

INDEX

DECLARATION OF CONDOMINIUM  
INDIAN CREEK CONDOMINIUMS

	<u>PAGE</u>
SECTION 1	DEFINITIONS.....2
SECTION 2	DESCRIPTION OF LAND.....2
SECTION 3	DESCRIPTION OF INDIAN CREEK CONDOMINIUMS.....3
SECTION 4	DESCRIPTION OF TOWNHOUSE.....3
SECTION 5	DESCRIPTION OF COMMON AREAS.....5
SECTION 6	LIMITED COMMON AREAS.....5
SECTION 7	UNDIVIDED PERCENTAGE INTERESTS.....6
SECTION 8	RESTRICTIONS ON USE.....6
SECTION 9	DECISION TO RECONSTRUCT OR REPAIR AFTER DESTRUCTION OR DAMAGE.....7
SECTION 10	INSURANCE.....8
SECTION 11	CONDEMNATION.....10
SECTION 12	EASEMENTS FOR ENCROACHMENTS.....11
SECTION 13	AMENDMENT OF DECLARATION.....12
SECTION 14	DECLARANT'S RESERVED RIGHTS AND POWERS.....12
SECTION 15	COMPLIANCE AND DEFAULT.....14
SECTION 16	EFFECTIVENESS OF THIS DECLARATION.....15
SECTION 17	RESTRICTIVE COVENANTS.....15
SECTION 18	SERVICE OF PROCESS.....15
SECTION 19	CAPTIONS.....16
SECTION 20	GENDER.....16
SECTION 21	WAIVER.....16
SECTION 22	INVALIDITY.....16
SECTION 23	CONFLICTS.....16

DECLARATION OF CONDOMINIUM  
INDIAN CREEK CONDOMINIUMS

This is a Declaration of Condominium made this 20th day of July, 1982 by Vermont Federal Savings and Loan Association, a banking institution organized and existing under the laws of the United States of America, hereinafter referred to as the "Declarant".

WHEREAS, Declarant is the sole owner in fee simple of certain land and premises located in the City of South Burlington, County of Chittenden and State of Vermont, as more particularly described in Exhibit A and Lot Plan attached to this Declaration and made a part hereof;

WHEREAS, Declarant is the sole owner of buildings and improvements constructed or to be constructed upon the aforementioned land and premises;

WHEREAS, Declarant desires to subject the land and premises, together with the buildings and improvements thereon to the provisions of Title 27, Chapter 15, of the Vermont Statutes Annotated, known as the "Condominium Ownership Act", hereinafter referred to as the "Act", as well as other covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens;

WHEREAS, Declarant desires to create a condominium with several phases;

NOW THEREFORE, Declarant hereby declares that all the land and premises described on Exhibit A and therein described as Phase I together with the buildings and all improvements heretofore and hereafter constructed thereon and all easements, rights-of-way and appurtenances thereto (hereinafter collectively referred to as "Property"), are hereby subjected to the Act. The Property is to be held, conveyed, leased and occupied, subject to this Declaration, the attachments hereto which are made a part of this Declaration and are hereby subjected to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens contained in the documents filed for record in the Land Records of the City of South Burlington, Vermont, all of which shall be deemed to run with and bind the Property and shall inure to the benefit of and be enforceable by the Declarant, its successors and assigns, including any person, group of persons, corporation, trust or other legal entity, or any culmination thereof, which holds such interest solely as security for the performance of an obligation. There is therefore hereby created a condominium to be known as "INDIAN CREEK CONDOMINIUMS".

**SECTION 1**  
**DEFINITIONS**

The terms used in this Declaration, in its exhibits and all amendments hereto shall have the meanings stated in the Act unless, the context herein requires otherwise, or if the definitions which follow are in conflict with the Act, the latter shall control.

1. "Association" as hereinafter used in these provisions shall mean the Association of apartment owners of the Indian Creek Condominiums.
2. "Townhouse" as hereinafter used in these provisions shall mean "apartment" as defined in the Act. "Owner" as hereinafter used shall mean "apartment owner" as defined in the Act. Declarant shall, for all purposes, be deemed to be an apartment owner as to any apartment which it has not yet conveyed and shall be entitled to the aggregate percentage of undivided interest attributable to all such apartments.
3. "Common Expenses" shall mean the expenses for which the owners are liable to the Association. Common expenses shall include, but not be limited to all those expenses enumerated under the provisions of the Act, other expenses which may be assessed against the apartment owner in accordance with the provisions of this Declaration and Bylaws; as well as all expenses necessary to maintain the water system, the sewerage system, and the easements.
4. "Unit" as hereinafter used interchangeably with Townhouse shall mean "apartment" as defined in the Act.

**SECTION 2**  
**DESCRIPTION OF LAND**

The land, rights-of-way and easements subjected to the Act by this Declaration is located in the City of South Burlington, County of Chittenden and State of Vermont and is more fully described on the description annexed hereto and made an integral part of this Declaration as Exhibit A and is shown on the "PHASE I -Lot Plan" attached hereto and also recorded in Map Book 103, Page 53 in the land records of the City of South Burlington. The aforementioned land, rights-of-way and easements are subject to documents recorded in the Land Records of the City of South Burlington (as mentioned previously herein), an "Offer of Irrevocable Dedication" granted the City of South Burlington by the Declarant, easements for fire lanes conveyed to the City of South Burlington by the Declarant, an Agreement and Waiver for Private Roads and Streets granted the City of South Burlington by the Declarant herein and rights reserved in the Declaration by the Declarant.

