EXHIBITS

Exhibit 1
Declaration of Covenants, Conditions and Restrictions

[This document was converted from the original Exhibit 1, which only contained scanned images, to produce a text searchable document and hence this document may contain some typos. Any concern areas should be both reported to the NHUOA board and you should reference the original scanned document. This document does NOT contain the plat images contained in the original Exhibit 1.]

DECLARATION OF COVENANTS,

CONDITIONS AND RESTRICTIONS

FOR NORTH HILLS SUBDIVISION AT CRESS CREEK

Home Hill Corporation, a West Virginia corporation with an office at Shepherdstown, West Virginia ("Declarant") does hereby submit the real property in Shepherdstown Magisterial District, Jefferson County, West Virginia, described in Schedule A-1, to the provisions of the Uniform Common Interest Ownership Act, West Virginia Code §36B-l-101, et-seq ("Act") for the purpose of creating and continuing (pursuant to Declarant's Development and Declarant Rights) North Hills Subdivision at Cress Creek, and making the improvements shown in the plat and plans attached as Schedules A-1 through A-l 0, and does hereby declare that the property described on Schedule A-1 shall be held and conveyed subject to the following terms, covenants, restrictions, and conditions.

ARTICLE I

Definitions

Section 1.1 **Act.** The Uniform Common Interest Ownership Act, West Virginia Code §36B-l-101, et seq., as it may be amended from time to time.

Section 1.2 **Affiliate of a Declarant.** An affiliate of a Declarant means any person who controls, is controlled by, or is under common control with a Declarant, as provided under §1-103 (1) of the Act.

Section 1.3 **Allocated Interests.** The undivided interest in the Common Elements, the Common Expense liability, and votes in the Association, allocated to Units in the Common Interest Community. The Allocated Interests are described in Article IX of this Declaration and shown on Schedule A-8.

Section 1.4 **Articles.** Articles of Incorporation of the Association.

Section 1.5 **Association.** North Hills Subdivision at Cress Creek Unit Owners Association, Inc., a non-profit corporation organized under West Virginia Code §3 lE-1-1, et seq. It is the Association of Unit owners pursuant to §3-101 of the Act.

Section 1.6 **Bylaws.** The Bylaws of the Association, as they may be amended from time to time.

Section 1.7 **Common Elements.** Each portion of the Common Interest Community other than a Unit.

Section 1.8 **Common Expenses.** The expenses or financial liabilities for the operation of the Common Interest Community. These include:

(i) Expenses of administration, maintenance, repair, or replacement of the Common Elements;

(ii) Expenses declared to be Common Expenses by the Documents or by the Act;

(iii) Expenses agreed upon as Common Expenses by the Association; and

(iv) Such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association.

(v) The assessment ("Fernbank Assessment") required under that certain agreement dated February 8, 2005 among Home Hill Corporation, MMD, LLC, and Fernbank Subdivision at Cress Creek Unit Owners Association (FUOA), as follows: each lot in the North Hills Subdivision shall pay .375% (7.5% divided by 20 units) of the total of the following five line items: roads, beautification, utilities, insurance, and accounting/administration expenses, established in the annual FUOA budget as the contribution of each North Hills Unit Owner for the use and maintenance of Fernbank Drive.

Section 1.9 **Common Interest Community.** The real property described in Schedule A-1, subject to the Declaration of Covenants, Conditions and Restrictions of North Hills Subdivision at Cress Creek.

Section 1.10 **Construction.** Any land disturbing activity, including surveying, excavating, or digging, or the building, installing, erecting, maintaining, remodeling, reconstructing, renovating, removing, or destroying of any improvement.

Section 1.11 **Declarant.** Home Hill Corporation, a West Virginia corporation, or its successor and others as defined in Subsection 1-103(12) of the Act.

Section 1.12 **Design Development Guidelines.** The design guidelines established by the Unit Owners Association for the design and construction of improvements on individual units.

Section 1.13 **Development Rights.** The rights reserved by the Declarant under Article VIII of this Declaration to (i) add real estate to the Common Interest Community; (ii) create Units, or Common Elements within the Common Interest Community; (iii) subdivide Units or convert Units into Common Elements; or (iv) withdraw real estate from the Common Interest Community.

Section 1.14 **Director.** A member of the Executive Board.

Section 1.15 Documents. The Declaration, Plat and Plans recorded and filed pursuant to the provisions of the Act, the Bylaws, Articles and the Rules of the Association as they be amended from time to time. Any exhibit, schedule, or certification accompanying a Document is a part of that Document.

Section 1.16 Eligible Insurer. An insurer or guarantor of a first Security Interest in a Unit which has notified the Association in writing of its name and address and that it has insured or guaranteed a first Security Interest in a Unit. Such notice shall be deemed to include a request that the eligible insurer be given the notices and other rights described in Article XVI.

Section 1.17 Eligible Mortgagee. The holder of a first Security Interest in a Unit which has notified the Association, in writing, of its name and address, and that it holds a first Security Interest in a Unit. Such notice shall be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in Article XVI.

Section 1.18 Executive Board. The board of directors of the Association.

Section 1.19 Fine. A charge levied, after Notice and Hearing, by the Executive Board for a violation of the Declaration, Bylaws, Rules and Regulations of the Association, as provided under the Bylaws of the Association.

Section 1.20 Improvements. Any construction, structure, fixture or facilities of any kind of either a temporary or permanent nature, constructed above, at or below ground level, including, but not limited to, a house, garage, carport, shed, patio, terrace, deck, walk, tennis court, swimming pool, antenna, TV satellite dish, fence, wall, driveway, mailbox or parking lot.

Section 1.21 Limited Common Elements. A portion of the Common Elements allocated by the Declaration or by operation of §2-102 (2) or (4) of the Act for the exclusive use of one or more but fewer than all of the Units.

Section 1.22 Limited Common Expense. A portion of the Common Expenses allocated by the Declaration to one or more but fewer than all of the Units.

Section 1.23 Majority or Majority of Unit Owners. The owners of more than fifty percent (50%) of the votes in the Association.

Section 1.24 Manager. A person, firm or corporation employed or engaged to perform management services for the Common Interest Community and the Association.

Section 1.25 Notice and Comment. The right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to comment thereon. The procedures for Notice and Comment are set forth in Section 22.1 of this Declaration.

Section 1.26 Notice and Hearing. The right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to be heard thereon. The procedures for Notice and Hearing are set forth in Section 22.2 of this Declaration.

Section 1.27 Person. An individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

Section 1.28 Plans. The plans filed with this Declaration as Schedule A-10, as they may be amended from time to time.

Section 1.29 Plat. The plat filed with this Declaration as Schedule A-10, as it may be amended from time to time.

Section 1.30 Property. The land and all improvements, easements, rights, and appurtenances which have been submitted to the provisions of the Act by this Declaration.

Section 1.31 Public Offering Statement. The current document prepared pursuant to §4-103 through 4-107 of the Act as it may be amended from time to time, and provided to purchasers prior to the time of execution of a binding purchase agreement.

Section 1.32 Review Committee. The Cress Creek Architectural and Development Review Committee as set forth in Article XXIV hereof.

Section 1.33 Rules. Rules for the use of Units and Common Elements and for the conduct of persons within the Common Interest Community, as may be adopted by the Executive Board pursuant to this Declaration in addition to the restrictions contained in Article X hereof.

Section 1.34 Security Interest. An interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an Association, and any other consensual lien or title retention contract intended as security for an obligation.

Section 1.35 Special Declarant Rights. Rights reserved for the benefit of a Declarant to (i) complete improvements indicated on plats and plans filed with the Declaration; (ii) exercise any Development right; (iii) maintain sales offices, management offices, signs advertising the Common Interest Community, and models, including model homes and homesites; (iv) use easements through the Common Elements for the purpose of making improvements within the Common Interest Community or within real estate that may be added to the Common Interest Community; (v) appoint or remove an officer of the Association or a master association or any Executive Board member during any period of Declarant control; (vi) merge or consolidate a Common Interest Community with another Common Interest Community of the same form of ownership; or (vii) make the Common Interest Community subject to one or more master associations.

Section 1.36 Trustee. The entity which may be designated by the Executive Board as the Trustee for the receipt, administration, and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses, and other like sources as defined in the Bylaws. If no Trustee has been designated, the Trustee will be the Executive Board from time to time constituted, acting by majority vote, as executed by the president and attested by the secretary.

Section 1.37 **Unit.** A physical portion of the Common Interest Community designated for separate ownership or occupancy, the boundaries of which are described in Section 4.2 of this Declaration.

Section 1.38 **Unit Owner.** The Declarant or other Person who owns a Unit. Unit Owner does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the initial owner of any Unit created by this Declaration.

ARTICLE II

Name and Type of Common Interest Community and Association

Section 2.1 **Common Interest Community.** The name of the Common Interest Community is North Hills Subdivision at Cress Creek. North Hills Subdivision at Cress Creek is a planned community.

Section 2.2 **Association.** The name of the Association 1s North Hills Subdivision at Cress Creek Unit Owners Association, Inc.

ARTICLE III

Description of Land

Section 3.1 The entire Common Interest Community is situated in the Shepherdstown Magisterial District, Jefferson County, West Virginia. A description of the real estate included in the Common Interest Community is contained in Schedule A-1.

ARTICLE IV

Maximum Number of Units; Boundaries

Section 4.1 **Maximum Number of Units.** The Common Interest Community contains twenty (20) Units.

Section 4.2 **Boundaries.** Boundaries of each Unit created by the Declaration are shown on Schedule A-2 as numbered lots, together with the ground beneath each such lot and the airspace above each such lot. The identifying number of each Unit is shown on Schedule A-2.

ARTICLE V

Common Elements and Limited Common Elements

Section 5.1 The portions of Common Elements on Schedule A-3 are Limited Common Elements and are assigned to the Units as stated therein.

Section 5.2 The real estate which 1s or must become Common Elements is described in Schedule A-4.

