

Emery Gardens

No. 04486 Filed on the 9th day of June 1977 at 11:15 A.M.

DECLARATION OF CONDOMINIUM

AND OF

EASEMENTS, RESTRICTIONS AND COVENANTS

FOR

WESTWARD HO CONDOMINIUM

THIS DECLARATION, made and entered into by Mercantile Trust & Savings Bank, of Quincy, Illinois, a banking corporation, as Trustee under the provisions of a trust known as Trust No. 41-86490, hereinafter referred to as "Declarant":

WITNESSETH THAT:

WHEREAS, Declarant is the record owner of certain real estate situated in the County of Adams and State of Illinois, legally described as follows:

Westward Ho Condominium, being all of Lot Six (6) of Emery Gardens, a subdivision of part of the Southwest Quarter of Section Six (6) in Township Two (2) South of the Base Line, Range Eight (8) West of the Fourth Principal Meridian, in the County of Adams, and State of Illinois;

and,

WHEREAS, Declarant intends to and does hereby submit the above described real estate, together with all buildings, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in anywise pertaining thereto, to the provisions of the Condominium Property Act of the State of Illinois, as amended from time to time; and

WHEREAS, Declarant is further desirous of establishing for its own benefit and for the mutual benefit of all future owners or occupants of the Property of any part thereof, certain easements and rights in, over and upon said Property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, Declarant desires and intends that the several owners, mortgages, occupants and any other persons hereafter acquiring any interest in said property shall, at all times, enjoy the benefits of, and shall hold their interests subject to the rights, easements, privileges and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the co-operative aspect of such property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness thereof.

NOW, THEREFORE, the Declarant, as the record owner of the above described real estate and for the purposes above set forth, hereby declares as follows:

1. DEFINITIONS. As used herein, unless the context otherwise requires:

- (a) "Act" means the "Condominium Property Act" of the State of Illinois.
- (b) "Declaration" means this instrument by which the Property is submitted to the provisions of the Act as hereinafter provided, and such Declaration as from time to time amended.
- (c) "Parcel" means the parcel or tract of real estate, described above in this Declaration.
- (d) "Property" means all the land, property and space comprising the Parcel, and all improvements and structures erected, constructed or contained therein or thereon, including buildings and all easements, rights and appurtenances belonging thereto, and all fixtures, equipment and furnishings intended for the mutual use, benefit or enjoyment of the unit owners.
- (e) "Unit" means a part of the Property including one or more rooms and occupying one or more floors or a part or parts thereof, designed or intended for independent use as a one-family dwelling, a garage, or such other incidental uses permitted by this Declaration, as set forth on Plat attached hereto as Exhibit "A" which Plat is being recorded simultaneously with the recording of this Declaration. Each Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes constituting the boundaries of such Unit as shown on the Plat; provided, however, that no structural components of a Building, and no pipes, wires, conduits, ducts, flues, shafts or public utility lines situated within a Unit and forming part of any system serving one or more other Units or the Common Elements shall be deemed to be a part of said Unit.

(f) "Common Elements" means all of the Property, except the Units, and shall include, but shall not be limited to, the land, foundations, roof, pipes, electrical wiring and conduits (except pipes and electrical wiring and conduits situated entirely within a Unit and serving only said Unit), public utility lines, floors, ceilings and perimeter walls of units (other than such portions thereof included within Unit boundaries as shown on the Plat), structural components of the Building, outside walks and driveways, landscaping and all other portions of the Property except the individual Units. Structural components located within the boundaries of a Unit shall be part of the Common Elements. Certain portions of the Common Elements are further defined hereinafter as "Limited Common Elements". The Board as hereinafter defined may from time to time

designate other portions of the Common Elements as Limited Common Elements, including, but not limited to, outdoor automobile parking spaces, rubbish collection areas, and such heating, plumbing and electrical fixtures and all associated pipes, ducts and wiring as may serve exclusively a single Unit or group of contiguous Units.

(g) "Limited Common Elements" shall include certain portions of the Common Elements designated in this Declaration, or hereinafter designated by the Board, as hereinafter defined, for exclusive service to and use by the owner or owners of a single Unit or group of contiguous Units. The following areas are hereby designated Limited Common Elements:

(i) The Southeast concrete driveway approach from the public street to the entrance to the Unit No. 2 garage area, as designated on the Plat of Survey of said Condominium is hereby reserved for the exclusive use of the owner or owners of Unit No. 2 of said Plat of Condominium.

