface of the subflooring.
- (B) Ceilings: The plane of the upper surface of the wallboard, plasterboard or plaster of which the ceilings are constructed.
- (C) Interior Building Walls between Units: The plane of the surface facing such unit of the wall studs.
- (D) Exterior Building Walls, Doors and Windows: As to exterior walls, the plane of the interior surface of the wall studs; as to doors providing access and egress to the unit, the plane of the exterior surface thereof; and as to windows and doors containing glass, the planes of the exterior surfaces of the window and panel frames.

Except as provided herein:

(1) Interior walls, floors or ceilings are designated as boundaries of a Unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finish flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the Unit and all other portions of the walls, floors, or ceilings are a part of the Common Area.

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture which lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Area allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Area is a part of the Common Area.

(3) Subject to the provision of paragraph (2), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

(4) Any doorsteps, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the Unit's boundaries, are Limited Common Areas allocated exclusively to that Unit.

(e) Description of Common Area and Limited Common Area.

(i) Common Area. Common Area consists of the entire property other than the Units and includes, but not by way of limitation: the Land, the walks, shrubbery and other plantings, and other land and interests in land included

and described in Exhibit A hereto: the water supply, sewage disposal, electrical, telephone, and other utility systems serving the condominium to the extent said systems are located within the Property and are not owned by the supplier of the utility service (but not including any portions thereof servicing a single Unit and contained within a Unit); and the pipes, ducts, chutes, conduits, plumbing, wires, meters, meter housings, and other facilities for the furnishing of utility services or waste removal located within a Unit, which serve parts of the condominium other than the Unit within which they are located, and also those located within the yard areas, the roofs, foundations, bearing walls, bearing columns, and other structural portions of the buildings; the perimeter walls, ceilings, the floors bounding each Unit to the unfinished interior surfaces thereof and other walls which are not within a Unit; any detention pond and other drainage facilities, including, without limitation, pumping facilities; any other amenities constructed or to be constructed on the Land; and all other parts of the Condominium, including personal property acquired by the Association, necessary or convenient to its existence, maintenance and safety, or normally in common use, and including any easements serving the Property set forth in Exhibit A hereto.

(ii) Limited Common Area. Certain decks, (whether open, or enclosed with a roof and windows and/or screens) patios, and parking spaces are Limited Common Area, being reserved for the exclusive use of the Unit to which they are adjacent or assigned. Designations of the aforementioned Limited Common Area or of any other Limited Common Area shall be shown on the Plans recorded at the time of substantial completion of each building. Two parking spaces shall be assigned as Limited Common Area to each Unit. Certain garden areas and landscaping areas, either immediately adjacent to the unit or within the Limited Common Area to the unit, may be shown on the plans and shall be subject to such rules and regulations as may be adopted and amended from time to time by the Board of Directors of the Association. Each Limited Common Area is owned in common by all of the Owners, but is restricted to the use and benefit of the Unit or Units which it services.

(iii) Use. The use of the Common Area shall be limited to the owners in residence and to their tenants in residence, and to their guests. EXCEPT, HOWEVER, for the rights of the public in the River Walk. The use of each Limited Common Area shall be further restricted to the Owner of the Unit to which it is appurtenant, to his tenants in residence, and to his guests. The use, including responsibilities for maintenance and repair, of the Common Area and Limited Common Area shall be governed by the By-Laws and by the Rules as adopted and amended from time to time by the Board of Directors of the Association.

(f) Reassignment of Limited Common Area. Limited Common Area may be reassigned pursuant to Section 19 of the Condominium Act. Pursuant to RSA 356-B:16, I (f), the Declarant reserves the right to designate additional limited common areas by amendment to this Declaration at any time prior to conveyance of any Unit.

(g) Allocation of Percentage Interests. All Units will have an equal fractional share or undivided percentage interest in the Common Areas as further described in Exhibit D.

(h) Statement of Purpose and Restrictions on Use. The Condominium and each of the Units are primarily intended for residential use and the following provisions, together with the provisions of the By-Laws and the Rules, are in furtherance of this purpose:

(i) Residential Use; Limitation. Each Unit shall be occupied and used only for residential purposes by the Owner and Owner's family, or by tenants and guests of the Owner, except for such limited professional use as the Association, upon application of the Owner, from time to time may authorize as not being incompatible with the residential character of the Condominium. This restriction shall not be construed to prohibit Owners from leasing their Units so long as the Lessees thereof occupy and use the leased premises in accordance with the provisions of this Declaration, and any rules and/or regulations adopted by the Board of Directors of the Association.