SECTION 3  
DESCRIPTION OF INDIAN CREEK CONDOMINIUMS

The structures upon the previously described land which are submitted to the Act as Phase I consists of three (3) buildings described as follows:

1. Two (2) of the buildings contain four (4) entryways, and one (1) building contains three (3) entryways.
2. All of the buildings are two (2) stories
3. There are no basements.
4. The principal materials of which these buildings are constructed are: wood frame for the structural system; concrete at the ends of each building for firewalls from ground level to roof; clapboard over construction board sheathing, for the exterior; and sheetrock for the interior walls of the townhouses.
5. There is one (1) townhouse contained within each section of each of the three (3) buildings, with each section having its own entryway.
6. There are a total of eleven (11) townhouses; two buildings contain four (4) townhouses and one building contains three (3) townhouses.
7. There are five (5) accessory structures to be used as garages, the principal materials of which are: woodframe for the structural system and clapboard over construction board sheathing, for the exterior.

SECTION 4  
DESCRIPTION OF TOWNHOUSE

1. Each townhouse consists of the enclosed space of more than one room occupying more than one floor, each townhouse being two stories having a direct exit to a common area leading to a street. The lower boundary of any such unit is a horizontal plane (or planes), the elevation of which coincides with the elevation of the upper surface of the unfinished subfloor thereof, extended to intersect the lateral or perimetrical boundaries of any such unit. The upper boundary of any such unit is a horizontal plane (or planes), the elevation of which coincides with the elevation of the lower surface of the unfinished sheetrock ceiling of the second floor extended to intersect the lateral or perimetrical boundaries of any such unit. The lateral or perimetrical boundaries of any such unit



#2 Amended to  
Include Rear  
Decks

are vertical planes which coincide with the interior unfinished surfaces of the perimeter sheetrock thereof, extended to intersect the upper and lower boundaries thereof and to intersect the other lateral and perimetrical boundaries of the unit.

Mechanical equipment and appurtenances located within any unit and designed to serve only that unit, such as appliances, non-bearing partition walls, outlets, electrical receptacles and outlets, fixtures, cabinets and the like, shall be considered a part of the unit.

2. An owner shall not own the undecorated or unfinished surfaces of both of the perimeter walls surrounding the respective unit, the ceiling of the second floor or the subfloor; the window sashes and frames, the doors, door sashes and frames. An owner, however, shall own and maintain the glass in windows, the doors which do not open to a common area or limited common area, the inner decorated or finished surfaces of both of the perimeter walls, floors and ceilings consisting of paint, wallpaper, carpet and other finishing materials.

3. An owner shall not be deemed to own the fireplace, the damper, the chimney, the flue, the throat or any other related equipment normally associated with the fireplace, except an owner shall own and maintain to the undecorated surface of the brick and mortar facing and the hearth of the within aforementioned boundaries of the unit, as well as to the undecorated surface of the firebrick and mortar surrounding the firebox area being the back hearth and reflecting walls, to the undecorated surface of the lintel and the air space therein.

4. An owner shall not own the utilities, conduits, pipes, ducts, flues, cables, wires and wire outlets, utility lines and the like and any other elements located within or accessible only from within any particular unit which are utilized for or serve more than one unit.

5. Each unit shall be subject to an easement to the Association and an irrevocable right to enter units for repairs to the common and limited common facilities and for the unobstructed and uninterrupted use of any and all pipes, ducts, flues, conduits, cables, wires and wire outlets, utility lines and the like, and any other common elements located within or accessible only from within any particular unit, which are utilized for or serve more than one unit.

6. Further details relative to the description of the unit and the dimensions are more particularly described on the Floor Plans filed in the Land Records in the City of South Burlington at Map Book 173, Page 54-58.

7. Within the building the units are the same, except as to layout and as noted below:

- A. There are eleven units.
- B. Eight units consist of a foyer, breakfast room, kitchen, living room/dining room and bathroom on the first floor; two bedrooms, two walk-in closets, laundry room area and a master bathroom on the second floor. Three units consist of the aforementioned rooms plus an additional bedroom and walk-in closet on the first floor.
- C. The area of the eight units with two bedrooms is approximately 1,450 square feet. The area of the three units with three bedrooms is approximately 1,670 square feet.
- D. The units are number 1-11; the three bedroom units are units 1, 8 and 9.

#### SECTION 5 DESCRIPTION OF COMMON AREAS

- 1. All areas other than those included in the boundaries of any unit as previously defined are common areas and common facilities, except those areas and facilities as hereinafter defined and "limited" common areas and facilities.
- 2. Common areas and common facilities shall include, but not be limited to:
  - A. The foundations, bearing walls, perimeter walls, main walls, footings, roofs, columns, girders, beams, supports, and parking areas not designated as limited common areas;
  - B. Yards and storage lockers not designated as limited common areas, chimney flues and plenums;
  - C. Compartments or installations for central services such as: power for heat, light, gas, hot and cold water, compressors and related equipment, pumps, and the like, including, but in no way limited to, all pipes, ducts, flues, conduits, cables, wires and other utility lines; and
  - D. All other elements of the Property rationally of common use or necessary to its existence, upkeep and safety.