(ii) The Northeast concrete driveway approach from the public street to the entrance to the Unit No. 1 garage area, as designated on the Plat of Survey of said Condominium is hereby reserved for the exclusive use of the owner or owners of Unit No. 1 of said Plat of Condominium.

(iii) The individual concrete patio areas and wood balcony areas constructed immediately to the rear of each respective Unit shall be reserved for the exclusive use of the owner or owners of the respective units served by each such patio and wood balcony.

(h) "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

(i) "Unit Owner" means the person whose estates or interest, individually or collectively, aggregate fee simple absolute ownership of a Unit.

(j) "Majority" or "Majority of the Unit Owners" means the owners of 100% in the aggregate in interest of the undivided ownership of the Common Elements. Any specified percentage of the Unit Owners means such percentage in the aggregate in interest of such undivided ownership of the Common Elements.

(k) "Unit Ownership" means a part of the Property consisting of one Unit and the undivided interest in the Common Elements appurtenant thereto.

(l) "Building" means the building or buildings located on the Parcel and forming a part of the Property and containing the Units, as shown by the surveys of the respective floors of said Building included in the Plat.

2. SUBMISSION OF PROPERTY TO THE ACT. The declarant, as the owner in fee simple of the Parcel, expressly intends to and, by recording this Declaration, does hereby submit the Parcel and the Property to the provisions of the Condominium Property Act of the State of Illinois.

3. PLAT. The Plat attached hereto as Exhibit A, and by this reference made a part hereof, sets for the measurements, elevations, locations and other data, as required by the Act, including (1) the Parcel and its exterior boundaries; (2) the Building and each floor thereof; and (3) each Unit of the Building.

4. UNIT IDENTIFICATION. Each Unit is identified on the Plat by a distinguishing number or other symbol. The legal description of each Unit shall refer to such identifying numbers or symbol.

5. ADMINISTRATION AND OPERATION OF THE PROPERTY. The governing body for all of the Unit Owners for the administration and operation of the Property, as provided in the Act and in this Declaration and in the By-Laws, shall be the Board of Managers who shall be elected in the manner provided in the By-Laws. The Board of Managers, when authorized by a majority of the Unit Owners, shall cause to be incorporated a not-for-profit corporation, as provided by the Act and in such event, or in the event Declarant has heretofore caused such corporation to be organized, then such corporation (hereinafter referred to as "Association") shall be the governing body for all of the Unit Owners for the administration and operation of the property as provided in the Act and in this Declaration and in the By-Laws. The Board of Directors of such Association shall constitute the Board of Managers provided for in the Act, and all rights, titles, powers, privileges and obligations vested in or imposed upon the Board of Managers in the Act and in this Declaration and in the By-Laws shall be held or performed by the Association or by the duly elected members of the Board of Directors thereof and their successors in office. The By-Laws for the governing body shall be the By-Laws appended hereto as Exhibit C and made a part hereof.

Whenever the word "Board" is used in this Declaration or in the By-Laws, it shall mean and refer to the Board of Managers if there is no association, or if there is an Association, it shall mean and refer to said Association acting through its Board of Directors. The Board shall be elected by the Unit Owners in accordance with the By-Laws. Neither the Board, the Association, nor the Unit Owners shall be deemed to be conducting a business of any kind. All funds collected by the Board, shall be held and expended for the purposes designated in the Declaration and By-Laws and (except for such adjustments as the Board may require to reflect delinquent, prepaid and special assessments) shall be deemed to be held for the benefit, use and account of all the Unit Owners in the percentages set forth in Exhibit B and shall be administered in accordance with the provisions of the Declaration and By-Laws. Each Unit Owner shall be a member of the Association so long as he shall be a Unit Owner, and membership shall automatically terminate when he ceases to be a Unit Owner, and upon transfer of his ownership interest, the new Unit Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association.