ARTICLE VI

Maintenance, Repair and Replacement

Section 6.1 **Common Elements.** The Association shall maintain, repair and replace all of the portions of the Common Elements which are required by this Declaration or the Act to be maintained, repaired or replaced by the Unit Owners.

Section 6.2 **Units.** Each Unit Owner shall maintain, repair and replace, at his or her own expense, all portions of his or her Unit, except the portions thereof required by the Declarant to be maintained, repaired or replaced by the Association.

Section 6.3 **Limited Common Elements.** Any common expense associated with the maintenance, repair, or replacement of the Limited Common Elements will be assessed against the Unit or Units to which the Limited Common Element is assigned, as shown on Schedule A-3. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element will be assessed equally among the Units to which it is assigned.

Section 6.4 **Access.** Any person authorized by the Executive Board shall have the right of access to all portions of the Property for the purpose of correcting any condition threatening a Unit or the Common Elements, and for the purpose of performing installations, alterations or repairs, and for the purpose of reading, repairing, replacing utility meters and related pipes, valves, meters, wires and equipment, provided that requests for entry are made in advance and that any such entry at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no such request or notice is required and such right of entry shall be immediate, and with such force as is apparently necessary to gain entrance, whether or not the Unit Owner is present at the time. Members and guests of the Cress Creek Golf Course and Country Club Association, Inc. shall also have access to all portions of the property for all purposes related to the use of the Cress Creek Golf Course and Country Club.

Section 6.5 **Repairs Resulting from Negligence.** Each Unit Owner will reimburse the Association for any damages to the Common Elements caused intentionally, negligently, or by his or her failure to properly maintain, repair, or make replacements to his or her Unit. The Association will be responsible for damage to Units caused intentionally, negligently, or by its failure to maintain, repair, or make replacements to the Common Elements. If such expense is caused by misconduct, it will be assessed

following notice and hearing. In cases where the Association has gained entrance to a unit in response to an emergency, the Association shall be responsible only for securing the premises following the emergency, and shall not be responsible to the Unit Owner for any damages caused to the Unit in gaining entrance to the Unit or in otherwise responding to the emergency. The Unit Owner shall be responsible for making all repairs to the Unit which result from the emergency and shall hold the Association harmless from any damages resulting therefrom.

ARTICLE VII

Subsequently Allocated Limited Common Elements

Section 7.1 Those portions of the Common Elements shown on Schedule A-3 may be subsequently allocated as Limited Common Elements in accordance with Subsection 8.1(b) and Article XII of this Declaration, or may be assigned by rule of the Executive Board.

ARTICLE VIII

Development Rights and Other Special Declarant Rights

Section 8.1 Reservation of Development Rights. The Declarant reserves the following Development Rights which may be exercised individually or in any combination:

(a) The right by amendment to add real estate to the Common Interest Community. The real estate to which this development right applies is set forth in Schedule A-7.

(b) The right by amendment to create Units, Common Elements, or Limited Common Elements within the Common Interest Community.

(c) The right by amendment to subdivide and combine Units or convert Units into Common Elements.

(d) The right by amendment to withdraw real estate from the Common Interest Community.

(e) The real estate to which the Development Rights specified in Paragraphs (b) and (c) above is set forth in Schedule A-6. The real estate to which the Development Rights specified in Paragraph (d) apply is shown on Schedule A-9.

Section 8.2 Limitations on Development Rights. The Development Rights reserved in Section 8.1 must be exercised within fifteen (15) years after the recording of the initial Declaration.

Section 8.3 Phasing of Development Rights. Any of the Development Rights set forth in Section 8.1 above may be exercised with respect to different parcels of real estate within the Common Interest Community at different times. However, no assurances are made by the Declarant as to the portions where the Declarant will exercise its Development Rights or the order in which such portions, or

all of the real estate, will be developed. The exercise of Development Rights as to some portions will not obligate the Declarant to exercise them as to other portions of the real estate within the Common Interest Community.

Section 8.4 Special Declarant Rights. The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Common Interest Community:

(a) To complete Improvements indicated on Plats and Plans filed with the Declaration;

(b) To exercise a Development Right reserved in the Declaration;

(c) To maintain sales offices, management offices, signs advertising the Common Interest Community, and models;

(d) To use easements through the Common Elements for the purpose of making Improvements within the Common Interest Community or within real estate which may be added to the Common interest Community;

(e) To make the Common Interest Community subject to a Master Association;

(f) To merge or consolidate a Common Interest Community with another Common Interest Community of the same form of ownership;

(g) To appoint or remove, an officer of the Association or Master Association or an Executive Board or Master Executive Board member during a period of Declarant control subject to the provisions of Section 8.10 of this Declaration;

(h) The real estate to which the special declarant rights specified in Sections (a) through (g) above is shown on Schedule A-6.

Section 8.5 Models, including model homes and homesites, Sales Offices and Management Offices. As long as the Declarant is a Unit Owner, the Declarant and its duly authorized agents, representatives and employees may maintain any Unit owned by the Declarant on any portion of the Common Elements as a model Unit or sales office or management office.

Section 8.6 Declarant's Easement. Subject to the provisions of this Declaration, a Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights.

Section 8.7 Unit Owners' Easement. Unit Owners have an easement in the Common Elements for purposes of access to their Units and to use the Common Elements and all real estate that must become Common Elements for all other intended purposes.

Section 8.8 Signs and Marketing. The Declarant reserves the right to post signs and displays in the common Elements to promote sales of Units, and to conduct general sales, administrative and maintenance activities in a manner as will not unreasonably disturb the rights of Unit Owners.

Section 8.9 Declarant's Personal Property. The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the premises that has not been represented as property of the Association. The Declarant reserves the right to remove from the property any and all goods and improvements used in development, marketing, construction and maintenance, whether or not they have become fixtures.

Section 8.10 Declarant Control of the Association.

(a) Subject to Subsection 8.1O(b), there shall be a period of Declarant control of the Association, during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Executive Board. The period of Declarant control terminates no later than the earlier of:

(i) sixty (60) days after conveyance of seventy five percent (75%) of the Units that may be created to Unit Owners other than a Declarant;

(ii) two (2) years after all Declarants have ceased to offer Units for sale in the ordinary course of business; or

(iii) two (2) years after any right to add new Units was last exercised.

The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of that period, but in that event the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

(b) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created to Unit Owners other than a Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Unit Owners other than a Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Executive Board must be elected by Unit Owners other than the Declarant.

(c) Not later than the termination of any period of Declarant control, the Unit Owners shall elect an Executive Board of at least three (3) members, at least a majority of whom shall be Unit Owners. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.

(d) Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice under Section 3-109 of the Act, the Unit Owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at a meeting of the Unit Owners at which a quorum is present, may remove a member of the Executive Board with or without cause, other than a member appointed by the Declarant.

Section 8.11 Limitations on Special Declarant Rights. Unless sooner terminated by an amendment to this Declaration executed by the Declarant, any Special Declarant Right may be exercised

by the Declarant until the earlier of the following: so long as the Declarant (i) is obligated under any warranty or obligation, (ii) holds a Development Right to create additional Units or Common Elements, (iii) owns any Unit; or (iv) owns any Security Interest in any Units; or (v) for fifteen (15) years after recording this Declaration, whichever is earliest. Earlier termination of certain rights may occur by statute.

Section 8.12 Interference with Special Declarant Rights. Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

Section 8.13 Rights of Lenders to the Declarant. Additional limitations on the right of the Declarant to exercise Development Rights may be found in Section 16.5 of the Declaration.

Section 8.14 Miscellaneous Easements and Encumbrances. The Plats attached to Schedule A-10 and a summary description on Schedule A-1, contain the various easements and other encumbrances that affect the unit Owners some of which may be in addition to the Easements and encumbrances described in this Declaration.

ARTICLE IX

Allocated Interests

Section 9.1 Allocation of Interests. The table showing Unit numbers and their Allocated Interests is attached as Schedule A-8. These interests have been allocated in accordance with the formulas set out in this Article IX. These formulas are to be used in reallocating interests if Units are added to the Common Interest Community.

Section 9.2 Formulas for the Allocation of Interests. The Interests allocated to each Unit have been calculated on the following formulas:

(a) Liability for the Common Expenses. A percentage of liability for Common Expenses allocated to each Unit is based on the number of Units listed on the most current Schedule A-2. Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Units under Articles XVII, XII or Article VI of this Declaration. The total amount of Common Expenses shall be divided by the number of Units listed in the most current Schedule A-2 to arrive at a proportional share of Common Expenses to be allocated to each Unit. Each Unit shall be allocated one share of Common Expenses so calculated. As Units are added to the Common Interest Community, the allocation of expenses shall be adjusted to reflect the total number of Units shown on the current Schedule A-2.

(b) Votes. Each Unit in the Common Interest Community shall have one (1) equal vote. Any specified percentage, portion or fraction of Unit Owners, unless otherwise stated in the documents, means the specified percentage, portion, or fraction of all the votes as allocated according to the number of Units listed in the most current Schedule A-2. As Units are added to the Common Interest Community, each Unit shall continue to have one equal vote.

Section 9.3 Assignment of Allocated Interests Upon Creation of Units Pursuant to Exercise of Development Rights. The effective date for assigning Allocated Interests to Units created pursuant to Section 8.1 of this Declaration shall be the date on which the amendment creating the Units is recorded on the Land Records of Jefferson County, West Virginia.

ARTICLEX

Restrictions on Use, Alienation and Occupancy

Section 10.1 Use and Occupancy Restrictions. Subject to the Special Declarant Rights reserved under Article VIII, the following Use and Occupancy Restrictions apply to all Units and, where applicable, to the Common Elements:

(a) RESIDENTIAL USE. All lots shall be used for single-family residences only. No commercial or retail business or activity shall be permitted on any lot, except that a home office may be maintained which does not generate customer traffic to and from the residence.

(b) SUBDIVISION OF LOTS. No lot shall be divided, subdivided or partitioned in any way by sale, gift, devise, or other method of conveyance, except to allow for normal boundary line adjustments. No lot shall be combined or merged with any other lot without the prior written approval and consent of the Executive Board.

