

March 9, 2000

Dear Rep. Sykora,

Thank you for sending back the Mill Valley
by-laws booklet. I hope it will be help-
ful to you.

I would like to be contacted in the future
if there are any more meetings where owners
input is required. I think it would be
very educational to be in attendance when
the Assembly votes on this Bill AB723.

Yours truly,

Ed. Fox

Ed Fox
11917 W. Appleton Ave. 22
Milwaukee, WI 53224
(414) 353-4008



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

DATE: March 15, 2000
TO: SENATOR ROBERT JAUCH
FROM: Richard Sweet, Senior Staff Attorney
SUBJECT: Applicability of Provision in Assembly Substitute Amendment 2 to 1999 Assembly Bill 806 (Lead-Bearing Paint) to Municipal Lawsuits

This memorandum is written pursuant to your request for a discussion of SECTION 10 of Assembly Substitute Amendment 2 to 1999 Assembly Bill 806 and what effect, if any, this section might have on the ability of a municipality to bring a lawsuit against companies that manufactured lead-bearing paint. For reasons set forth in this memorandum, the amendments in SECTION 10 of the substitute amendment will not impair the ability of a municipality to sue companies that manufactured lead-bearing paint.

1999 Assembly Bill 806 generally relates to lead-bearing paint hazards. SECTION 10 of Assembly Substitute Amendment 2 to the bill amends s. 254.154, Stats., as follows:

254.154 This subchapter does not prohibit any city, village, town or other political subdivision from enacting and enforcing ordinances establishing a system of lead poisoning or lead exposure control that provides the same or higher standards than those set forth in this subchapter. Nothing in this subchapter other than s. 254.173 (2) and (3) may be interpreted or applied in any manner to impair the right of any person, ~~or entity, municipality or other political subdivision~~ to sue for damages or equitable relief ~~or to restrain a violation of such an ordinance.~~ Nothing in this subchapter may be interpreted or applied in any manner to impair the right of a municipality or other political subdivision to impose a penalty for or restrain the violation of an ordinance specified in this section.

A concern has been raised that deleting "municipality or other political subdivision" from the second sentence of s. 254.154, Stats., will impair the ability of a municipality to bring a

lawsuit against a company that manufactured lead-bearing paint. This amendment to s. 254.154, Stats., was not in the original Assembly Bill 806, which received a public hearing in draft form by the Assembly Committee on Housing on February 23, 2000. The day after the public hearing, a meeting was convened involving you, myself and other attorneys from the Legislative Council Staff, other legislative staff and representatives of the realty and apartment owner industries, the Department of Health and Family Services and the City of Milwaukee.

At the February 24, 2000 meeting, a decision was made to include the phrase "other than s. 254.173 (2) and (3)" in the second sentence of s. 254.154, Stats. The cross-reference that was added to the second sentence is to the proposed statutes that will provide immunity from liability to property owners who obtain a certificate of lead-free or lead-safe status or who are new property owners and obtain temporary immunity during a grace period. However, in order to specify that the immunity from liability for those property owners does not shield them from penalties for violations of municipal ordinances, the phrases "municipality or other subdivision" and "or to restrain a violation of such an ordinance" were removed from the second sentence and inserted in a new third sentence created in s. 254.154, Stats. Therefore, the purpose of removing those phrases from the second sentence was to specify that property owners who satisfy the requirements in the bill are generally immune from liability, but are not immune from penalties for violation of municipal ordinances.

The removal of the phrase "municipality or other political subdivision" from the second sentence of s. 254.154, Stats., does not impair the ability of a municipality to sue a company that manufactured lead-bearing paint for two reasons. First, the second sentence says that "(n)othing in this subchapter" may be interpreted or implied to impair the right to sue. However, there is nothing in subch. II of ch. 254, Stats., that would appear to impair the ability of a municipality to sue such a manufacturer, regardless of whether or not the second sentence was present.