6. INDEMNITY. The members of the Board and the Officers thereof or of the Association shall not be liable to the Unit Owners for any mistake of judgment, or any acts or omissions made in good faith as such members or officers. The Unit Owners shall indemnify and hold harmless each of such members or officers on behalf of the Unit Owners or the Association unless any such contract shall have been made in bad faith or contrary to the provisions of this Declaration. The liability of any Unit Owner arising out of any contract made by such members or officers or out of the aforesaid indemnity shall be limited to such proportion of the total liability thereunder as his percentage interest in the Common Elements bears to the total percentage interest of all the Unit Owners in the Common Elements. Each agreement made by such members or officers or by the managing agent on behalf of the Unit Owners or the Association shall be executed by such members or officers or the managing agent, as the case may be, as agents for the Unit Owners or for the Association.

7. BOARD'S DETERMINATION BINDING. In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any question of interpretation or application of the provisions of the Declaration or By-Laws, the determination thereof by the Board shall be final and binding on each and all of such Unit Owners.

8. OWNERSHIP OF THE COMMON ELEMENTS. Each Unit Owner shall be entitled to the percentage of ownership in the Common Elements allocated to the respective Unit owned by such Unit Owner, as set forth in the Schedule attached hereto as Exhibit B and by this reference made a part hereof as though fully set forth herein. The aforesaid percentages of ownership interest have been computed

and determined in accordance with the Act, and shall remain constant unless hereafter changed by recorded amendment to this Declaration consented to in writing by all Unit Owners. Said ownership interests in the Common Elements shall be undivided interests, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of ownership as set forth in Exhibit B. The ownership of each Unit and of the Unit Owner's corresponding percentage of ownership in the Common Elements shall not be separated.

9. USE OF THE COMMON ELEMENTS. Each Unit Owner shall have the right to use the Common Elements (excepted as the Limited Common Elements) in common with all other Unit Owners, as may be required for the purposes of access and ingress and egress to and use and occupancy and enjoyment of the respective Unit owned by such Unit Owner. Such right to use the Common Elements shall extend to each Unit Owner, and the agents, servants, tenants, family members and invitees of each Unit Owner shall have the right to the exclusive use and possession of the Limited Common Elements serving exclusively his Unit. Such rights to use and possess the Common Elements, including the Limited Common Elements, shall be subject to and governed by the provisions of the Act and of this Declaration and the By-Laws herein and the rules and regulations of the Board. The Board shall have the exclusive authority from time to time to adopt or amend administrative rules and regulations governing the use, occupancy and control of the Common Elements more particularly provided in the By-Laws. The Board shall have the authority to lease or to grant licenses or concessions with respect to parts of the Common Elements, subject to the provisions of the Declaration and By-Laws.

10. COMMON EXPENSES. Each Unit Owner shall pay his proportionate share of the expenses of administration, maintenance and repair of the Common Elements and of any other expenses incurred in conformance with the Declaration and By-Laws or otherwise lawfully agreed upon (which expenses are herein sometimes referred to as "common expenses"). Such proportionate share of the common expenses for each Unit Owner shall be in the same ratio as his percentage of ownership in the Common Elements. Payment thereof shall be in such amounts and at such times as determined in the manner provided in the By-Laws. If any Unit Owner shall fail or refuse to make any such payment of the common expenses when due, the amount thereof shall constitute a lien on the interest of such Unit Owner in the Property as provided in the Act.

11. SEPARATE MORTGAGES. Each Unit Owner shall have the right, subject to the provisions herein, to make a separate mortgage or encumbrance on his respective Unit, together with his respective ownership interest in the Common Elements. No Unit Owner shall have the right or authority to make or create or cause to be made or created any mortgage or encumbrance or other lien on or affecting the Property or any part thereof, except only to the extent of his Unit and his respective ownership interest in the Common Elements.

12. SEPARATE REAL ESTATE TAXES. It is understood that real estate taxes are to be separately taxed to each Unit Owner for his Unit and corresponding percentage of ownership in the Common Elements, as provided in the Act. In the event that for any year such taxes are not separately taxed to each Unit Owner, but are taxed on the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the Common Elements.

13. INSURANCE.

(a) The Board shall have the authority to and shall obtain insurance for the Property against loss or damage by fire and such other hazards as the Board may deem

desirable for the full insurable replacement cost of the Common Elements and the Units. Premiums for such insurance shall be common expenses.

