DECLARATION OF CONDOMINIUM

OF

APPLE VALLEY GARDENS

This Declaration is made under the Wisconsin Condominium Ownership Act, Chapter 703 of the Wisconsin Statutes, by Steven A. MacHutta ("Declarant"). The purpose of this Declaration is to submit the land and improvements described herein to Condominium ownership in use in the manner provided by the Wisconsin Condominium Ownership Act. Declarant is an individual and a resident of the State of Wisconsin.

1. NAME AND ADDRESS OF CONDOMINIUM. The name of the condominium is APPLE VALLEY GARDENS, A CONDOMINIUM. The address of the condominium is N84 W15979 Menomonee Avenue, Menomonee Falls, Wisconsin 53051 and N84 W16033 Menomonee Avenue, Menomonee Falls, Wisconsin 53051.

2. DESCRIPTION OF LAND. The land subject to this Declaration is owned by the Declarant in fee simple and is more fully described in Exhibit "A" to this Declaration ("Real Estate").

3. DESCRIPTION OF BUILDING AND UNITS. The building and improvements ("Project") which are located on the Real Estate contain 47 units. A plat of survey of the Real Estate showing the location of each building is attached to this Declaration as Exhibit "A". A set of floor plans of each building showing the layout, location, unit numbers, unit dimensions, building address,

and bearing the verified statement certifying that it is an accurate copy of portions of plans of each building as filed with the Village of Menomonee Falls, State of Wisconsin, are attached as Exhibit "B". Each building has two stories and a basement and is principally of frame and brick construction.

4. IDENTIFICATION OF UNITS. There shall be two kinds of condominium units: residential units and parking units.

(a) A residential unit means an enclosed space, intended for individual, private residential use, consisting of one or more rooms occupying all or part of one or more floors in buildings of one or more floors or stories provided, always, that any such unit has direct exit to a thoroughfare or to a common area leading to a thoroughfare as follows: (1) The upper vertical boundary of any such unit is a horizontal plane, the elevation of which coincides with the lower surface of the unfinished ceiling thereof, to include the drywall, extended to intersect the lateral or perimetrical boundaries thereof; (2) The lower vertical boundary of any such unit in the project is a horizontal plane, 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 thereof; (3) The lateral or perimetrical boundaries of any such unit are vertical planes which coincide with the unexposed surfaces of the perimeter drywall, fireplaces, windows and doors thereof, extended to

intersect the upper and lower vertical boundaries thereof and to intersect the other lateral or perimetrical boundaries of the unit; (4) Mechanical equipment and appurtenances located within any unit and/or designated to serve only that unit, such as furnaces, compressors for air-conditioning (including those designed to serve only one unit), appliances, range hoods, outlets, electrical receptacles and outlets, fixtures and the like, shall be considered as part of the unit; (5) The residential units are designated by identifying numbers as shown on Exhibit "B" attached hereto. The location, approximate dimensions, number of rooms, immediate common areas to which the residential units have access and further details identifying the respective units are as set forth in Exhibits "A" and "B" attached hereto and made a part hereof.

(b) A parking unit is that part of the buildings on the underground parking level intended for individual, private and separate use as a motor vehicle parking area, comprised of the cubicle of air at the level of space indicated, excluding the interior surfaces of floors, walls and ceilings, as shown the building and floor plans attached hereto as Exhibit "B". The parking units are designated by identifying numbers P-1 through P-63 as shown on Exhibit "B" attached hereto. Each parking unit shall have direct access to the interior and exterior driveways, which shall be a part of the common area, leading to public street or highway. The location, immediate common areas to which the parking units have access and further details identifying the respective units are as set forth in Exhibit "B" attached hereto