(ii) Easement to Facilitate Completion and Sales. Declarant shall be deemed to be the Owner of any Units which have not been sold and conveyed. Declarant and its duly authorized agents, representatives, and assigns may make such reasonable use of the Condominiums as may facilitate the sale and conveyance, including, without limiting the generality of the foregoing, the right to enter all Units and Common Area for construction purposes, and the right to store materials, the maintenance of a sales office and a rental office, the showing of property, and the displaying of signs. In addition, the Declarant and its duly authorized agents, representatives, and employees shall have the right to use any and all unsold and un conveyed Unit or Units as sales offices and/or model units. Such Units shall be Units within the meaning of this Declaration and the Condominium Act, and not parts of the Common Area. The Declarant shall have the absolute right to convey or lease such Units. Further, the Declarant reserves the right to enter into certain agreements with other Unit Owners who may agree to lease their Units to the Declarant for use by the Declarant as model units and/or sales offices.

(iii) Easement for Structural Encroachments. None of the rights and obligations of the Owners created herein, or in any deed conveying a Condominium Unit from the Declarant to a purchaser thereof, shall be altered in any way by encroachments as a result of construction of any structures or due to settling or shifting of structures. There shall be valid easements for the maintenance of such encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners.

(iv) Occupancy Limitation. No Unit in any building shall be leased, sold, or occupied until the Owner thereof shall have received an occupancy permit for the Unit in accordance with the Zoning Ordinance and Building Code of the City of Rochester.

(v) Pipes, Ducts, Cables, Wires, Conduits, Public Utility Lines, and Other Common Area Located Inside of Units, Support. Each Unit Owner shall have an easement in common with the Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines, and other Common Area located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use the pipes, ducts, cables, wires, conduits, public utility lines, and other common Area serving such other Units and located in such Unit. The duly authorized representative of the Association shall have a right of access to each Unit to inspect the same, to remove violations therefrom, and to maintain, repair, or replace the Common Area contained therein or elsewhere in the building. Every portion of a Unit which contributes to the structural support of a building shall be burdened with an easement of structural support for the benefit of all other Units and the Common Area.

(vi) Owners Subject to Declaration, By-Laws, and Rules and Regulations. All present or future Owners, tenants, and occupants of Units, or any other person who might use the facilities of the Property in any manner are subject to the provisions of this Declaration, the By-Laws, and the Rules. The acceptance or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the By-Laws, and the Rules, as they may be lawfully amended from time to time, are accepted and ratified by such Owner, tenant, or occupant, and all of such provisions shall be deemed and taken to be enforceable servitudes and covenants running with the land and shall bind any person having at any time any interest or estate in such Units, as though such provisions were recited and stipulated at length in each and every deed of conveyance or lease thereof.

The Declaration, By-Laws, and Rules to be adopted by the Board of Directors of the Association, and the decisions and resolutions of the Association, or its representatives, as lawfully amended from time to time, all contain, or will contain certain restrictions as to use of the Units or other parts of the Condominium. Each Owner shall comply therewith and failure to comply with any such provisions, decision, or resolution shall be grounds for an action by the Association or any Unit Owner to recover sums due, for damages or for injunctive relief. All such actions in law or in equity by the Association shall be authorized by resolution of the Board of Directors, and the Association or Unit Owner shall be entitled to recover all reasonable costs and expenses of such actions, including attorneys' fees, as more particularly set forth in Article XII of the By-Laws.

(vii) Condominium Subject to Easements for Ingress and Egress and Use. Subject to the provisions of this Declaration, including, without limitation, Paragraph 4 hereof, the By-Laws and the Condominium Act, each Unit Owner shall have an easement in common with the Owners of all other Units for ingress and egress through, and use and enjoyment of, all Common Area. Each Unit shall be subject to an easement for ingress and egress through, and use and enjoyment of, all Common Area by persons lawfully using or entitled to the same.

(viii) Property Subject to Covenants, Easements, and Restrictions of Record. The submission of the Property is subject to all covenants, conditions, easements, and restrictions of record.

(ix) Reservation of Utility Easements. The Declarant reserves on behalf of itself and the Association and their successors and assigns, perpetual easements over all Units and the Common Area for the installation, construction, reconstruction, maintenance, repair, operation, and inspection of all utility services necessary or desirable in connection with operation of the Condominium, including, without limitation, water, sewage disposal, telephone, heating and air conditioning, gas, cable television and electrical systems, all for the benefit of the respective Owners of the Condominium, which reservation includes the right to convey such easements directly to suppliers and/or distributors of such utility services.

