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Brief for Allan - Deane in Opposition to Motions for
Stay and Summary Judgment

Pgs - 124

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION

DOCKET NOS. L-36896-70 P.W., L-28061-71 P.W.

THE ALLAN DEANE CORPORATION, :
et al, :

Plaintiffs :

vs. :

TOWNSHIP OF BEDMINSTER, :
et al, :

Defendants :

and :

LYNN CEISWICK, :
et al, :

vs. :

TOWNSHIP OF BEDMINSTER and :
THE TOWNSHIP OF BEDMINSTER :
PLANNING BOARD, :

Defendants. :

Civil Action
On Remand Following Appeal From
the Superior Court of New Jersey
Law Division, Somerset County,
Docket No. L-36896-70 P.W. and
L-28061-71 P.W.

BRIEF FOR PLAINTIFF
ALLAN-DEANE CORPORATION
IN OPPOSITION TO MOTIONS FOR STAY AND SUMMARY JUDGMENT

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PRELIMINARY STATEMENT

The Hills Development Company has proposed a program to settle this long-standing exclusionary zoning suit. This proposed affordable housing program utilizes subsidies provided by the developer in the form of syndication proceeds and land cost write-downs. New Jersey Mortgage Finance Agency bond proceeds will be used to bring mortgage rates down to 11.25%, with an interest write down to 7.25% in the first year. Although the lower income housing is designed to be constructed at a low per square foot construction cost, the dwellings are attractively designed and include features such as patios or decks.

Time is of the essence on this offer. If the proposal is not swiftly accepted, the public funds upon which it is dependant will be allocated elsewhere. Hills will have no choice but to continue litigating and arguing that it is not subject to the mandate of Mt. Laurel II.

COUNTER-STATEMENT OF FACTS

A. Early History

Plaintiff Allan-Deane Corporation is the owner of the largest parcel of land in the highest density development corridor of Bedminster Township and has been in litigation to settle the zoning status of its property for twelve years. On August 23, 1971, Allan-Deane instituted a prerogative writ action against Bedminster Township attacking the zoning scheme then in effect. A separate suit filed by the other Plaintiffs (the "Ceiswick plaintiffs" now represented by the Department of the Public Advocate) was consolidated with the Allan-Deane action by the New Jersey Supreme Court. Allan-Deane Corp. v. Tp. of Bedminster, 63 N.J. 591 (1973).

On February 25, 1975 the Law Division of Superior Court issued a lengthy decision invalidating the zoning of land in the "Bedminster-Pluckemin Corridor" of the Township because of the failure to permit multi-family uses at 5 to 15 units per acre in accordance with the Somerset County Master Plan. In a supplementary letter opinion issued on October 17, 1975, the Court responded to Southern Burlington County NAACP v. Tp. of Mt. Laurel, 67 N.J. 151 (1975) (hereinafter "Mt. Laurel I") by invalidating the entire zoning scheme of Bedminster Township and ordering rezoning to take place by January 31, 1976. This Order to rezone was stayed on January 29, 1976 to permit an appeal by Bedminster Township to the Appellate Division and a subsequent Petition for Certification, both of which were unsuccessful.

On December 19, 1977 after more than six years of court proceedings, Bedminster Township adopted a new zoning ordinance which was allegedly responsive to the trial court's orders. Allan-Deane again was forced to institute court proceedings, this time by way of motion for an Order to Show

Cause pursuant to R. 1:10-5. The hearings held pursuant to this Order lasted 40 days, and on December 13, 1979 the trial court issued a formal decision which was followed on March 6, 1980 by an order requiring Bedminster Township to rezone the Bedminster-Pluckemin Corridor for five to fifteen units per gross acre "unless in specific areas, for particular reasons, such density would constitute improper land use" (Pa 9). In other words, Bedminster was free to exclude areas in the Corridor from high density zoning and to zone large areas for very low density so long as the average density of all Corridor land was set at between five and fifteen units per acre. Since this Order granted Bedminster Township substantial discretion and did not mandate the rezoning of the Allan-Deane Corp. property, Allan-Deane did not receive a "builders remedy", merely the right to participate in the rezoning process.

B. The Ordinance At Issue

The current Bedminster Township Land Development Ordinance permits a total of 5,711 dwelling units at gross densities up to ten (10) dwelling units per acre in the "Bedminster-Pluckemin Corridor". (Pa 19) Rather than designate all land in the Corridor for a uniform density of at least five units per acre, Bedminster chose to divide the Corridor between five zoning districts, with the "R- $\frac{1}{4}$ " District containing the largest land area.

Single family detached dwellings at four units per acre are permitted as of right in the R- $\frac{1}{4}$ zone. The highest density option of Planned Unit Developments at 10 units per acre is permitted on designated R- $\frac{1}{4}$ land, provided that 20% of the units are provided as "subsidized and/or least-cost housing". At least twenty-five percent of the subsidized/least-cost units must be senior citizen units, and if subsidies are not available, this twenty-five percent must be provided as rental units (subsidized or minimum-sized, rent-controlled units) or minimum-sized for-sale units. At least thirty-five percent of the

subsidized/least-cost units must be rental units which are limited in size, required to contain a minimum percentage of three or more bedroom units, and may not be rented for more than the Fair Market Rents established by the Department of Housing and Urban Development ("H.U.D.") for Section 8 housing.

Subsidized and least-cost housing units are required to be phased into the planned development in accordance with the following schedule:

<u>% Of Subsidized Units and/or Least Cost Units</u>	<u>% of Market Units</u>
0%	Up to 25%
At least 25%	Up to 50%
At least 50%	Up to 75%
100%	More than 75% (Pa35)

Of the six inclusionary mechanisms considered by Bedminster Township, only initial and resale price controls on units offered for sale were rejected. Price controls were objected to as potential violations of federal and state anti-trust laws, and all parties agreed that initial price controls would not keep housing "affordable" without resale controls.

C. Phase I Preliminary Approval

Pursuant to the Bedminster Land Development Ordinance, on April 15, 1981 Allan-Deane was granted "Optional Phase I Preliminary Approval" for the construction of 1,287 dwelling units and 350,000 square feet of nonresidential uses on its property. The procedures and submission requirements of Phase I Preliminary Approval are designed to comply with the Municipal Land Use Law, N.J.S.A. 40:55D-46a, which requires that preliminary site plans and engineering documents be "in tentative form for discussion purposes". The effect of this Phase I Preliminary Approval is: "to require all subsidized and/or least-cost housing to be provided in accordance with the ordinance." (Section 13-807.4 of Bedminster Land Development Ordinance)

The Public Advocate filed a Notice of Appeal on May 1, 1981 attacking the validity of the Law Division's final judgment of March 20, 1981 on the grounds that: the Bedminster Land Development Ordinance provisions described above failed to provide for low and moderate income housing; and, Allan-Deane should have been required to guarantee the production of housing affordable to lower income persons. On November 4, 1981, the Law Division ordered the parties to implement "any requirements for affirmative action which may be imposed" as a result of the within appeal and conditioned all of Allan-Deane's future development approvals upon compliance with such affirmative action requirements.

Preliminary and final site plan approval for the construction of 227 townhouses was granted on January 11, 1982 and 88 townhouses were approved on June 1, 1983. Future sections of the development can not be approved under the existing ordinance unless they contain subsidized and/or least-cost housing in accordance with the phase-in requirements of the Bedminster Ordinance.

Other approvals obtained include: preliminary/final site plan approval for a major collector road; preliminary/final site plan/conditional use approval for a water storage tank; preliminary/final subdivision approval for commercial development; preliminary/final subdivision approval for townhouse lots; preliminary/final site plan approval for a sewer pump station; preliminary/final site plan approval for a sewage treatment plan; sanitary sewer extension permits; stream encroachment permits; D.E.P. Stage II and N.J.P.D.E.S. permits for a sewage treatment plan; registration and approval of public offering statements pursuant to the Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:22A-26; and soil erosion and sediment control permits.

Since early 1982, and more intensively in the past nine months, Hills Development Company has been diligently seeking state and federal subsidies for the project; has been attempting to comply with the requirements of the New Jersey Housing Finance and Mortgage Finance agencies for mortgage and other housing subsidies; and has expended thousands of dollars on applications, architects designs, and other preliminary costs associated with meeting its obligation, as it understands it, to provide housing under the ordinance. These efforts are near fruition, and in fact, require only a cooperative attitude on the part of the Township of Bedminster and approval by the Public Advocate so that housing for persons of low and moderate income can in fact be provided in a timely fashion.

POINT I

THE HILLS DEVELOPMENT COMPANY PROPOSAL TO SETTLE THIS CASE IS IN CONFORMANCE WITH MOUNT LAUREL II AND ACCEPTANCE OF IT BY ALL PARTIES WOULD RESOLVE MAJOR ISSUES PRESENTED BY THIS CASE.

The Hills Development Company believes it has the right to proceed under the terms of the existing Bedminster ordinance and the Supreme Court directive of the Madison decision. In order to settle this long-standing litigation, however, The Hills has now extended a settlement proposal to Bedminster and the Public Advocate. (The full proposal appears in the Appendix.)

The Hills Development Company is offering to construct 260 housing units for sale or rent to persons of low and moderate income. It proposes to use its own funds as well as public funds to subsidize these units, and to establish a mechanism to keep the units affordable to persons of low and moderate income. This offer is specifically conditioned upon the following:

1. Full settlement of all issues currently remaining before this Court; and
2. A stipulation from Bedminster Township that it will rapidly process all applications pending before it for the low and moderate units and market units; and
3. Full participation on the part of the Public Advocate and the Township of Bedminster in the creation and operation of the proposed Bedminster Hills Housing Corporation.

If the Public Advocate and Bedminster do not accept this offer, then Hills will withdraw it and continue to litigate all issues, taking the positions set forth within this Brief.

A. The Hills Development Company Proposal

1. Total Number of Units

The Hills Development Company proposes to build and offer for sale or rent, a total of 260 units to be set aside for person of low and moderate income. Since the development as a whole will consist of a maximum of 1,287 dwelling units,¹ slightly over 20% of the units will be setaside units; 172 units will be offered for sale and 88 units will be available for rental.

2. Affordability Analysis

The following table summarizes current low and moderate income levels for Bedminster Township, N.J.:

LOW AND MODERATE INCOME CEILINGS FOR NEWARK SMSA BY FAMILY SIZE

FAMILY SIZE	LOW INCOME	MODERATE INCOME
1	\$ 11,450	\$ 17,650
2	13,100	20,150
3	14,700	22,700
4	16,350	25,200
5	17,650	26,750
6	18,950	28,350

Source: Newark Area Office, HUD. (March 31, 1983)

¹ The Phase I Preliminary Approval Granted April 15, 1981 pursuant to Section 13-807 of the Bedminster Ordinance authorizes a maximum of 1,287 units on the Hills P.U.D. property.

The following chart demonstrates the affordability of the units to be offered for sale; the analysis is based upon a formula which allocates 28%² of family income to housing costs.