(c) PROPERTY MAINTENANCE. Each owner shall keep the property and improvements thereon in a safe, clean and neat condition, and shall comply with all applicable safety, health, police and fire department requirements. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building material shall be permitted to remain exposed on any lot except as necessary during the construction period. Rubbish, leaves, and trash shall not be disposed of on the property by burning in open fires or incinerators. All trash and garbage cans or receptacles shall be stored out of view from neighboring lots, roads, or streets, except at times of scheduled garbage or trash pickup. Unimproved lots shall be mowed at least four (4) times each year. In the event a lot is not kept properly mowed, the Association may enter upon the lot to do so and may charge a reasonable fee to the owner for doing so.

(d) NUISANCE. No noxious, illegal, hazardous, dangerous or offensive use, construction or activity shall be conducted on any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the owners, tenants or occupants of other lots within or adjacent to the property by reason of unsightliness, or the excessive emission of fumes, odors, glare, excessive heat, vibration, gases, vapors, chemicals, radiation, dust, liquid waste, smoke or noise. No lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition or that will be obnoxious to the eye. No tarps shall be used to cover firewood or any other material or object.

(e) UNREGISTERED VEHICLES. No unregistered vehicles of any kind, including, but not limited to, automobiles, trucks, pickups, buses, motorcycles, vans, motor homes, trailers, boats or recreational vehicles, lawn mowers, lawn tractors or other landscape maintenance vehicles shall be parked, stored, or in any way maintained on any lot, except in a garage or other improvement on the lot, or on any street, right-of-way, or common area of the subdivision.

(f) PETS. Only common domestic house pets shall be allowed on any lot or the improvements thereon, provided they are not kept or bred for any commercial purpose. Pets shall not be allowed to roam at large. No farm animals, livestock, or poultry of any kind shall be kept, maintained or in any way allowed on any lot. The Unit Owners Association shall have absolute authority to prohibit an animal from being kept on a lot or in an improvement located thereon.

(g) PARKING. Except for temporary overflow parking from the garage and driveway of any lot, no parking shall be permitted on any street or road within the subdivision. No lot owner shall keep or maintain more than two (2) registered vehicles on the lot, other than inside any improvement thereon, on a regular or continuing basis. Motor homes, recreational vehicles less than twenty (20) feet in length, or boats on trailers may be parked or maintained on a lot provided that they are kept in a garage or are otherwise shielded from view from other lots and streets in the subdivision. Otherwise, no recreational vehicle or motor home shall be parked or maintained on a lot or elsewhere in the subdivision for more than forty-eight (48) hours without the prior written consent of the Association.

(h) SNOWMOBILES, ETC. Except for electric golf carts and golf course maintenance vehicles, no golf carts, snowmobiles, trail bikes, all terrain vehicles or other unlicensed vehicles shall be permitted to operate within the subdivision.

(i) FIREARMS, RECREATION. The discharge of firearms shall not be permitted within the subdivision. No hunting or fishing shall be allowed within the subdivision, except that fishing shall be permitted on a catch and release basis by unit owners and their guests in the storm water management pond. Swimming in the Storm Water Management Pond is prohibited.

U) FLOOD PLAIN. No improvement shall be constructed by a Unit Owner within the boundaries of the one hundred (100) year flood plain shown on any plat of North Hills Subdivision at Cress Creek.

(k) QUARRIES, ETC. No quarrying, mining, or dredging of any type or nature shall be done on any lot.

(l) CONSTRUCTION. During construction, property shall be kept free and clear of unnecessary and unsightly debris. All trash, rubbish and debris shall be cleaned from the property on a reasonably periodic basis during construction and all trash, rubbish and debris shall be promptly removed from the property after construction is completed. Existing storm water and runoff drainage patterns for each lot shall be protected at all times both during and after construction. During construction, reasonable measures shall be taken to prevent erosion by wind and water, including the following:

1. Prior to any earth moving operations, appropriate soil and sediment control measures shall be installed for that phase of operation.

2. Following initial soil disturbance or re-disturbance, permanent or temporary stabilization shall be completed within:

(a) Seven (7) calendar days as to the surface of all perimeter controls, dikes, swales, ditches, perimeter slopes, and all slopes greater than three (3) horizontal to one (1) vertical (3:1) and

(b) Fourteen (14) days as to all other disturbed or graded areas on the project site.

3. All disturbed areas shall be stabilized by grass, gravel, pavement, crown vetch, etc. within seven (7) days after completion of earthwork operations.

4. Regular maintenance shall be provided to all sediment and erosion control measures and they shall be inspected after every rain.

5. These measures shall be revised, modified, or deleted as required by the Soil Conservation District having jurisdiction over the location of construction.

6. Construction of all improvements upon any Unit shall be completed no later than six (6) months from commencement except that residences shall be completed no later than eighteen (18) months from commencement. Failure to so complete any improvements or residence within the aforesaid time parameters shall be in violation of this covenant and shall be assessed a per diem monetary assessment as may be determined from time to time by the Unit Owners Association. Such assessment once made by the Association shall be enforced and collected in the same manner as any other assessment made by the Association.

(m) COMMERCIAL VEHICLES, EQUIPMENT, ETC. Except during periods when construction is taking place on the property, no commercial vehicles, camper tops, construction, or like equipment or mobile or stationary trailers of any kind shall be permitted on any lot.

(n) IMPROVEMENTS. No construction of any improvement on or to the property shall be done without the prior written approval and consent of the Review Committee, as further provided for and set forth herein. All improvements shall be designed, located and constructed in compliance with the Design Guidelines and according to the procedures set forth therein. Each improvement shall be maintained in accordance with the terms and conditions upon which it was approved.

(o) LANDSCAPING. All lots shall be landscaped in accordance with a landscape plan. The construction or installation of any such landscape plan shall not be undertaken without the prior written approval and consent of the Review Committee. All landscape plans shall be designed and installed in compliance with the Design Guidelines and according to the procedures set forth therein. All landscaping shall be maintained in a neat and aesthetic manner which shall include the mowing of lawns, adequate watering, replacement of dead, diseased, or unsightly plantings, removal of weeds from planted areas and appropriate pruning of all plants. No existing trees shall be cut or removed without the prior written consent of the Review Committee.

(p) BUILDING SETBACK REQUIREMENTS. The minimum building setback line for all improvements constructed on any lot shall be as follows:

Front: Twenty-five (25) feet from the front property line. The front property line is defined as the property line fronting on the street from which access to the lot is provided as shown on the plat of North Hills Subdivision at Cress Creek.

Side and Rear: Twelve (12) feet from each side property line and twenty (20) feet from the rear property line; except that for Lots 1 and 2, no construction shall take place within the fifty (50) foot residential buffer as shown on the aforesaid plat of North Hills Subdivision at Cress Creek.

Reference is also made to Note 17 on the aforesaid plat which states: Although this subdivision is in technical compliance with Jefferson County Land Development Ordinance, several lots have geometry that may limit future construction of decks, pools, sheds and other approved structures."

(q) UTILITY LINES. AH utility service lines, including but not limited to, electric, telephone, natural gas, cable television, water and sewer lines shall be buried underground.

(r) OUTDOOR LIGHTING. Outdoor lighting shall be of a type and installation such that no direct glare is visible from adjoining properties, and shall be in compliance with specific requirements of the Design Guidelines.

(s) MAIL BOXES. The Architectural Review Committee shall determine the location, color, size, design, lettering, and all of the particulars of all mail or paper delivery boxes, and standards and brackets and name signs for the boxes in order that the area be strictly uniform in appearance with respect to these items.

(t) STORAGE TANKS. All storage tanks for use in connection with any residence, including tanks for the storage of fuels 10 gallons in capacity or greater, must be buried. No above ground tanks shall be permitted. Fuel storage tanks less than 10 gallons in capacity may be placed above ground, but must be screened by landscaping or other appropriate barrier.

(u) SIGNS. No signs of any character shall be erected, placed, permitted or maintained on any lot or improvement except with the prior written approval and consent of the Review Committee. Nothing herein shall be construed to prevent Declarant, its successors and/or assigns, from erecting, placing, or maintaining sign structures and offices as may be deemed necessary by it for the operation of the subdivision, including the sale of any lot therein.

(i) Notwithstanding the foregoing, a builder or financier may place a sign upon a Unit identifying itself as the builder or financier, as the case may be, during the construction period of an improvement upon the Unit, provided however, that all said signs shall be removed within ninety (90) days after occupancy of the Unit.

(ii) A For Sale sign may be placed upon a Unit for a period of up to one hundred eighty (180) days from the date of the placement of said sign upon said Unit. A For Sale sign shall thereafter not be placed upon the same Unit until sixty (60) days have elapsed from the removal of the prior For Sale sign.

(v) YARD ART. No outdoor sculpture or other non-vegetative decor shall be permitted except that of a temporary or seasonal nature which may be placed upon a Unit for a period of no longer than thirty (30) days. No replacement or substitute yard art shall be placed upon the property unless one hundred twenty (120) days has elapsed from the removal of the preceding temporary or seasonal yard art.

(w) SATELLITE DISHES. Satellite dish receivers up to 18" in diameter are allowed, but must be located upon and attached to the back or sides of the dwelling unit

(20 CENTRAL WATER AND SEWER. All residences or other improvements on the lot shall be connected to the central water and sewer systems serving the subdivision, and no residence or other improvement shall be occupied until such time as it is connected to the central water and sewer system. No private water well or septic system shall be permitted on any lot.

(y) VARIANCES/WAIVERS. The Review Committee shall have the right to waive and/or grant variances, both temporary and permanent, from the covenants, conditions and restrictions set forth herein. However, the waiver or granting of any variance from these covenants, conditions and restrictions as to any lot SHALL NOT affect their applicability to any other lot.

Section 10.2 Restrictions on Alienation. A Unit may not be conveyed pursuant to a timesharing plan.