Second, the sentence, as amended, states that nothing in that subchapter may be interpreted or implied in any manner to impair the right of any "person" or "entity" to sue for damages or equitable relief. A municipality is a "person" under the statutes and arguably is also an entity. Section 990.01, Stats., sets forth definitions for a number of words and phrases that are to be construed as indicated unless the construction would produce a result inconsistent with the manifest intent of the Legislature. In s. 990.01 (26), Stats., the term "person" is defined to include all partnerships, associations and bodies politic or corporate. A municipality falls within the definition of "person" in s. 990.01 (26), Stats. [See *City of Madison v. Hyland, Hall and Co.*, 73 Wis. 2d 364, 243 N.W.2d 422 (1976), appeal dismissed 97 S. Ct. 373, 429 U.S. 953 (1976).]

The term "entity" is not defined in ch. 254, Stats., nor is the term defined in s. 990.01, Stats. *Webster's Third New International Dictionary* has the following as the second listed definition of "entity"--"something that has objective or physical reality and distinctness of being and character : something that has independent or separate existence : something that has a unitary and self-contained character." This definition is broad and it appears that a municipality would fall within the definition of "entity."

For these reasons, a municipality is still included in the second sentence of s. 254.154, Stats., as a "person" and arguably as an "entity."

Feel free to contact me if I can be of further assistance.

RNS:rv:wu;rv



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Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

DATE: February 28, 2000

TO: REPRESENTATIVE TOM SYKORA, CHAIRPERSON, AND MEMBERS OF THE ASSEMBLY COMMITTEE ON HOUSING

FROM: Mary Matthias, Senior Staff Attorney

SUBJECT: LRB-1451/1, An Assembly Amendment to 1999 Assembly Bill 723, Relating to Condominium Budgets and Reserve Accounts

This memorandum describes LRB-1451/1, an Assembly amendment to 1999 Assembly Bill 723, relating to condominium budgets and reserve accounts. The bill was introduced on February 8, 2000 by Representatives La Fave and Sykora; cosponsored by Senator Grobschmidt. The bill was referred to the Assembly Committee on Housing which held a hearing on the bill on February 23, 2000 and has scheduled an executive session on the bill on February 28, 2000.

1999 Assembly Bill 723 is described in detail in a Legislative Council Staff Interested Legislator memorandum dated February 17, 2000.

LRB-1451/1, makes two changes to the bill, which are described below.

1. Elimination of Requirement to Submit a Report on Condominium Reserve Accounts to the Register of Deeds Office

The bill requires all condominium associations to establish a reserve account and requires the board of directors of every condominium association to annually record in its minutes and with the Register of Deeds of the county where the condominium is located a report on the reserve account of the association, setting forth certain specified information.

The amendment deletes the requirement to record the report on the condominium reserve account with the Register of Deeds office.

Milwaukee Journal Sentinel February 21, 2000

Bill would require reserve accounts for condo groups

Lawmakers want to make
them set aside money
for major capital expenses

BY GRETCHEN SCHULDT
of the Journal Sentinel staff

Concern that condominium associations are not looking enough to the future is prompting legislators to consider a bill that would require condo associations to set aside enough money for a rainy day to get leaky roofs fixed.

If enacted into law, the bill, sponsored by state Rep. John La Fave (D-Milwaukee), would require condominium associations to establish reserve accounts that would pay for major capital expenditures on things like roofs, foundations and other items not considered the responsibility of individual unit owners.

"North Meadows never would have gotten into the financial trouble that it did with its water bills if this statute would have been in place," Assistant City Attorney David Halbrooks said.

The condominium association used money meant for the \$100,000-plus water bill to make foundation repairs instead, he said.

The city last month issued a disconnect notice to the 576-unit complex on Milwaukee's northwest side. The potential shut-off was avoided, however, when the complex was able to come up with about \$70,000 as a partial payment, Halbrooks said.

"If there is a reserve requirement then they would have to have a separate fund for things like roofs and foundations," he said. "There is definitely a connection for North Meadows."

...cont. next page

Milwaukee Journal Sentinel February 21, 2000

...cont. from prev. page

A city-affiliated organization called the Neighborhood Improvement Development Corp. bought 38 North Meadows units earlier this month out of bankruptcy.