AFFORDABILITY ANALYSIS-FOR SALE CONDOMINIUMS

	ONE BEDROOM	TWO BEDROOM (LOFT)	TWO BEDROOM	THREE BEDROOM
Unit Price	\$28,000	\$36,000	\$46,000	\$52,000
(down payment)	(2,800)	(3,600)	(4,600)	(5,200)
Mortgage Amount	<u>\$25,200</u>	<u>\$32,400</u>	<u>\$41,400</u>	<u>\$46,850</u>
Annual Constant	----- .08256 -----		----- .10388 -----	

ANNUAL COST

Mortgage Payment	\$ 2081	\$ 2675	\$ 4301	\$ 4867
Property Taxes	342	439	561	634
Association Fee	<u>462</u>	<u>594</u>	<u>759</u>	<u>858</u>
TOTAL	\$ 2885	\$ 3708	\$ 5621	\$ 6359
Minimum Income Needed at 28% of Income	\$10,304	\$13,243	\$20,075	\$22,711
Low or Mod. Income and Family Size	Low- One/Two persons	Low- Three persons	Mod.- Three/ Four persons	Mod.- Four/Five persons

² See following section entitled "The Hills Proposal Complies with Mt. Laurel II" for justification for this factor.

The following chart demonstrates the affordability of the rental units to be offered; the analysis is based upon a formula which allocates 30%² of income to rent and utilities.

**RENTAL AFFORDABILITY ANALYSIS
FOR PROPOSED MAYFIELDS LOW AND MODERATE INCOME RENTAL UNITS**

UNIT TYPE HOUSEHOLD SIZE	<u>ONE BEDROOM</u>		<u>TWO BEDROOM</u>		<u>THREE BEDROOM</u>	
	1	2	3	4	4	5
<u>LOW INCOME FAMILIES</u>						
INCOME CEILING		\$13100		\$16350		\$17650
		<u>X .3</u>		<u>X .3</u>		<u>X .3</u>
MAX SHELTER AMT.		3930		4905		5295
(UTILITY ALLOWANCE)		(600)		(840)		(1080)
MAXIMUM NET RENT		<u>\$3330</u>		<u>\$4065</u>		<u>\$4215</u>
90% MAX NET RENT		\$2997		\$3659		\$3794
MONTHLY AMOUNT		250		305		316
<u>MODERATE INCOME FAMILIES</u>						
INCOME CEILING	\$17650	\$20150	\$22700	\$25200	\$25200	\$26750
	<u>X .3</u>	<u>X .3</u>	<u>X .3</u>	<u>X .3</u>	<u>X .3</u>	<u>X .3</u>
MAX. SHELTER AMT.	5295	6045	6810	7560	7560	8025
(UTILITY ALLOWANCE)	(600)	(600)	(840)	(840)	(1080)	(1080)
MAXIMUM NET RENT	<u>\$4695</u>	<u>\$5445</u>	<u>\$5970</u>	<u>\$6720</u>	<u>\$6480</u>	<u>\$6945</u>
90% MAX NET RENT	\$4226	\$4901	\$5373	\$6048	\$5832	\$6251
MONTHLY AMOUNT	352	408	448	504	486	521

3. Maintenance of Affordability (Resale Controls)

The general policies to govern the imposition of resale controls in this project will include the following:

- a. Resale controls will be established in order to ensure that all units, upon their resale, will be both affordable to and purchased by households of low and moderate income.

- b. The initial sales price shall be increased on the basis of an appropriate inflation index to the time of resale. Under consideration is the Home Purchase Component of the Consumer Price Index (this component is free of interest-related effects).
- c. Adjustments to the sales price for property improvements, or major fixtures or appliances, may be made, with the determination of the amount of the adjustment in the hands of the nonprofit corporation.
- d. The nonprofit corporation will have the exclusive right to refer potential purchasers to units to be sold, at the price established above, from a waiting list maintained by the nonprofit corporation, for a fixed period of 90 days after it has been notified of the availability of a unit.
- e. If a unit has not been sold (in that no contract of sale has been executed), by the end of that period, the seller may sell it on the open market. In that event, however, the seller will have to pay all or the greater part of the excess of the selling price over the established resale price to the nonprofit corporation, which will use the funds as a subsidy.

The above provisions will be framed in the form of deed covenants, restrictions and reservations and will be fully disclosed to all potential buyers.

4. Subsidy Proposal

The 260 housing units will require both public and private subsidies in order to be affordable to persons of low and moderate income.

The Hills Development Company will assist the project in the following ways:

- a. For the rental units, The Hills Development Company will write down the cost of the land from its market value of \$11,500 per dwelling unit to \$2,000 per dwelling unit. Further, The Hills Development Company intends to syndicate the rental portion of the project, and will contribute 80% of the proceeds to the non-profit entity which it proposes to manage the project. This entity, titled the "Bedminster Hills Housing Corporation," is described more fully below.
- b. For the units offered for sale, The Hills Development Company will not initially assess any land costs. However, the deeds to these units will have a recapture provision, whereby if the income of the homebuyer rises, he will be obligated to pay for the land costs normally attributable to these units.

The Hills Development Company has applied to the New Jersey Mortgage Finance Agency for a setaside of bond proceeds for mortgages to low and moderate income homebuyers. While this is expected to provide permanent financing at the rate of 10.5%, the Hills Development Company will build in an interest buydown as demonstrated in the following chart:

EFFECT OF PROPOSED MORTGAGE BUYDOWN PROGRAM

YEAR OF MORTGAGE	LOW INCOME	MODERATE INCOME
1	7 1/4%	9 3/4%
2	7 3/4%	10 1/4%
3	8 1/4%	10 3/4%
4 through 30	8 3/4%	11 1/4%

For the rental units, Hills is seeking permanent financing from a variety of state and federal agencies, and has arranged conventional financing to start construction immediately while negotiations with public agencies proceeds.

5. Description of the Units For Sale

The Mayfields units will be constructed in two story buildings, with three different building types ranging from 8 units per building to 16 units each. The buildings are planned to allow construction at relatively low per square foot construction cost. The buildings are attractively designed; visual quality is achieved by varying rooflines, and by providing variety to the facade through decks and exterior staircases, as well as careful placement of windows and doors. Each unit has an exterior area for its own use, either a patio or a deck, which also serves as an entry to the unit. Although a major goal is to provide these units as inexpensively as possible, it is essential to provide units that will exist harmoniously with the balance of The Hills PUD. This is particularly important in view of the relatively high net density of the PUD which leaves no room for extensive buffers and separations between the different parts of the development.

TABLE I

 LOW AND MODERATE INCOME UNITS PROFILE

<u>Number</u>	<u>Building Type</u>	<u>Square Feet</u>	<u>Preliminary Price³</u>
44	1 Bedroom	567	\$28,000 (low)
44	2 Bedroom (sleeping loft)	675	\$36,000 (low)
48	2 Bedroom	769	\$46,000 (moderate)
36	3 Bedroom	997	\$52,000 (moderate)

³ See Appendix for full affordability calculation.

6. The Rental Housing Component

The rental housing component will contain units which are physically similar to the for sale units. Fifty percent of each building type (a total of 44 units) will be affordable to low income families, with the remainder (44 units) to be affordable to moderate income families.

<u>Number</u>	<u>Building Type</u>	<u>Square Feet</u>	<u>Monthly Rental Rates⁴</u>	
			<u>Low</u>	<u>Moderate</u>
24	1 Bedroom	567	\$230	\$380
24	2 Bedroom (Sleeping Loft)	675	\$270	\$350
32	2 Bedroom	769	\$285	\$475
8	3 Bedroom	997	\$300	\$500

7. Administration of the Project

The Hills Development Company proposes that a nonprofit corporation be established to administer the project. Members of the board of trustees of the corporation would be selected by the Township of Bedminster, the Public Advocate, The Hills Development Company, and the Mortgage Finance Agency. The Bedminster Hills Housing Corporation, as this entity is entitled, would be responsible for all tasks involved in administering the rental and sales components of the project. It would serve as the basic policy making unit for the project, and would hire staff and management agents and insure that the goals of providing and retaining affordable housing within The Hills are met.⁵

⁴ Based on current income limits for the Newark SMSA. Figures subject to change. See rental component description in the appendix for further information.

⁵ See Statement of Policies, Procedure and Organization For The Bedminster Hills Housing Corporation in the Appendix.

B. The Hills Proposal Complies With Mt. Laurel II

The Hills proposal, if accepted, will provide 130 units to low income families (earning less than 50% of area median income)⁶ and 130 units to moderate income families (earning between 50% and 80% of area median).

The term "affordable" housing was used in Mt. Laurel II to indicate that a low or moderate income family should pay no more than 25% of its income for housing costs. (92 N.J. 158 at 221, footnote 8). Hills Development Company believes that there are two important sub-issues flowing from the use of these terms.

First, what costs are properly considered "housing costs"; secondly, should a family allocate more than 25% of its income for housing costs.

1. What Are "Housing Costs"?

The components of "housing costs" tend to vary with the type of housing and the style of ownership involved. Housing costs may be defined to include interior and exterior maintenance; it may include the cost of purchasing basic appliances such as a refrigerator and stove. In the broadest sense, housing costs may include payments toward reserves to replace or repair those items that wear out over time.

Up until recently, utilities were frequently included in base rent on the rationale that the construction (and therefore the level of insulation) of the units was beyond the control of the individual tenant, since the landlord had control over fuel costs and distribution systems. In the mid-1970s, however, with the advent of the energy crisis, it became far more common for utilities to be

⁶ While the New Jersey Supreme Court speaks of the Standard Metropolitan Statistical Area (SMSA), in April of 1983, the US Census Bureau and the Department of Housing and Urban Development adopted a new category called the Primary Metropolitan Statistical Area (PMSA). The data for the relevant PMSA (the Hunterdon - Somerset -Middlesex PMSA) is not expected to be available until mid-1984. The Hills Development Company will use that data when it becomes available; until then, however, Hills will use the existing data for Somerset County derived from the Newark SMSA.

individually metered and not included in base rent⁷, not only to encourage individual tenants to exercise more restraint, but also because building codes mandated higher levels of insulation.

For homes which are owned rather than rented, the inclusion of utility costs makes even less sense since utility costs are within the total control of the individual household and are not a lien item.

"Housing costs" are defined in The Hills proposal as follows:⁸

For housing offered for sale, housing costs are the sum of principal, interest, taxes, and insurance for a basic housing unit. No appliances are included in the base price and a 10% down payment is assumed. In the case of units which are part of a common scheme of ownership, such as a condominium, where homeowner association assessments include hazard insurance and exterior maintenance, housing costs are defined as the total of principal, interest, taxes, and homeowner association fees.

"Housing costs" for rental units is defined by The Hills Development Company as the base rent for the unit, furnished with utility systems including a stove, refrigerator and heating system, but not including utility costs which will be the responsibility of the individual tenant.

⁷ The Federal Department of Housing and Urban Development computes a utility allowance for rental units which it supports. This allowance is based on utility use for a typical family in a unit comparable to the one for which rent is being set. In its rentals, HUD provides for "unbundled" utility costs, and figures the rent for the unit as rent plus this utility allowance equaling no more than thirty percent of a household's income. The "utility allowance" is not actually collected.

⁸ A review of the literature and consultation with a variety of housing researchers indicates that The Hills Development Company's definitions of housing costs are in conformance with general practice. See especially the Guidelines of the Federal Home Loan Mortgage Corporation.