(x) No Subdivision or Partition. No Unit may be divided or subdivided into a smaller Unit; no Unit or portion thereof shall be added to or incorporated into another Unit. The Common Area shall remain undivided and no Unit Owner or any other person shall bring any action for partition or division thereof; nor shall the Common Area be abandoned by act or omission, unless the Condominium shall be terminated pursuant to the Condominium Act.

(xi) No Harmful or Offensive Use of Condominium. No harmful or offensive use shall be made of any part of the Condominium and nothing shall be done therein which is or will become in the judgment of the Association an annoyance or nuisance to the other Unit Owners. No use shall be made of any part of the Condominium which will constitute a fire hazard, result in the cancellation of insurance on any part of the Condominium, or be in violation of any law, ordinance, or governmental regulation applicable thereto. No use shall be made of any part of the Condominium which would increase the rate of insurance on the Common Area without the prior written consent of the Association.

(xii) Sprinkler System. In the event that any Unit shall be equipped with a sprinkler system, nothing shall be hung from the sprinkler or any pipe or other structure comprising a part of the system, nor shall any such sprinklers, wiring, or components be painted, covered, or otherwise changed, tampered with or altered.

(xiii) Determination of Action Following Casualty Damage. In the event of damage to any portion of the Condominium by fire or other casualty, the proceeds of the master casualty policy shall, pursuant to Section 43, III of the Condominium Act, be used to repair, replace, or restore the structure or Common Area damaged, unless the Unit Owners vote to terminate the Condominium pursuant to Section 34 of the Condominium Act. The Board of Directors of the Association is hereby irrevocably appointed the agent for each Owner of a Unit and for each mortgagee of a Unit and for each Owner of any other interest in the Condominium to adjust all claims arising under such policy, or otherwise resulting from such damage, and to execute and deliver releases upon the payment of claims; and proceeds of insurance shall be payable to Fownes Mill Condominium Unit Owners' Association, the Unit Owners, or any mortgagees as their interests may appear. The procedure for reconstruction and repair is set forth in Article VII of the By-Laws.

(xiv) Garbage. Garbage, trash and refuse may be removed at suitable regular intervals as directed by the Board of Directors of the Association. No dumping or burning of garbage, trash or refuse shall be permitted on condominium property. No garbage, trash or refuse may be stored in such a manner that may cause same to be transferred off-site by natural causes such as rain, wind, etc. All containers for garbage, trash and refuse shall be kept under cover from view, except for a reasonable time before removal.

(xv) Antennas. No unit owner shall erect, install, or maintain any outside television and/or radio antennas or satellite dish, except as may be approved by the Board of Directors in accordance with rules and regulations established by the Board of Directors, which regulations must be in compliance with state and federal law. Windmills are not permitted on any part of the condominium property.

(xvi) Recreational Vehicles. Recreational vehicles including, but not limited to, boats, trailers, campers, motor homes, snowmobiles, all-terrain vehicles, etc. shall not be allowed on any part of the condominium property except, however, as may be approved by the Board of Directors in accordance with rules and regulations established by the Board of Directors.

(xvii) Exterior Lighting. No Unit Owner shall install any exterior lighting on any Unit or change the original exterior light fixtures installed by the Declarant.

(i) RSA 356-B:41 - Upkeep of Condominium - Warranty Against Structural Defects.

A. Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall

belong (a) to the individual Unit Owners' Association in the case of the common areas, and (b) to the individual unit owner in the case of any unit or any part thereof. Each unit owner shall afford to the unit owners' association and to any of its agents or employees such access through his unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. But to the extent that damage is inflicted upon the common areas or any unit through which access is taken, the unit owner causing the same, or the unit owners' association if it has caused the same, shall be liable for the prompt repair thereof.

- B. Notwithstanding anything in this section to the contrary, the declarant shall warrant or guarantee, against structural defects, each of the units for one (1) year from the date each is conveyed, and all of the common areas for one (1) year. The one year referred to in the preceding sentence shall begin as to each of the common areas whenever the same has been completed or if later, (a) as to any common area within any additional land or portion thereof, at the time the first unit therein is conveyed. For the purposes of this paragraph, no unit shall be deemed conveyed unless conveyed to a bona fide purchaser. For the purposes of this paragraph, structural defects shall be those defects in components constituting any unit or common area which reduce the stability or safety of the part of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration or replacement. Nothing in this paragraph shall be construed to make the declarant responsible for any items of maintenance relating to the units or common areas.