La Fave said the bill, which is set for a public hearing on Wednesday, "is just a small part" of a needed revision of the state's condominium law. Members of a work group studying the issue felt that the reserve requirement was the most important aspect, he said.

The hearing before the Assembly Housing Committee will begin at 10:30 a.m. in Room 225 NW in the Capitol.

State Rep. Tom Sykora (R-Chippewa Falls), the committee chairman, joined in introducing

the bill in the Assembly. Sen. Richard A. Grobschmidt (D-South Milwaukee) co-sponsored the bill.

Matthew Berkowitz, manager of 36 condominium associations and vice president of the real estate management firm of Barflein & Co. Inc., said that residents of condo complexes that do not set aside enough for major capital repairs can be rudely surprised when the repairs can't be delayed any longer. They could be confronted with special assessments in the thousands of dollars, he said.

When they get those megabills, "They're screaming, 'How can they do this?'" he said. Berkowitz emphasized he was speaking for himself, not his firm.

The special assessments can hit the elderly and others living on fixed incomes especially hard, he said.

In some instances, condo associations may not levy the special assessments and just let the buildings slide into disrepair until they become "a sty in the neighborhood," he said.

"They need some type of (regular) assessment to fund themselves just like municipalities fund themselves, because they are mini-municipalities," he said.

John Poehlmann, a principal in Reserve Advisors Inc., which provides engineering and financial advice to condominium associations, said the state is a little bit behind others in the country in considering some sort of reserve requirement. Illinois, Michigan, Minnesota and others already have them, he said.

The proposed bill would require each condo association board of directors to develop and annually evaluate a long-range plan to determine the amount that must be contributed to the reserve each year. The board would be required to consider such things as the estimated life of the major building elements and the cost of repairing or replacing them.

"The whole purpose of this is to educate these boards," said Poehlmann, who with business partner Ted Salgado was part of the group that worked on the bill. "They are running a non-profit business with money going in and going out. They really should have a long-range plan for the success of that business."

Hughes, Carolyn

From: LaFave, John
Sent: Wednesday, February 23, 2000 10:22 PM
To: Hebl, Tom; Reynolds, Marty; Sykora, Tom; Wieckert, Steve; Kedzie, Neal; Seratti, Lorraine; Morris-Tatum, Johnnie
Cc: Rep.Hebl; Rep.Reynolds; Rep.Sykora; Rep.Wieckert; Rep.Kedzie; Rep.Seratti; Rep.MorrisTatum
Subject: Letter from Condo owner supporting AB-723 relating to condominium budgets and reserve accounts

Dear Housing Committee Members,

I would like to share with you this letter that 'says it all' in regard to AB-723. Please note Ms. Cashmore's mention of condo reserve requirements in her former state of residence, Virginia.
Thank you.

Sincerely,

Rep. *John La Fave*

-----Original Message-----

From: Patsy Cashmore [mailto:pcashmor@execpc.com]
Sent: Wednesday, February 23, 2000 4:47 AM
To: Rep.Stone@legis.state.wi.us
Cc: Rep.LaFave@legis.state.wi.us
Subject:

I am writing in support of Representative La Fave's bill that would require condominiums to have a Reserve For Replacement Fund.

I own a unit at the Cloisters of Greenfield and we just got socked with a very large special assessment for a new roof. My assessment is \$3,800.

The money should have been there to pay for this roof. It is not a new condominium, but a very desirable property. Unfortunately past Board's of Director's did not see fit to put money away and kept robbing Peter to Pay Paul with the funds.

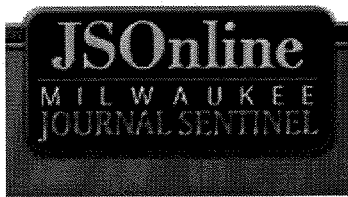
This is the second special assessment in two years and now the building is aging and needs other repairs and maintenance that will require more special assessments.