2. The Percentage Of Income Which Should Be Allocated To Housing Costs

The second issue relates to the percentage of income allocated to housing costs. The New Jersey Supreme Court believed that 25% of a family's income was the standard which should be met if the housing was to be "affordable" to persons of low and moderate income. In support of its selection of the 25% figure, the Court cited three studies which were published in 1973, 1975, and 1978. Since these studies were published, there has been a substantial shift in opinion as to the validity of that figure.

First, as to renters in HUD assisted housing, HUD changed the renter's calculation from 25% to 30% of a family's adjusted gross income.⁹ Thus, if 30% of a tenant's adjusted gross income would be \$300/month, and a utility allowance figured for the unit would be \$40/month, the tenant's rent would be \$260/month.

A different system is needed for housing to be purchased by low and moderate income persons. First, a generally accepted figure to support principal, interest, taxes and insurance used by lenders is 28% of an applicant's gross income.¹⁰ In many cases, lenders are willing to use a higher proportion of an individual's income. For example, the Mortgage Guarantee Insurance Corporation (MGIC) will use 32% of an individual's income to qualify that person for a guaranteed mortgage, and under some circumstances, will go as high as 38%.¹¹

⁹ 12 U.S.C. 1701 s(d) (1982).

¹⁰ See Federal Home Loan Mortgage Corporation Guidelines, 1983.

¹¹ See MGIC Operations Manual, 1982.

A second reason why buyers should allocate a higher percentage of income to housing than renters is that interest payments and local real estate taxes are deductible for federal income tax purposes. These payments thus provide income to the homebuyer in the form of offset taxes.

A third reason for higher payments by buyers is that a significant portion of real estate payments amount to "forced savings." While a rental payment is strictly an operating expense for households, this is not the case for homeownership. Households are generally able to recoup most, if not all of the principal payments which they have made for housing when a unit is sold. Nowhere is this more likely to be true than in The Hills housing development where housing units will certainly appreciate in value over time. Therefore it is appropriate to recognize that where the unit is owned rather than rented, a portion of the "housing cost" payment is really forced savings, which allows the purchaser to allocate at least 28% of income to such payments.

C. Compatibility of The Hills offer with the Bedminster Ordinance

The Hills Development Company believes that its offer, as outlined in more detail in the attached appendix, is compatible with the current and proposed revisions to the Bedminster Ordinance. There are some minor deviations between The Hills proposal and the ordinance. These deviations are so modest that they should have no effect on the ability of Bedminster to accept the proposal.

1. Comparison Of The Hills Offer With The Existing Ordinance

The Bedminster Township subsidized least-cost housing ordinance provision is described at page 3 of this brief. The offer which The Hills Development Company makes herein is substantially in conformance with the requirements of the ordinance. Hills proposes to build 260 units, which is in excess of the 20% required by the ordinance. These units are within the size

parameters set by the ordinance. The units will rent for costs below the fair market rental program and be affordable to low and moderate income families.

The proposed offer of The Hills Development Company does not strictly comply with the following requirements of the ordinance:

a. None of the units are constructed for senior citizens since there is, at the present time, no senior citizen subsidy money available.

b. The Hills Development Company proposes to build 88 units for rental, rather than the 90 units required to meet the 35% requirement of the ordinance. This modification is necessary due to the configuration of the buildings. In order to literally comply with the ordinance, Hills would have to mix some sales and rental units in the same building, posing extreme administrative difficulties. Hills believes that this shortage of 1.5 units is de minimus.

c. The Hills Development proposal does not include any 4 bedroom units since demographic studies have indicated that the market for 4 bedroom units is not substantial. Furthermore, there are excessive building costs involved in the construction of affordable 4 bedroom units.

d. The number of 3 bedroom rental units is slightly under the requirements of the ordinance.

The Hills Development Company proposal therefor is in substantial conformance with the existing ordinance, and waivers for the very small deviations have been requested and could be granted by the Bedminster Planning Board.

2. The Proposed Amendment to The Ordinance

The ordinance as introduced for first reading by the Bedminster Township Committee in September of 1983 is substantially similar to the existing ordinance. The ordinance amendment requires the developer to propose, as part

of the application for the development, a mechanism to be used to insure that affordable dwellings remain affordable over time. Affordable units are defined as those rented or sold at a cost not exceeding 25% of the earning limits calculated for low or moderate income households.

The Hills Development Company believes that the 25% figure is too low for the reasons discussed herein. Otherwise, The Hills Development application is substantially in conformance with the proposed Bedminster ordinance amendment.

To summarize, The Hills Development Company proposal for the construction of 260 units of housing designed to meet the needs of low and moderate income people, is substantially in conformance with the requirements of Mount Laurel II and the existing and proposed ordinances of the Township of Bedminster. If the offer is accepted, then lower income housing can begin to be constructed in 1983 and will be offered for sale or rental to these persons by mid-1984. Failure to accept this offer will result in unnecessary costs to Hills Development Company, unnecessary expense and delay to persons of low and moderate income, and no real benefit to any of the parties.

POINT II

DEFENDANT TOWNSHIP OF BEDMINSTER IS NOT ENTITLED TO A STAY OR INJUNCTION ON THE PROCESSING OF ALL DEVELOPMENT APPLICATIONS SUBMITTED BY THE HILLS DEVELOPMENT COMPANY

Defendant Township of Bedminster has moved for a stay of the processing of all development applications filed by The Hills Development Company until such time as this Court decides all issues remanded by the Appellate Division, or until the Bedminster Township Committee has adopted an ordinance amendment which is approved by this Court as in compliance with Mt. Laurel II. Although this request is styled as a "request for stay", Bedminster Township admits at page 11 of its brief that it is really requesting preliminary injunctive relief. The brief and affidavit submitted by Bedminster Township do not demonstrate its entitlement to such equitable relief.

Injunctions are considered extraordinary equitable relief, utilized primarily to forbid and prevent irreparable injury, to be administered with sound discretion and always upon considerations of the justice, equity and morality in a given case. New Jersey State Bar Ass'n. v. Northern N.J. Mortgage Association, 22 N.J. 184 (1956); Suenram v. The Society of the Valley Hospital, 155 N.J. Super 593 (Law Div. 1977). Injunctive relief is generally granted only where the injury to the moving party will be irreparable if the relief is denied, where the inconvenience or loss to the opposing party will be minimal if the relief is obtained and where the movant is able to make a preliminary showing of a reasonable probability of ultimate success on the merits. Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299 (E&A 1878); Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108 (E&A 1930); Crowe v. DeGioia, 90 N.J. 126, 133 (1982).

Harm is ordinarily considered irreparable as a matter of equity, if it cannot be redressed adequately by monetary damages. Bedminster Township has not demonstrated any irreparable injury in its moving papers. The currently pending site plan applications which Bedminster seeks to have stayed specifically include low and moderate income housing. In the event The Hills Development Company proposal for affordable lower income housing is not approved by this Court, The Hills can modify its program to meet said standards and thus provide for a portion of Bedminster's fair share.

In applying the second test for the grant of a preliminary injunction, this court must weigh the relative hardship of the parties in granting or denying relief. Crowe v. DeGioia, 90 N.J. 126 (1982); Isolantite Inc. v. United Electric Radio and Machine Workers, 130 N.J. Eq. 506 (Ch. 1941). This case had been pending in the Appellate Division from March 20, 1981 through August 3, 1983 when the Appellate Division remanded all issues to this Court. Bedminster Township had plenty of time during the pendency of the appeal to consider what type of ordinance amendment it had to adopt in order to meet the claims of the Public Advocate. After January 20, 1983 (when the New Jersey Supreme Court decided Mt. Laurel II) the Township Committee should have been beginning the process of adopting an ordinance amendment to comply. However, it was not until September 19, 1983 that the Township Committee introduced such an ordinance amendment.

The preliminary and final site plan applications which Bedminster seeks to enjoin were approved in concept on June 1, 1983. The Hills Development Company has under construction all of the units for which municipal approvals can be granted under the existing ordinance. It has work crews available, working drawings completed and favorable weather conditions to start construction of the proposed low and moderate income housing units this

year. There is no barrier to the construction and sale of the lower income units, assuming favorable action by the parties to this case on The Hills Development Company's settlement proposal. If The Hills Development Company is delayed in the processing of its subsidy application until such time as Bedminster decides to adopt an ordinance which is found to be in compliance with Mt. Laurel II, the following hardship may result to The Hills Development Company:

1. Hills will build and sell the remaining units for which it has approval and will then have to shut down its construction and sales operations. This will result in substantial additional costs to the company since it will remain liable for its essential overhead and interest charges during this period of time; these charges may exceed \$100,000.00 per month;

2. The New Jersey Mortgage Finance Agency has informed Hills that 1983 is the last year in which it may be able to offer a tax free bond given the fact that its existing legislative authority expires this year and may not be renewed by the legislature;

3. The relatively low mortgage interest rates which will help to make some units within this project affordable to low and moderate income families may not be available again.

The third criteria for a preliminary injunction is that the movant demonstrate a reasonable probability of ultimate success on the merits; an injunction should therefor be denied where the legal right underlying plaintiff's claim is unsettled. Crowe v. DeGioia, supra; Citizens Coach Co. v. Camden Horse R.R. Co., supra; Ideal Laundry Co. v. Gugliemone, supra.

The Public Advocate claimed in the Appellate Division that all remaining issues including the validity of the Bedminster Ordinance were clearly resolved in the Mt. Laurel II opinion. The Appellate Division disagreed with this position and therefor remanded the case to this Court. (slip. op., p. 6, A-196).

Thus, the legal right underlying Bedminster's claim is far from settled and injunctive relief should be denied. The remainder of this brief demonstrates that Bedminster has not made a preliminary showing of a reasonable probability of ultimate success on the merits with respect to the issue of the Allan-Deane Corporation's responsibility under Mt. Laurel II to provide for lower income housing.

Additionally, Bedminster Township's failure to respond swiftly to the decision in Mt. Laurel II and the Appellate Division remand should be viewed in light of the history of this litigation which demonstrates the Township's tendencies to delay taking action to assure the production of lower income housing until forced to do so by court order. This course of action should not be rewarded with an injunction which prevents the only developer willing to provide lower income housing from doing so. Additionally, such an injunction or selective moratorium against development applications submitted only by the Hills Development Company is explicitly prohibited by the Municipal Land Use Law, N.J.S.A. 40:55D-90. The Municipal Land Use Law requires Bedminster Township to approve the currently pending site plan applications conditioned upon the removal of any legal barrier to development. (N.J.S.A. 40:55D-22a).

POINT III

THE MARCH 20, 1981 TRIAL COURT DECISION SHOULD BE AFFIRMED AND PRELIMINARY INJUNCTIVE RELIEF DENIED BECAUSE MT. LAUREL II SHOULD NOT BE APPLIED RETROACTIVELY, AND ALTERNATIVELY, ALLAN-DEANE DID NOT RECEIVE A BUILDER'S REMEDY AND IS PROTECTED FROM CHANGES IN THE LAW BY VESTED PHASE I PRELIMINARY APPROVAL.

A. Mt. Laurel II Should Not Be Given Retroactive Application In This Case.

The final judgment of compliance appealed from herein was rendered on March 20, 1981, after ten years of litigation and almost two years before the New Jersey Supreme Court's landmark pronouncement in the Mt. Laurel II case. Allan Deane's motion for direct certification and consolidation with the pending Mt. Laurel II cases was denied on December 22, 1981.