4. Amendment of Declaration.

Except as otherwise provided in the Condominium Act and in this Declaration and By-Laws, this Declaration and By-Laws may be amended by agreement of at least sixty-seven (67%) percent of the Owners; provided, however, that (i) any such amendment shall be executed by such sixty-seven (67%) percent of the Owners or by the President and Treasurer of the Association accompanied by a Certificate of Vote of the Clerk; (ii) evidence of such amendment shall be duly recorded at the Registry pursuant to Section 34, IV of the Condominium Act; (iii) so long as the Declarant owns one or more Units, no amendment to the Declaration shall be adopted that could interfere with the construction, sale, lease, or other disposition of such Unit(s); (iv) no such amendment shall be contrary to the provisions of the Condominium Act; (v) no such amendment shall affect any rights reserved to the Declarant herein or in the By-Laws without the written consent of the Declarant; (vi) any amendment of material nature as defined in Section 402.02 of FNMA Lending documents dated January 1, 1983, shall have been approved in writing by fifty-one (51%) percent of the mortgagee or mortgagees holding first mortgages on Units, except, however, that the consent of said mortgagee or mortgagees may be presumed when the eligible mortgagee is sent a written request for approval of a

proposed amendment by certified mail, return receipt requested, and then fails to submit a response within thirty (30) calendar days after receipt of said notice; and (vii) any such amendment shall not be contrary to any provisions of the City of Rochester Zoning Ordinance and Building Code or Subdivision Regulations.

5. FNMA/FHLMC Compliance. Notwithstanding anything to the contrary elsewhere in the Condominium Instruments, the following provisions shall govern and be applicable insofar and for so long as the same are required in order to qualify mortgages of Units in the Condominium for sale to the Federal Home Loan Mortgage Corporation (FHLMC) or the Federal National Mortgage Association (FNMA) or the Federal Housing Administration (FHA) under the laws and regulations applicable thereto.

(a) Any holder, insurer, or guarantor of a first mortgage on a Unit in the Condominium shall, upon written request, be entitled to written notification from the Association of any of the following (holders of first mortgages who have submitted such written requests will be referred to as "Eligible Mortgage Holders"):

(i) A condemnation or loss which affects a material portion of the Property of such Unit on which such first mortgagee holds a first mortgage lien;

(ii) Any sixty (60) day delinquency in the payment of assessments or charges owed by a mortgagor of such Unit;

(iii) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(iv) Any action for which the consent of Eligible Mortgage Holders is required pursuant to this Declaration;

(b) Any first mortgagee of a Unit in the Condominium who obtains title to the Unit pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed (of assignment) in lieu of foreclosure, shall take the property free of any claims for unpaid assessments or charges against the mortgaged Unit which accrue prior to the acquisition of title of such Unit by the mortgagee.

(c) Unless at least fifty-one (51%) percent of the Eligible Mortgage Holders (based upon votes appurtenant to Units subject to such mortgages) have given their prior written approval, the Owners and the Association shall not be entitled to: (i) by act or omission, seek to abandon or terminate the Condominium project; (ii) change the Percentage Interests or obligations of any Unit for purposes of (a) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or (b) determining the pro rata share of ownership of each Unit in the Common Area; (iii) partition or subdivide any Unit; (iv) by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer, the Common Area (the granting of easements for public utilities or for other public purposes consistent with the intended use of the

Common Area by the Declarant or the Association shall not be deemed a transfer within the meaning of this clause); (v) use hazard insurance proceeds for losses to the Property (whether to Units or to Common Area) for other than the repair, replacement, or reconstruction of such Property; or (vi) amend, modify, or otherwise change any material rights or obligations under this Declaration or the By-Laws. In the case of termination of the Condominium for any reason other than substantial destruction or condemnation, prior written approval of sixty-seven (67%) percent of Eligible Mortgage Holders shall be required.

(d) The Board of Directors of the Association shall assure that its books, records, and financial statements, as well as current copies of the Declaration, By-Laws, and Rules are available for inspection by Unit Owners or holders, insurers, or guarantors of first mortgages on Units during normal business hours or under other reasonable circumstances.

(e) An adequate operating fund and a reserve fund for maintenance, repairs, and replacements of any Common Area which must be replaced on a periodic basis shall be established by the Association and shall be funded by regular monthly payments rather than by special assessments.

(f) No provision of this Declaration, the By-Laws, or the Rules shall be construed to grant to any Unit Owner, or to any other party, any priority over any rights of first mortgagees of the Condominium Units pursuant to their mortgages in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to, or a taking of, Units and/or the Common Area or any portions thereof.

(g) This Declaration and the By-Laws contain provisions concerning various rights, priorities, remedies, and interests of first mortgagees of Units. Such provisions are to be construed as covenants for the protection of such mortgagees on which they may rely in making loans secured by mortgages on the Units. Accordingly, any Owner who gives a first mortgage on his Unit shall notify the Association of the name and address of the first mortgagee of such Unit. All mortgagees with respect to which the Association has received such notice shall be given written notice of any damage or loss where the cost of restoring the Common Area exceeds Ten Thousand (\$10,000.00) Dollars, and the first mortgagee of a Unit shall be given written notice of damage or loss to the Unit covered by its mortgage where the cost of restoration of such damage or loss exceeds One Thousand (\$1,000.00) Dollars, the Association is made aware of such damage or loss, and notice of such mortgage has been supplied to the Association.