Such insurance coverage shall be written in the name of the Board of Managers of Westward Ho Condominium, as Trustee, for each of the Unit Owners in their respective percentages of ownership interest in the Common Elements as established in the Declaration.

The proceeds of such insurance shall be applied by the Board of Managers as Trustee, for the reconstruction of the Building, or shall be otherwise disposed of, in accordance with the provisions of this Declaration and the Act; and the rights of the mortgagee of any Unit under any standard mortgage clause endorsement to such policies shall, not withstanding anything to the contrary therein contained, at all times be subject to the provisions of the Act with respect to the application of insurance proceeds to the reconstruction of the Building.

Payment by any insurance company to such Board of Managers of the proceeds of any policy, and the receipt of release from the Board of Managers of the company's liability under such policy, shall constitute a full discharge of such insurance company, and such company shall be under no obligation to inquire into the terms of any trust under which proceeds may be held pursuant hereto, or to take notice of any standard mortgage clause endorsement inconsistent with the provisions hereof, or to see to the application of any payments of the proceeds of any policy by the Board of Managers as Trustee.

In the event the Board of Managers shall elect to resign as Trustee, the Board shall engage the services of a bank or trust company authorized to do trust business in Illinois to act as successor-trustee, agent or depository on behalf of the Board for the purpose of receiving and disbursing the insurance proceeds resulting from any loss, upon such terms as the Board shall determine consistent with the provisions of the Act and this Declaration.

(b) The Board shall also have the authority to and shall obtain comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and workmen's compensation insurance and other liability insurance as it may deem desirable, insuring each Unit Owner, the Association, its officers, members of the Board, the Declarant, the Manager and managing agents of the Building, if any, and their respective employees and agents, from liability in connection with the Common Elements and insuring the officers of the Association and members of the Board from liability for good faith actions beyond the scope of their respective authorities. Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties. The premiums for such insurance shall be common expenses.

(c) Each Unit Owner shall be responsible for his own insurance on the contents of his own Unit and furnishings and personal property therein and his personal property stored elsewhere on the property, and his personal liability to the extent not covered by the liability insurance for all of the Unit Owners obtained as part of the common expenses as above provided.

The Board shall not be responsible for obtaining insurance on any additions, alterations or improvements made by any Unit Owner to his Unit unless and until said Unit Owner shall request the Board in writing so to do, and shall make arrangements satisfactory to the Board to reimburse the Board for any additional premiums attributable thereto; and upon the failure of such Unit Owner so to do, the Board shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements.

(d) Each Unit Owner hereby waives and releases any and all claims which he may have against any other Unit Owner, the Association, its officers, members of the Board, the Declarant, the Manager and managing agent of the Building, if any, and their respective employees and agents, for damage to the Common Elements, the Units or to any personal property located in the Units or Common Elements, caused by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance.

14. MAINTENANCE, REPAIRS AND REPLACEMENTS. Each Unit Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Unit. Maintenance, repairs and replacements of the Common Elements shall be furnished by the Board as part of the common expenses, subject to the rules and regulations of the Board; provided, that at the discretion of the Board, maintenance, repairs and replacements of the Limited Common Elements may be assessed in whole or in part to Unit Owners benefited thereby and further, at the discretion of the Board, it may direct such Unit Owners in the name and for the account of such Unit Owners to arrange for such maintenance, repairs and replacements, to pay the cost thereof, and to procure and deliver to the Board such lien waivers and contractor's and sub-contractor's sworn statements as may be required to protect the property from all mechanic's-or-materialmen's lien claims that may arise therefrom.

The Board may cause to be discharged any mechanic's lien or other encumbrance which, in the opinion of the Board, may constitute a lien against the Property or Common Elements rather than against a particular Unit and its corresponding percentage of ownership in the Common Elements. When less than all the Unit Owners are responsible for the existence of any such lien, the Unit Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses (including attorney's fees) incurred by reason of such lien.

