

## Declaration

Establishing a plan of condominium ownership of premises located at Chapman Boulevard, Manorville, Town of Brookhaven, County of Suffolk, State of New York. Pursuant to Article 9-B of the Real Property Law of the State of New York

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PLAN OF CONDOMINIUM HOME OWNERSHIP

DECLARATION OF TOWN HOUSES AT COBBLERIDGE INC. PURSUANT TO  
ARTICLE 9-B OF THE REAL  
PROPERTY LAW OF THE STATE OF NEW YORK

In Ronkonkoma, County of Suffolk and State of New York on this day of , 1992, Town Houses at Cobbleridge Inc., a corporation organized and existing under the laws of the State of New York, whose principal office is situated in Ronkonkoma, County of Suffolk, State of New York, hereinafter referred to as the "Owner" or "Declarant" represented in this Declaration by , who is fully empowered and qualified to execute this Declaration on behalf of the said corporation does hereby state:

**FIRST:** Submission of Property.

By this Declaration the Owner submits the property described in this Declaration, including the land and the Building and all other improvements erected and to be erected thereon, all easements, rights and appurtenances belonging thereto and all other property, real, personal or mixed, intended for use in connection therewith, to the provisions of Article 9-B of the Real Property Law of the State of New York.

**SECOND:** Description of Property.

The Owner owns all that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in Manorville, Town of Brookhaven, County of Suffolk and State of New York, and more particularly described in Schedule A annexed hereto.

**THIRD:** Definitions.

(a) The Owner of each Home is hereinafter referred to as the "Home Owner." Every Home Owner shall be treated for all purposes as a single owner, irrespective of whether such ownership is joint, in common or tenancy by the entirety. Where such ownership is joint, in common or tenancy by the entirety, majority vote of such owners shall be necessary to cast the Home Owner's vote referred to in paragraph EIGHTH of this Declaration.

(b) A "Home" as hereinafter referred to shall be defined as follows: Each Home is measured horizontally from the exterior surface of the sheetrock of all opposite walls to the exterior surface of the sheetrock of all opposite walls and vertically from the lower surface of the concrete slab forming the first floor or of the Home up to the exterior surface of the sheetrock forming the ceiling of the Home. Doors, windows, interior walls and fireplaces which abut a Home are part of the Home. The Description of Homes set forth herein pertains to the location of the walls, floors and roof of the Homes as they are finally set forth in the building plans to be filed simultaneously with the recording of this Declaration.

(C) A "Building" as hereinafter referred to shall be defined as a number of Homes all of which are constructed under a continuous roof.

(d) "Party Wall" as hereinafter referred to shall be defined as a wall, which is common to and separates two or more Homes.

(e) "Condominium" as hereinafter referred to shall mean Cobble Ridge Condominium, which is composed of the Home Owners.

(f) The term "Home" and "Home Owner" as used herein shall be construed to mean Unit and Unit Owner as defined in Section 339-e of Article 9-B of the Real Property Law of the State of New York.

**FOURTH:** Community.

The Owner is constructing on the parcel of land described above a Condominium Home Community known as Cobble Ridge Condominium according to the plans filed simultaneously with the recording of this Declaration in the Office of the Clerk of Suffolk County, which Plans set forth a description of the buildings stating the number of stories and number of Homes.

The Community will consist of 72 Homes to be located in 18 buildings as set forth on the Plot Plan filed simultaneously herewith. The Homes are constructed of concrete foundations, wood frame walls and asphalt roofs. Each of the Homes has access to a public street by means of a walk or interior roadway. For the purposes of describing the location of the buildings, approximate area, type and number of rooms of each Home and the common elements to which each Home has immediate access, each Home is described on Schedule B annexed hereto. Each Home will be sold to one or more Owners each Owner obtaining fee ownership in, and exclusive right of occupancy and possession of the Home, together with an undivided interest in the common elements of the Community, as listed hereinafter in this Declaration, and referred to as the "common elements", all of the above in accordance with Article 9-B of the Real Property Law of the State of New York. The designation of the number of rooms, interior partitions and kitchen and bathroom facilities may be changed by mutual consent of the Owner and the Home Owner at the time of construction of the Home.