I recently moved back to Wisconsin from Virginia where I also owned a condominium. Unlike this one, the State of Virginia required a Reserve for Replacement Fund and my condo association there had over a million dollars in reserves. We never had to pay for special assessments. When that condo was built in 1986 everybody put in an extra two months condo fees and it was invested. Every year the Board would look at the reserves and determine what amount of money should go into the fund. The building was a high rise and money needed to be spent for tuck pointing and waterproofing the building, replacing large air conditioning units, a new roof, etc.

Not like the one I own now where they can't afford to replace much of anything without a special assessment.

Please support Rep. La Fave's Bill. It would help condominium owners everywhere!

Patsy Cashmore
6100 W. Stonehedge Dr. Unit B128
Greenfield, WI 53220



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Bill would require reserve accounts for condo groups

Lawmakers want to make them set aside money for major capital expenses

By Gretchen Schuldt of the Journal Sentinel staff

Last Updated: Feb. 20, 2000

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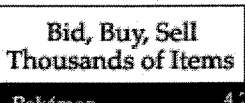
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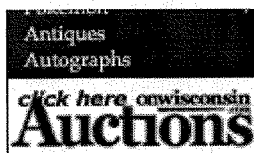
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Special Features:

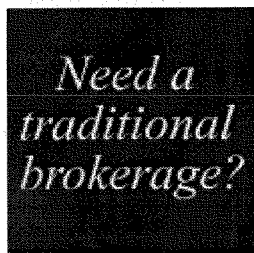


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The hearing before the Assembly Housing Committee will begin at 10:30 a.m. in Room 225 NW in the Capitol.

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Appeared in the Milwaukee Journal Sentinel on Feb. 21, 2000.

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Assembly Committee on Housing

Date: _____
Moved by: 723 MT Seconded by: 5
AB: _____ Clearinghouse Rule: _____
AB: _____ SB: _____ Appointment: _____
AJR: _____ SJR: _____ Other: _____
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Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

Committee Member

Rep. Tom Sykora, Chair
Rep. Steve Wieckert
Rep. Neal Kedzie
Rep. Lorraine Seratti
Rep. Tom Hebl
Rep. Johnnie Morris-Tatum
Rep. Marty Reynolds

	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
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Rep. Marty Reynolds	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 5 2 _____

Motion Carried

Motion Failed

Vote Record

Assembly Committee on Housing

Date: 2/28/00
 Moved by: _____ H _____ Seconded by: _____ S _____
 AB: _____ Clearinghouse Rule: _____
 AB: _____ SB: _____ Appointment: _____
 AJR: _____ SJR: _____ Other: _____
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Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

Committee Member

Rep. Tom Sykora, Chair
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 Rep. Lorraine Seratti
 Rep. Tom Hebl
 Rep. Johnnie Morris-Tatum
 Rep. Marty Reynolds

<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
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Motion Carried

Motion Failed

Vote Record

Assembly Committee on Housing

Date: 2/28/00
Moved by: H Seconded by: K
AB: _____ Clearinghouse Rule: _____
AB: _____ SB: _____ Appointment: _____
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| <input type="checkbox"/> Rejection | <input type="checkbox"/> Nonconcurrence |
| | <input type="checkbox"/> Confirmation |

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Rep. Tom Sykora, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Steve Wieckert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Rep. Marty Reynolds	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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Telephone: (608) 266-1304

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Email: leg.council@legis.state.wi.us

DATE: February 28, 2000

TO: REPRESENTATIVE TOM SYKORA, CHAIRPERSON, AND MEMBERS OF
THE ASSEMBLY COMMITTEE ON HOUSING

FROM: Mary Matthias, Senior Staff Attorney

SUBJECT: LRB-1451/1, An Assembly Amendment to 1999 Assembly Bill 723, Relating
to Condominium Budgets and Reserve Accounts

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The bill requires all condominium associations to establish a reserve account and requires the board of directors of every condominium association to annually record in its minutes and with the Register of Deeds of the county where the condominium is located a report on the reserve account of the association, setting forth certain specified information.

