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DECLARATION OF CONDOMINIUM OWNERSHIP

FOR

HEATHERFIELD CONDOMINIUMS OF CORTLAND

*Plat Cabinet 10
Slide 7-A*

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**DECLARATION OF CONDOMINIUM OWNERSHIP FOR
HEATHERFIELD CONDOMINIUMS OF CORTLAND**

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**DECLARATION OF CONDOMINIUM OWNERSHIP FOR
HEATHERFIELD CONDOMINIUMS OF CORTLAND**

This Declaration is made by HEATHERFIELD CONDO DEVELOPMENT, LLC
("Declarant").

RECITALS:

The Declarant is record titleholder of certain real estate (the "Parcel") legally described on Exhibit A, which is located in the Town of Cortland, in DeKalb County, Illinois. Declarant intends to submit the Parcel to the Illinois Condominium Property Act (the "Act").

The Residential Association shall be responsible for the administration of the Property and the maintenance, repair and replacement of the Common Elements. Each Owner of a Dwelling Unit shall be assessed to pay his proportionate share of the Common Expenses required to operate the condominium, all as more fully provided for in this Declaration.

The Developer, hereinafter defined, shall retain certain rights set forth in this Declaration with respect to the Property and the Residential Association, including, without limitation, the right, prior to the Turnover Date, to appoint all members of the Board, the right to come upon the Property in connection with Developer's efforts to sell Dwelling Units and other rights reserved in Article Ten.

NOW, THEREFORE, Declarant, as record titleholder of the Parcel, hereby declares as follows:

ARTICLE ONE
Definitions

For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

- 1.01 **ACT**: The Condominium Property Act Of the State of Illinois, as amended from time to time.
- 1.02 **BOARD**: The board of directors of the Residential Association, as constituted at any time or from time to time.
- 1.03 **BUILDING**: That portion of the Property which consists of a structure which contains Dwelling Units, including, without limitation, the structural components of such structure, the entryways, corridors, stairways, roofs and other portions of the structure, except the Dwelling Units.
- 1.04 **BY-LAWS**: The By-Laws of the Residential Association which are attached hereto as Exhibit D.
- 1.05 **COMMON ELEMENTS**: All of the Property, except the Dwelling Units.
- 1.06 **COMMON EXPENSES**: The expenses of administration (including management and professional services), maintenance, operation, repair and replacement of the Common Elements; the cost of additions, alterations, or improvements to the Common Elements; the cost of insurance

required or permitted to be obtained by the Board under Article Five with respect to the Common Elements; utility expenses for the Common Elements; any expenses designated as Common Expenses by the Act, this Declaration, or the By-Laws; if not separately metered or charged to the Owners, the cost of waste removal, scavenger services, water, sewer, or other necessary utility services to the Common Elements; the cost of maintenance of privately-owned storm and sanitary sewers within the Common Elements outside of the Building; and any other expenses lawfully incurred by or on behalf of the Residential Association for the common benefit of all of the Owners.

1.07 **DECLARATION**: This instrument with all Exhibits hereto, as amended or supplemented from time to time.

1.08 **DEVELOPER**: Heatherfield Condo Development, LLC, an Illinois limited liability company.

1.09 **DWELLING UNIT**: A part of the Property, including one or more rooms, designed or intended for independent residential use and having lawful access to a public way. Each Dwelling Unit shall consist of the space enclosed and bounded by the planes constituting the boundaries of such Dwelling Unit as shown on the Plat and the fixtures and improvements located wholly within such boundaries which serve such Dwelling Unit exclusively. A Dwelling Unit shall not include the following, wherever located:

- (a) any structural components of the Property; or
- (b) any component of a system which serves more than one Dwelling Unit where such component is an integral part of such system and is not intended to serve the Dwelling Unit exclusively.

Each Dwelling Unit is identified on the Plat by a distinguishing number or other symbol. The legal description of each Dwelling Unit shall refer to such identifying number or symbol and every such description shall be deemed good and sufficient for all purposes, as provided in the Act.

1.10 **FIRST MORTGAGEE**: The holder of a bona fide first mortgage, first trust deed or equivalent security interest covering a Unit Ownership. Any reference herein to a specified percentage of the First Mortgagees shall mean the First Mortgagees of that number of Dwelling Units which is equal to the number of Dwelling Units covered by first mortgages, first trust deeds or equivalent security interests multiplied by such percentage, rounded upward to the next full number.