The aforesaid Community has a total plot area of approximately 61.878 acres.

**FIFTH:** Common Elements.

The common elements of the Community will consist of all of the Community, except the Homes, including, but without limitations, outside walls and roofs of the Building, the land, and improvements (other than the Homes) comprising the Community (including the land under the Homes and under the improvements), all utility or other pipes and materials located outside of the Homes, roadways and parking spaces.

## IRREVOCABLY RESTRICTED AREAS

Certain portions of the common elements are irrevocably restricted in use to specified Home Owners, subject to the right of the Board of Managers to enter upon any restricted area for maintenance, repair or improvement of a Home or common element and subject to the rules of the Board of Managers (see By-Laws, Article VIII). Any portion of the common elements which is not restricted in use may be used by any Home Owner. The common elements are not subject to partition nor are they severable from the Homes except in accordance with the Real Property Law. Following are detailed descriptions of the irrevocably restricted common elements:

1. The rear yard area behind each Home extending ten (10) feet out from the rear wall of each Home by the width of such Home is restricted in use to the owner of such Home.

The common elements shall remain undivided and no Home Owner shall bring any action for partition or division unless otherwise provided by law.

The percentage of the undivided interest in the common elements established herein shall not be changed except with the consent of all of the Home Owners affected expressed in a duly recorded amendment to this Declaration.

The undivided interest in the common elements shall not be separated from the Home to which it appertains and shall be deemed conveyed or encumbered with the Home even though such interest is not expressly mentioned or described in the conveyance or other instrument.

### **SIXTH:** Easements.

All pipes, wires, conduits and public utility lines located within each Home shall be owned by such Home Owner. Any portion of such pipes, wires, conduits and public utility lines located in the common elements including electric and gas meter banks and hose bibs located on the exterior of a home and servicing one or more other homes, will be owned in common by the Home Owners. The Board of Managers shall have a right of access to all common elements for maintenance, repair or improvement whether such common elements are restricted or not.

The Owner, its successors, assigns, and purchasers, reserves the easements, licenses, rights and privileges of a right-of-way in, through, over, under and across the common elements of the Condominium for the purpose of completing construction and sale of Homes and facilities in the Condominium and, towards this end, reserves the right to grant and reserve easements and rights-of-way in, through, under, over and across the common elements for the installation, maintenance and inspection of lines and appurtenances for public or

private water, sewer, drainage, cable television and other utilities and for any other materials or services necessary for the completion of the work. The Owner, its successors, assigns, and purchasers, also reserve the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers and drainage lines which may from time to time be in or along the streets and roads or other areas of the common elements. The Owners, its successors, assigns and purchasers also reserve the right to continue to use the common elements, any facilities, sales offices, model homes, signs and parking spaces located on the common elements, in its efforts to market homes constructed in the Condominium. Owner shall also have the right to maintain construction trailers on the site until the last home is closed and all warranty periods have expired. This paragraph shall not be amended without the consent of the Owner.

**SEVENTH: Service of Process:**

Service of process on the Home Owners in any action with relation to the common elements shall be made upon the Board of Managers of Cobble Ridge Condominium, Chapman Boulevard, Manorville, and County of Suffolk, New York.

**EIGHTH: Common Interest.**

Each Home Owner shall have such percentage interest in the common elements as is set forth in Schedule B attached hereto and shall bear such percentage of the common expenses of the Condominium. Each Home Owner shall have one vote for all voting purposes at any meeting of the Home Owners. The percentage of interest of each Home in the common elements has been based on equal percentages - one for each Home, pursuant to Real Property Law Section 339 (i)(1)(iii) as of the date of recording this Declaration.

**NINTH: Administration.**

The administration of the Condominium, the Community and parcel of land described herein shall be in accordance with the provisions of this Declaration and with the provisions of the By-Laws which are made a part of this Declaration and are attached hereto as Exhibit "A".

**TENTH: Amendments and Withdrawal.**

(a) The dedication of the property to Condominium ownership herein shall not be revoked or the property withdrawn from Condominium ownership unless 80% of the Home Owners in number and in common interest and the first mortgagees, if any, of each of these same homes agree to such revocation or removal of the property from the Plan by duly recorded instruments.