(h) If FHLMC or FNMA or FHA holds any interest in one or more mortgages of Units:

(i) The Association shall be required to obtain and maintain, to the extent obtainable, and permitted by applicable law, such insurance other than that which may be required by Article VI of the By-Laws, in such amounts and containing such terms, as may be required from time to time by FHLMC, FNMA, or FHA, including, but not

limited to, dishonest acts on the part of the officers of the Association, employees, or volunteers responsible for handling the Association's funds. All such insurance shall provide that an adjustment of loss shall be made by the Association and if FHLMC, FNMA, or FHA holds any interest in one or more mortgages on Units, all such policies shall be in such amounts and contain such terms as may be required from time to time by whichever of FHLMC, FNMA, or FHA (or all) holds such interests.

(ii) Whenever any Unit and/or Common Area is damaged by fire or other hazard, the Association shall give notice to such persons as may be required by FHLMC or FNMA.

(iii) Any holder, insurer, or guarantor, or grantor of a first mortgage on any Unit shall be entitled to have the Association provide a copy of the audited financial statement for the immediate preceding fiscal year of the Association. If no such audited statement exists, the requesting party is entitled to have an audited statement prepared at its own expense, or at its option to receive a copy of any unaudited statement. Upon such request, the Association must provide the financial statement to the requesting party within a reasonable time.

6. No Revocation or Partition. The Common Area shall remain undivided, and no Unit Owner or any other Person shall bring any action for partition or division thereof, nor shall the Common Area be abandoned by act or omission, unless the Condominium is terminated pursuant to Section 34 of the Condominium Act.


7. Invalidity. It is the intention of the Declarant that the provisions of this Declaration are severable so that if any provision, condition, covenant, or restriction hereof shall be invalid or void under any applicable federal, state, or local law or ordinance, the remainder shall be unaffected thereby. In the event that any provision, condition, covenant, or restriction hereof is, at the time of recording this Declaration, void, voidable, or unenforceable as being contrary to any applicable law or ordinance, the Declarant, its successors and assigns, and all persons claiming by, through, or under this Declaration, covenant and agree that any future amendments or supplements to the said laws having the effect of removing said invalidity, voidability, or unenforceability, shall be deemed to apply retrospectively to this Declaration thereby operating to validate the provisions of this instrument which otherwise might be invalid, and it is covenanted and agreed that any such amendments and supplements to the said laws shall have the effect herein declared as fully as if they had been in effect at the time of this instrument.

8. Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same (except where a right is dependent upon notice to be given within a specified period), irrespective of the number of violations or breaches which may occur.

9. Gender. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender and the use of the singular shall be deemed to refer to the plural and vice versa, whenever the context so requires.

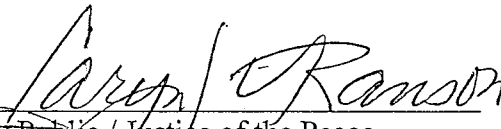
Dated this 23rd day of July, 2007.

FOWNES MILL DEVELOPMENT, LLC
Declarant

By: 
Steven K. Miller, Manager

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

On this, the 23rd of July, 2007, before me, the undersigned Officer, personally appeared Steven K. Miller, who acknowledged himself to be the Manager of Fownes Mill Development, LLC, a New Hampshire limited liability company, and that he, as such Manager, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Manager.


Notary Public / Justice of the Peace
My commission expires: _____

Caryn J.V. Ranson, Justice of the Peace
My Commission Expires July 13, 2010

EXHIBIT A

SUBMITTED LAND

PARCEL ONE:

A certain tract or parcel of land with any improvements thereon situate in Rochester, Strafford County, New Hampshire, lying on the southeasterly side of Gagne Street, so-called, and in part divided by and in part bounded by the Cochecho River, and shown on a plan entitled "Subdivision Plan, Thomas E. Mason, Rochester, N.H.," dated September 1982, prepared by Frederick E. Drew Associates and recorded in the Strafford County Registry of Deeds as Plan #23A-98, more particularly bounded and described as follows:

BEGINNING at a point on the southeasterly side of said Gagne Street at the northerly corner of land formerly of Joseph Guerin and running N 57° 55' E along said Gagne Street a distance of 260 feet, more or less, to a point; thence turning and running along land now or formerly of Quirion the following courses and distances:

S 33° 09' E a distance of 44 feet, more or less, to a point;
N 74° 05' E a distance of 80 feet, more or less, to a point;
N 74° 05' E a distance of 92 feet, more or less, to a point;
N 54° 38' W a distance of 102 feet, more or less, to a point at the intersection of
said Gagne Street and River Street, so-called;

thence turning and running by said intersection in a northeasterly direction a distance of 23 feet to a point marked with an "X" in the sidewalk at land now or formerly of the Catholic Bishop of N.H.; thence turning and running along said Catholic Bishop of N.H. land the following courses and distances:

S 54° 38' E a distance of 178.1 feet to a point;
S 25° 38' E a distance of 45.6 feet to a point;
N 70° 50' E a distance of 67.7 feet to a point;

thence turning and running S 0° 46' W along land now or formerly of the City of Rochester a distance of 183.6 feet to a point; thence turning and running in a general S 73° W direction along said City of Rochester land a distance of 100 feet, more or less, to a point; thence continuing in a general S 73° W direction into said Cochecho River a distance of 94 feet, more or less, to a point in said River one (1) rod above or northeasterly of the cap of the dam as shown on said Plan; thence turning and running S 20° 59' E on a line parallel with said dam cap a distance of 72 feet to a stone post on the southerly side of said River; thence turning and running S 20° W along land now or formerly of Donald LaCroix and land now or formerly of Betty Cullen a distance of 72 feet, more or less, to a point; thence turning and running in a northwesterly direction along land now or formerly of James Stiles a distance of 75 feet, more or less, to a point

25 feet in a southerly or southeasterly direction from the southerly bank of said River; thence turning and running in a generally southwesterly course, on a line parallel with said River bank, a distance of 215 feet, more or less, to a stone post, said post further being 25 feet on a course S 35° 49' E from a stone post in the southerly bank of said River; thence turning and running N 35° 49' W along land now or formerly of Robert Hale said distance of 25 feet to the last mentioned stone post in the southerly bank of the Cocheco River; thence continuing N 35° 49' W across the Cocheco River to a point on the northerly bank; thence turning and running in a generally southerly and westerly direction following the northerly bank of the Cocheco River a distance of 375 feet, more or less, to a point at the end of a stone wall; thence turning and running N 50° E along land now or formerly of Michael Dureau a distance of 158.7 feet to an iron pin; thence turning and running N 27° 35' W along said Dureau land a distance of 35 feet, more or less, to an iron pin; thence turning and running along land formerly of Joseph Guerin the following courses and distances:

- N 53° 50' E a distance of 223.2 feet to a point;
- N 53° 50' E a distance of 25 feet to a point;
- N 33° 09' W a distance of 62 feet, more or less, to a point;
- N 57° 56' E a distance of 25 feet to a point;
- N 33° 09' W a distance of 80 feet, more or less, to the point of beginning.

Said premises are held SUBJECT TO any presently subsisting burdens of the following:

- 1) The easement of the City of Rochester, across the easterly edge of the premises (then of C. F. Trask & Co.) for maintenance of a sewer siphon running across said River to the foot of Charles Street, as shown in plans and lay-out records recorded with Rochester City Clerk; Plans, Series N#5, Series 0#3; Highway Book 4; Pages 43-49 (August 6, 1895).
- 2) The easement or right of way of the City of Rochester, from the northwesterly end of Ela Court, across intervening land formerly of Charles Otis and John J. Dimeglio, and across the twenty-five foot strip of the premises paralleling the southeasterly bank of said River, to said river Bank, for maintenance of a drain or sewer, as set forth in deed from Charles F. Trask to said City, dated December 12, 1899, recorded in Strafford County Registry of Deeds, Book 321, Page 436. (Further reference is made to said City's intervention, in protection of such easement, in Strafford County Superior Court Civil No. 3956, Cullen v. Stamat, at February Term 1926).
- 3) Such rights or easements as may exist in said City or the Public, as in a public highway, in Mill Court, so-called, through dedication, adverse use, or otherwise.
- 4) Such matters as are shown on said Plan #23A-98.

Said premises are held TOGETHER WITH the benefit of the following as may exist:

- A) A right-of-way from Ela Court, across intervening land now or formerly of Charles Otis and John J. Dimeglio, to the portion of the premises lying on the southeasterly bank of the Cocheco River at the southeasterly end of said dam, as reserved in deed from Charles F. Trask to Charles M. Bailey dated February 1, 1907 recorded in the Strafford County Registry of Deeds at Book 346, Page 191. (Further reference as to the presumed width of the entrance to said right-of-way from Ela Court and the presumed width of said right-of-way derived therefrom is made to deed from Jacob H. Ela to George W. and Caroline M. Barker dated October 5, 1874 and recorded in said Registry at Book 256, Page 355); and
- B) All and sundry the canal, raceway, flumes, abutments, dam and all rights and privileges of waterfall, milling, water power, flowage and drainage and other appurtenances appertaining to or connected with said premises.