#### SECTION 6 LIMITED COMMON AREAS

The limited common areas and facilities are common areas and facilities declared or designated for the use of certain owners or a certain owner to the exclusion of other owners. All areas

Section 6: Amended  
to remove balcony,  
terraces + patio

designated as balcony, fireplaces and chimney, terraces, patio, storage, garage parking space and the like, are reserved to the exclusive use of the owners of the townhouse or townhouses to which they are adjacent. Except as provided herein, any expense for the maintenance, repair or replacement relating to the limited common areas and facilities shall be treated as and paid for as a part of the common expenses.

#### SECTION 7 UNDIVIDED PERCENTAGE INTERESTS

1. The value of the Property made subject to the Act hereby, and the value of each of the townhouses which is part thereto and the percentage of undivided interest in the common areas and facilities and the limited common areas and facilities appurtenant to each townhouse is set forth in the "Statement of Percentage of Ownership" attached hereto and made a part of this Declaration as Exhibit B.

2. The respective percentages referred to above and in Exhibit B hereto shall be of a permanent character and may not be changed without the consent of all of the owners or as otherwise provided for in this Declaration. The undivided percentage interests shall be determinative of all matters which under the Act, this Declaration, and the Bylaws are properly determinable by reference to the respective percentages, including but not limited to the weight of each owner's vote in voting on Association business and the allocation of common expenses.

#### SECTION 8 RESTRICTIONS ON USE

1. Except for such temporary non-residential uses as may be permitted by the Board of Directors from time to time all townhouses shall be used for single family residential purposes only, and no trade or business of any kind may be carried on therein, provided, however, that rental of all or a portion of such townhouse for residential purposes shall not be a violation of this restriction. Notwithstanding the foregoing, nothing in this section, or herein elsewhere, shall be construed to prohibit the Declarant from using any one townhouse at any time for promotional or display purposes as a "Model Townhouse", a Sales Office or the like or for leasing.

2. No structural alterations within or affecting any townhouse shall be made without written consent of the Board of Directors.

3. Each owner shall be subject to and shall comply with the terms and conditions of all State and Municipal laws and regulations affecting the use of the townhouse and the common areas and facilities and the limited common areas and facilities.

4. Until Declarant has completed and sold all of the

Section 8: Amended  
to include Family  
or Not more than  
2 unrelated persons

Section 8: Amended  
to include 30%  
rental limit

townhouses subject to this Declaration or subjected by annexing additional land to the Property as now or hereafter amended, neither the owners nor the Association, nor its Board of Directors, shall interfere with the completion of the contemplated improvements and the sale of those townhouses.

5. The Association shall have an irrevocable right and an easement to enter townhouses for the purpose of making repairs to the common and limited common areas and facilities when the repairs reasonably appear necessary. Except in cases involving manifest danger to public safety or property, the Association shall make a reasonable effort to give notice to the owner of any unit to be entered; no entry as permitted herein by the Association shall be considered trespass.

#### SECTION 9

##### DECISION TO RECONSTRUCT OR REPAIR AFTER DESTRUCTION OR DAMAGE

1. In the event of damage or destruction to the Property by fire or other casualty to the extent of less than two-thirds (2/3) of full replacement value of the Property, as estimated by the Board of Directors and the insurer, the same shall be promptly reconstructed or repaired in substantial conformity with plans of record and the original plans and specifications for Indian Creek Condominiums with the proceeds of insurance available for that purpose, if any.

2. In the event of damage or destruction to the Property by fire or other casualty to the extent of two-thirds (2/3) or more of the full replacement value of the Property, as estimated by the Board of Directors and the insurer, there shall be no reconstruction or repair of the damaged portions unless at a meeting of the members of the Association which shall be called and held within thirty (30) days after the occurrence of the damage or destruction, owners having sixty-seven (67%) percent or more of the aggregate ownership interest vote in favor of such reconstruction or repair. Absent such a determination by the Association, the Property shall be deemed to be owned in common by the owners of all the townhouses in the same proportion as that established in this Declaration for their ownership of undivided interests in the common areas and facilities. In this event, the Property will be subject to the proceedings provided for in the pertinent part of the Act.

3. In the notice to the members for the meeting which is to be held, pursuant to the above paragraph 2, the following information shall be sent, which information shall be prepared or caused to be prepared by the Board of Directors:

A. An estimate of the damage;

B. An estimate of the cost of repairing the damage or reconstructing the damaged portions in substantial compliance with the original plans and specifications;



C. An inventory of Association funds from all sources, including insurance, available for such reconstruction and repair work; and

D. If such available funds are less than the estimated reconstruction and repair costs, the amount of the assessments against each townhouse which would be necessary to enable the Association to meet such costs in full.

4. Any reconstruction or repair work required or decided upon in accordance with this Declaration, whether to be performed on common and limited common areas and facilities or individual townhouses, shall be done only by the Association, which may, however, delegate such work to suitable contractors of its choice.

5. The proceeds of any insurance upon the Property which are collected or collectible by the Association shall be available to it for the purpose of defraying the cost of such reconstruction or repair work. If they are insufficient for that purpose, the Association may raise the remainder of the necessary funds by levying one or more special assessments in the same manner in which assessments to meet ordinary common expenses are levied.