(b) Except as otherwise set forth herein, the provisions of this Declaration may be modified or amended by an instrument executed by the Board of Managers upon

a vote of 80% of the Home Owners in number held at a duly called meeting of the Home Owners, provided however, that:

- (i) No amendment shall change any condominium parcel, nor a Home Owner's proportionate share of the common charges, nor the voting rights appurtenant to any Home, unless all of record owner(s) in number and common interest thereof and the first mortgagees, if any, of each of these same Homes agree to such revocation by recorded instrument.
- (ii) No amendment shall be passed which shall impair or prejudice the rights and priorities of mortgagees.

There shall be a presumption for a period of 60 days subsequent to the recording of the amendment that the vote of the Home Owners was made at a duly called meeting and that the requisite voting percentage was obtained. After the 60-day period such presumption will be deemed conclusive.

(c) Any amendment to this Declaration shall not take effect until it is recorded in the Office of the Clerk of the County of Suffolk.

Irrespective of any other provision of this Declaration, no action for partition or division of the common elements shall be brought nor shall this plan of condominium ownership be terminated where such partition, division or termination will result in a violation of the then existing local zoning and building laws and codes.

**ELEVENTH:** Subject to Declaration, By-Laws, etc.

All present or future Home Owners, tenants, future tenants, or any other person that might use the facilities of the Community in any manner, are subject to the provisions of this Declaration, the By-Laws and Rules and Regulations of the Condominium and the mere acquisition or rental of any of the Homes of the Community or the mere act of occupancy of any of said Homes shall signify that the provisions of this Declaration and the By-Laws and Rules and Regulations of the Condominium are accepted and ratified and all of such provisions shall be deemed and taken to be covenants running with land and shall bind any person having at any time any interest or estate in such Home, as though such provisions were recited and stipulated at length in each and every deed, conveyance or lease thereof.

**TWELFTH:** Common Charges.

All sums assessed as common charges by the Board of Managers of the Condominium but unpaid together with the maximum interest permitted in New York thereon, chargeable to any Home Owner shall constitute a lien on his Home prior to all other liens except: (a) tax or assessment liens on the Home by the taxing subdivisions of any governmental authority, including but not limited to State, County, Village and School District taxing agencies; and (b) all sums

unpaid on any first mortgage of record encumbering any Home. Such lien may be foreclosed when past due in accordance with the laws of the State of New York, by the Condominium, in like manner as a mortgage on real property, and the Condominium shall also have the right to recover all costs incurred including reasonable attorneys' fees (but such right shall not be a lien against the Home). In the event the proceeds of the foreclosure sale are not sufficient to pay such unpaid common charges, the unpaid balance shall be charged to all Home Owners as a common expense. However, where the holder of an institutional mortgage of record, or other purchaser of a Home at a foreclosure sale of an institutional mortgage, obtains title to the Home as a result of foreclosure, or the institutional mortgage holder obtains title by conveyance in lieu of foreclosure, such acquirer of title, his successors or assigns, shall not be liable and the Home shall not be subject to a lien for the payment of common charges chargeable to such Home which were assessed and became due prior to the acquisition of title to such Home by such acquirer. In such event, the unpaid balance of common charges will be charged to all other Home Owners as a common expense. The term "institutional mortgage" herein used shall mean a first mortgage granted by a bank, savings and loan association, life insurance company, mortgage company, pension fund, trust company or other institutional lender or a mortgage granted by the Owner to a purchaser of a Home or in which the Owner participates with one of the above.

Every Home Owner shall pay the common charges assessed against him when due and no Home Owner may exempt himself from liability for the payment of the common charges assessed against him by waiver of the use or enjoyment of any of the common elements or by the abandonment of his Home. However, no Home Owner shall be liable for the payment of any common charges accruing subsequent to a sale, transfer or other conveyance by him of such Home made in accordance with Section 339-x of the Real Property Law or in accordance with the provisions of this Declaration and the By-Laws.

**THIRTEENTH:** Homes Acquired by the Board.

In the event any Home Owner shall convey his Home to the Board of Managers in accordance with Section 339-x of the Real Property Law or in the event the Board of Managers shall purchase any Home at a foreclosure sale in accordance with Article IX of the By-Laws, title to such Home or the rights to the lease of such Home shall be held by the Board of Managers or its designee on behalf of all of the other Home Owners.