The amendment deletes the requirement to record the report on the condominium reserve account with the Register of Deeds office.

2. Voting Requirements for Special Withdrawals or Transfers From a Condominium Reserve Account

The bill provides that in general, the funds in a condominium association's reserve account, including any accrued interest, may be used only for major repairs and replacements of common elements of the condominium. Funds in the reserve account may not be used for routine expenditures such as normal or routine repair or maintenance of common elements or customary services such as snow or trash removal.

The bill authorizes the board of directors to withdraw or transfer funds from the reserve account for a purpose other than one specified above, if certain conditions are met. One of those conditions is that the amount and specific purpose of the withdrawal or transfer from the reserve account must be approved at a special meeting of the association by the affirmative vote of at least 51% of unit owners having 66% or more of the votes.

The amendment changes the voting requirements for the approval of a special withdrawal or transfer from a condominium reserve account. Specifically, the amendment requires the affirmative vote of the unit owners having at least 51% of the votes. Thus, under the amendment, a majority of the unit owners must approve any special withdrawal or transfer from a condominium reserve account.

Please contact me at the Legislative Council Staff offices if you have questions or would like more information. My direct telephone number is 266-0932; my email address is mary.matthias@legis.state.wi.us.

MM:ksm;wu

MILL VALLEY CONDOMINIUMS

DOCUMENTS

Reprinted Nov. 1974

Document No. 4699599
Recorded on Aug. 22, 1972
Register's Office,
Milwaukee County, Wis.
Reel 671, Images 1143 to
1204 inclusive.

DECLARATION OF CONDOMINIUM

OF

MILL VALLEY CONDOMINIUM HOMES

This Declaration is made under the Wisconsin Unit Ownership Act, Chapter 703, Wisconsin Statutes, by Mill Valley Development Company, a limited partnership under the laws of the State of Wisconsin, hereafter referred to as Developer.

THEREFORE, Developer as the fee owner thereof, hereby declares that all of the property described in Exhibit A shall be held, sold and conveyed subject to Chapter 703 of the Wisconsin Statutes.

ARTICLE I

DESCRIPTION OF BUILDINGS AND UNITS

Section 1. There shall be 12 residential buildings containing 299 units, and a recreation building.

(a) The units are described as follows:

Type A. A one-bedroom apartment consisting of a living room, dining area, kitchen, one bedroom and full bath, all on one level, together with a patio adjacent thereto.

Type B. A one-bedroom apartment consisting of a living room, dining area, kitchen, one bedroom and full bath, all on one level, together with a balcony attached thereto.

Type C. A two-bedroom apartment consisting of a living room, dining area, kitchen, two bedrooms and one and one-half baths, all on one level, together with a balcony attached thereto.

Type D. A two-bedroom apartment consisting of a living room, dining area, kitchen, two bedrooms and one and one-half baths, situated on two levels, together with a balcony attached thereto.

Type E. A two-bedroom apartment consisting of a living room, dining area, kitchen, two bedrooms and one and one-half baths, situated on two levels, together with a balcony attached and a patio adjacent thereto.

Type F. A three-bedroom apartment consisting of a living room, dining area, kitchen, three bedrooms and two and one-half baths, all on one level, together with a balcony attached thereto.

Type G. A three-bedroom apartment consisting of a living room, dining area, kitchen, three bedrooms and two and one-half baths, all on one level, together with a balcony attached and a patio adjacent thereto.

- (b) Buildings 1, 2, 4, 6, 7, 8, 9, 10, 11 and 12 each contain 3 Type A apartments, 4 Type B apartments, 7 Type C apartments, 4 Type D apartments, 6 Type E apartments, 1 Type F apartment and no Type G apartments.
- (c) Building 3 contains 3 Type A apartments, 4 Type B apartments, 7 Type C apartments, 4 Type D apartments, 6 Type E apartments, and no Types F or G apartments.
- (d) Building 5 contains 3 Type A apartments, 4 Type B apartments, 7 Type C apartments, 4 Type D apartments, 6 Type E apartments, no Type F apartments, and 1 Type G apartment.
- (e) Each building and unit is specifically described by dimension and location on Exhibit B attached hereto and made a part of this Declaration. Each building has two stories and a basement and is constructed principally of frame and brick. Between buildings 1 and 2, 2 and 3, 3 and 4, 4 and 5, 6 and 7, 7 and 8, 8 and 9, 10 and 11, and 11 and 12, there is a common wall. There is no access between buildings through this common wall. The detail of this common wall appears on page 1 of Exhibit B.