1.11 **LIMITED COMMON ELEMENTS**: A portion or portions of the Common Elements which are designated by this Declaration or the Plat as being a Limited Common Element appurtenant to and for the exclusive use of Owners of one or more, but less than all of the Dwelling Units. Without limiting the foregoing, the Limited Common Elements assigned and appurtenant to each Dwelling Unit shall include the following ("Exclusive Limited Common Elements"): (a) Perimeter doors and windows which serve the Dwelling Unit, (b) the interior surface of perimeter walls, ceilings and floors which define the boundary planes of the Dwelling Unit, (c) decks and patios which are designated on the Plat as being Exclusive Limited Common Elements appurtenant to the Dwelling Unit or which serve the Dwelling Unit exclusively, and (d) any system or component part thereof which serves the Dwelling Unit exclusively to the extent that such system or component part is located outside the boundaries of the Dwelling Unit.

1.12 **OWNER:** A record owner, whether one or more Persons, of fee simple title to any Dwelling Unit, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The Declarant shall be deemed to be an Owner with respect to each Dwelling Unit owned by the Declarant.

1.13 **PARCEL:** The real estate which is legally described in Exhibit A hereto from time to time, together with all rights appurtenant thereto.

1.14 **PERSON:** A natural individual, corporation, partnership, limited liability company, trustee or other legal entity capable of holding title to real property.

1.15 **PLAT:** The plat or plats of survey attached and hereafter attached as Exhibit B hereto, and such other plats as may be made a part hereof, which set forth the measurements, elevations, and locations of the Property, the location of the planes which constitute the perimeter boundaries of each Dwelling Unit, a distinguishing number or other symbol to identify each Dwelling Unit and such other data as may be required by the Act or this Declaration.

1.16 **PROPERTY:** All the land, property, space comprising the Parcel, all improvements and structures erected, constructed or contained therein, thereon or thereunder, including the Building, and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the Owners, hereby or hereafter submitted and subjected to the provisions of this Declaration and the Act as part of the Property.

1.17 **RECORD:** To record with the Recorder of DeKalb County, Illinois.

1.18 **RESIDENTIAL ASSOCIATION:** Heatherfield Condominiums of Cortland Association, an Illinois not-for-profit corporation, its successors and assigns.

1.19 **TURNOVER DATE:** The date on which any one of the following shall first occur:

- (a) The sixtieth (60th) day after Declarant has conveyed nine (9) Dwelling Units to purchasers for value (being 75% of the maximum number of Dwelling Units which the Declarant may make subject to this Declaration);
- (b) The expiration of three (3) years from the date of the recording of this Declaration; or
- (c) The date designated in written notice from the Developer to all of the Owners as being the Turnover Date.

1.20 **UNDIVIDED INTEREST:** The percentage of ownership interest in the Common Elements appurtenant to a Dwelling Unit as herein and hereafter allocated on Exhibit C hereto, as Exhibit C may be amended from time to time.

1.21 **UNIT OWNERSHIP:** A part of the Property consisting of one Dwelling Unit, its Undivided Interest, and the Limited Common Elements appurtenant to the Dwelling Unit.

1.22 VOTING MEMBER: The individual who shall be entitled to vote in person or by proxy at meetings of the Owners, as more fully set forth in Article Four.

ARTICLE TWO

Scope of Declaration and Certain Property Rights

2.01 REAL ESTATE SUBJECT TO DECLARATION: Declarant, as the owner of fee simple title to the Parcel, expressly intends to and, by recording this Declaration, does hereby subject and submit the Parcel and the Property to the provisions of the Act and this Declaration.

2.02 CONVEYANCES SUBJECT TO DECLARATION: All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved, or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding on any Person having at any time any interest or estate in the Property, and their respective heirs, successors, personal representatives or assigns. Reference in any deed of conveyance, lease, mortgage, trust deed, other evidence of obligation, or other instrument, to the provisions of this Declaration shall be sufficient to create and reserve all of the easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved, or declared by this Declaration, as fully and completely as though they were set forth in their entirety in any such document.