#### SECTION 10 INSURANCE

1. In order to insure that sufficient reconstruction or repair funds or both will be available to the Association if and when needed, the Board of Directors of the Association shall insure the entire Property, being the common areas and facilities, the limited common areas and facilities, and the townhouses exclusive of betterments, improvements of furniture and furnishings installed by townhouse owners in the townhouses, in such amounts as it shall, in its judgment, determine to provide not less than one hundred (100%) percent of the replacement value (exclusive of foundations) relative to the insurable improvements, in the event of damage or destruction from the casualty against which such insurance is obtained. Such insurance shall include fire insurance and extended coverage, vandalism, and malicious mischief insurance and such other types of insurance as may, in the Board of Directors' opinion, serve this purpose. The Board of Directors may comply with the above requirements by the purchase of blanket coverage and may elect such deductible provisions as are, in its opinion, consistent with good business practice and the purpose for which the insurance is bought.

Policies of casualty insurance hereunder shall name the Association as the insured and the person to which payment is to be made as trustee on behalf of the owners and lienholders as their interests may appear. They shall also provide that they

can not be cancelled, except upon at least thirty days written notice to the insured Association.

2. The Board of Directors of the Association shall also purchase broad form comprehensive liability coverage in such amounts and in such forms as prudent condominium management practice may suggest. Coverage shall include liabilities for personal injuries or property damage suffered on or in common areas and facilities and liabilities arising from the operation of motor vehicles on behalf of the Association.

3. The Board of Directors shall obtain such insurance against additional risks of a similar or dissimilar nature as it shall deem necessary, appropriate, or in harmony with prudent condominium management practice.

4. Premiums and expenses for all insurance purchased by the Board of Directors hereunder shall be common expenses. Where insurance premiums are increased as a result of increased risk attributable to a particular townhouse they shall be allocable to the townhouse responsible for the increase, based upon the insurance carrier's appraisal of risk inherent to said townhouse. A levy made against a unit owner for an increase in premiums may be enforced by the Association by adding the same to the common expenses allocable to said townhouse.

5. No insurance purchased by the Board of Directors hereunder shall in any way prejudice the right of each owner to insure his own townhouse and the property therein for his own benefit, nor shall the insurance purchased by the owner diminish or in any way prejudice the Association's rights and protection under policies purchased and held by it pursuant to this Section. All such separate insurance coverage obtained by an owner shall contain waivers of subrogation if available.

6. In the event the cost of reconstruction or repair shall exceed an amount equal to two-thirds (2/3) or more of the full replacement value of the Property, all proceeds of insurance shall be paid over to a trustee as selected by the Board of Directors, and shall be paid out from time to time as the reconstruction or repair progresses in accordance with the provisions of an Insurance Trust Agreement satisfactory in form and substance to the Board of Directors or in the event the owners do not vote to reconstruct or repair, then it shall be paid out to the owners of the townhouses in accordance with the adjustment as determined by the Association.

In the event the Property is reconstructed or repaired, and payment is made in full of all amounts due on account thereof, any proceeds of insurance then in the hands of the Insurance Trustee shall be paid to the Association and shall be considered as one fund and shall be divided among the owners of all of the townhouses in the same proportion as that established in the Declaration for ownership of undivided percentage interests in

the common elements, but only after first paying out of the owner's share, to the extent such payment is required by any lienor and to the extent there are sufficient funds, all amounts due on account of such liens upon said townhouse in accordance with the priority of interest.

SECTION 11  
CONDEMNATION

1. In the event a condemnation action is commenced against the Property, the Board of Directors of the Association shall immediately notify all owners.

2. Upon the entry of a decree of condemnation or order of taking resulting in the taking of a townhouse, but not before, the owner thereof shall automatically cease to be a member of the Association and cease to have any interest in common and limited common areas and facilities. Such termination of membership shall be prospective only and shall not affect liabilities or claims which arose prior thereto.

3. Any condemnation award resulting from a condemnation of any part of the Property shall, in the first instance, be paid to the Association, to be held and distributed to the persons entitled thereto as hereinafter provided.

4. A total taking, which shall mean a taking involving the condemnation of not less than eighty (80%) percent of the value of the Property as determined under Exhibit B, shall terminate this Declaration. The portions of the Property not taken shall be considered owned in common by the owners and shall be subject to partition pursuant to the Act. A portion of the condemnation award shall be distributed to the owners whose townhouses were taken in the amount of fair market value of the remaining townhouses, as determined by the Board of Directors; the balance, if any, shall be distributed to all owners in proportion to their respective ownership interests. When all townhouses are taken, the award shall be distributed in accordance with the ownership interest of Exhibit B, unless otherwise ordered by the Court.

5. A partial taking, which is a taking involving a condemnation of at least eighteen (18%) percent but less than eighty (80%) percent of the value of the Property as determined under Exhibit B shall also terminate this Declaration unless at a meeting of all remaining owners, to be called and held not later than ninety days after the entry of the order of taking or decree of condemnation, the remaining owners adopt an amendment to this Declaration which is:

A. To take account of the elimination of the condemned townhouses and their owners from the Property and to determine the necessary reallocations of the burdens and benefits of townhouse ownership to be made, so far as

practicable in accordance with the general principles embodied in this Declaration; and

B. Make such changes as may be necessary for the continued satisfactory operation of the Property in light of the nature and extent of the particular taking involved.