PARCEL TWO:

Tract I:

A certain tract or parcel of land with the buildings thereon, situate in said Rochester, County of Strafford, State of New Hampshire on the southeasterly side of Gagne Street, so-called, bounded and described as follows:

BEGINNING on said Gagne Street at an iron pipe driven in the ground at the northerly corner of the lot of land herein conveyed at land formerly of the Fownes Manufacturing Company; thence running along Gagne Street a distance of about two hundred sixteen (sic) [seventeen] feet six inches (217'6") to an iron pipe driven in the ground at land now of formerly of Poisson; thence turning and running in a generally southeasterly direction through a stone post to a stone post at land deeded by the City of Rochester to Trask & Company, November 1914; thence turning and running in a northeasterly direction along said Trask land to an iron pipe driven in the ground at land formerly of Fownes Mfg. Company; thence turning and running in a northwesterly direction along said Fownes land to Gagne Street at an iron pipe which is the point of beginning, and being the lot of land known as Albert Gagne Estate on plan of property of A. & P. Gagne on Gagne Street, Rochester, N.H., G. D. Dame, Engineer, May 1931, recorded in the Strafford County Registry of Deeds in Pocket 10, Folder 3 as Plan 64.

Tract II:

A certain tract or parcel of land with any improvements thereon on the southeasterly side of Gagne Street, so-called, in Rochester, Strafford County, New Hampshire, bounded and described as follows:

BEGINNING at an iron hub set in the ground on the southerly side of Gagne Street, so-called, at the northwesterly corner of the premises herein conveyed and at the northeasterly corner of land formerly of Joseph T. and Alice M. Guerin; thence running

north 57 degrees 55' east by said Gagne Street a distance of 25 feet, more or less, to an iron pipe set in the ground on the southerly side of said Gagne Street and at the northeast corner of the premises herein conveyed; thence turning at an angle and running south 33 degrees 9' east by land formerly of Fownes Trust a distance of 142 feet, more or less, to an iron pipe set in the ground at the southeast corner of the premises herein conveyed and at the canal, so-called; thence turning at an angle and running south 53 degrees 50' west by said canal a distance of 25 feet, more or less, to an iron pipe set in the ground at the southwest corner of the premises herein conveyed; thence turning at an angle and running north 33 degrees 9' west by said Guerin land a distance of 142 feet, more or less, to the point of beginning, meaning hereby to convey a strip of land 25 feet in width northerly of and adjoining land of said Guerin.

Tract III:

A certain parcel of land situate on the southeasterly side of Gagne Street in Rochester, Strafford County and State of New Hampshire, and bounded and described as follows:

BEGINNING at a point in the southeasterly sideline of Gagne Street, said point also being the junction of the northwesterly corner of the herein described premises with the northeasterly corner of land formerly of Joseph T. and Alice M. Guerin; thence N 57° 55' E by the southeasterly sideline of Gagne Street a distance of twenty-five (25) feet, more or less, to a point; thence S 33° 09' E by land formerly of Fownes Trust a distance of eighty (80) feet, more or less, to a point; thence S 57° 55' W by said Fownes Trust land a distance of twenty-five (25) feet, more or less, to land formerly of said Guerin; thence N 33° 09' W by land formerly of said Guerin a distance of (80) feet, more or less, to the point of beginning. Bearings are same as used in previous conveyance to Guerin by deed dated June 12, 1950 and recorded in Strafford County Records, Book 582, Page 291.

SUBJECT TO easement to the City of Rochester as more fully set forth in instrument recorded December 4, 1967 in the Strafford County Registry of Deeds at Book 837, Page 297, as may be applicable.

PARCEL ONE and PARCEL TWO, as may be applicable, are further SUBJECT TO:

- a) Such right or easement as may subsist in said City and may touch said premises, to maintain a highway drain or surface sewer pipeline, and a domestic or deep sewer pipeline and sewage tank, and other pipe lines, as set forth in deed from Albert Gagne, et al to said City, dated February 23, 1916, recorded at Book 376, Page 389. (Further reference is made: (a) to the decree, at February Term 1916, in Strafford County Superior Court Equity No. 1235, City of Rochester vs. Gagnes recorded at Book 376, Page 374; and (b) to an indemnity bond from said Gagnes to said City, dated September 13, 1916, recorded Book 379, Page 21).