The Allan-Deane Corporation has the dubious distinction of being the only developer-litigant to have pursued an exclusionary zoning case for twelve years, obtained a court-ordered rezoning, and been rewarded for its efforts by being stalled in appellate proceedings for two years and thus possibly subjected to the dramatically new legal principles set forth in Mt. Laurel II. Allan-Deane is also in the unique position of being the only developer-litigant to have begun substantial residential construction pursuant to development approvals granted under land use regulations which were declared valid by a trial court, and which were allegedly rendered invalid by a subsequent Supreme Court decision.

The legal issue of whether the Mt. Laurel II decision should apply "retroactively" must be considered in this very unique factual context. What we mean by "retroactive application" is: the requirement that litigants in exclusionary zoning cases which resulted in a pre-Mt. Laurel II trial court decision and judgment of compliance be subject to all of the Mt. Laurel II

rulings. The Allan-Deane Corporation takes the position that retroactive application would be contrary to the principle that court decisions which significantly change constitutional law must be applied prospectively only and, additionally, that retroactive application would be inequitable given Allan-Deane's justifiable reliance on the Madison decision.

In its Mt. Laurel II decision, the New Jersey Supreme Court retreated from its holdings that the private housing industry would be unable to satisfy the state's lower income housing needs in the foreseeable future without substantial federal and state subsidy assistance. Southern Burlington County N.A.A.C.P. vs. Township of Mount Laurel, 67 N.J. 151, 211 (1975) (hereinafter "Mt. Laurel I"); Oakwood at Madison, Inc. vs. Township of Madison, 72 N.J. 481, 510 (1977).

The Madison Township decision has been consistently construed to require developing municipalities to provide by zoning for least-cost housing. Pascack Ass'n., Ltd. v. Washington Township, 74 N.J. 470 (1977); Fobe Associates v. Demarest, 74 N.J. 519 (1977); In re Egg Harbor Associates, 185 N.J. Super. (App. Div. 1981); Montgomery Associates v. Township of Montgomery, 149 N.J. Super. 536 (Law Div. 1977). The Court held in Madison:

"To the extent that the builders of housing in a developing municipality like Madison cannot through publicly assisted means or appropriately legislated incentives (as to which see infra) provide the municipality's fair share of the regional need for lower income housing, it is incumbent on the governing body to adjust its zoning regulations so as to render possible and feasible the "least cost" housing, consistent with minimum standards of health and safety, which private industry will undertake, and in amounts sufficient to satisfy the deficit in the hypothesized fair share...Nothing less than zoning for least cost housing will, in the indicated circumstances, satisfy the mandate of Mt. Laurel. While compliance with this direction may not provide newly constructed housing for all in the lower income categories mentioned, it will nevertheless through the "filtering down" process referred to by defendant tend to augment the total supply of available housing in such a manner as will indirectly provide additional and better housing for the insufficiently and inadequately housed of the region's lower income population." 72 N.J. 512-3.

After Madison, trial courts were required to look at the "substance" of challenged zoning ordinances and to the existence of bona fide efforts by a municipality to meet its obligations. 72 N.J. at 499. The "builder's remedy" was held out to the plaintiff-developer in that case as a quid pro quo for the particularly egregious circumstances on which it came to the court, i.e., the fact that it had been a litigant for over six years, had endured two trials and an extended appeal and had borne the stress and expense of this public interest litigation. 72 N.J. at 549-50. The court made it absolutely clear that such a "builder's remedy" would "ordinarily be rare". Id., at 551-52 n. 50.

The constitutional obligation as set forth in the Madison Township case was substantially changed by Mt. Laurel II.¹² First of all, the municipal obligation no longer applies to "developing" municipalities, but rather to those which are designated as part of a growth area on the State Development Guide Plan. Such municipalities are now required to provide a "realistic opportunity for the construction of their fair share of low and moderate income housing" through the elimination of unnecessary cost producing requirements and the adoption of affirmative devices. Simply permitting least-cost housing will no longer satisfy the constitutional mandate, and trial courts must do more than take a superficial look at the municipality's bona fide efforts. Streamlined judicial management and appeal procedures were set forth, and the quid pro quo for a builder's remedy was changed from prosecution of lengthy and expensive litigation to guaranteeing the production of housing affordable to lower income families.

With respect to the "builder's remedy", the Supreme Court explicitly

¹² Perhaps the most dramatic illustration of this revision of basic zoning precepts is the overruling of Vickers v. Gloucester, 37 N.J. 232 (1962), which authorized the total exclusion of mobile homes. After Mt. Laurel II, municipalities that cannot otherwise meet their fair share obligations must provide zoning for low-cost mobile homes. 92 N.J. at 275

recognized that it was making a substantial change in the existing law:

"In Madison, this court, while granting a builder's remedy to the plaintiff appeared to discourage such remedies in the future by stating that "such relief will ordinarily be rare". Experience in Madison, however, has demonstrated to us that builder's remedies must be made more readily available to achieve compliance with Mt. Laurel. We hold that where a developer succeeds in Mt. Laurel litigation and proposes a project providing a substantial amount of lower income housing, a builder's remedy should be granted unless the municipality establishes that because of environmental or other substantial planning concerns, the plaintiffs proposed project is clearly contrary to sound land use planning. We emphasize that the builder's remedy should not be denied solely because the municipality prefers some other location for lower income housing, even if it is in fact a better site. Nor is it essential that considerable funds be invested or that the litigation be intensive." 92 N.J. at 279-280.

Given the very significant change in the constitutional basis for municipal land use regulation laid down in Mt. Laurel II, and the parties' justifiable reliance on the trial court's judgment of compliance, this decision should be given prospective application only. Merenoff v. Merenoff, 76 N.J. 535, 560 (1978); Darrow v. Hanover Township, 58 N.J. 410 (1971).

Public policy and sound judicial management dictates that there must be some finality to judgments and an end to litigation. West Jersey Title and Guarantee Co. v. Industrial Trust Co., 27 N.J. 244 (1958); State v. Speare, 86 N.J. Super 565, 585 (App. Div. 1965); State v. Singletary, 170 N.J. Super 454, 460 (Law Div. 1979). The principal policy question posed by this case is the extent to which a party may force the court to question and relitigate standards which were previously adjudicated in a piece of complex litigation several years prior to a major change in the law. This is a special problem in Mt. Laurel cases where the developer-litigant stands as a surrogate for the public interest. If developers can not be given at least limited protection against major changes in the law and the likelihood of extended or repeated appellate litigation, they will certainly hesitate to bring exclusionary zoning litigation. Mt. Laurel II, 92 N.J. at 291.

There are additional equitable reasons why Mt. Laurel II should not apply in the within case. Assuming for the sake of argument that the Allan-Deane Corporation did receive a builder's remedy, it earned this relief at the cost of twelve years of litigation, during which time it was held hostage by what the N.J. Supreme Court described as: "...the present procedures allowing numerous appeals, retrials, and ordinarily resulting in substantial delay in meeting the obligation..." 92 N.J. at 291. In order to make this proposed housing project a reality, the Allan Deane Corporation was forced to make substantial investments in infrastructure which ordinarily should be provided at the public expense, including but not limited to a thirteen million dollar commitment in a sewage treatment plant, and the extension of sewer and water lines and infrastructure (over \$4.5 million of which has been spent). All of these costs, including the cost of twelve years of exclusionary zoning litigation with a recalcitrant municipality, will arbitrarily inflate the price of housing which Allan-Deane can build. As the New Jersey Supreme Court clearly recognized, "if builder's remedies cannot be profitable, the incentive for builders to enforce Mount Laurel is lost." Mt. Laurel II, 92 N.J. at 279 n. 37. Since Allan-Deane has not undertaken a project which included from the outset a mandatory low and moderate income housing set-aside, it has not voluntarily assumed the financial burden which follows from the provision of housing which is affordable to low and moderate income people.¹³

¹³ See Mt. Laurel II, 92 N.J. at 267 n. 30 where the Supreme Court discusses the mandatory set-aside and the confiscation issue. The Court reasons that confiscation is not an issue because "a builder who undertakes a project that involves a mandatory set-aside voluntarily assumes the financial burden". In this case, of course, Allan-Deane voluntarily assumed only a "least-cost" burden and if Mt. Laurel II is to be applied retroactively, confiscation remains an issue. Stated differently, the Supreme Court gets around this issue of confiscation by analyzing exclusionary zoning litigation as the kind of "institutional litigation" where the developer makes a "contract" with the court to secure the public interest by promoting low and moderate income housing. Allan-Deane entered into a "contract" with the Oakwood at Madison consideration, least cost housing, not the Mt. Laurel II low and moderate consideration.

B. The Allan Deane Corporation Did Not Receive A Builder's Remedy And Is Therefore Not Subject To The Set Aside Requirement Of Mt. Laurel II.

Assuming for the sake of argument, that this Court would hold that the Mt. Laurel II decision should have retroactive application, the next area of inquiry must be as to whether or not the Allan-Deane Corporation received a "builder's remedy". If it did receive a builder's remedy, assuming retroactive application, Mt. Laurel II requires Allan-Deane to provide a "substantial amount" of lower income housing. Mt. Laurel II, 92 N.J. at 279.

Although the term "builder's remedy" is not defined within the Mt. Laurel II decision, the general concept may be derived from the Madison Township and Mt. Laurel II decisions. In Madison Township, the Court granted "specific corporate relief", or a builder's remedy, to the plaintiff-developer in the form of "a permit for the development on their property of the housing project they proposed to the Township prior to or during pendency of the action." 72 N.J. at 551. The Mt. Laurel II Court affirmed the grant of a builder's remedy in the form of building permits conditioned upon application for section 8 subsidies for twenty percent of the units and in lieu of subsidies, utilization of other devices to keep 20% of the units affordable to lower income households. Mt. Laurel II, 92 N.J. at 308-9.

A builder's remedy thus involves an explicit order to a municipality to permit a proposed housing project on the plaintiff-developer's property. Allan-Deane did not receive such an order from the trial court, which mandated only a rezoning process for a corridor of land within Bedminster Township. The trial court order permitted Bedminster Township to exempt specific areas from high density zoning if it found that such density would constitute improper land use. Bedminster Township was therefore left with the discretion not to rezone the Allan Deane property for higher densities. Since Allan-Deane did not receive a

builder's remedy, it should not be required to provide a substantial amount of low and moderate income housing.