A Unit may not be leased or rented for a term of less than thirty (30) days. All leases and rental agreements shall be in writing and subject to the requirements of the Documents and the Association.

All leases of a Unit shall be deemed to include a provision that the tenant will recognize and attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Documents against the tenant, provided the Association gives the landlord notice of its intent to so enforce, and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

Section 10.3 Declarant's Rights. Notwithstanding the foregoing, as long as the Declarant is a Unit Owner, the Declarant and its duly authorized agents, representatives and employees may maintain any Unit owned by the Declarant or any portion of the Common Elements as a model unit or sales office. The Declarant may also maintain management offices and signs and displays advertising the Common Interest Community.

ARTICLE XI

Easements, Rights-of-Way and Licenses

Section 11.1 General Provisions. The easements, rights-of-way or licenses to which the Common Interest Community is presently subject are those recited in Schedule A-1, Article X, Sections 8.6, 8.7, 11.2, 11.3, 11.4, 11.5, and 11.6 of this Declaration and those shown on the Final Plats of North Hills Subdivision at Cress Creek, recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, as follows:

Section 11.2 Easement for Access. Declarant reserves unto itself, its successors and/or assigns and invitees a perpetual and non-exclusive easement or right-of-way for ingress, egress and access of all kinds over and across all of the Common Elements and Limited Common Elements of the Common Interest Community to and from all points within the Common interest Community for all purposes.

Section 11.3 Utility Easements. Declarant reserves unto itself, its successors and/or assigns, a perpetual and non-exclusive easement or right-of-way over, through and under the Common Elements within the Common Interest Community for the purpose of constructing, installing, operating and maintaining utility lines, pipes, wires, ducts, conduits, and other facilities for the purpose of furnishing utility and related services and extensions thereof within the Common Interest Community. The Declarant further reserves unto itself, its successors and/or assigns, all those utility easements shown on the aforesaid plat for the purpose of constructing, installing, operating, and maintaining utility lines, pipes, wires, ducts, conduits, and other facilities for the purpose of furnishing utility and related services within the Common Interest Community. If the Declarant grants any such reserved easement or right-of-way to a utility company or other third party, Schedule A-1 will be amended to include any such easement or right-of-way, specifying the recording data for each. The term "utilities" as used in this paragraph includes, but is not limited to, gas, electric, telephone, water, sewer and cable television.

Section 11.4 Recreational and Golf Easement. Declarant reserves unto itself, its guests, invitees, successors and/or assigns, easements to permit the doing of every act necessary and proper to the playing of golf on the golf course adjacent to the Common Interest Community, which said easements are hereby expressly granted, reserved and established. These easements shall include, but is not limited to, the recovery of golf balls from Units, the flight of golf balls over and upon such Units, the use of necessary and usual equipment upon such golf course, the usual and common noise level created by the playing of the game of golf, together with all the other common and usual activity associated with the game of golf and with all normal and usual activities associated with the operation of a country club.

Section 11.5 Reserved.

Section 11.6 Storm Drainage Easements. The Declarant reserves unto itself, its successors and/or assigns, those storm drainage easements shown on the aforesaid Final Plat of North Hills Subdivision at Cress Creek, for the purpose of maintaining proper storm water drainage within the Common Interest Community. The Declarant, or its assigns, shall have the right to enter upon a unit for the purpose of inspecting storm drainage easements and doing such things as are necessary to maintain proper storm water drainage within the Common Interest Community. The Declarant may assign the rights reserved to it under this Section to the Association. No Unit Owner shall interfere with storm water drainage patterns within any such easement, except that, with the prior approval of the Association, a Unit Owner may make alterations to the drainage patterns within the easement if such alterations do not affect any other Unit. Any alterations to a storm drainage easement may require the approval of the Jefferson County Department of Planning, Zoning and Engineering

ARTICLE XII

Allocation and Reallocation of Limited Common Elements

Section 12. 1 Common Elements are allocated equally among all Units. A Common Element not previously allocated as a Limited Common Element may be so allocated only pursuant to the provisions of this Article XII. All allocations will be made by amendments to the Declaration specifying to which Unit or Units the Limited Common Element is located.

All amendments shall specify to which Unit or Units the Limited Common Element is allocated.

Such amendment shall require the approval of all holders of Security Interests in the affected Units, which approval shall be endorsed thereon. The person executing the amendment shall provide an executed copy thereof to the Association which, if the amendment complies with the provisions of this Declaration and the Act, shall record it. The amendment shall contain words of conveyance and must be recorded and indexed in the names of the parties and the Common Interest Community.

The parties executing the amendment shall be responsible for the preparation of the amendment and shall reimburse the Association for its reasonable attorneys' fees in connection with the review of the amendment and for the recording costs.

ARTICLE XIII

Relocation of Boundaries Between Adjoining Units

Section 13.1 Application and Amendment. Subject to other provisions of law, including land use and health regulations, the boundaries between adjoining Units may be relocated by an amendment to the Declaration upon application to the Association by the owners of the Units affected by the relocation. If the owners of the adjoining Units have specified a reallocation between their Units of their Allocated Interests, the application shall state the proposed reallocations. Unless the Executive Board determines, within thirty (30) days after receipt of the application, that the reallocations are unreasonable, the Association shall consent to the reallocation and prepare an amendment that identifies the Units involved, states the reallocations and indicates the Association's consent. The amendment must be executed by those Unit Owners affected and contain words of conveyance between them, and the approval of all holders of Security Interests in the affected Units shall be endorsed thereon. On recordation, the amendment shall be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the Association.

Section 13.2 Recording Amendments. The Association shall prepare and record Plats or Plans necessary to show the altered boundaries between adjoining Units and the Units' dimensions and identifying numbers.

The applicants will pay for the costs of preparation of the amendment and its recording, and the reasonable consultant fees of the Association if the Executive Board deems it necessary to employ a consultant.

ARTICLE XIV

Amendments to Declaration

Section 14.1 General. Except in cases of amendments that may be executed by the Declarant in the exercise of its Development Rights or by the Association under Article XII of this Declaration and §1-107 of the Act, or by certain Unit Owners under Article XII and Section 13.1 of this Declaration and §2-118 of the Act, and except as limited by Section 14.4 and Article XVI of this Declaration, this Declaration, including the Plat and Plans, may be amended only by vote or agreement of Unit Owners of

Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated. The procedure for amendment must follow the procedures of §2-117 of the Act.

Section 14.2 Limitation of Challenges. An action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one (1) year after the amendment is recorded.

Section 14.3 Recordation of Amendments. Each amendment to the Declaration must be recorded in each recording district in which a portion of the Common Interest Community is located and the amendment is effective only upon recording. An amendment, except an amendment pursuant to Article XIII of this Declaration, must be indexed in the grantee's index in the name of the Common Interest Community and the Association and in the grantor's index in the name of the parties executing the amendment.

Section 14.4 When Unanimous Consent Required. Except to the extent expressly permitted or required by other provisions of the Act, an amendment may not create or increase Special Declarant Rights, increase the number of Units, change the boundaries of a Unit, the Allocated Interests of a Unit, or the uses to which a Unit is restricted, in the absence of unanimous consent of the Unit Owners.

Section 14.5 Execution of Amendments. An amendment to the Declaration required by the Act to be recorded by the Association, which has been adopted in accordance with this Declaration and the Act, must be prepared, executed, recorded and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

Section 14.6 Special Declarant Rights. Provisions in this Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

Section 14.7 Consent of Holders of Security Interests. Amendments are subject to the consent requirements of Article XVI.

Section 14.8 Amendments to Create Units. To exercise any Development Right reserved under Section 8.1 of this Declarations, the Declarant shall prepare, execute and record an amendment to the Declaration. The Declarant shall also record either new Plats and Plans necessary to conform to the requirements of Subsections (a), (b) and (d) of §2-109 of the Act or new certifications of Schedule A- 1 previously recorded if the Schedule otherwise conforms to the requirements of those Subsections.

The amendment to the Declaration shall assign an identifying number to each new Unit created and reallocate the Allocated Interests among all Units. The amendment shall describe any Common Elements and any Limited Common Elements created thereby and designate the Unit to which each Limited Common Element is allocated to the extent required by Subsection 2-108(a) of the Act.

ARTICLE XV

Termination

Section 15.1 Termination of the Common Interest Community may be accomplished only in accordance with §2-118 of the Act.

ARTICLE XVI

Mortgagee Protection

Section 16.1 Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain Security Interests. This Article is supplemental to, and not in substitution for, any other provisions of the Documents, but in the case of conflict, this Article shall control.

Section 16.2 Percentage of Eligible Mortgagees. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent of Eligible Mortgagees holding Security Interests in Units which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Units then subject to Security Interests held by Eligible Mortgagees.

Section 16.3 Notice of Actions. The Association shall give prompt written notice to each Eligible Mortgagee and Eligible Insurer of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Common Interest Community or any Unit in which there is a first Security Interest held, insured, or guaranteed by such Eligible Mortgagee or Eligible Insurer, as applicable;

(b) Any delinquency in the payment of Common Expense assessments or fines owed by a Unit Owner whose Unit is subject to a first Security Interest held, insured, or guaranteed, by such Eligible Mortgagee or Eligible Insurer, as applicable, which remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 16.4 of the Declaration;

(e) Any violation of the Restrictions on Use, Alienation of Occupancy set forth in Article X by a Unit Owner whose Unit is subject to a first Security Interest held, insured, or guaranteed by such Eligible Mortgagee or Eligible Insurer;

(f) Any judgment rendered against the Association.

Section 16.4 Consent Required.