If this Declaration is not so amended within ninety (90) days of the entry of the decree or order of taking, it shall terminate this Declaration. The portions of the Property not taken shall be considered owned in common by the owners and shall be subject to partition pursuant to the Act.

Whether the Declaration is terminated or not, a portion of the condemnation award shall be distributed to the owners whose townhouses were taken in the amount of fair market value of the remaining townhouses, as determined by the Board of Directors; the balance, if any, shall be distributed to all owners in proportion to their respective ownership interests as they appear prior to any amendment made in accordance with this paragraph 5 of Section 11.

6. Any condemnation award resulting from a taking involving a condemnation of less than eighteen (18%) percent of the value of the Property as determined under Exhibit B, which does not involve the taking of a townhouse, shall be paid to the Association.

7. Any condemnation award resulting from a taking involving a condemnation of less than eighteen (18%) percent of the value of the Property as determined under Exhibit B, which does involve the taking of townhouses shall, so far as possible, be treated as a simple sale or conveyance thereof and the award shall be paid to the owners of the townhouses taken in the same proportion as each bears to the other as determined under Exhibit B.

#### SECTION 12 EASEMENTS FOR ENCROACHMENTS

1. In the event of encroachments of townhouses upon each other, townhouses upon common and limited common areas and facilities, or common and limited common areas and facilities upon townhouses, valid easements for the encroachments and for the maintenance of the same thereof shall be deemed to exist. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building, by error in any pertinent surveys, maps, plans or specifications which may occur in the course of reconstruction or repair work after destruction or casualty, or as a result of settlement or shifting of the building.

2. Encroachments authorized by this Section shall not be regarded as encumbrances upon either the affected townhouses or



the common or limited common areas and facilities, and shall not be regarded as rendering title to any affected townhouse or common or limited common area and facilities unmarketable.

**SECTION 13**  
**AMENDMENT OF DECLARATION**

1. Except as otherwise provided in this Declaration or in the Act, this Declaration may only be amended by written approval of owners owning in the aggregate of fifty-one (51%) percent or more of the aggregate ownership interest as shown on Exhibit B. If the amendment involves change in the undivided percentage interest, such approval shall be by one hundred (100%) percent of the owners. Furthermore, except for technical changes to this Declaration which require amendments, prior consent of mortgagees holding a mortgage interest in a townhouse or townhouses is required; in all instances prior notice of the proposed amendments is to be given to said mortgagees.

2. Notwithstanding the foregoing, provisions reserving certain powers to the Declarant under SECTION 14 of this Declaration, including the change in undivided percentage interest shall control, regardless of this Section of the Declaration or the Act, and the same may not be amended, modified or deleted except by the Declarant.

**SECTION 14**  
**DECLARANT'S RESERVED RIGHTS AND POWERS**

1. The Declarant shall have and hereby reserves the absolute right, but not the obligation, which right is to be exercised at any time or from time to time, provided it is prior to the 31st day of May, 1989, to annex to the land described in Exhibit A any part of or all of the land described in Exhibit A-1, together with improvements to be constructed thereon, in such increments and in such order as the Declarant may from time to time deem appropriate, and thereby make the same a part of Indian Creek Condominiums, submitting the same to this Declaration and the Act, all in the sole discretion of Declarant, in which case, the applicable provisions of this Declaration shall be amended by Declarant.

2. The undivided percentage interest as described in Exhibit B attached hereto shall remain permanent in character, however, the undivided percentage interest shall be re-allocated in accordance with Exhibit B which sets forth the manner in which the value of the townhouse to the overall project is calculated as a townhouse is annexed to and made a part of Indian Creek Condominiums.

Any deed or other instrument for or otherwise relating to any townhouse which forms a part of Indian Creek Condominiums shall be delivered subject to the condition that the undivided percentage interest shall be automatically re-allocated pro

tanto, and that Indian Creek Condominiums may be expanded in accordance with the provisions herein, upon the filing in the Land Records of the City of South Burlington, Vermont any amendment to the Declaration which has for its purpose the annexing of land and the adding of a townhouse or townhouses and submitting the same to this Declaration and making the same a part of Indian Creek Condominiums.

Whenever in this Declaration or in any of the Exhibits attached hereto, reference is made to Exhibit B then such reference shall mean and refer to Exhibit B as the same may from time to time be modified, amended or enlarged in accordance with provisions of this Section and by the exercise of the rights herein reserved by the Declarant.

3. Declarant reserves, for itself, its successors and assigns, without restriction or limitation, non-exclusive easements over, across and under all the common areas of the Property except those portions of the common areas upon which townhouses are located and those common areas providing immediate and adjacent support to said townhouses, and over, across and under all the right-of-ways to and from the Property, for the purposes of: storing building supplies, materials and equipment; installation, construction, reconstruction and maintenance of utility lines and storm drainage facilities; ingress and egress by all manner of transportation, either vehicular or pedestrian to the land and premises described on Exhibit A-1; as well as the right by easement, irrevocable license and right-of-way to make future connections, hook-ups, and tie-ins to existing or to be constructed power and telephonic lines, water lines, sewer lines and storm drainage lines as may be necessary or convenient to the Declarant, its successors and assigns for the construction of a building or buildings and other improvements on the land described in Exhibit A-1.