C. The Phase I Preliminary Site Plan Approval Granted In 1981 Protects Allan-Deane From Changes In The Law

Pursuant to the Bedminster Land Development Ordinance, on April 15, 1981 Allan-Deane was granted "Optional Phase I Preliminary Approval" for the construction of 1,287 dwelling units and 350,000 square feet of non-residential uses on its property. The stated purpose of Phase I Preliminary Approval is "to provide flexibility in the review of large planned developments (those exceeding 50 acres in size). The procedures and submission requirements are designed to comply with the Municipal Land Use Law, N.J.S.A. 40:55D-46a, which requires that preliminary plans and engineering documents be "in tentative form for discussion purposes". The effect of this Phase I Preliminary Approval, as stated in Section 13-807.4 of the Bedminster Land Development Ordinance, is to vest the total number and type of dwelling units, the gross floor area of commercial uses, the location and general specifications for proposed collector roads, to permit the submission of Stage II Preliminary Site Plan Application and to require all subsidized and/or least-cost housing to be provided in accordance with the ordinance. The effect of this approval pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-49a is to confer upon the applicant the following rights:

"That the general terms and conditions on which preliminary approval was granted shall not be changed, including but not limited to use requirements; layout and design standards for streets, curbs and sidewalks; lot size; yard dimensions and off tract improvements; and, in the case of a site plan, any requirements peculiar to site plan approval pursuant to Section 29.3 of this Act.¹⁴ Except

¹⁴ Reference herein is to N.J.S.A. 40:55D-41, and standards relating to the preservation of existing natural resources on the site, safe and efficient vehicular and pedestrian circulation, parking and loading, screening, landscaping and location of structures, exterior lighting needed for safety reasons in addition to any requirements for street lighting, and conservation of energy and use of renewable energy sources.

that nothing herein shall be construed to prevent the municipality from modifying by ordinance such general terms and conditions of preliminary approval as relate to public health and safety;"

The statutory language quoted above is significant since the predecessor to this section, N.J.S.A. 40:55-1.18, did not contain the language prohibiting the changing of general terms and conditions and was construed in Pennyton Homes, Inc. v. Planning Board of Stanhope, 41 N.J. 578 (1964) to permit municipalities to increase standards for roads and other requirements after the grant of preliminary approval. This major change in the effect of preliminary approval was recognized in Bleznak v. Township of Evesham, 170 N.J. Super 216 (Law Div. 1979), where the Court held:

"(Plaintiffs) contend that the use for which they obtained approvals is protected as to their entire 12.6 acre site for a period of two years under N.J.S.A. 40:55D-49...Nevertheless, it appears to be precisely what the legislature intended when it established lasting qualities for site plan approvals. The language of the statute is not ambiguous; it uses words with ordinary meaning entitled to ordinary interpretation. (cites omitted) Those words provide the protection which plaintiffs claim."

"Any entrepreneur commencing a new venture, as here, embarks upon an uncertain journey. He cannot know whether he will succeed or fail and, if he succeeds, whether his building and other improvements will require changes in order to accommodate growth and other unforeseeable future events. If he is obliged to proceed with the knowledge that his future plans may be frustrated through zoning changes, he may well decide not to proceed at all since success will carry the seed of its own defeat. The legislature recognized this circumstance and protected approved uses for specific periods of time as set forth in the statute." 170 N.J. Super at 218-219.

The terms and conditions of the Phase I Preliminary Approval granted on April 15, 1981 to Allan-Deane included the requirement that all subsidized and/or least-cost housing be provided in accordance with the then effective ordinance. This term therefor may not be changed except if necessitated by "the public health and safety". Public health and safety related standards are those

standards necessary to protect against fire, flood, panic and other disasters, and not standards as may be required by the public welfare, such as mandatory "set-asides". Allan-Deane is therefor required to comply with the 1981 Bedminster Ordinance and need not guarantee the production of low and moderate income housing.

POINT IV

THE CURRENT BEDMINSTER LAND DEVELOPMENT ORDINANCE COMPLIES WITH THE MT. LAUREL II MANDATE.

A. The Current Bedminster Land Development Ordinance Complies With The Mt. Laurel II Mandate.

The Bedminster Township Land Development Ordinance permits a total of 5,711 dwelling units at gross densities up to 10 dwelling units per acre in the Bedminster-Pluckemin Corridor. In order to develop under the highest densities permitted in this Corridor, a developer must choose the Planned Unit Development option which is conditioned upon the provision of 20% of the housing units as governmentally subsidized or, if subsidies are not available, as very small units, which if rented may not exceed the fair market rents established by HUD. Phasing of subsidized/least-cost housing is required. Allan-Deane would prove on remand that the combination of these affirmative measures, when viewed in the context of Bedminster Township's massive rezoning of a large land area for high densities, complies with the Mt. Laurel II mandate.

Municipalities are free to choose among a number of affirmative measures to afford a realistic opportunity for the construction of low and moderate income housing. Mt. Laurel II, 92 N.J. at 270. Three affirmative measures were prominently discussed in the Mt. Laurel II decision: incentive zoning (density bonuses for lower income housing), mandatory set-asides (the requirement that private developers "set-aside" a portion of their development for lower income housing), and mobile home zoning. 92 N.J. at 266-277. In addition to these three mechanisms, municipalities may consider and adopt such affirmative devices as zoning substantial areas for other types of low cost housing, establishing maximum square footage zones, and overzoning to assure

that at least some of the property zoned for higher density uses will actually contain lower income housing. 92 N.J. at 270. Municipalities and trial courts were encouraged to create other devices and methods. 92 N.J. at 266.

Bedminster Township has chosen to: 1) grant density bonuses for subsidized/least-cost housing; 2) require the use of state or federal subsidies and if such subsidies are not available, to require the production of very small, cost controlled units; and 3) require subsidized/least-cost housing to be phased in. Although it must be conceded that a true low and moderate income "set-aside" provision is not included in the Bedminster Township Land Development Ordinance, Mt. Laurel II does not require the use of this specific device:

"Which, if either, of these devices will be necessary in any particular municipality to assure compliance with the constitutional mandate will be initially up to the municipality itself." Mt. Laurel II, 92 N.J. at 262.

If Bedminster's response is insufficient, this Court should determine whether mobile home zoning, the establishment of a housing authority and other devices are necessary to afford a realistic opportunity for the construction of low and moderate income housing. Id. at 262

B. Excessive Land Costs Affect The Ability of Hills Development Company To Provide Low And Moderate Income Housing

The New Jersey Supreme Court held that in the event of extremely high land costs, a municipality's fair share could be satisfied with least-cost rather than low and moderate income housing:

"There may be municipalities where special conditions such as extremely high land costs make it impossible for the fair share obligation to be met even after all excessive restrictions and exactions, i.e., those not essential for safety and health, have been removed and all affirmative measures have been attempted. In such cases, and in only such cases, the Mt. Laurel obligation can be met by supplementing whatever lower income housing can be built with enough "least cost" housing to satisfy the fair share." 92 N.J. 277.

Multi-family densities on The Hills Development Property were earned at the expense of twelve years of legal, planning, engineering and land carrying costs associated with the within litigation. Additionally, due to Bedminster Township's failure to plan for its own development future, the Allan-Deane Corporation was forced to build a brand new sewage treatment plant and extend sewer lines from that plant to its site at entirely private expense. In addition to the anticipated \$6 Million construction cost of the sewage treatment plant, sewer line and necessary infrastructure, Allan-Deane spent five years in administrative proceedings with the New Jersey Department of Environmental Protection seeking approval for the sewage treatment plant, and has incurred the legal and engineering fees associated with other administrative applications such as sanitary sewer extension permits, stream encroachment permits, soil erosion permits, water tower approvals, public utility franchise approvals, etc. Since all of these costs must eventually be passed on to the ultimate consumer of the housing, they must be considered as "land costs" which contribute to the necessity of marketing housing units at higher prices than the developer would otherwise choose.

POINT V

BEDMINSTER MUST PROVIDE AN ADMINISTRATIVE MECHANISM TO ENSURE THE CONTINUING AFFORDABILITY OF HOUSING FOR PERSONS OF LOW AND MODERATE INCOME

The Mt. Laurel II Court recognized the importance of keeping affordable housing available to low and moderate income families. 92 N.J. 158 at 269. Although the court discussed other methods, it endorsed the Princeton Township plan as a "sophisticated approach". That plan involved both the use of disposition covenants by the developer and the creation of a government entity, a "public trust", to administer the covenants and determine lower income levels and prices over time.

In its proposed ordinance, Bedminster has attempted to transfer the burden of providing a "public trust" type administrative body to the developer.

Screening tenants, setting rent levels, administering a system of resale controls, providing for surcharge or other controls on individuals based on their incomes has traditionally been considered a governmental function. The Hills Development Company questions whether developers should have the entire burden of creating an administrative mechanism to perform what is essentially a governmental responsibility.

It is significant to note that, in addition to involving the use of governmental powers, the administration of these types of projects is inevitably going to cost money. People will be needed to supervise the project; space and equipment will be needed to accomplish the necessary work of the project; funding will be needed to ensure that the work continues into the future. Since the administrative mechanism will add an increment of cost to The Hills units, it would be more equitable if these costs were shouldered by Bedminster and the Public Advocate, and thus passed on to the public at large. Mt. Laurel II recommends this approach. 92 N.J. 158 at 269.

CONCLUSION

For the aforementioned reasons, plaintiff Allan-Deane Corporation respectfully requests this Court to affirm the trial court decision of March 20, 1981 and to order Bedminster Township to expeditiously process any and all development applications of The Hills Development Company.

Respectfully submitted,

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Attorneys for Plaintiff

By: 
Juliet D. Hirsch

Dated: *Sept 30, 1983*

THE HILLS



PROPOSAL OF THE HILLS DEVELOPMENT COMPANY
TO BUILD AND MAINTAIN 260 UNITS OF HOUSING
AFFORDABLE TO PERSONS OF LOW AND MODERATE INCOME

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SECTION I

EXECUTIVE SUMMARY

The Hills Development Company's Settlement Proposal

EXECUTIVE SUMMARY

I. The Hills Development Company and the Bedminster PUD

During the past twelve years, the process of building a major new community within Bedminster Township has occupied more time in court than in the design and construction process. However, the balance has now shifted: the process of physically developing a major new residential center in Bedminster has now begun. The Hills Development Company seeks to settle the last remaining legal issues which affect the developmental process.

The Hills Development Company was formed in November, 1980, by the creation of a joint venture general partnership. The Allan-Deane Corporation contributed land and capital to the venture; and Ligone, Incorporated, a privately held real estate investment firm, contributed capital. The partnership hired RecreActions, a major real estate development specialist, to manage the process of planning, design and construction.

Since the formation of the Hills Development Company, substantial time and financial resources have been committed to the process of transforming 140 acres of land near the village of Pluckemin into a Master Planned Community ultimately comprising 1287 residential units and 350,000 square feet of office and commercial space. The Hills Development Company has already spent in excess of \$ 6 million for needed infrastructure improvements, such as a sewage system, a roadway system, underground utilities, and landscaping; and has committed itself to an additional \$ 1.2 million for other, off-site improvements related to the PUD. To date, the Hills Development Company has received approvals for, and begun construction and sales of, 227 townhouse residential units as well as 88 condominium units.

As mentioned, the early history of the Hills PUD was primarily written through the legal process. Allen-Deane, the predecessor in interest to the Hills Development Company, had sued Bedminster Township in 1971 in order to overturn the original zoning, a process which led, eventually, to a court ordered re-zoning of the Township. The Hills Development Company and its predecessor in interest participated in the rezoning process, and has proceeded, under the new municipal land development ordinance, to obtain Phase I preliminary approval for the entire PUD, as well as subsequent site plan and subdivision approvals for portions of the development. The remaining legal issue revolves around the language of Bedminster's provision for affordable housing. That ordinance requires developers of PUDs to provide at least 20% of their units, as subsidized or as least-cost units. The Township requires that the construction of these subsidized/least-cost units proceed in tandem with the market housing; and as of the present time, Hills Development cannot apply for any more market housing until it complies with the municipal ordinance. Hills Development Company is prepared to comply with that ordinance, but the Public Advocate felt that the language of the ordinance did not sufficiently protect the public interest, and sought to prevent further municipal approvals until the matter was clarified.