(a) Document Changes. Notwithstanding any lower requirement permitted by this Declaration or the Act, no amendment of any material provision of the Documents by the Association or Unit Owners described in this Subsection 16.4 (a) may be effective without the vote of at least sixty-seven percent (67%) of the Unit Owners (or any greater Unit Owner vote required in this Declaration or the Act) and until approved in writing by at least fifty-one percent (51%) of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by this Declaration). The foregoing approval requirements do not apply to amendments effected by the exercise of any Development Right. Material includes, but is not limited to, any provision affecting:

(i) Assessments, assessment liens or subordination of assessment liens;

(ii) Voting rights;

(iii) Reserves for maintenance, repair and replacement of Common Elements;

(iv) Responsibility for maintenance and repairs;

(v) Reallocation of interests in the Common Elements or Limited Common Elements except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and only the Eligible Mortgagees holding Security Interests in such Units must approve such action;

(vi) Rights to use Common Elements and Limited Common Elements;

(vii) Definitions of boundaries of Units except that when boundaries of only adjoining Units are involved, or a Unit is being subdivided, then only those Unit Owners and the Eligible Mortgagees holding Security Interests in such Unit or Units must approve such action;

(viii) Convertibility of Units into Common Elements or Common Elements into Units;

(ix) Expansion or contraction of the Common Interest Community, or the addition, annexation or withdrawal of property to or from the Common Interest Community;

(x) Insurance or fidelity bonds;

(xi) Leasing of Units;

(xii) Imposition of restrictions on a Unit Owner's right to sell or transfer his or her unit;

(xiii) Restoration or repair of the project after a hazard damage or partial condemnation in a manner other than that specified in the Documents;

(xiv) Termination of the Common Interest Community after occurrence of

substantial destruction or condemnation; and

(xv) The benefits of mortgage holders, insurers or guarantors.

(b) Actions. Notwithstanding any lower requirement permitted by this Declaration or the Act, the Association may not take any of the following actions other than rights reserved to the Declarant as Special Declarant Rights, without the approval of at least fifty-one percent (51%) of the Eligible Mortgagees:

(i) Convey or encumber the Common Elements or any portion thereof as to which an eighty percent (80%) Eligible Mortgagee approval is required. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Common Interest Community will not be deemed a transfer within the meaning of this clause);

(ii) The establishment of self-management when professional management had been required previously by any Eligible Mortgagee;

(iii) The restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Documents;

(iv) The termination of the Common Interest Community for reasons other than substantial destruction or condemnation, as to which a sixty-seven percent (67%) Eligible Mortgagee approval is required;

(v) The alteration of any partition or creation of any aperture between adjoining Units (when Unit boundaries are not otherwise being affected), in which case only the owners of Units affected and Eligible Mortgagees of those Units need approve the action;

(vi) The merger of this Common Interest Community with any other common interest community;

(vii) The granting of any easements, leases, licenses or concessions through or over the Common Elements (excluding, however, any utility easements serving or to serve the Common Interest Community and excluding any leases, licenses or concessions for no more than one (1) year);

(viii) The assignment of the future income of the Association, including its right to receive Common Expense assessments; and

(ix) Any action taken not to repair or replace the Property.

(c) The Association may not change the period for collection of regularly budgeted Common Expense assessments less frequently than annually without the consent of all Eligible Mortgagees.

(d) The failure of an Eligible Mortgagee to respond within thirty (30) days to any written request of the Association for approval of an addition or amendment to the Documents shall constitute an implied approval of the addition or amendment.

Section 16.5 Development Rights. No Development Rights may be exercised or voluntarily abandoned or terminated by the Declarant unless all persons holding Security Interests in the Development Rights consent to the exercise, abandonment, or termination.

Section 16.6 Inspection of Books. The Association shall permit any Eligible Mortgagee or Eligible Insurer to inspect the books and records of the Association during normal business hours.

Section 16.7 Financial Statements. The Association shall provide any Eligible Mortgagee or Eligible Insurer which submits a written request with a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if:

(a) the Common Interest Community contains fifty (50) or more Units, in which case the cost of the audit shall be a Common Expense; or

(b) any Eligible Mortgagee or Eligible Insurer requests it, in which case the Eligible Mortgagee or Eligible Insurer shall bear the cost of the audit.

Section 16.8 Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors, and may be enforced by any of them by any available means, at law, or in equity.

Section 16.9 Attendance at Meetings. Any representative of an Eligible Mortgagee or Eligible Insurer may attend and address any meeting which a Unit Owner may attend.

Section 16.10 Appointment of Trustee. In the event of damage or destruction under Article XXI or condemnation of all or a portion of the Common Interest Community, any Eligible Mortgagee may require that such proceeds be payable to a Trustee established pursuant to Section XXIII of this Declaration. Such Trustee may be required to be a corporate trustee licensed by the State of West Virginia. Proceeds will thereafter be distributed pursuant to Article XXI or pursuant to a condemnation award. Unless otherwise required, the members of the Executive Board acting by majority vote through the president may act as Trustee.

ARTICLE XVII

Assessment and Collection of Common Expenses

Section 17.1 Apportionment of Comm on Expenses. Except as provided in Section 17.2, all Common Expenses shall be assessed against all Units in accordance with their percentage interest in the Common Expenses as shown on Schedule A-8 to this Declaration.

Section 17.2 Common Expenses Attributable to Fewer than all Units.

(a) Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Unit or Units to which the Limited Common Element is assigned. If any such Limited Common Element is assigned to more than one (I) Unit, the

Common Expenses attributable to the Limited Common Element shall be assessed equally among the Units to which it is assigned.

(b) Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner shall be assessed against the Unit which benefits from such service.

(c) Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.

(d) An assessment to pay a judgment against the Association may be made only against the Units in the Common Interest Community at the time the judgment was entered, in proportion to their Common Expense liabilities.

(e) If a Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against that Unit Owner's Unit.

(f) Fees, damage deposits as defined by the Architectural Review Committee guidelines, charges, late charges, fines, all costs associated with collection thereof, and interest charged against a Unit Owner pursuant to the Documents and the Act are enforceable as Common Expense assessments.

Section 17.3 RESERVED

Section 17.4 Lien.

(a) The Association has a lien on a Unit for an assessment levied against the Unit or fines imposed against its Unit Owner from the time the assessment or fine becomes due. Fees, charges, late charges, fines and interest charged pursuant to the Act and the Documents are enforceable as assessments under this Section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) A lien under this Section is prior to all other liens and encumbrances on a Unit except: (1) a lien and encumbrances recorded before the recordation of the Declaration; (2) a first Security Interest on the Unit recorded before the date on which the assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. A lien under this Section is also prior to all Security Interests described in Subdivision (2) of this Subsection to the extent of the Common Expense assessments based on the periodic budget adopted by the Association pursuant to Section 17.5 of this Article which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce either the Association's lien or a Security Interest described in Subdivision (2) of this Subsection. This Subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of a lien for other assessments made by the Association. A lien under this Section is not subject to the provision of WV Code §38-9-3.

(c) Recording of the Declaration constitutes record notice and perfection of the lien. Further recording of a claim of lien for assessment under this Section is not required.

(d) A lien for an unpaid assessment is extinguished unless proceedings to enforce

the lien are instituted within three years after the full amount of the assessment becomes due; provided, that if an Owner of a Unit subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty (30) days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

(e) This Section does not prohibit an action to recover sums for which Subsection (a) of this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

(f) A judgment or decree in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.

(g) A judgment or decree in an action brought under this Section is enforceable by execution under WV code §38-4-1, et seq.

(h) The Association's lien must be foreclosed as a mortgage or deed of trust on real estate is foreclosed, or as a lien is foreclosed under WV Code §38-5-1, et seq.

(i) In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the Unit Owner to collect all sums alleged to be due from that Unit Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense assessments based on a periodic budget adopted by the Association pursuant to Section 17.5 of this Declaration.

U) If a holder of a first or second Security Interest in a Unit forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid assessments against that Unit which became due before the sale, other than the assessments which are prior to that Security Interest under Subsection 17.4 (b) of this Declaration. Any unpaid assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Unit Owners, including the purchaser.

(k) In the case of foreclosure under WV Code §38-5-1, et .. the Association shall give reasonable notice of its action to each lien holder of a Unit whose interest would be affected.

(1) Any payments received by the Association in the discharge of a Unit Owner's obligation may be applied to the oldest balance due.

Section 17.5 Budget Adoption and Ratification. Within thirty (30) days after adoption of a proposed budget for the Common Interest Community, the Executive Board shall provide a summary of the budget to each Unit Owner, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Unit Owners continues until the Unit Owners ratify a budget proposed by the Executive Board.

Section 17.6 Ratification of Non-budgeted Common Expense Assessments. If the Executive Board votes to levy a Common Expense assessment not included in the current budget, other than one enumerated in Section 17.2 of this Declaration, in an amount greater than fifteen (15%) percent

of the current annual operating budget, the Executive Board shall submit such Common Expense to the Unit Owners for ratification in the same manner as a budget under Section 17.5.

Section 17.7 Certificate of Payment of Common Expense Assessments. The Association, upon written request, shall furnish to a Unit Owner a statement in recordable form setting out the amount of unpaid assessments against the Unit. The statement must be furnished within (10) days after receipt of the request and is binding on the Association, the Executive Board and each Unit Owner.

Section 17.8 Acceleration of Common Expense Assessments. In the event of default for a period of ten (10) days by any Unit Owner in the payment of any Common Expense assessment levied against his or her Unit, the Executive Board shall have the right, after Notice and Hearing, to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable.

Section 17.9 Commencement of Common Expense Assessments. Common Expense assessments may begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs. Until such time as Declarant commences the assessment of Common Expense Assessments, Declarant shall be required to maintain Common Areas and pay all expenses associated in connection therewith.

Section 17.10 No Waiver of Liability for Common Expenses. No Unit Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the assessments are made.

Section 17.11 Personal Liability of Unit Owners. The Unit Owner of a Unit at the time a Common Expense assessment or portion thereof is due and payable is personally liable for the assessment. Personal liability for the assessment shall not pass to a successor in title to the Unit unless he or she agrees to assume the obligation.

ARTICLE XVIII

Right to Assign Future Income

Section 18.1 The Association may assign its future income, including its right to receive Common Expense assessments, only by the affirmative vote of Unit Owners of Units to which at least fifty-one (51%) percent of the votes in the Association are allocated, at a meeting called for that purpose, and the Eligible Mortgagee consent described in Article XVI.