2.03 ENCROACHMENTS: In the event that, by reason of the construction, repair, reconstruction, settlement, or shifting of the Property, or any part thereof, (i) any part of the Common Elements encroaches or shall hereafter encroach upon any part of any Dwelling Unit, or (ii) any part of any Dwelling Unit encroaches or shall hereafter encroach upon any part of any other Dwelling Unit or the Common Elements, then, in any such case, there shall be deemed to be an easement in favor of the Owners for the maintenance and use of any of the Common Elements which may encroach upon a Dwelling Unit and there shall be deemed to be an easement in favor of any Owner for the exclusive use of any part of his Dwelling Unit which shall encroach upon the Common Elements or any other Dwelling Unit; provided, however, that in no event shall an easement for any encroachment be created in favor of any owner if such encroachment occurred due to the intentional, willful, or negligent conduct of such Owner or his agent.

2.04 OWNERSHIP OF COMMON ELEMENTS: Each Owner shall own an undivided interest in the Common Elements as a tenant in common with all the other Owners. Each Dwelling Unit's corresponding percentage of ownership in the Common Elements (Undivided Interest) has been determined by Developer as required under the Act to be as set forth in Exhibit C attached hereto. Exhibit C may not be changed without unanimous written approval of all Owners and all First Mortgagees, except as hereinafter provided in Sections 5.06 or 5.07 or as permitted under the Act. The Common Elements shall remain undivided and no Owner shall bring any action for partition.

2.05 OWNERS' RIGHTS TO USE THE COMMON ELEMENTS:

- (a) Each Owner shall have the right to use the Common Elements (except the Limited Common Elements or portions occupied pursuant to leases, licenses or concessions made by the Board) in common with all other Owners, as may be required for ingress and egress to and from his respective Dwelling Unit, and for such other purposes not prohibited hereunder.

- (b) Each Owner shall have the right to the exclusive use and possession of the Exclusive Limited Common Elements which serve his Dwelling Unit. Each Owner shall have the right to the non-exclusive use, in common with other owners, of the Limited Common Elements which serve his Dwelling Unit and the Dwelling Units of such other Owners.
- (c) The rights to use and possess the Common Elements, including the Limited Common Elements, as herein provided, shall extend to each Owner, and the agents, servants, tenants, and invitees of each Owner and such rights and easements shall be subject to and governed by the provisions of the Act, this Declaration, the By-Laws, and the reasonable rules and regulations of the Board.

2.06 UTILITY AND ACCESS EASEMENTS: Each Owner of a Dwelling Unit and the Developer shall have a non-exclusive easement for vehicular and pedestrian access over and across roadways and walkways from time to time located on the Property, including, without limitation, those roadways and walkways which provide access to public ways. Verizon, Commonwealth Edison Company, Northern Illinois Gas Company, the local cable television franchisee, and all other public and private utilities serving the Property, and their successors, are hereby granted the right to lay, construct, renew, operate, and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment, into and through the Property for the purpose of providing utility services to the Parcel. The County of DeKalb, the Town of Cortland, and any municipality or other governmental authority which has jurisdiction over the Parcel or which undertakes to provide services to the Parcel are hereby granted access easements for ingress and egress to and from, over and across the Property for the purpose of providing any such services.

2.07 ADDITIONAL EASEMENTS: In addition to the easements provided for herein, the Board, on behalf of all of the Owners, shall have the right and power (a) to grant such easements with respect to the Common Elements (except the Limited Common Elements) as the Board deems necessary and proper, including, without limitation, access easements for emergency and service vehicles operated by any governmental authority or private enterprise and/or (b) to cancel, alter, change or modify any easement which affects the Property and does not benefit an owner, as the Board shall, in its discretion, determine. Without limiting the foregoing, until such time as the Declarant no longer holds title to a portion of the Parcel, the Board shall grant such easements as the Developer may from time to time request, including, but not limited to, such easements as may be required to construct, keep and maintain improvements upon the Common Elements or to provide owners of the Parcel with necessary utility services. Each person, by acceptance of a deed, mortgage, trust deed, other evidence of obligation, or other instrument relating to a Unit ownership, shall be deemed to grant a power coupled with an interest to the Board, as attorney-in-fact, to grant, cancel, alter or otherwise change the easements provided for in this Section. Any instrument executed pursuant to the power granted herein shall be executed by the President and attested to by the Secretary of the Residential Association and duly Recorded.

2.08 BOARD'S RIGHT OF ENTRY: The Board or its agents, upon reasonable notice or, in the case of an emergency, without notice, shall have the right to enter any Dwelling Unit, including any of the appurtenant Limited Common Elements, when necessary in exercise of its authority under Section 3.02, or in connection with any maintenance, repair and replacement for which the Board is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and