4. Declarant reserves the right to alter the interior design and interior arrangements of the townhouses, said right to last as long as Declarant owns the townhouses so altered. If Declarant shall make any such alterations, they shall be reflected in an amendment to this Declaration in the manner provided for in this Declaration. The Declarant may make any structural changes within or affecting any townhouse so long as Declarant owns said townhouse, without the prior consent of the Board of Directors.

5. Any amendment permitted to be made to this Declaration by the Declarant under the terms of this Section need be signed and acknowledged only by Declarant and it shall be deemed that the Association of owners, owners, lienholders or mortgagees have voted for such amendment or amendments. (Declarant may, make whatever amendments it deems advisable, in its sole discretion, without consent of any person or notice to any person as long as it owns all the townhouses.) When the rights as heretofore enumerated are exercised, and the appropriate amendment or

amendments are executed by Declarant and filed in the Land Records of the City of South Burlington, County of Chittenden and State of Vermont, they shall be effective and binding upon all past and future owners and all other persons having an interest in the Property. Neither this provision, the aforesaid provisions under this SECTION 14, nor the authority of the Declarant to record amendments to this Declaration pursuant to said Declaration may be modified or deleted by amendment to the Declaration or Bylaws or otherwise. Each owner and each mortgagee must execute any instruments as may from time to time be required by the Declarant, its successors and assigns to accomplish the aforesaid provisions.

SECTION 15  
COMPLIANCE AND DEFAULT

1. Each owner shall be governed by and shall comply with the terms of this Declaration, Bylaws, and Administrative Rules, as the same may be amended from time to time. Specifically, but without limitation, each owner shall be liable for and pay within thirty (30) days of receipt of a statement, the following:

A. All assessments made by the Association to meet present and projected common expenses; and

B. The expenses of any maintenance, repair, or replacement rendered necessary by an owner's noncompliance with this Declaration, Bylaws, Administrative Rules, or his act, neglect, or carelessness, or by that of any member of his family, guests, invitees, agents and patrons, to the extent not covered by insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy, or abandonment of a townhouse or its appurtenances, or of the common and limited common areas and facilities.

2. Failure of an owner or other parties to comply with any of the terms contained in the Declaration, the Bylaws or the Administrative Rules shall entitle the Association or owners to the following relief, in addition to relief granted under the Act and applicable law:

A. Any owner and any other party shall be liable to injunctive relief, to prevent or abate the effects of such violation.

B. The prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the court.

C. Interest to accrue on any unpaid balance which the owner owes to the Association from the date the payment was due at the rate of prime plus two (2%) percent as reflected at the Chase Manhattan Bank in New York, figured on the 1st

calendar day of each month in which the unpaid balance is due.

The failure of the Association, the Board of Directors, or any owner to enforce any covenant, restriction, or other provision of the Act, this Declaration, the Bylaws, or the Administrative Rules, shall not constitute a waiver of the right to do so thereafter.

**SECTION 16**  
**EFFECTIVENESS OF THIS DECLARATION**

1. This Declaration shall become effective upon its execution in accordance with the Act by Declarant and its filing for record in the Land Records of the City of South Burlington, Vermont.

2. This Declaration, the Bylaws, and any Administrative Rules adopted thereunder shall supplement and not replace or waive any and all rights and obligations provided for by the Act and by other applicable laws which inure to the benefit of and are binding upon any person affected thereby.

**SECTION 17**  
**RESTRICTIVE COVENANTS**

All of the terms, provisions and conditions of this Declaration and its Exhibits shall be a covenant running with the land for the benefit and are binding upon the Property, Declarant, its successors and assigns, any owner, the Association and any mortgagee or other lienholder.

**SECTION 18**  
**SERVICE OF PROCESS**

The name and address of a person on whom process may be served in any action described in the Act is as follows:

Clarke Gravel, Esq.  
Gravel, Shea & Wright, Ltd.  
Box 1049, 109 S. Winooski Avenue  
Burlington, Vermont 05401

This appointment shall be effective until the appointment of a successor or the death or resignation of the agent. Any successor shall be elected by the Board of Directors and such notice, attested by the President and Secretary of the Association, shall be filed in the Land Records of the City of South Burlington. A resignation shall be by notice to the Board of Directors, with a copy filed in the Land Records of the City of South Burlington. If there is no agent appointed as provided in this Section, service may be made upon any officer.



SECTION 19  
CAPTIONS

The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof.

SECTION 20  
GENDER

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

SECTION 21  
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, irrespective of the number of violations of breaches which may occur.

SECTION 22  
INVALIDITY

The invalidity of any provision or provisions of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

SECTION 23  
CONFLICTS

This Declaration is set forth to comply with the requirements of the Condominium Ownership Act. In the event of any conflict between this Declaration and the provisions of the Act, the provisions of such Act shall control.

IN WITNESS WHEREOF, Vermont Federal Savings and Loan Association hereunto causes its name to be subscribed hereto by its duly authorized agent.