ARTICLE XIX

Persons and Units Subject to Documents

Section 19.1 Compliance with Documents. All Unit Owners, tenants, mortgagees and occupants of Units shall comply with the Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the entering into occupancy of a Unit constitutes agreement that the provisions of the Documents are accepted and ratified by such Unit Owner, tenant, mortgagee or occupant, and all such provisions recorded on the Land Records of Jefferson County, West Virginia, are covenants running with the land and shall bind any Persons having at any time any interest or estate in such Unit.

Section 19.2 **Adoption of the Rules.** The Executive Board may adopt Rules regarding the use and •occupancy of Units affecting the Common Elements and Limited Common Elements and the activities of occupants, subject to Notice and Comment.

ARTICLE XX

Insurance

Section 20.1 **Coverage.** To the extent reasonably available, the Executive Board shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Executive Board determines that any insurance described herein will not be maintained, the Executive Board shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners and Eligible Mortgagees at their respective last known addresses.

Section 20.2 **Property Insurance.**

(a) Property insurance covering:

(i) All Common Elements and property reserved to become Common Elements, but excluding land, excavations, foundations, and other items normally excluded from property policies; and

(ii) All personal property owned by the Association.

(b) Amounts. The Common Elements and reserved Common Elements equal to one hundred percent (100%) of their actual cash value at the time the insurance is purchased and at each renewal date. Personal property owned by the Association for an amount equal to its actual cash value.

The Executive Board is authorized to obtain appraisals periodically for the purpose of establishing said replacement cost of the project facilities and the actual cash value of the personal property, and the cost of such appraisals shall be a Common Expense.

The maximum deductible for insurance policies shall be Ten Thousand Dollars ($10,000.00) or one percent (1%) of the policy face amount. The policy deductible shall be a Common Expense of the Association.

(c) Risks Insured Against. The insurance shall afford protection against "all risks" of direct physical loss commonly insured against.

(d) Other provisions. Insurance policies required by this Section shall provide that:

(i) Each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or membership in the Association.

(ii) The insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of a Unit Owner;

(iii) An act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy.

(iv) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance.

(v) Loss must be adjusted with the Association.

(vi) Insurance proceeds shall be paid to any insurance trustee designated in the policy for that purpose, and in the absence of such designation to the Association, in either case to be held in trust for each Unit Owner and such Unit Owner's mortgagee.

(vii) The insurer may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

(viii) The name of the insured shall be substantially as follows: "North Hills Subdivision at Cress Creek Unit Owners Association for the use and benefit of the individual Owners."

Section 20.3 Liability Insurance. Liability insurance, including medical payments insurance, in an amount determined by the Executive Board but in no event less than One Million Dollars ($1,000,000.00), covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements, and the activities of the Association.

(a) Other Provisions. Insurance policies carried pursuant to this Section shall provide that:

(i) Each Unit Owner is an insured person under the policy with respect to liability arising out of the Unit Owner's interest in the Common Elements or membership in the Association.

(ii) The insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of a Unit Owner;

(iii) An act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy.

(iv) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance.

(v) The insurer issuing the policy may not cancel or refuse to renew it until

thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

Section 20.4 Unit Owner Policies. An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his or her own benefit.

Section 20.5 Workers' Compensation Insurance. The Executive Board shall obtain and maintain Worker's Compensation Insurance to meet the requirements of the laws of the State of West Virginia.

Section 20.6 Directors' and Officers' Liability Insurance. The Executive Board shall obtain and maintain Directors' and Officers' liability insurance, if available, covering all of the directors and officers of the Association in such limits as the Executive Board may, from time to time, determine.

Section 20.7 Other Insurance. The Association may carry other insurance which the Executive Board considers appropriate to protect the Association or the Unit Owners.

Section 20.8 Premiums. Insurance premiums shall be a Common Expense.

ARTICLE XXI

Damage To Or Destruction of Property

Section 21.1 Duty to Restore. A portion of the Common Interest Community for which insurance is required under §3-113 of the Act or for which insurance carried by the Association is in effect, whichever is more extensive, that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

(a) The Common Interest Community is terminated;

(b) Repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety; or

(c) Eighty percent (80%) of the Unit Owners, including each owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild.

Section 21.2 Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 21.3 Plans. The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Executive Board, a majority of Unit Owners and fifty-one percent (51%) of Eligible Mortgagees.

Section 21.4 Replacement of Less Than Entire Property.

(a) The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Common Interest Community;

(b) Except as to the extent that other persons will be distributees, (i) the insurable proceeds attributable to Units or Limited Common Elements that are not rebuilt must be distributed to the owners of the Units to which those Limited Common Elements were allocated, or to the lien holders, as their interests may appear, and (ii) the remainder of the proceeds must be distributed to each Unit Owner or lienholder, as their interests may appear, in proportion to the Common Elements of all the Units.

Section 21.5 Insurance Proceeds. The Trustee, or if there is no Trustee, then the Executive Board of the Association, acting by the President, shall hold any insurance proceeds in trust for the Association, Unit Owners and lien holders as their interests may appear. Subject to the provisions of Subsection 21.1 (a) through Subsection 21.1 (c) of this Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged Property, and the Association, Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Common Interest Community is terminated.

Section 21.6 Certificates by the Executive Board. The Trustee, if any, may rely on the following certifications in writing made by the Executive Board:

(a) Whether or not damaged or destroyed Property is to be repaired or restored;

(b) The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

Section 21.7 Certificates by Attorneys or Title Insurance Companies. If payments are to be made to Unit Owners or mortgagees, the Executive Board, and the Trustee, if any, shall obtain and may rely on a title insurance company or attorney's title certificate of title or a title insurance policy based on a search of the Land Records of Jefferson County, West Virginia, from the date of the recording of the original Declaration stating the names of the Unit Owners and the mortgagees.

ARTICLE XXII

Rights to Notice and Comment; Notice And Hearing

Section 22.1 Right to Notice and Comment. Before the Executive Board amends the Bylaws or the Rules, whenever the Documents require that an action be taken after "Notice and Comment", and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action shall be given to each Unit Owner in writing and shall be delivered personally or by mail to all Unit Owners at such address as appears in the records of the Association, or published in a newsletter or similar publication which is routinely circulated to all Unit Owners. The notice shall be given not less than five (5) days before the proposed action is to be taken. It shall invite comment to the Executive Board orally or in writing before the scheduled time of the meeting. The right to Notice and Comment does not entitle a Unit Owner to be heard at a formally constituted meeting.

Section 22.2 **Right to Notice and Hearing.** Whenever the Documents require that an action be taken after "Notice and Hearing", the following procedure shall be observed: The party proposing to take the action (e.g., the Executive Board, a committee, an officer, the Manager, etc.) shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

Section 22.3 **Appeals.** Any Person having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of persons other than the Executive Board by filing a written notice of appeal with the Executive Board within ten (10) days after being notified of the decision. The Executive Board shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

ARTICLE XXIII

Executive Board

Section 23.1 **Minutes of Executive Board Meetings.** The Executive Board shall permit any Unit Owner to inspect the minutes of Executive Board meetings during normal business hours. The minutes shall be available for inspection within fifteen (15) days after any such meeting.

Section 23.2 **Powers and Duties.** The Executive Board may act in all instances on behalf of the Association, except as provided in this Declaration, the Bylaws or the Act. The Executive Board shall have, subject to the limitations contained in this Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community which shall include, but not be limited to, the following:

(a) Adopt and amend Bylaws, Rules and regulations;

(b) Adopt and amend budgets for revenues, expenditures and reserves;

(c) Collect assessments for Common Expenses from Unit Owners;

(d) Hire and discharge managing agents;

(e) Hire and discharge employees and agents, other than managing agents, and independent contractors;

(f) Institute, defend or intervene in litigation or administrative proceedings or seek

injunctive relief for violation of the Declaration or the Association's Bylaws or Rules in the Association's name on behalf of the Association or two (2) or more Unit Owners on matters affecting the Common Interest Community;

(g) Make contracts and incur liabilities;

(h) Regulate the use, maintenance, repair, replacement and modification of the Common Elements;

(i) Cause additional improvements to be made as a part of the Common Elements;

(j) Acquire, hold, encumber and convey in the Association's name any right, title or interest to real property or personal property, but Common Elements may be conveyed or subjected to a Security Interest only pursuant to §3-1 12 of the Act;

(k) Grant easements for any period of time including permanent easements, and leases, licenses and concessions for no more than one year, through or over the Common Elements;

(l) Impose and receive a payment, fee or charge for the use, rental or operation of the Common Elements, other than Limited Common Elements described in Subsections (2) and (4) of §2-102 of the Act, and for services provided to Unit Owners;

(m) Impose a reasonable charge for late payment of assessments and, after Notice and Hearing, levy reasonable fines for violations of this Declaration, Bylaws, Rules and regulations of the Association;

(n) Impose a reasonable charge for the preparation and recordation of amendments to this Declaration, resale certificates required by §4-109 of the Act for a statement of unpaid assessments;

(o) Provide for the indemnification of the Association's officers and Executive Board and maintain Directors' and officers' liability insurance;

(p) Assign the Association's right to future income, including the right to receive Common Expense assessments;

(q) Exercise any other powers conferred by this Declaration or the Bylaws;

(r) Exercise any other power that may be exercised in this state by legal entities of the same type as the Association;

(s) Exercise any other power necessary and proper for the governance and operation of the Association;

(t) By resolution, establish committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Unit Owners and the Executive Board. However, actions taken by a committee may be

appealed to the Executive Board by any Unit Owner within forty-five (45) days of publication of such notice, and such committee action must be ratified, modified or rejected by the Executive Board at its next regular meeting;

(u) Appoint a trustee for the receipt, administration, and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses, and other like sources as defined in the Bylaws.

ARTICLE XXIV

Cress Creek Architectural Review Committee

Section 24.1 The Association shall establish the North Hills at Cress Creek Architectural Review Committee.