and made a part hereof. At least one parking unit shall be conveyed with the initial conveyance of each residential unit. Thereafter, no residential unit shall be transferred or conveyed to any person unless accompanied by the conveyance of a parking unit to that person. No unit owner shall transfer or convey a parking unit so as to divest himself of all parking units, but a unit owner may own more than one parking unit in conjunction with his residential unit. Only owners of residential units may own parking units, with the exception of Declarant and the Association, who may own, lease, rent or otherwise hold or use parking units without regard to ownership of residential units. Unit owners shall have no additional ownership interest in the common areas and facilities and limited common areas by reason of parking unit ownership, and shall have no additional responsibility or liability for payment of common expenses by reason of parking unit ownership, and shall not be entitled to additional membership rights in the Association by reason of parking unit ownership. The expenses of maintenance of the walls, floors and ceilings of the underground parking level shall be considered a common expense and maintenance shall be performed by the Association. No owner of a parking unit shall construct, erect or place upon a parking unit any object which will interfere in any way with the use of any other parking unit.

(c) The Term "unit owner" as that term is used throughout this Declaration shall mean and designate the owner of a resi-

dential unit, and shall not include or refer to the owner of a parking unit unless specifically so stated, or required by context. The term "unit" as used throughout this Declaration shall mean and designate a residential unit, and shall not include or refer to a parking unit unless expressly so stated, or required by context.

5. COMMON ELEMENTS. The common elements, or common areas, shall mean and include the following:

(a) The land.

(b) The foundations, bearing walls, perimeter walls, main walls, roofs, halls, columns, girders, beams, supports, corridors, exits, lobbies, parking structures not designated as a part of a unit or as limited common areas, stairways, and entrance and exit or communication ways.

(c) The basements, roofs, yards, streets, parking areas not designated as parking units or as limited common elements, storage lockers not designated as limited common elements, and gardens, except as otherwise provided.

(d) The entire Community Recreation Room, including kitchen and lavatory facilities and all recreational equipment therein.

(e) The compartments or installations of central services such as power, light, gas, hot and cold water, central heating, pumps, and the like, including, but in no way limited to, all pipes, ducts, flues, chutes, conduits, cables, wires and other utility lines.

6. LIMITED COMMON ELEMENTS. The limited common elements,

or limited common areas, include those designated as such in this Declaration and such other as are agreed upon by the Board of Directors of the Association prior to the first annual meeting of the Association and thereafter by the Association to be reserved for the exclusive use of a certain number of units such as special corridors, stairways, sanitary services common to the units of a particular floor, and the like. All areas designated herein as a balcony, deck, terrace, patio, fenced area, storage lockers, or the like, and designated thereon as limited common elements, are reserved for the exclusive use of the owners of the unit or units to which they are adjacent or to which they are declared to be appurtenant by appropriate designation herein.

7. PERCENTAGE INTEREST APPURTENANT TO EACH UNIT. Each unit and its owner have an undivided percentage interest in the common and limited common areas and facilities equal to the number one divided by the number forty-seven. This percentage interest is appurtenant to the unit, and is not subject to partition as long as this Declaration is in effect.

8. PURPOSE - RESTRICTION ON USE. The buildings and each of the units are intended for the purpose of single family residential use only and are restricted to that use. Any lease or oral or written rental agreement shall not relieve an owner from his obligation to pay common expenses or any other obligations imposed upon unit owners by this Declaration.

9. PERSON TO RECEIVE SERVICE OF PROCESS. The name of the person to receive service of process shall be Steven A. MacHutta, N84 W15979 Menomonee Avenue, Menomonee Falls, Wisconsin 53051.

The Board of Directors of the Association may designate a different person to receive service of process. The designation of a different person to receive service of process shall become effective upon being filed with the Register of Deeds for Waukesha County, Wisconsin.

10. DAMAGE OR DESTRUCTION. In the event that seventy-five per cent (75%) or more of the buildings and other improvements above foundation level are destroyed, then the determination as to whether or not to reconstruct or repair shall be made by a vote taken of the members of the Association within ninety (90) days from the date of the fire or casualty. An affirmative vote of at least fifty-one percent (51%) of the eligible votes shall be required in order to reconstruct or repair. If the required number of members do not vote in favor of reconstruction or repair within said ninety (90) days, then the provisions of Section 703.18, Wisconsin Statutes of 1977, shall apply.