Whenever the Board shall determine, in its discretion, that any maintenance or repair of any Unit is necessary to protect the Common Elements or any other portion of the Building, the Board may cause a written notice of the necessity for such maintenance or repair to be served upon such Unit Owner, which notice may be served by delivering a copy thereof to any occupant of such Unit, or by mailing the same by certified or registered mail, addressed to the owner at the Unit. If such Unit Owner fails or refuses to perform any such maintenance or repair within a reasonable time stated in the notice (or any extension thereof approved by the Board), the Board may cause such maintenance and repair to be performed at the expense of such Unit Owner.

If, due to the act or negligence of a Unit Owner, or a member of his family or household pet or of a guest or other authorized occupant or visitor of such Unit Owner, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be the common expense, then such Unit Owner, shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Board, to the extent not covered by insurance.

The Board shall have exclusive authority to take, or refrain from taking, any action pursuant to this paragraph 14. All expenses which, pursuant to this paragraph 14, are chargeable to any Unit Owner, may be specifically assessed to such Unit Owner and shall be payable by such Unit Owner as prescribed by the Board.

15. ALTERATIONS, ADDITIONS OR IMPROVEMENTS. No alterations of any Common Elements, or any additions or improvements thereto, shall be made by any Unit Owner without the prior written approval of the Board. The Board may

authorize and charge as common expenses (or in the case of Limited Common Elements may charge to the Unit Owner benefited thereby) alterations and improvements of, and additions to, the Common Elements; provided, however, that in the event the costs thereof are to be charged as common expenses, the Board shall not approve such alterations, improvements or additions requiring expenditure in excess of \$1,000.00 without the approval of the Unit Owners owning not less than 100% of the aggregate in interest of the undivided ownership of the Common Elements. Any Unit Owner may make alterations, additions or improvements within his Unit without the prior written approval of the Board, but in any event such Unit Owner shall be responsible for any damage to other Units, the Common Elements, or the Property as a result of such alterations, additions or improvements.

16. DECORATING. Each Unit Owner shall furnish and be responsible for, at his own expense, all of the decorating within his own Unit from time to time, including painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. In the event the boundaries of any Unit, as shown on the Plat, are the finished undecorated interior surfaces of the perimeter walls, floors and ceilings thereof, the owner of such Unit shall be entitled to the exclusive use of such surfaces, and such Unit Owner shall maintain such surfaces in good condition at his sole expense as may be required from time to time, which said maintenance and use shall be subject to the rules and regulations of the Board, and each such Unit Owner shall have the right to decorate such surfaces from time to time in such manner as he may see fit and at his sole expense. The use of and the covering of the interior surfaces of windows, whether by draperies, shades or other items visible on the exterior of the Building, shall be subject to the rules and regulations of the Board. Decorating of the Common Elements (other than interior surfaces within the Units as above provided), and any re-decorating of Units to the extent made necessary by any damage to existing decorating of such Units caused by maintenance, repair or replacement work on the Common Elements by the Board, shall be furnished by the Board as a part of the common expenses.

17. ENCROACHMENTS. If any portions of the Common Elements shall actually encroach upon any Unit, or if any Unit shall actually encroach upon any portions of the Common Elements or any other Units, as the Common Elements and Units are shown by the surveys comprising the Plat attached hereto as Exhibit A, there shall be deemed to be mutual easements in favor of the owners of the Common Elements and the respective Unit Owners involved to the extent of such encroachments as long as the same shall exist.

18. (a) SALE OR LEASE BY UNIT OWNER -- FIRST OPTION TO OTHER UNIT OWNER.

If any Unit Owner, other than the Declarants and other that a mortgagee acquiring a Unit by foreclosure or by Deed in lieu of foreclosure shall desire at any time to sell or lease his Unit Ownership, or if any lessee of any Unit wishes to assign or sublease such Unit, other than to a person related by blood or marriage to the Unit Owner, he shall give the Owner of the remaining Unit at least thirty (30) days prior written notice of the proposed sale or lease, which notice shall state the name and address and financial and character references of the proposed purchaser or lessee and the terms of the proposed sale or lease. During the period of thirty (30) days following the receipt by the Owner of the remaining Unit of such written notice, the remaining Owner shall have the first right, at his option, to purchase or lease such Unit Ownership upon the same terms as the proposed sale or lease described in such notice.

If the remaining Unit Owner shall give written notice to the Unit Owner desiring to sell or lease his Unit within a thirty (30) day period that he has elected