DATED: July 14, 1982

Christine L. Smith  
Lynne Tracy Ritchie

VERMONT FEDERAL SAVINGS  
AND LOAN ASSOCIATION

By: [Signature]  
Duly Authorized Agent

## First Amendment Exhibit B- Page 3

26	\$91,500.00	1.6949
27	\$91,500.00	1.6949
28	\$91,500.00	1.6949
29	\$91,500.00	1.6949
30	\$91,500.00	1.6949
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55	\$91,500.00	1.6949
56	\$91,500.00	1.6949
57	\$91,500.00	1.6949
58	\$91,500.00	1.6949
59	\$91,500.00	1.6949
60	\$91,500.00	1.6949

100.0000

AMENDMENT TO DECLARATION OF INDIAN CREEK CONDOMINIUM

WHEREAS, the Indian Creek Condominium was created by virtue of a certain Declaration of Condominium dated July 20, 1982, and of record in Volume 181 at Page 295 of the Land Records of the City of South Burlington;

WHEREAS, the owners of more than fifty-one percent (51%) of the aggregate ownership interests in said Condominium have given their written approval to the amending of Section 8 (1) of said Declaration of Condominium as hereinafter set forth;

WHEREFORE, pursuant to Section 13 (1) of said Declaration of Condominium, the Indian Creek Condominium Association, Inc., does hereby amend said Declaration as follows:

I

By deleting all of Section 8 (1) therefrom and by inserting, in lieu thereof, the following:

(1) Except for such temporary non-residential uses as may be permitted by the Board of Directors from time to time, all townhouses shall be used for single-family residential purposes only and each townhouse shall be occupied by not more than one family unit in which all of the individuals are related by consanguinity or affinity or by not more than two adults not so related, and no trade or business of any kind may be carried on therein, provided, however, that the rental of all or any portion of any townhouse for residential purposes shall not be a violation of this restriction.

IN WITNESS WHEREOF, the Indian Creek Condominium Association, Inc. has caused this Amendment to Declaration to be executed and attested by its President and duly authorized agent on behalf of the Association, this ~~17th~~ day of ~~March~~ <sup>April</sup>, 1988.

In the presence of:

Carol Ramsey  
(witness)  
Scott L. Thurnit  
(witness)

Indian Creek Condominium  
Association, Inc.

John Hamilton  
President and Duly  
Authorized Agent

STATE OF VERMONT  
CHITTENDEN COUNTY, SS.

Personally appeared at South Burlington this 11<sup>th</sup> day of  
April  
March, 1988, John Hamilton, President and duly  
authorized agent of the Indian Creek Condominium Association,  
Inc. and he did attest to the truth of the matters set forth  
in this Amendment to Declaration of Indian Creek Condominium  
and he did acknowledge the execution of this instrument to be  
his free act and deed and the free act and deed of the Indian  
Creek Condominium Association, Inc.

Janet P. Papette  
Notary Public

Received for record April 13, 1988 at 10:10 a.m.

Attest Janet P. Papette



**AMMENDMENT to the DECLARATION of CONDOMINIUM  
of the INDIAN CREEK ASSOCIATION**

WHEREAS, with more than 51% of the homeowners present at the November 1992 annual meeting, the following amendments were voted on and passed. Being these amendments were not recorded and with no minutes of the 1992 annual meeting available, the present Board of Directors has reviewed and signed this amendment.

WHEREFORE, pursuant to Section 13, (1) of said Declaration of Condominium, the Indian Creek Condominium Association, does hereby amend as follows:

**DECLARATION - SECTION 4: DESCRIPTION OF TOWNHOUSE**

Item #2 is amended to read: An owner shall not own the undecorated or unfinished surfaces of both of the perimeter walls surrounding the respective unit, the ceiling of the second floor or the subfloor; the window sashes and frames, the doors, door sashes and frames. An owner, however, shall own and maintain the glass in windows, the doors which do not open to a common area or limited common area, the inner decorated or finished surfaces of both of the perimeter walls, floors and ceilings consisting of paint, wallpaper, carpet and other finishing materials. An owner shall own and maintain the rear deck of the townhouse.

**SECTION 6: LIMITED COMMON AREAS**

Amended to read: The limited common areas and facilities are common areas and facilities declared or designated for the use of certain owners or a certain owner to the exclusion of other owners. All areas designated as fireplaces and chimney, storage, garage parking space and the like, are reserved to the exclusive use of the owners of the townhouse or townhouses to which they are adjacent. Except as provided herein, any expense for the maintenance, repair or replacement relating to the limited common areas and facilities shall be treated as and paid for as a part of the common expenses.

IN WITNESS WHEREOF, the Indian Creek Association has caused this amendment to be executed and attested by its President and duly authorized agent on behalf of the Association, this 22nd day of April, 1997.

In the presence of:

Indian Creek Association, Inc.

Ken Willingham

Melinda Tate  
President and Duly Authorized Agent  
(V. President at 1992 Annual Meeting)

At South Burlington, in the county of Chittenden, on this 22nd day of April, 1997  
Melinda Tate personally appeared and acknowledged this to be her free act and deed and the free act and deed of the Indian Creek Condominium Association.