In the event that any unit or units require reconstruction and/or repair which when completed causes the unit to be situated on a portion of the common area or limited common area, such encroachment shall be permitted to endure. Such encroachment shall be determined and approved at the time the members of the Association determine whether such reconstruction or repair shall be undertaken.

Reconstruction or repair as used in this Declaration shall mean restoring the damaged premises to substantially the same condition existing prior to the fire or casualty.

11. INSURANCE. The Board of Directors of the Association

shall obtain and continue in effect insurance coverage on the buildings and other improvements upon the property in an amount equal to the maximum insurable replacement value, which amount shall be reviewed at least annually by the Board of Directors, affording protection against loss or damage by fire and such hazards covered by a standard extended coverage endorsement and such other risks or hazards as from time to time shall be customarily covered with respect to building similar in construction, location and use. Said insurance shall be for the benefit of the Association and the Owners and their Mortgagees as their interests may appear; provided, however, all proceeds payable by reason of said insurance shall be paid to the Association as trustee for the Owners and their Mortgagees for the express purpose of reconstruction and repair as provided in Section 10 hereof, or, if it is determined in the manner as provided in Section 10 hereof that the damaged premises for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be applied as provided in Section 10 hereof. In addition to the insurance coverage that the Board of Directors of the Association shall obtain as provided above, the Board of Directors shall obtain public liability insurance in such amounts and with such coverage as it may deem suitable under the circumstances and may obtain such other insurance as it shall determine from time to time to be desirable. All insurance premiums for any insurance coverage obtained by the Board of Directors shall be a common expense to be paid by assessments levied by the Association.

12. INTERPRETATION OF PLANS. In interpreting the survey or floor plans or any deed or any other instrument effecting a building or unit, the boundaries of the building or unit constructed or reconstructed in substantial accordance with the survey and floor plans shall be conclusively presumed to be the actual boundaries rather than the description expressed in the survey or floor plans, regardless of settling or lateral movement of the building and regardless of minor variation between boundaries shown on the survey and floor plans and those of the building or unit as located and erected.

13. ENCROACHMENTS. If any portion of the common areas now encroaches upon any unit, or if any unit now encroaches upon any other unit or upon any portion of the common areas, as a result of the construction or repair of the buildings, or if any such encroachment shall occur hereafter as a result of settlement or shifting of any building, or otherwise, a valid easement for the encroachment and for the maintenance of the same so long as the building stands, shall exist.

14. EASEMENTS FOR DECORATION. Each unit owner has an easement over and into the surfaces of the common areas abutting his unit from the interior thereof for the purpose of decoration provided that this easement shall not be construed so as to allow the owner to impair the structural integrity of any portion of the property or to change the boundaries of the unit or to interfere with the rights of any other unit owner in the common area.

15. EASEMENTS FOR UTILITIES. The unit owners, the

Association, and the Declarant, each have easements for utility purposes over, under, along and on any part of the common areas and facilities.

16. EASEMENTS AND ACCESS TO UNITS. The Association shall have the right, to be exercised by the Board of Directors, to have the access to each unit during reasonable hours for the maintenance, repair, or replacement of any common areas and facilities accessible from such areas or for making emergency repairs necessary to prevent damage to the common areas or facilities or to another unit. Each unit shall be subject to an easement to the co-owners of all of the other units to and for the unobstructed and uninterrupted use of any and all pipes, ducts, flues, chutes, conduits, cables and wire outlets and utility lines of any kind and other common elements located within or accessible only from any particular unit and for support. There shall be an easement, for the benefit of unit owners and the Association, in and across all parking units for pedestrian and vehicular ingress and egress as necessary or convenient in connection with the use by unit owners or the Association or common areas, limited common areas or parking units.

17. EASEMENTS RUN WITH THE LAND. All easements and rights set forth in this Declaration run with the land and are subject to the reasonable constrol of the Association. No unit owner shall do any work which would jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament without first obtaining, in every such case, the unanimous consent of all the other unit owners.