- b) Rights and an easement granted to Verizon New England Inc. and Public Service Company as more fully set forth in instrument recorded in the Strafford County Registry of Deeds at Book 3447, Page 787.
- c) Such matters as are shown on a plan entitled "Boundary / Site Plan, Fownes Mill Condominium, Gagne Street, Tax Map 121, Lots 32, 32-1 & 37, Rochester, NH for Fownes Mill Development, LLC" and on a plan entitled "Site Plan, Fownes Mill Condominium, Gagne Street, Tax Map 121, Lots 32, 32-1 & 37, Rochester, NH for Fownes Mill Development, LLC," both plans dated January, 2007, prepared by Norway Plains Associates, Inc. and recorded or to be recorded in the Strafford County Registry of Deeds ("the Plan").
- d) Rights of the public to use the area shown as "river walk" on the Plan and the rights of the City of Rochester to enter the herein described property for maintenance of the river walk.
- e) Rights of the City of Rochester to access the herein described property for its required maintenance of the vortechnix system.

Meaning and intending to describe the same premises conveyed to Fownes Mill Development, LLC by Warranty Deed of Rose Realty, L.L.C. dated August 2, 2006 and recorded in the Strafford County Registry of Deeds at Book 3413, Page 591 and Warranty Deed of Rose Realty, L.L.C. dated August 2, 2006 and recorded in the Strafford County Registry of Deeds at Book 3413, Page 595 and re-recorded at Book 3415, Page 249. See also Warranty Deed of Kurt P. Zeller to Fownes Mill Development, LLC dated July 21, 2006 and recorded in the Strafford County Registry of Deeds at Book 3413, Page 589.

EXHIBIT B

EXPANDABLE LAND

A certain tract or parcel of land with improvements thereon situate in Rochester, Strafford County, New Hampshire on the southeasterly side of Gagne Street, so-called, and the southwesterly side of River Street, so-called, (formerly known as Mill Court), bounded and described as follows:

BEGINNING at the intersection of said streets at an iron post in the ground and thence running South 57° 55' West by said Gagne Street one hundred twenty-five (125) feet, more or less, through a stone bound in the ground to an iron post in the ground at land formerly of "Fownes Manufacturing Company;" thence turning and running southeasterly by said "Fownes Manufacturing Company" land forty-four (44) feet, more or less, to a stone post in the ground; thence turning and running northeasterly by said "Fownes Manufacturing Company" land and by land formerly of "Fownes Lumber Company" one hundred seventy-two (172) feet, more or less, to an iron post in the ground at said River Street; thence turning and running northwesterly by said River Street one hundred two (102) feet, more or less, to the point of beginning.

EXHIBIT C

EXPANDABLE LAND PROVISIONS

1. The Declarant hereby reserves the right and option to expand the Condominium by not more than three (3) additional units, to not more than a total of seventy-four (74) units.

2. The consent of the unit owners will not be required for any such expansion.

3. The Declarant hereby reserves the right to expand the condominium by Amendment hereto for a period not to exceed seven (7) years from the date of the recording of this Declaration. However, the time limit contained in this section may be extended by not more than seven (7) years in accordance with the provisions of RSA 356-B:16,III(c).

4. There are no assurances made that any improvements within the expandable land will be located in any given portion or area.

5. The maximum number of units that may be created within the expandable land is three (3) units.

6. The expandable land will be restricted entirely to residential uses.

7. Any structures to be constructed upon the expandable land shall be compatible with the structures located within the submitted land in terms of quality of construction and the principal materials used, but not necessarily architectural style.

8. In addition to the new buildings and units, certain sewer facilities, utilities and water mains and pumps may be constructed upon the expandable land.

9. The units which may be created within the expandable land may or may not be substantially identical to the units on the submitted land.

10. The Declarant makes no assurances with regard to the creation of limited common areas within the expandable land.

11. If the Declarant should expand the Condominium, it must add all of the expandable land described in Exhibit B hereof, and the expansion must be done all at one time.

EXHIBIT D

TOTAL OF SEVENTY-ONE UNITS

LIST OF UNITS AND PERCENTAGE INTEREST

Each of the seventy-one (71) units shall have an equal undivided interest in the Common Area, or a one-seventy-first (1/71) interest in the Common Area.

EXHIBIT D-1

TOTAL OF SEVENTY-FOUR UNITS

LIST OF UNITS AND PERCENTAGE INTEREST

If the Condominium is expanded to the Expandable Land and three additional units are created, each of the seventy-four (74) units shall have an equal undivided interest in the Common Area, or a one-seventy-fourth (1/74) interest in the Common Area.