Section 2. INTERPRETATION OF PLANS. In interpreting the survey or floor plans or any deed or any other instrument affecting a building or unit, the boundaries of the buildings 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 buildings and regardless of minor variations between boundaries shown on the survey and floor plans and those of the buildings or unit as located and erected.

Section 3. UNITS. The boundaries of each unit are as follows:

- (a) "Unit" shall mean the part of the property subjected by this Declaration to the Wisconsin Unit Ownership Act, including one or more cubicles of air at one or more levels of space or one or more rooms or enclosed spaces located on one or more floors in a building.
- (b) The upper boundary of a one level unit is the horizontal plane of the lower face of the joists supporting the ceiling. The lower boundary is the horizontal plane of the upper face of the concrete floor.
- (c) The upper boundary of each two level unit is the horizontal plane of the lower face of the joists supporting the ceiling on the upper level. The lower boundary is the horizontal plane of the upper face of the concrete floor.
- (d) The side boundaries are the vertical planes, the elevation of which coincide with the face of the studs supporting the drywall. Each door and window shall constitute a part of the unit.
- (e) The foregoing boundaries extended to their intersection constitute the unit, together with all windows, window frames, doors and door jambs, including all glass in all windows and doors, and together with an air-conditioning compressor located

on the roof of the building which shall bear the same unit identification as the unit.

Section 4. COMMON AND LIMITED COMMON AREAS. Every area, structure and facility which is not a unit is a Common Area or facility. Resident Manager's living quarters and office shall be deemed Limited Common Area. Common Areas which are identified on Exhibit B as Limited Common Areas are appurtenant to the unit designated on Exhibit B and are limited for the exclusive use of the Owner or Owners of such unit, subject to such rules and regulations as to manner of use and decoration of the Limited Common Areas as shall be established by the Association.

Section 5. PERCENTAGE INTEREST IN COMMON AREAS. The ownership of each of the Units includes a 1/299th undivided interest in the Common Area and the same shall be conveyed with each of the Units.

ARTICLE II

PROPERTY RIGHTS AND OBLIGATIONS OF OWNERS

Section 1. OWNERS EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Unit.

Section 2. OWNERS RIGHT TO INGRESS AND EGRESS AND SUPPORT. Each Owner shall have the right to ingress and egress over, upon and across the Common Area necessary for access to his Unit, and shall have the right to lateral support for his Unit and such rights shall be appurtenant to and pass with the title to each Unit.

Section 3. USE OF UNITS. Each Unit shall be used exclusively for residential purposes. Lease or rental of a Unit for residential purposes shall not be considered to be a violation of this covenant. Units may be rented or leased, but not for a term of less than one (1) month. No room in any Unit may be rented. No Unit

may be subdivided.

Section 4. USE OF COMMON AREA. There shall be no obstruction of the Common Area, nor shall anything be kept or stored on any part of the Common Area without the prior written consent of the Association except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Area except upon the prior written consent of the Association.

Section 5. PARKING RIGHTS, Every Owner shall be entitled to the exclusive right and use of at least one indoor and one outdoor parking space which shall be assigned by the Association.

Section 6. EASEMENTS FOR DECORATION. Each unit Owner has an easement over and into the surfaces of the Common Area abutting his unit 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.

ARTICLE III

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. ASSOCIATION. The Association as referred to herein shall be Mill Valley Homes Association, Inc., a corporation organized under and pursuant to Chapter 181 of the Wisconsin Statutes.