18. ASSOCIATION OF UNIT OWNERS. All unit owners are members of Apple Valley Gardens Association, Inc., ("Association") which is incorporated as a non-stock, non-profit corporation under Chapter 181 of the Statutes of the State of Wisconsin. Every unit owner shall be entitled and required to be a member of the Association. An owner of more than one unit shall be entitled to one membership for each unit owned by him. No person or entity other than a unit owner or Declarant may be a member of the Association, and a membership in the Association may not be transferred except in connection with the transfer of title to a unit. When more than one person holds an interest in any unit, all such persons shall be members.

Each unit owner and each occupant of any unit shall abide by and be subject to the duties and obligations of this Declaration and the By-Laws and rules and regulations of the Association.

19. VOTING. At meetings of the Association, members shall be all Owners including the Declarant and shall be entitled to one vote for each unit owner, which vote shall be appurtenant to the particular unit owned. The vote for each unit shall be exercised as the members determine, but in no event shall more than one vote be cast with respect to any unit. There can be no split vote. Prior to the time of any meeting at which a vote is to be taken, each co-owner shall file the name of the voting co-owner with the Secretary of the Association in order to be entitled to a vote at such meeting, unless such co-owners have filed a general voting authority with the Secretary applicable to all

votes until rescinded.

20. MAINTENANCE AND SERVICES. The Association shall be responsible for the exclusive management and control of the common elements, common areas and facilities and shall conduct all work of maintenance, repair and replacement of common areas and facilities and the making of any additions or improvements thereto.

The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper maintenance operation of the properties, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the properties or the enforcement of this Declaration. The Association may arrange with others to furnish common services to each unit. The Association may employ a Resident Manager or contract for management services.

21. RULES AND REGULATIONS. The Association may make reasonable rules and regulations governing the use of the units and of the limited common area and/or common areas.

22. IMPLIED RIGHTS. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonable to be implied from the existence of any right or privilege given to it herein or reasonable necessary to effectuate any

such right or privilege.

23. COMMON EXPENSES. The common expenses shall be charged to the owners according to the percentage of undivided interest of each in the common areas. Commencing December 1, 1979, common area expenses of $90.00 per month shall be paid by each owner in accordance with Article V of the By-Laws. The Association may levy assessments from time to time for the purpose of maintaining a fund from which common expenses may be paid, and such assessment shall be levied in the same percentage that common expenses are to be charged.

24. AMENDMENT. Prior to the first meeting of the Association, this Declaration may be amended by the Declarant. Thereafter, his Declaration may be amended by an affirmative vote of not less than two-thirds of all votes entitled to be cast by unit owners at a meeting called for that purpose; provided, however, that so long as the Declarant is the owner of any unit, which has not initially been sold, no amendment shall be effective without the consent of the Declarant. Copies of any amendments adopted as provided in this paragraph shall be certified by the Declarant or the President and Secretary of the Association in a form suitable for recording and shall be recorded by the Register of Deeds for the County of Waukesha.

25. REVOCATION. This Declaration may be revoked and the property removed under the provisions of Chapter 703 of the Wisconsin Statutes by an instrument executed by all of the unit owners and duly recorded, provided that the holders of all liens affecting any of the units consent thereto.

26. NO EXEMPTION BY WAIVER. No unit owner may exempt himself from liability from his contribution towards the common expenses by waiver of the use or enjoyment of the common areas and facilities or by abandonment of this unit.

27. LIABILITY ON CONVEYANCE. In the event of a voluntary conveyance of a unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grant or conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee. The grantee shall be entitled to a statement from the Board of Directors setting forth the amount of unpaid assessments against the grantor and the grantee shall not be liable for nor shall the unit conveyed be subject to a lien for any unpaid assessment against the grantor in excess of the amount set forth in such statement.

28. SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the said Steven A. MacHutta has caused this Declaration to be executed on this _____ day of July, 1979.

Declarant:

_____
Steven A. MacHutta

Signature of Steven A. MacHutta authenticated this _____ day of July, 1979.

_____
John H. Niebler

_____
Title: Member State Bar of Wisconsin or other party authorized under Section 706.06 viz.

This instrument was drafted by

JOHN H. NIEBLER