Kathleen Willingham  
Notary Public 2/10/99

CITY CLERK'S OFFICE  
Received April 22 1997 at 9:20 AM  
Recorded in Vol. 407 on page 361  
In So. Burlington Land Records  
Attest: Margaret A. Poirard  
Margaret A. Poirard City Clerk

**AMENDMENT TO DECLARATION OF CONDOMINIUM OF  
INDIAN CREEK CONDOMINIUMS**

At a meeting of the Unit Owners convened in accordance with the Bylaws of the Indian Creek Condominiums Association, Inc. (the "Association"), the holders of fifty-one percent (51%) of the votes of the Association approved amending the Declaration of Condominium of Indian Creek Condominiums, dated July 20, 1982 and recorded in Volume 181 at Page 294 in the Land Records of the City of South Burlington, as the same and its exhibits have been amended by the following: (i) a First Amendment to Declaration of Indian Creek Condominiums, dated \_\_\_\_\_ and of record in Volume \_\_\_\_\_ at Page \_\_\_\_\_, (ii) an Amendment to Declaration of Indian Creek Condominiums, dated April 11, 1988 and of record in Volume 260 at Page 294, (iii) an Amendment to the Declaration of Condominium and Bylaws of the Indian Creek Association, dated January 16, 1997, and of record in Volume 403 at Page 13, (iv) an Amendment to the Declaration of Condominium of the Indian Creek Condominium of the Indian Creek Association, dated April 22, 1997 and of record in Volume 407 at Page 36, (v) an Amendment to the Declaration of Condominium and By-laws of the Indian Creek Association, dated May 15, 2001 and of record in Volume 504 at page 351, (vi) as Amendment to Bylaws of Indian Creek Condominium Association, Inc., dated January 27, 2005 and of record in Volume 702 at Page 660, and (vii) an Amendment to the By-Laws of Indian Creek Condominium Association, Inc., dated February 22, 2008 and of record in Volume 807 at Page 344 (collectively, the "Declaration"), as follows:

- I. The following section shall be added to the end of the Declaration and shall going forward be a part thereof:

**SECTION 24  
RIGHTS RELATED TO MORTGAGEES**

A. Limitations On Ability To Sell/Right Of First Refusal. Any right of first refusal in this Declaration shall not adversely impact the rights of a mortgagee or its assignee to:

1. Foreclose or take title to a Condominium Unit pursuant to the remedies in the mortgage;
2. Accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or
3. Sell or lease a Unit acquired by the mortgagee or its assignee.

B. Amendments To Documents.

CITY CLERK'S OFFICE  
Received Mar 02, 2010 10:30A  
Recorded in VOL: 922 PG: 121 - 623  
OF So. Burlington Land Records  
Attest:  
Donna Kinville  
City Clerk

1. Any amendments of a material adverse nature to mortgagees shall be agreed to by mortgagees that represent at least fifty-one percent (51%) of the votes of Unit estates that are subject to mortgages;
2. Any action to terminate the legal status of the project after substantial destruction or condemnation occurs or for other reasons shall be agreed to by mortgagees that represent at least fifty-one percent (51%) of the votes of the Unit estates that are subject to mortgages; and
3. Implied approval shall be assumed when a mortgagee fails to submit a response to any written proposal for an amendment within sixty (60) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

C. Rights Of Condominium Mortgagees And Guarantors. The mortgagee and guarantor of the mortgage on any Unit in the Condominium project shall be given timely written notice of:

1. Any condemnation or casualty loss that affects either a material portion of the project or the Unit securing its mortgage;
2. Any sixty (60) day delinquency in the payment of Assessments or charges owed by the owner of any Unit on which it holds the mortgage;
3. A lapse, cancellation, or material modification of any insurance policy maintained by the Association; and
4. Any proposed action that requires the consent of a specified percentage of mortgagees.

D. First Mortgagee's Rights Confirmed. No provision of this Declaration shall give a Condominium Unit Owner or any other party priority over any rights of the First Mortgagee of the Condominium Unit pursuant to its mortgage in the case of payment to the Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Condominium Units and/or Common Elements.

E. Unpaid Dues. Any First Mortgagee who obtains title to a Condominium Unit pursuant to the remedies in the mortgage or through foreclosure will not be liable for more than six (6) months of the Unit's unpaid regularly budgeted dues or charges accrued before acquisition of the title to the Unit by the Mortgagee. If the Association's lien priority includes costs of collecting unpaid dues, the lender will be liable for any fees or costs related to the collection of the unpaid dues.

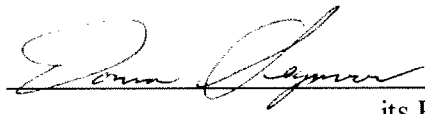
F. Priority. In the event of a conflict between the provisions contained in this article and any other of the Declaration, the provisions hereof shall control.

II. Except as specifically amended hereby, the Declaration remains in full force and effect.

The President of the Association does hereby certify that fifty-one percent (51%) of the Unit Owners approved the foregoing Amendment to Declaration of Condominium of Indian Creek Condominiums, in person or by proxy.

Dated this 16th day of February, 2010.

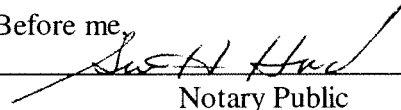
**Indian Creek Condominiums Association,  
Inc.**

By: , its President  
and Duly Authorized Agent

STATE OF VERMONT  
CHITTENDEN COUNTY, SS.

At South Burlington, in said County and State, this 16th day of February, 2010, personally appeared Donna M. Seymour, the President and Duly Authorized Agent of **Indian Creek Condominiums Association, Inc.** and he/she acknowledged this instrument, by him/her signed, to be his/her free act and deed and the free act and deed of said association.

Before me,

  
Notary Public

My Commission Expires: 02/10/11

H:\Sta\_8\SUBDIVIS\Condo Dec Amendments Fannie-Freddie\Indian Creek Condominium\Indian Creek Dec Amendment (revised).wpd