Section 2. MEMBERSHIP Every 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. Each such membership shall be appurtenant to the unit upon which it is based and shall be transferred automatically by conveyance of that unit. No person or entity other

than an Owner or Developer 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; provided, however, that the rights of voting may be assigned to a Mortgagee as further security for a loan secured by a lien on an unit.

Section 3. NOMINATION OF MEMBERS OF BOARD OF DIRECTORS. Until such time as the Developer shall have sold 250 of the units, or four (4) years from the date of the recording of this Declaration, whichever shall first occur, Developer shall have the exclusive right to nominate members for the Board of Directors of the Association.

Section 4. VOTING. Members shall be all Owners including the Developer and shall be entitled to one vote for each Unit owned. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they among themselves 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.

Section 5. AMPLIFICATION. The provisions of this Article are to be amplified by the Articles of Incorporation of the Association and by the By-Laws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth herein.

ARTICLE IV

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. THE COMMON AREA. The Association, subject to the rights of the Owners set forth in this Declaration,

shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The Association shall be responsible for the maintenance and repair of exterior surfaces of all buildings on the properties, including, without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance and repair of roofs; the maintenance and repair of all Common Area, including utility lines and all other improvements or material located within or used in connection with the Common Area.

Section 2. SERVICES. 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 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 shall employ a Resident Manager.

Section 3. ACCESS TO UNITS. The Association shall have the right, to be exercised by the Board of Directors, to have 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.

Section 4. PERSONAL PROPERTY FOR COMMON USE. The Association may acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the

beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interests in the Common Areas. Such interest shall not be transferable except with the transfer of a Unit. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Unit.

Section 5. RULES AND REGULATIONS. The Association may make reasonable rules and regulations governing the use of the Units and of the Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Declaration.

Section 6. 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 reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE V

COVENANT FOR ASSESSMENTS

Section 1. AGREEMENT TO PAY ASSESSMENTS. Developer for each Unit owned by it within the Properties, and for and as the Owner of the Properties and every part thereof, hereby covenants, and each Owner of any Unit by the acceptance of a deed therefore, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with each other and with the Association, to pay to the Association for the purposes provided in this Declaration, for special assessments, for capital improvements, and for any other matters as provided in this Declaration.

Such assessments shall be fixed, established and collected from time to time in the manner provided in this Article.

Section 2. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the management, improvements and maintenance of the Common Area, and of the exterior of the buildings situated upon the Properties, and such emergency repairs as the Association may deem necessary, including repairs and maintenance of sewer and water lines, utility cables and pipes and heating and cooling ducts, to individual units.

Section 3. MONTHLY ASSESSMENT. Commencing with the month immediately following the conveyance of the first unit by Developer to an Owner a uniform monthly assessment per unit shall be established by the Association which may thereafter be increased or decreased by the Association.

ARTICLE VI

ENCROACHMENTS

Some of the units in each building may be aesthetically and functionally designed with drains, air conditioning equipment and other structures that encroach or overhang adjoining units. The Owner of each unit hereby takes title subject to a perpetual easement for any such overhang or encroachment and each encroaching or overhanging unit or other structure, drain, or air conditioning equipment may be repaired, rebuilt or replaced in such a fashion as to permit these overhangs and encroachments to be reestablished but not enlarged without consent of the servient Owner and the Association. Such easements as provided herein shall be limited to improvements as originally constructed.

ARTICLE VII

RECONSTRUCTION OR REPAIR

Section 1. SUFFICIENT INSURANCE PROCEEDS. In the event of fire or

casualty affecting one or more of the Units and/or one or more of the buildings or common facilities, the insurance proceeds, if sufficient to reconstruct or repair the damaged premises, shall be applied to the reconstruction or repair. 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. Any such reconstruction or repair shall be undertaken by the Association within ninety (90) days.

Section 2. DETERMINATION OF WHETHER TO RECONSTRUCT OR REPAIR. In the event that seventy-five percent (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. In the required number of members do not vote in favor of reconstruction or repair within said ninety (90) days, then the provisions of Section 703.26, Wisconsin Statutes of 1969, shall apply.