Section 24.2 Membership. The Review Committee shall consist of five (5) members. Two (2) members shall be appointed by Declarant, its successors or assigns, one of which members shall represent the Cress Creek County Club. The remaining three (3) members shall be appointed by the Association. Upon the termination of the period of Declarant control set forth in Section 8.lO(a), four (4) members shall be appointed by the Association. The Cress Creek Country Club shall be entitled to membership on the Review Committee regardless of whether it continues to be owned by Declarant or whether it is a separate entity.

Section 24.3 Quorum and Voting. A Quorum of three (3) members shall be required for any action taken by the Review Committee. Each member of the Review Committee shall be entitled to one (1) vote.

Section 24.4 Procedures and Guidelines. In its review of all plans for improvements and landscaping submitted by Unit Owners, the Review Committee shall apply the procedures and guidelines set forth in the Design Guidelines.

Section 24.5 Consent Required. No Unit Owner shall construct any improvement or install any landscaping plans on any Unit without first obtaining the written consent of the Review Committee.

ARTICLE XXV

Reserved

ARTICLE XXVI

Reserved

ARTICLE XXVII

Open Meetings

Section 27.1 **Access.** All meetings of the Executive Board, at which action is to be taken by vote will be open to the Unit Owners, except as hereafter provided.

Section 27.2 **Notice.** Notice of every such meeting will be given not less than twenty-four (24) hours prior to the time set for such meeting, by posting such notice in a conspicuous location in the Common Interest Community, except that such notice will not be required if an emergency situation requires that the meeting be held without delay.

Section 27.3 **Executive Sessions.** Meetings of the Executive Board may be held in executive session, without giving notice and without the requirement that they be open to Unit Owners, in either of the following situations only:

(a) No action is taken at the executive session requiring the affirmative vote of Directors; or

(b) The action taken at the executive session involves personnel, pending litigation, contract negotiations, enforcement actions, or matters involving the invasion of privacy of individual unit owners, or matters which are to remain confidential by request of the affected parties and agreement of the Board.

ARTICLE XXVIII

Condemnation

If part or all of the Common Interest Community is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with §1-107 of the Act.

ARTICLE XXIX

Miscellaneous

Section 29.1 **Captions.** The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Documents nor the intent of any provision thereof.

Section 29.2 **Gender.** The use of the masculine gender refers to the feminine and neuter genders and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so require.

Section 29.3 **Waiver.** No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 29.4 **Invalidity.** The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability of effect of the remainder, and in such event, all of the other provisions of the Documents shall continue in full force and effect.

Section 29.5 **Conflict.** The Documents are intended to comply with the requirements of West Virginia Code §36(b)-1-101, et seq. In the event of any conflict between the Documents and the provisions of the code, the provisions of the code shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

IN WITNESS WHEREOF, Home Hill Corporation, a West Virginia corporation, has executed this Declaration by causing its President to sign thereto its corporate name and its Secretary to affix its corporate seal, this 6 day of July, 2007 both being duly authorized by resolution of the Board of Directors of said corporation.

HOME **HILL** CORPORATION,
a West Virginia corporation

By: Margaret M. Dressman
Its President

STATE OF WEST VIRGINIA,

COUNTY OF JEFFERSON, to-wit:

I, REBECCA F. SMITH, a Notary Public in and for said County and State, do hereby certify that Margaret M. Drennen, PRESIDENT, who signed the name of Home Hill Corporation, a West Virginia corporation, bearing date the 6th day of July, 2007 has this day acknowledged the same before me in my said County to be the act and deed of said Corporation.

Given under my hand this 6th day of July, 2007.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
REBECCA F. SMITH
c/o JOHN K. DORSEY, ATTORNEY AT LAW
108 W. CONGRESS STREET
CHARLES TOWN, WV 25414
My commission expires December 23, 2012

(AFFIX NOTARIAL SEAL)

Notary Public

My Commission Expires: DECEMBER 23, 2012

FIRST AMENDMENT TO

THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR

NORTH HILLS SUBDIVISION AT CRESS CREEK

This First Amendment to the Declaration of Covenants, Conditions and Restrictions for North Hills Subdivision at Cress Creek made this .2l_ day of February, 2008, by Home Hill Corporation, a West Virginia Corporation ("Declarant").

WHEREAS, by Declaration of Covenants, Conditions and Restrictions for North Hills Subdivision at Cress Creek ("Declaration") dated July 6, 2007 and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Deed Book 1038 at page 415, the Declarant submitted certain real property in Shepherdstown District, Jefferson County, West Virginia (as more particularly described in Schedule A-1 of said Declaration) to the provisions of the Uniform Common Interest Ownership Act, W.V. Code Sec. 36B-1-101, et seq., ("Act") for purposes of creating North Hills Subdivision at Cress Creek, a planned community, as further set forth therein; and

WHEREAS, pursuant to Sec. 14.1 of said, the Declaration may be amended pursuant to agreement of Unit Owners of Units to which at least sixty seven (67%) of the votes in the Association are allocated; and

WHEREAS, Declarant is the Unit Owner of 19 of the 20 Units in the Common Interest Community, to which ninety five (95%) of the votes in the Association are allocated; and

WHEREAS, Declarant now desires to amend said Declaration in order to modify the location of an easement or right of way shown on the plat of survey dated March 16, 2007, prepared by Dewberry & Davis, LLC, entitled "Final Plat Showing Lots 1-20 & Lot 21 (Residue) North Hills at Cress Creek," and recorded in the aforesaid Clerk's Office in Plat Book 24 at Page 29, *et seq.,* which is outside the boundaries of the Common Interest Community; to reflect the modification of certain storm drain easements within the Common Interest Community; and to make other minor modifications to said Declaration as set forth herein;

NOW, THEREFORE, WITNESSETH: That the Declaration of Covenants, Conditions and Restrictions for North Hills Subdivision at Cress Creek dated July 6, 2007 and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Deed Book 1038 at page 415, be, and the same hereby is, amended as set forth herein and the attached schedules. Except as specifically provided by the terms of this First Amendment, each and every provision of said Declaration remains in full force and effect and is incorporated by reference herein.

IN WITNESS WHEREOF, Home Hill Corporation, a West Virginia corporation, has executed this Declaration by causing its President to sign thereto its corporate name and its Secretary to affix its corporate seal, this 29 day of February, 2008 both being duly authorized by resolution of the Board of Directors of said corporation.

HOME HILL CORPORATION,
a West Virginia corporation

By: Margaret M. Drennen
Its President

STATE OF WEST VIRGINIA,

COUNTY OF JEFFERSON, to-wit:

I, Jennifer L Brown, a Notary Public in and for said County and State, do hereby certify that Margaret M. Drennen, PRESIDENT, who signed the name of Home Hill Corporation, a West Virginia corporation, bearing date the 29 day of February, 2008 has this day acknowledged the same before me in my said County to be the act and deed of said Corporation.

Given under my hand this 29 day of February, 2008.

(AFFIX NOTARIAL SEAL)

OFFICIAL SEAL
STATE OF WEST VIRGINIA
NOTARY PUBLIC
Jennifer L. Brown
PO Box 1199
Shepherdstown, WV 25443
My Commission Expires March 8, 2014

Jennifer L Brown
Notary Public

My Commission Expires: March 8, 2014

DESCRIPTION OF REAL ESTATE INCLUDED IN THE COMMON INTEREST COMMUNITY

1. The following described real estate is included within the North Hills at Cress Creek Subdivision:

A tract or parcel of land located in Shepherdstown District, Jefferson County, West Virginia, said tract at the northeast comer of Cress Creek Golf Course between said golf course and the conservations easement created by MMD, LLC.

Beginning at a set 5/8-inch rebar with I.D. Cap (460), a comer with Home Hill Corporation; thence for two lines with Home Hill Corporation

South 79'36'41" East a distance of **152.11 feet** to a set 5/8-inch rebar with I.D. Cap (461); thence

North 74'26'41" East a distance of **456.06 feet** to set 5/8-inch rebar with I.D. Cap (9982), a corner with Home Hill Corporation; thence leaving Home Hill Corporation and continuing for three (3) new lines through the property of MMD, LLC.

South 15'33'19" East a distance of **818.70 feet** to set 5/8-inch rebar with I.D. Cap (9838) ; thence

South 22'37'22" West a distance of **446.65 feet** to set 5/8-inch rebar with I.D. Cap (12211); thence

North 67'22'38" West a distance of **81.71 feet** to set 5/8-inch rebar with I.D. Cap (12210); thence

South 12'22'13" West a distance of **24.99 feet** to set 5/8-inch rebar with I.D. Cap (11842); thence

North 67'03'08" West a distance of **940.46 feet** to set 5/8-inch rebar with I.D. Cap (9877), said rebar a point in the boundary with Home Hill Corporation; thence with Home Hill Corporation **North 22'56'52" East** a distance of **795.37 feet** the **Point of Beginning,** containing 19.954 ACRES, more or less.

2. Easements and Rights of Way

The Common Interest Community either includes or is subject to the following easements and rights of way. (It should be noted that certain of the easements and rights of way listed below were granted by previous owners of the property which is now included within the Common Interest Community. Due to the uncertainty of the descriptions of certain of these easements and rights of way, it may not be possible to determine their exact location. Some of the easements and rights of way listed below may not actually now affect the Common Interest Community.)

A. Residential Buffer reserved over portions of Lots 1 and 2 as shown on the plat entitled Final Plat showing Lots 1-20 & Lot 21 (Residue) North Hills at Cress Creek, made by Dewberry & Davis, LLC, dated March 16, 2007, revised September 26, 2007 and December 12, 2007, and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Plat Book 24 at page 88, *et seq.*. Reference is also made to that certain plat entitled Final Plat showing Lots 1-20 & Lot 21 (Residue) North Hills at Cress Creek, made by Dewberry & Davis, LLC, dated March 16, 2007, and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Plat Book 24 at page 29, *et seq.*.