The New Jersey Supreme Court's Mount Laurel II decision, while arguably not binding on the Hills Development Company's already-in-progress PUD*, may point the way to settle this matter. Bedminster is moving to amend its ordinance to comply with the language of Mt. Laurel II, and the Hills Development Company, by the Offer of Settlement contained herein, proposes to construct housing units for persons of low and moderate income which, in its judgement, would meet the Mount Laurel II standard.

II. The Proposal

Hills Development Company has applied to the New Jersey Mortgage Finance Agency (NJMFA) for a setaside of bond proceeds, so as to provide mortgage money for 172 housing units which are proposed for sale to persons of low and moderate income. Hills proposes to sell units which range in size from 567 square feet (1 bedroom) to 997 square feet (3 bedroom) at prices which range from \$28,000 to \$52,000. The prices, coupled with a favorable interest rate available if the NJMFA mortgage funds are setaside for this purpose would mean that households with incomes from \$ 10,300 to \$ 22,711 will be able to afford housing in one of New Jersey's most attractive locations. The Application is contained in Tab II, which follows this summary.

In addition to the 172 units which are intended to be sold to persons of low and moderate income, The Hills Development Company has meet with and has prepared an application to be submitted to the New Jersey Housing Finance Agency for financing assistance for rental units. Hills proposes to construct 88 units, physically similar to the "for-sale" residences, with the same square footage, and offer them as rental units. Rents will be skewed so that a low income family would pay between \$230 and \$300/month, depending on unit size; a moderate income family would pay between \$380 and \$500/month, depending on unit size. A full description of the Rental Component is found at Tab III.

The Hills Development Company proposes to establish a non-profit Housing Corporation to monitor the income-regulation features of the plan, and to ensure that the units continue to remain affordable and available for persons of low and moderate income in the future. A description of the policies, procedures and organization of that Corporation is set forth in Tab IV.

The Settlement Offer can be summarized as follows: The Hills Development Company proposes to build 260 units of housing affordable to persons of low and moderate income; to provide a mechanism to ensure that these units remain affordable; to do so within the limits of presently available public and private resources; and with the approval of the Court and the municipality, to begin construction on this housing in 1983. The Hills Development Company believes that these proposals, which are presented in detail in the tabbed sections which follow this summary, meet the requirements of Mount Laurel II and will be acceptable to all parties.

* See Point IV, below.

III. Consequences of Failure to Settle the Case

The Hills Development Company has, under construction, all of the units for which municipal approvals can be granted under the existing ordinance. It has crews available, working drawings available, and should have favorable weather available to start construction of these proposed low and moderate income housing units this year. The Bedminster Planning Board has already conducted extensive reviews of the proposed build-out of all of the housing units in the "inner loop", which includes these low and moderate income units and has endorsed the concept plan. If there is a settlement of all of the outstanding issues in this case, there is no barrier to the construction and sale of these units, assuming favorable action by the state agencies to which the Hills Development Company has applied for funds.

If, for some reason, there is a delay in acceptance by Bedminster and the Public Advocate of this offer, the following events are likely to occur:

1. Hills Development Company will build and sell the remaining units for which it has approval, and will then have to shut down construction and sales operations. This will result in substantial additional costs to the company, since it will remain liable for its essential overhead and the interest charges for money it has borrowed for infrastructure it has already built. These charges will be in excess of \$100,000/month.
2. The NJMFA has informed The Hills that 1983 is the last year it will be able to offer a tax free bond to the public under terms of its existing legislative authority, which expires this year, and which may not be renewed by the Legislature.
3. The interest rates which help make this low and moderate income project affordable may not be available again; and it is likely that inflation will cause an increase in construction costs.

The inevitable result of delay is an increase in costs to all parties, and the likelihood that fewer persons of low and moderate income will be able to find housing. Failure to accept this settlement offer could deprive other municipalities and developers throughout the State of an example of a successful integration of low and moderate units within a larger planned unit development offering housing to buyers throughout the income spectrum.

IV. Previous Commitments of The Hills Development Company

The motions filed by Bedminster and the Public Advocate, the oral argument before the Appellate Division and the prior litigation in this case have been replete with rhetoric about Hills Development Company's prior commitments to this court with respect to the issue of affordable housing. The only commitments which have been made are contained in the affidavit of E. James Murar, then President of Allan-Deane Corporation, dated March 19, 1978. This affidavit was filed in response to a motion filed by Bedminster in 1977, alleging that Allan-Deane had no standing to bring an exclusionary zoning case by reason of the fact that they intended to construct no affordable housing. At the time this

motion was filed Oakwood at Madison was the most recent Supreme Court decision on all Mt. Laurel issues.

In their affidavit, Allan-Deane committed itself to do the following:

a. Give an option to a limited dividend or a non-profit corporation, to be established by the Cieswick Plaintiffs, to enable them to purchase sufficient land, at a price acceptable under the New Jersey Housing Finance Agency and federal programs, to construct at least 20% of the residential units on the Bedminster property as low and moderate income housing. The Allan-Deane Corporation and Johns-Manville Properties Corporation would cooperate, if specific corporate relief were granted, with the legal entity established to apply for subsidized financing and use its best efforts to insure that financing applications were approved.

b. Include capacity in the advanced waste water treatment facility.

c. Such commitments were conditioned on Bedminster Township cooperating and adopting a resolution of need and granting tax abatements where necessary to obtain federal subsidies; since most, if not all, subsidy programs would be otherwise unavailable. (See Oakwood at Madison, supra, page 546 and 547). In the event the options were not exercised due to the unavailability of funding or lack of municipal cooperation, Allan-Deane agreed to market least cost housing on those sites upon the expiration of the aforesaid options.

Hills is today and has always been ready, willing and able to meet that commitment.

The proposal outlined herein constitutes the first and only formal offer which Hills has made to extend that commitment. This is an offer of settlement and in no way should be construed by this court as an admission of liability or an admission that this case should be treated in all respects as an exclusionary zoning case initiated after Mt. Laurel II.*

In other words, Hills will commit to this settlement, providing only if such a commitment will result in a dismissal of all matters on appeal and the immediate processing by Bedminster of all applications pending before the Township. If the development of this project is held up in order to litigate any issues Hills will withdraw this offer and intends to litigate all issues.

* See Mt. Laurel II, 92 N.J. at 267 n. 30 where the Supreme Court discusses the mandatory set-aside and the confiscation issue. The Court reasons that confiscation is not an issue because "a builder who undertakes a project that involves a mandatory set-aside voluntarily assumes the financial burden". In this case, of course, Allan-Deane voluntarily assumed only a "least-cost" burden and if Mt. Laurel II is to be applied retroactively, confiscation remains an issue. Stated differently, the Supreme Court gets around this issue of confiscation by analyzing exclusionary zoning litigation as the kind of "institutional litigation" where the developer makes a "contract" with the court to secure the public interest by promoting low and moderate income housing. Allan-Deane entered into a "contract" with the Oakwood at Madison consideration, least cost housing, not the Mt. Laurel II low and moderate consideration.

SECTION II

**DESCRIPTION OF FOR-SALE HOUSING COMPONENT AND APPLICATION
TO NEW JERSEY MORTGAGE FINANCE AGENCY FOR
SET-ASIDE OF BOND PROCEEDS**

September 21, 1983

Ms. Constance B. Gibson
Acting Executive Director
New Jersey Mortgage Finance Agency
1180 Raymond Boulevard
Newark, New Jersey 07102

Dear Ms. Gibson:

On behalf of The Hills Development Company, I am pleased to submit the attached application for a set-aside of proceeds from the next bond issue to be offered by the New Jersey Mortgage Finance Agency. The enclosed application sets forth, in detail, the proposal which The Hills Development Company is making to provide a total of 172 for sale housing units for persons of low and moderate income.

To date, The Hills in Bedminster Township, Somerset County, has been successful in offering well-designed housing for the private market. With this application, The Hills Development Company commits itself, with the assistance of the New Jersey Mortgage Finance Agency, to providing housing affordable to qualified families whose incomes fall within the low and moderate income range as defined by the New Jersey Supreme Court in its Mt. Laurel II decision.

The Hills intends to carry out its committment to provide quality affordable housing, and looks forward to working with the New Jersey Housing Finance Agency to make this project a reality. We will provide you and your staff with any further information which you may need.

Sincerely,



John H. Kerwin
President,
The Hills Development Company

Alan Mallach
27 W Patcong Ave
Linwood NJ 08221

September 20, 1983

Ms. Constance B. Gibson
Acting Executive Director
New Jersey Mortgage Finance Agency
1180 Raymond Boulevard
Newark, New Jersey 07102

Dear Ms. Gibson:

I am pleased to be able to submit to the New Jersey Mortgage Finance Agency the attached application, which seeks approximately \$6.2 million in tax-exempt bond proceeds, in order to provide end loans to low and moderate income homebuyers in The Hills, a planned unit development under construction in Bedminster Township, New Jersey.

These funds will make it possible for low and moderate income households to purchase 172 units, priced between \$28,000 and \$52,000, which have been planned and designed to be affordable to households earning 80 percent of the area median income or less, and, through a variety of means, to remain affordable to such households over an extended period.

This project represents not only the culmination of over a decade of litigation in Bedminster itself, but, more importantly, the first large-scale development to come to fruition under the standards set down by the New Jersey Supreme Court in the landmark January 1983 Mt. Laurel II decision. We consider it a potential prototype of development of low and moderate income housing without Federal subsidies, and of a genuine public-private partnership to provide such housing, as reflected by this application.

I look forward to hearing from you, and to continuing to work together to make this project, and many others like it, a reality in New Jersey.

Sincerely,



Alan Mallach

AM/lk
enc.

609-927-1706

THE APPLICATION OF THE HILLS DEVELOPMENT COMPANY

FOR A SETASIDE OF

NEW JERSEY MORTGAGE FINANCE AGENCY

BOND PROCEEDS

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APPLICATION FOR SETASIDE OF BOND PROCEEDS FROM NEW JERSEY MORTGAGE FINANCE AGENCY BOND ISSUE FOR END LOANS TO LOW AND MODERATE INCOME HOMEBUYERS IN THE HILLS, BEDMINSTER, NEW JERSEY, SUBMITTED BY THE HILLS DEVELOPMENT COMPANY

SUMMARY OF APPLICATION

The Hills Development Company, developers of The Hills, a 1287 unit Planned Unit Development in Bedminster, New Jersey, has made a commitment to provide 20% of the units in the PUD as low and moderate income housing. It is proposed to offer 172 units for sale, and 88 units for rental housing. This commitment complies with the standards of the recent Mt. Laurel II decision, without the availability of any Federal subsidy funds.

Meeting this commitment contemplates that The Hills Development Company will seek a setaside of proceeds from a forthcoming bond issue by the New Jersey Mortgage Finance Agency so as to be able to make end-loans to the low and moderate income purchasers. The total amount required to finance the 172 condominium units, is \$6,174,400 assuming 90% financing. Since anticipated bond interest rates will not, in and of themselves, be enough to make these units affordable to low income households, The Hills Development Company proposes to:

- a. Skew interest rates, lowering rates for low income buyers and raising them (but still below conventional rates) for moderate income buyers;
- b. Provide, in addition, a buydown program designed to reduce the first year effective rate 1.5% below the permanent rate, and provide for a gradual, moderate, increase in payments over four years.