Section 3. ENCROACHMENT INTO THE COMMON AREA OR LIMITED COMMON AREA. 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.

ARTICLE VIII

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 buildings 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 Article VII hereof, or, if it is determined in the manner as provided in Article VII 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 Article VII 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. Such insurance policy or policies shall contain a waiver of subrogation in favor of the insurance carrier against any Owner or Owners or members of their immediate family who resides in any unit or units.

ARTICLE IX

GENERAL PROVISIONS

Section 1. ENFORCEMENT. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. No Owner shall have the right to commence a suit for partition of the units and/or Common Area which

constitute Mill Valley Condominium Homes but shall be limited to the provisions contained herein for amending this Declaration.

Section 2. 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.

Section 3. AMENDMENT. This Declaration may be amended during the first twenty (20) years after this Declaration is recorded by a vote of not less than ninety percent (90%) of the Owners and thereafter by a vote of not less than seventy-five percent (75%) of the Owners. No amendment shall become effective until the certificate setting forth such amendment signed by the officers of the Association and stating that Owners of the Units have adopted the same in accordance with the provisions of this Declaration, is recorded in the Office of the Register of Deeds in and for Milwaukee County, Wisconsin.

Section 4. REGISTERED AGENT FOR SERVICE OF PROCESS. The initial registered agent for service of process shall be MICHAEL D. ROSEN 536 North 27 Street, Milwaukee, Wisconsin 53208. Change of agent for service of process may be accomplished by resolution of the Board of Directors of the Association and upon proper filing of said name with the Register of Deeds of Milwaukee County.

IN WITNESS WHEREOF, the said MILL VALLEY DEVELOPMENT COMPANY, a limited partnership, has executed this Declaration as of this 21st day of ~~XXXXXX~~ August, 1972.

MILL VALLEY DEVELOPMENT COMPANY

By S/Michael D. Rosen
General Partner

By S/William Berland
General Partner

Signatures of MICHAEL D. ROSEN and WILLIAM BERLAND, General Partners of MILL VALLEY DEVELOPMENT COMPANY, a limited partnership, authenticated this 21st day of ~~JULY~~~~1972~~ August, 1972.

S/Robert B. Peregrine
Title: Member State Bar of
Wisconsin or other Party Authorized
under Sec. 706.06 viz. _____

This instrument was drafted by
ROBERT B. PEREGRINE of
PEREGRINE, MARCUVITZ, CAMERON
& PELTIN, S.C.

CONSENT OF MORTGAGE HOLDER

The MILWAUKEE FEDERAL SAVINGS AND LOAN ASSOCIATION, a Wisconsin corporation, with offices at Milwaukee, Wisconsin, and mortgagee named in a certain mortgage executed by MILL VALLEY DEVELOPMENT COMPANY, a Wisconsin limited partnership, dated May 24 , 1972, and recorded in the office of the Register of Deeds for Milwaukee County, Wisconsin, on the 25th day of May , 1972, in ~~VOLUME XXXXX OF RECORDS, XXS DOCUMENT XXXX~~ Reel 653, Images 1653 to 1658 inclusive, as Document No. 4676561 hereby consents to the execution and recording and filing of the above and foregoing Declaration of Conditions, Covenants, Restrictions and Easements regarding MILL VALLEY CONDOMINIUM HOMES, and hereby submits its mortgage above referred to, to the provisions of the above and foregoing Declaration and the Wisconsin Unit Ownership Act, Chapter 703 of the Wisconsin Statutes.

IN WITNESS WHEREOF, the said MILWAUKEE FEDERAL SAVINGS AND LOAN ASSOCIATION has caused this instrument to be signed by its duly authorized officers on its behalf.

Dated and executed at Milwaukee, Wisconsin, this 21st day of August, 1972.

MILWAUKEE FEDERAL SAVINGS AND LOAN ASSOCIATION

By S/Michael J. Doyle
Michael J. Doyle Vice Pres.

Attested to:

By S/Arlene Schramkowski
Arlene Schramkowski Asst. Secy.