In order to carry out the provisions of this Paragraph each Home Owner shall, upon becoming such, grant an irrevocable power of attorney, coupled with an interest to the Board of Managers and their successors to acquire title or lease any such Home under whatever terms the Board may in its sole discretion deem proper and to sell, lease, sublease, mortgage, vote or otherwise deal with such Home under such terms as the Board in its sole discretion shall deem proper.

**FOURTEENTH:** Encroachments.

The Home Owners agree that if any portion of a Home or the common elements (whether restricted in use to an individual Home Owner or not) encroaches upon another or shall hereinafter encroach upon another as a result of original construction or settling of the Building, a valid easement for the encroachment and the maintenance of the same, so long as it stands, shall and does exist. In the event the Building is partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings and is rebuilt, the Home Owners agree that encroachments of any portion of the Home or the common elements as aforescribed due to construction, shall be permitted, and that a valid easement for said encroachment and the maintenance thereof shall exist so long as the Building or reconstructed Building shall stand.

**FIFTEENTH:** Home ownership.

Upon the closing of title to a Home, a purchaser shall automatically become a Home Owner in the Condominium and shall remain such until such time as he ceases to own the Home for any reason.

**SIXTEENTH:** Conveyance of a Home.

In any conveyance of a Home, either by voluntary instrument, operation of law or judicial proceeding in accordance with this Declaration or the By-Laws, the Grantee of the Home shall be jointly and severally liable with the Grantor for any unpaid common charges against the latter assessed and due 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 therefore. Any such Grantee shall be entitled to a statement from the Board of Managers setting forth the amount of the unpaid common charge against the Grantor and such Grantee shall not be liable for, nor shall the Home conveyed be subject to a lien for any unpaid common charge against the Grantor in excess of the amount set forth in such statement. Grantee as used herein shall not include either the holder of an institutional mortgage of record or other purchaser of a Home at a foreclosure sale of an institutional mortgage.

**SEVENTEENTH:** Covenants and Restrictions.

The use of the Home by the Home Owner or other occupant shall be subject to the rules, regulations and provisions of this Declaration, the By-Laws and Rules and Regulations of the Board of Managers and the following covenants and restrictions:

(a) The Home and area restricted to the Home Owner's use shall be maintained in good repair and overall appearance.

(b) No alterations to the exterior of the Home or any part of the common elements may be made and no structure may be built on any portion of the common elements or restricted common elements without the written consent of



the Board of Managers. No alterations to the inside of a Home which would impair the structural soundness of the Building may be made without the written consent of the Board of Managers. Consent may be requested by mailing a letter, certified mail, return receipt requested to the Management Agent, if any, or to the President of the Board of Managers, if no Management Agent is employed. The Board of Managers shall have the obligation to answer within sixty days and failure to do so within the stipulated time shall mean that there is no objection to the proposed modification or alteration. The provisions of this paragraph shall not apply to Owner.

(c) Any Home Owner who mortgages his Home shall notify the Board of Managers providing the name and address of his mortgagee.

(d) The Board of Managers shall, at the request of the mortgagee of the Home, report any unpaid common charges due from the Home Owner of such Home.

(e) No nuisances shall be allowed upon the property nor shall any use or practice be allowed which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents.

(f) No immoral, improper, offensive or unlawful use shall be made of the property nor any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

(g) Regulations promulgated by the Board of Managers concerning the use of the property shall be observed by the Home Owners, provided, however, that copies of such regulations are furnished to each Home Owner prior to the time the said regulations become effective.

(h) The common charges shall be paid when due.

(i) Ownership and occupancy of the Homes shall be restricted to residential occupancy in accordance with municipal zoning requirements.

(j) No Home Owner may alter the landscaping located on the common elements. In no event may a Home Owner remove any existing trees from the common elements without the written consent of the Board of Managers.

**EIGHTEENTH:** Invalidity.

Invalidation of any of the covenants, limitations or provisions of the Declaration by judgment or court order shall in no wise affect any of the remaining part or parts hereof, and the same shall continue in full force and effect.

TOWN HOUSES AT COBBLERIDGE INC.