These steps are described in detail in the application, along with additional concessions that are being made in order to make these units available at prices which make low and moderate income homeownership realistic. Specifically, The Hills Development Company proposes to sell these units at prices ranging from \$28,000 for a one bedroom unit to \$52,000 for a three bedroom unit, in one of the most expensive parts of the State of New Jersey.

The units will include 1 bedroom, 2 bedroom, and 3 bedroom flats, with decks and patios, in attractively designed two story buildings. In keeping with the standards for low and moderate income housing set forth in Mt. Laurel II, units will be sold exclusively to households whose incomes are within low and moderate income levels. Provisions will be established to ensure that these condominium units continue to be purchased by low and moderate income households through controls on the resale of these units.

This application provides a complete picture of the proposed development, as follows:

(1) Background and history of the development, including a narrative setting forth the mixed legal and developmental circumstances leading to this project and this application;

(2) Description of the project, including an overview of The Hills PUD, factual information on the proposed low and moderate income housing units, including cost information; and an analysis of the means by which the units will be made affordable to low and moderate income households;

(3) Description of the special provisions governing the project, including sale and resale controls designed to insure continued low and moderate income occupancy of the project.

Three appendices have been added, providing background information on the developer, The Hills Development Company; maps and drawings including site plans and floor plans; and the policies adopted by FNMA and FHLMC regarding developments of the nature proposed in this application.

I. BACKGROUND AND HISTORY OF THIS PROPOSAL

This application, seeking mortgage funds for low and moderate income homebuyers in The Hills, a Planned Unit Development (PUD) located in Bedminster Township, New Jersey, is the result of a long and complex history, of particular significance to the future of affordable housing development in New Jersey. It is both a major event in itself, as well as the first significant application of the momentous Mt. Laurel II decision, which mandated the provision of low and moderate income housing in suburban New Jersey. In view of the significance of that decision, before describing the history of this project directly, a brief mention is appropriate.

A. Mt. Laurel II

In January of this year, the New Jersey Supreme Court issued a decision in six exclusionary zoning cases which rapidly became known as Mt. Laurel II*. In this decision, the Court, frustrated with the limited progress on providing housing opportunities for low and moderate income households throughout New Jersey, as had been ordered by earlier decisions, for the first time, set down explicit standards, guidelines and procedures designed to turn those orders into reality. In particular, the decision provided explicit guidelines as to the definition of "low and moderate income", gave particular support to the approach of including low and moderate income units as a part of larger developments, rather than specific, separate, projects; and, most importantly, made clear that results, rather than good faith efforts, would be the sole touchstone of compliance with the Court's mandate.

Directly relevant to this project was the Court's call for use of mandatory setasides as a means of obtaining low and moderate income housing,

* One of the six cases decided by the Court was the retrial of the original Mt. Laurel suit, decided by the Supreme Court in 1975; hence Mt. Laurel II.

characterized by the Court as "basically a requirement that developers include a minimum amount of lower income housing in their projects" (slip opinion at 109). Elsewhere in the opinion, it was suggested that allocation of 20% of the units for low and moderate income households was "reasonable". (at 129). It seems clear from the decision, particularly as long as Federal housing subsidies are unavailable, or at best, in extremely short supply, that this approach, known as inclusionary housing, would be the principal means by which the goals of Mt. Laurel II would be met in New Jersey.

While there have been a number of inclusionary housing programs enacted in municipal zoning ordinances in New Jersey, in the absence of a clear legal mandate, they have been little used up to this point*. Developers are uncertain about this entire area, although limited experience elsewhere (most notably in Orange County, California and Montgomery County, Maryland) has indicated that it can be successful. These programs, however, operated under much more generous standards than those permitted by the New Jersey Supreme Court; and therefore before a concerted effort will be made in New Jersey, it will be necessary to provide a success model, in New Jersey, under the Mt. Laurel II standards. By success model, it is meant a project that effectively provides low and moderate income housing, while blending in successfully with other housing of a variety of types and cost levels in a manner consistent with the economic imperatives of development. The Hills is seeking to accomplish that in Bedminster.

* Among New Jersey municipalities, other than Bedminster, enacting such ordinances have been East Brunswick, Franklin, (Somerset), Cherry Hill, Bridgewater and South Brunswick Townships. Note that there has been some production of lower income units with Federal subsidies under the (voluntary, rather than mandatory) East Brunswick ordinance.

B. A Short History of the Bedminster Project

The PUD known today as The Hills has a history going back to 1969. It represents one of the most complex, and significant, land use cases in the history of the New Jersey judiciary. The Allan-Deane Corporation* acquired this land in 1969, at which time it proposed a planned development to the Township, which proposal was not acted upon. As a result, a suit was filed by Allan-Deane shortly thereafter.

At the same time, largely as a result of the relocation of the AT&T Long Lines facility from Manhattan to Bedminster, a move resulting in the relocation of nearly 5,000 jobs, a number of civic and civil rights organizations focused attention of this community. As a result of that effort, spearheaded by Suburban Action Institute and the New Jersey Civil Liberties Union, a suit was filed against the Town of Bedminster on behalf of a number of moderate income families and individuals, seeking relief from the exclusionary zoning of the community. At this time, with minimal exceptions, all of the land in the Township was zoned for single family houses on lots of five or more acres.

After a variety of procedural issues had been resolved, the two cases (Allan-Deane v. Bedminster and Cieswick et al v. Bedminster), were joined, and a single trial, in which the civil rights organizations and Allan-Deane presented a common case, took place in Somerset County Superior Court in 1974. In February 1975, the court held that Bedminster's zoning was "arbitrary, capricious and unreasonable", and ordered those parts of the Township shown as growth areas in the County Master Plan, including the Allan-Deane holdings, be rezoned. Since the Mt. Laurel (I) decision came down from the Supreme Court shortly

* The Hills Development Company is the successor of Allan-Deane Corporation (see Appendix 1 for description of The Hills Development Company).

thereafter, the trial judge issued a modified, but substantially similar opinion in light of that decision in October 1975. That decision was affirmed by the Appellate Division in 1977. The Supreme Court refused to grant an appeal of that decision, brought by the defendant municipality. In the fall of 1977 the Township began to draft an amended zoning ordinance, which was submitted to the court and the parties, after a number of amendments, in mid-1978.

It was clear that, after having exhausted the courts, the Township was seeking to undo the decision by adopting a nonresponsive ordinance. A new trial was held in 1979, at the end of which the trial judge held that:

in responding to this court's order to revise its zoning the municipality's conduct has verged on legislative prestidigitation. By creating an R-20 zone, on the one hand, and so restricting its development as to render it a nullity, on the other hand, the local officials have engaged in governmental "sleight of hand." They have not complied with this court's order. The plaintiffs are entitled to relief. (Unpublished opinion at 18-19)

As a result, the court ordered that rezoning take place under the supervision of a court appointed master, and that it incorporate a reasonable development density and standards for the Allan-Deane holdings, subject to their providing 20 percent of the units in areas rezoned PUD as "least cost" housing, as set forth in the then-governing Madison decision*.

* The "least cost" doctrine of Madison, a 1977 holding of the Supreme Court, was explicitly abandoned in Mt. Laurel II. Since, however, under that doctrine, the court was unwilling to impose explicit income requirements for these units, resale controls, etc., the New Jersey Department of the Public Advocate appealed that part of the 1980 order. This appeal is technically still pending; it is the position of both parties, however, that the changes in the law made in Mt. Laurel II point a clear direction for settlement of this issue, which is being carried out with a central element being this application and the units proposed to be constructed with the assistance of NJMFA financing.

George Raymond, president of the planning firm of Raymond, Parrish & Pine, was appointed as the master, and late in 1980, a new ordinance was enacted, complying with the court order, eleven years after the initial presentation to the Township. Development activities on the site, under the auspices of the recently created The Hills Development Company, began in 1982.

During the course of this extended period of litigation this project became one of the most, if not the most, visible proposed PUD in New Jersey. The project is significant, not only by virtue of its litigation history, and its significant combination of public interest and development plaintiffs, but by virtue of its highly dramatic and important location. The project is in Bedminster Township, the center of one of the greatest employment growth areas in New Jersey; i.e., the I-287 corridor through Middlesex, Somerset and Morris Counties. The site is a short distance from the intersection of I-287 and I-78, and is readily visible to drivers along I-287 immediately north of that intersection. It is within a short walk of the Village of Pluckemin (in Bedminster Township), and a short commute to such major employers as AT&T (corporate headquarters), AT&T "Long Lines", Beneficial Finance, Chubb, American Hoechst, and others.* It represents a dramatic and unique opportunity to demonstrate the feasibility of providing low and moderate income housing in conjunction with more expensive housing units, in an economically integrated framework, in a high-demand area of the state, where jobs are available, but affordable housing is virtually nonexistent.

The balance of this application is in two sections. The first will provide a detailed description of the PUD as a whole, and the low and moderate income housing proposed for NJMFA financing, including costs, pro formas,

* See Appendix 2

affordability analysis, and related materials (site plans, floor plans, and elevations are attached). The second section will describe the special provisions to be established in keeping with the goal of creating and maintaining low and moderate income housing without Federal subsidies, in particular the proposed structure of resale controls, as mandated by the court in Mt. Laurel II (see slip opinion at 113). Additional information, including information on the development corporation, is provided in a series of appendices to this application.

II. DESCRIPTION OF THE PROPOSED LOW AND MODERATE INCOME HOUSING DEVELOPMENT

The Hills Development Company proposes to construct a total of 260 low and moderate income housing units in The Hills PUD which is 20% of all units in the PUD. Of this total, 172, or approximately 66% are expected to be offered for sale to low and moderate income households, and are the subject of this application for end loan funds from the New Jersey Mortgage Finance Agency. The balance will be rental housing units, which have been the subject of initial discussions with the New Jersey Housing Finance Agency. All these units are included in the section of the PUD to be known as Mayfields, a section which will include a substantial number of market-rate units as well. For convenience, however, the name Mayfields will be used frequently in this narrative to describe the low and moderate income sales housing units proposed for NJMFA support.

This section of the proposal will provide a detailed presentation on the Mayfields project, preceded by an overview of The Hills PUD as a whole.

A. The Hills PUD

The Hills PUD is located on a 128.7 acre tract immediately outside the village of Pluckemin in Bedminster Township. The site is a gently sloping site, with a steep mountainous backdrop, which is being retained in its natural wooded state. Within The Hills PUD, approval has been obtained for a total of 1,287 units. While it is expected that all units will be attached, either two-story townhouses or flats, The Hills is providing for great diversity of size and price level within the PUD, designed to attract a highly varied resident population.

B. Mayfields

The low and moderate income condominium units are proposed to be developed according to the following profile:

MAYFIELDS LOW AND MODERATE INCOME UNITS DEVELOPMENT PROFILE

<u>Number</u>	<u>Type</u>	<u>Square Feet</u>	<u>Preliminary Price</u>
44	A 1 Bedroom	567	\$28,000
44	B 2 Bedroom (sleeping loft)	675	\$36,000
48	C 2 Bedroom	769	\$46,000
36	D 3 Bedroom	997	\$52,000

NOTE: All price and square footage information subject to change on basis of final approved plans.