B. Storm water management easements reserved over portions of Lots 1, 2, 16, 17, 19 and 20, as shown on the aforesaid plat.

C. Sanitary sewer and storm drainage easements reserved over portions of Lots 8, 14, 15, 16, 17, 19 and 20 as shown on the aforesaid plat.

D. Utility easements reserved over portions of Lots 18 and 20, also including a power line easement reserved over portions of Lot 20 and an electric line easement over lots 1, 2, 3, 4 and 5 as shown on the aforesaid plat. In addition, all side and rear setbacks on all lots shall be reserved as utility easements.

E. Temporary grading easements reserved over portions of Lots 2, 3, 4, 5, 6, 7, 9, 10, and 18, as shown on the aforesaid plat.

F. A blanket easement to the appropriate public service district in all subdivision rights of way for the purpose of constructing water and/or sewer lines and facilities and a pump station access easement on the storm water management lot as shown on the aforesaid plat. The pump station located on the storm water management lot will be dedicated to the Corporation of Shepherdstown.

G. Those streets and roadways shown on the aforesaid plat as North Hills Circle, Briar Mountain Drive, North Ridgemont Way and South Ridgemont Way.

H. Deed of Easement dated December 31, 2002 and recorded in the aforesaid Clerk's Office in Deed Book 969 at page 281 from Home Hill Corporation and Fernbank Subdivision at Cress Creek Unit Owners Association, Inc., grantors, to Eugene Olcott and Margaret Olcott, grantees, granting to said grantees, their heirs, successors and assigns, a perpetual easement and right of way over and along that certain roadway identified as Fernbank Drive, being 50 feet in width, situate and located within the Fernbank Subdivision at Cress Creek as the same is more particularly set forth, designated, described and located on the various plats and surveys of the Fernbank Subdivision at Cress Creek for the purpose of ingress and egress of vehicular traffic from the property of the grantees to State Secondary Route 5.

I. Deed of easement dated July 6, 2007, from Home Hill Corporation, grantor, to Eugene L. Olcott and Margaret W. Olcott, grantees and recorded in the aforesaid Clerk's Office simultaneously or closely following the recording of this Declaration, granting to said grantees, their heirs, successors and assigns, a perpetual easement and right of way over and along those certain roadways identified as Briar Mountain Drive and North Hills Circle, being 50 feet in width, situate within the North Hills Subdivision at Cress Creek as the same are more particularly set forth, designated, described and located on the aforesaid plat of North Hills Subdivision at Cress Creek. Said deed of easement amends, modifies and replaces, in part, that certain 50 foot wide easement reserved to Eugene Olcott and Margaret Olcott, their successor and assigns, in a deed dated September 18, 2003, from the said Eugene L. Olcott and Margaret W. Olcott, grantors, to MMD, L.L.C., grantee, and recorded in the aforesaid Clerk's Office in Deed Book 979, at page 576, and which is identified in said deed as the first mentioned 50' foot wide right of way reserved by the grantors therein, the centerline of which may be relocated as set forth therein.

J. That certain deed dated July 5, 2007, from MMD, L.L.C. to Home Hill Corporation and recorded in the aforesaid Clerk's Office in Deed Book 1038, at page 410, reserving to MMD, L.L.C., its successors and assigns, a perpetual and non-exclusive easement or right of way fifty (50) feet wide over the streets and roadways shown on the aforesaid plat as North Hills Circle and Briar Mountain Drive for purposes of ingress and egress of all kinds between the land of MMD, L.L.C. and Fernbank Drive.

K. That certain easement or right of way dated July 10, 1956 from Roy V. Clem to Potomac Power and Light Company and recorded in the aforesaid Clerk's Office in Deed Book 213 at page 525.

L. An easement to construct, repair and maintain two retaining walls on Lot 20.

K. That certain easement or right of way dated June 21, 1961 from Roy V. Clem, et al. To Potomac Light and Power Company and recorded in the aforesaid Clerk's Office in Deed Book 248 at page 543.

L. That certain right of way agreement dated March 14, 1977 from Eugene L. Olcott, et al., to The Potomac Edison Company and recorded in the aforesaid Clerk's Office in Deed Book 420 at page 187.

M. That certain easement or right of way over the "connector road" and Howard Farm Road (formerly known as Turner Lane) created by a deed of easement recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Deed Book 857, at Page 700, and in Deed Book 857, at Page 711.

NUMBER OF UNITS, UNIT BOUNDARIES AND DESCRIPTION OF UNITS WITHIN THE COMMON INTEREST COMMUNITY

The number of units within the Common Interest Community, the boundaries of each Unit and the individual numbers of the Units are shown on the plat entitled Final Plat showing Lots 1-20 & Lot 21 (Residue) North Hills at Cress Creek, made by Dewberry & Davis, LLC, dated March 16, 2007, revised September 26, 2007 and December 12, 2007, and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Plat Book 24 at page 88, *et seq.*. Lot 21 Residue, containing 80.046 acres, as shown on said plat is not included within the Common Interest Community and is not a Unit within the Common Interest Community. Reference is also made to that certain plat entitled Final Plat showing Lots 1-20 & Lot 21 (Residue) North Hills at Cress Creek, made by Dewberry & Davis, LLC, dated March 16, 2007, and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Plat Book 24 at page 29, *et seq.*.

LIMITED COMMON ELEMENTS

NONE.

REAL ESTATE WHICH IS OR MUST BECOME COMMON ELEMENTS

1. The real estate which is or must become Common Elements is all of that real estate within the Common Interest Community which is shown on the plat entitled Final Plat showing Lots 1-20 & Lot 21 (Residue) North Hills at Cress Creek, made by Dewberry & Davis, LLC, dated March 16, 2007, revised September 26, 2007 and December 12, 2007, and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Plat Book 24 at page 88, *et seq.,* other than and excluding the individual units shown on said plat and identified on Schedule A-2 and also excluding Lot 21 (residue) as shown on said plat. Reference is also made to that certain plat entitled Final Plat showing Lots 1-20 & Lot 21 (Residue) North Hills at Cress Creek, made by Dewberry & Davis, LLC, dated March 16, 2007, and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Plat Book 24 at page 29, *et seq.*.

2. The storm water management lot shown on the aforesaid plat as "SWM Lot," containing 1.063 acres.

3. The storm water management easement shown on the aforesaid plat as "SWM Easement," containing 0.584 acres, located on Lot 21 (Residue).

4. The easement shown on the aforesaid plat as "Offsite Grading/Access Easement," containing 0.385 acres, located on the adjoining property of the Cress Creek Golf Course.

5. An easement or right of way over and along that certain roadway identified as Fernbank Drive being fifty (50) foot in width, situate and located within the Fernbank Subdivision at Cress Creek in the Shepherdstown District of Jefferson County, West Virginia as particularly designated and described on the various plats of the Fernbank Subdivision at Cress Creek, and as further set forth in a deed dated July 5, 2007, from MMD, L.L.C., to Home Hill Corporation, recorded in the aforesaid Clerk's Office in Deed Book 1038, at page 410.

6. An easement to construct, repair and maintain the retaining walls on Lot 20 as set forth in Schedule A-1.

7. The following improvements may be included within the real estate which is or must become Common Elements:

(A) Streets and roads
(B) Street signs
(C) Entrance signs and gates
(D) Cluster mailboxes (if constructed)
(E) School bus shelters (if constructed)
(F) Security gate (if constructed)

PORTIONS OF COMMON ELEMENTS WHICH MAY SUBSEQUENTLY BE ALLOCATED AS LIMITED COM:MON ELEMENTS

Those portions of the Common Elements which may be subsequently allocated as Limited Common Elements are all those Common Elements described on Schedule A-4.

REAL ESTATE TO WHICH DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS APPLY

The real estate to which the development rights included in Section 8.1 (b) and (c) and the special declarant rights included in Section 8.4 (a) through (d) apply is all of that real estate described in Schedule A-1.

THE DEVELOPMENT RIGHT TO ADD REAL ESTATE

The development right to add real estate to the Common Interest Community applies to the following described real estate located in the Shepherdstown District, Jefferson County, West Virginia, as shown on the tax maps of the Jefferson County Assessor's Office for said district, as follows:

TAX MAP	PARCEL
5	9
5	10.3
5	7

ALLOCATION OF INTERESTS

The allocation of interests among Units within the Common Interest Community is as follows:

Units 1 through 20, inclusive. A I/20th interest each.

REAL ESTATE SUBJECT TO WITHDRAWAL

The development right to withdraw real estate from the Common Interest Community applies to all of the real estate described on Schedule A-1.

FINAL PLAT SHOWING LOTS 1-20
NORTH HILLS SUBDIVISION AT CRESS CREEK

Attached hereto and recorded in the Plat Books of the records of the Clerk of the County Commission of Jefferson County, West Virginia, are the plats of all the Units and more particularly, that certain plat entitled Final Plat showing Lots 1-20 & Lot 21 (Residue) North Hills at Cress Creek, made by Dewberry & Davis, LLC, dated March 16, 2007 and revised September 16, 2007 and December 12, 2007, recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Plat Book 24, at page 88, *et seq.*. Reference is also made to that certain plat entitled Final Plat showing Lots 1-20 & Lot 21 (Residue) North Hills at Cress Creek, made by Dewberry & Davis, LLC, dated March 16, 2007, and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Plat Book 24 at page 29, *et seq.*.

Swimming Prohibited
in Storm Water Management Pond

Based on a report of visitors swimming in the Storm Water Management Pond referred to the Board, the board on July 22, 2026 unanimously approved the amended the Article X, Section 10.1 (i) to further limit liability concerns and now reads as follows:

FIREARMS. **RECREATION.** The discharge of firearms shall not be permitted within the subdivision. No hunting or fishing shall be allowed within the subdivision, except that fishing shall be permitted on a catch and release basis by unit owners and their guests in the storm water management pond. **Swimming in the Storm Water Management Pond is prohibited.**

To support these liability concerns, the board approved the purchase of signage to be placed around the Storm Water Management Pond.