The Mayfields units will be constructed in two story buildings, with three different building types ranging from 8 units per building to 16 units each. The buildings are planned to lend itself to a relatively low per square foot construction cost, and the ability to complete construction within a short period. The buildings, as can be seen from the attached plans, are attractively designed; visual quality is achieved by varying rooflines, and by providing variety to the facade through decks and exterior staircases, as well as careful placement of windows and doors. Each unit has an exterior area for its own use, either a patio or a deck, which also serves as an entry to the unit. Although a major goal is to provide these units as inexpensively as possible, it is essential to provide units that will exist harmoniously with the balance of The Hills PUD, which includes a substantial number of units at significantly higher prices. This is particularly important in view of the relatively high net density of the PUD, or that part of the PUD being developed between the Pluckemin Village to the west, and the steep slopes to the east. There is, therefore, no room for extensive buffers and separations between the different parts of the development.

Considerable effort has been expended to develop space- and cost-efficient unit plans without sacrificing livability. One example is the two bedroom unit in which the second bedroom is a sleeping loft; this creates an attractive and livable unit at substantial cost savings over conventionally laid out units. The units themselves will not have amenities beyond those considered necessities; air conditioning will not be provided, although it will be available as an option, as will other amenity features.

While cost considerations dictate that the units themselves may lack some of the features of more expensive units, internally, it is considered essential that the residents of Mayfields have access to all of the communitywide amenities within The Hills PUD, including access to community services and recreation facilities (except for those facilities reserved for the exclusive use of others), and the like.

The condominium structure for the Mayfields units will be similar to that of the balance of The Hills; specifically, there will be a separate neighborhood condominium association for each type of ownership and neighborhood section.* The residents of the Mayfields units will also be members of The Hills Village Master Association, and will pay a fee to that entity. The Mayfields Neighborhood Condominium Association(s) will be responsible for the maintenance of the exterior areas, landscaping, parking areas, garbage and snow removal, and hazard insurance within the Mayfields neighborhoods and will be supported by condominium association fees paid by the unit owners. A special program has been proposed by The Hills Development Company to provide a source of additional funds to the project, either to cover

* Strictly speaking, there will be a separate association for the condominium units that are the subject of this proposal, and a separate association for the Mayfields rental units.

future expenditures or to reduce the cost to the unit owners, which is described in Section III(C) of this proposal.*

It is our strong conviction that what has been proposed here, and is described above, represents an outstanding balance of quality and cost effectiveness, a balance that is essential in a project that is destined to be as visible as is Mayfields.

C. Cost Analysis and Affordability Analysis

Within the context of the general description given above, it is now necessary to establish two points, both central to the success of the project as low and moderate income housing, and, indeed, central to the entire body of the Mt. Laurel II objectives; specifically, how units can be produced for the prices cited above, and how those prices can be translated into affordability to low and moderate income households.

1. Cost Analysis: A pro forma, or cost analysis, of the May fields condominium units, is presented on the following page. While it is not customarily for such information to be presented by developers, it is considered appropriate in view of the nature of this proposal, and the importance of the question; i.e., what does housing of this nature actually cost?

* Thereafter, all discussion refers exclusively to the Mayfields low and moderate income sales units.

COST ANALYSIS FOR PROPOSED MAYFIELDS LOW AND MODERATE
INCOME SALES PROJECT (172 UNITS)

land (see note 1)		\$ 0
Site Improvements @ \$5000/DU (note 2)		860,000
Landscaping, hookups, patios, etc., @ \$2500/DU		430,000
Construction (136408 SF @ \$28/SF)		3,568,656
Architecture & engineering @ 3.4%	\$121,334	
Warranty & Service (HOW)	97,250	
Legal & Consulting	50,000	297,584
Property taxes during constuction	9,000	
Permits, fees & misc.	20,000	
	SUBTOTAL	<u>\$5,156,240</u>
Construction Financing @ 13% for 8 months		266,109
Financing fees & contingency @ 4%		245,828
Supervision & administration @ 3%		184,371
Marketing & advertising @ 3%		184,371
Closing & title @ 1%		61,457
Nonprofit corporation fee @ 0.75% (note 3)		46,093
	TOTAL DEVELOPMENT AND COST	<u>\$6,144,469</u>
Buydown (note 4)		163,007
Profit, risk & contingency @ 9%		553,002
	TOTAL PROJECT COST	<u>\$6,860,478</u>

NOTES:

(1) Some of the land value subsidy, not to exceed an amount to be determined by independent appraisal, will be subject to recapture in the event of increased homebuyer income. See section III(C).

(2) This includes only those site improvements required internally within the low and moderate income housing section of the PUD, and no improvements associated with the PUD as a whole, such as arterial roads and the sewage treatment plant.

(3) This will cover the costs to be incurred by the nonprofit corporation which will be responsible for screening of prospective buyers, administering resale controls, etc., as set forth in section III.

(4) The buydown will provide for a first year effective interest rate for all units at 1.5% below the permanent rate, to increase by 0.5% increments in years 2, 3, and 4.

It will be noted that the purchase price of these units are far less than the actual market cost of these units produced in an unconstrained market environment. If the full prorated cost of land and development-wide improvements, such as the "state of the art" sewerage treatment plan that was built for The Hills, were incorporated, a customary and not excessive profit and risk factor included, and other costs increased on a prorated basis, the identical housing unit would sell for roughly 40% more than the proposed selling prices for these units. Furthermore, given the nature of the housing market in this area, there is little doubt that they would be marketable units. For point of fact, The Hills plans to sell similar units with slightly larger interior areas and somewhat more expensive fixtures and finishes, at prices between \$66,000 and \$89,000.

The total cost of \$6,860,000 translates into a total cost of roughly \$54 per square foot. The proposed pricing schedule given on page 2-3 has not been derived, however, directly from the square footage; rather, prices have been adjusted in order to increase affordability of the units relative to the applicable income ceilings for each unit. Specifically, the price of the smaller units has been slightly reduced, as has the price of the three bedroom unit; the price of the larger two bedroom unit has been increased relative to the cost on a per square foot basis.

2. Affordability Analysis: Even with these substantially below-market costs, making the units affordable to households falling within the Mt. Laurel II definition of "low and moderate income" is difficult. Since doing so lies at the core of this entire effort, this subject is worth discussing in some detail, by first defining low and moderate income, and then, defining what "affordable" should realistically mean in this context.

(a). Defining Low and Moderate Income

In Mt. Laurel II, the Court defined the target population as follows:

"Moderate income families" are those whose incomes are no greater than 80% and not less than 50% of the median income of the area, with adjustments for smaller and larger families. "Low income families" are those whose incomes do not exceed 50% of the median income of the area, with adjustments for smaller and larger families (footnote, slip opinion, p.36).

The decision further recommends reliance on those median income figures promulgated by the U.S. Department of Housing & Urban Development for each SMSA in the county, in this case, the Newark, New Jersey SMSA*. The most recent HUD figures are dated March 31, 1983, and the counterpart figures consistent with the above language from the Mt. Laurel II decision, using the Court's terminology, by family size are as follows:

LOW AND MODERATE INCOME CEILINGS FOR NEWARK SMSA BY FAMILY SIZE**

FAMILY SIZE	LOW INCOME	MODERATE INCOME
1	\$11450	\$17650
2	13100	20150
3	14700	22700
4	16350	25200
5	17650	26750
6	18950	28350

* Somerset County has recently been placed in a different, newly created, SMSA (or its new equivalent, "A") by the Census Bureau. It is likely therefore that HUD will revise these figures at some time in the future. The above figures will continue to be used for this project until or unless new figures are promulgated by HUD. If that takes place prior to completion of the marketing of these units, it is the intention of The Hills to apply the revised figures from that point onward.

**Source: Newark Area Office, HUD. Subject to change (see preceding footnote).

These figures will be used as the definition of low and moderate income applicable to Mayfields. The next section will discuss how it is possible to make these units affordable to households earning the above amounts, or less.

(b). Establishing Affordability

In order realistically to meet the standards set by the Court, a unit whose purchase is to be limited to families earning no more than the above must actually be affordable to households earning some reasonable amount less than the ceiling income, so that there is a reasonable range between the maximum income at which one is eligible to buy the unit, and the minimum income needed to qualify for the unit. If the range between the two is too small, the number of households capable of meeting those conditions may become too few, and the marketability of the units, notwithstanding their low prices, becomes questionable.

In order to be affordable to a household of a given income, the standard generally used by the NJMFA has been applied; namely, that the sum of (a) debt service; (b) property taxes; (c) hazard insurance; and (d) condominium association fees, shall not exceed 28% of gross household income. The pricing has been structured so that the lowest income at which a family can qualify for each unit, based on the above standard, is approximately 80% of the highest ceiling income applicable to that unit type, except with regard to the three bedroom unit, where the minimum is 85% of the maximum*. For example, the

* This is based on two considerations; first, that the shortage of such units in the area so is great that a narrower income band can be applied; second, that even to reach that level it is necessary to skew the price of the three bedroom unit below real cost more drastically than any other unit. To do so further would require raising the price of other units, which is not feasible.

minimum qualifying income for the one bedroom unit, based on carrying cost assumptions discussed below, is \$10,304, which is roughly 80% (actually 79%) of \$13,100, the maximum income at which a two person household is considered to be of low income. This range appears more than adequate to ensure that the units are marketable, and that a reasonable variety of low income household has access to the units. It will be noted that slightly over 50 percent of the units will be affordable to low income households, as defined in Mt. Laurel II.

The cost of taxes, hazard insurance, and condominium association fees is not dramatically variable, so that the key adjustments in the annual cost needed to make these units affordable to low and moderate income households must be made by adjusting the level of mortgage payments. At this point it can be stated unequivocally: without NJMFA mortgage financing, there is no realistic way in order to achieve that affordability, especially with regard to the low income households.

Specifically, we have calculated the affordability of these units on the basis of the ability of the low income households to qualify for a mortgage at an effective first year interest rate of 7.25%, and for the moderate income households at an effective first year rate of 9.75%. This requires three steps:

- Obtain NJMFA mortgage financing: As noted above, this is essential. We have assumed, for purposes of this analysis, that the mortgage interest rate on the forthcoming NJMFA bond issue will be 10½%.

- Skew Interest Rates for Low and Moderate Income Buyers: While the overall interest rate on the pool of NJMFA mortgages is projected to be 10½%, the mortgages made to low income buyers will be at a lower rate, and corresponding to moderate income buyers at a higher rate. This approach, which provides an extra margin of affordability for the less affluent households, has

been determined to be legal under Federal law governing tax-exempt mortgage bonds, and has been used extensively in the development of affordable housing in California. Specifically, the permanent interest rate on the mortgages made to low income households will be 8 3/4%, and to moderate income households 11 1/4% (while the same number of mortgages will be made to each group, the size of the mortgages to the low income households will be much less, so that the downward interest rate adjustment to the low income households will be much greater than the upward adjustment to the moderate income households).

- Provide an additional three year interest rate buydown: Finally, a three year buydown program by The Hills Development Company has been built into the project budget, in order to yield the following interest rates during the term of the mortgages:

EFFECT OF PROPOSED MORTGAGE BUYDOWN PROGRAM

YEAR	LOW INCOME	MODERATE INCOME
1	7 1/4%	9 3/4%
2	7 3/4%	10 1/4%
3	8 1/4%	10 3/4%
4 through 30	8 3/4%	11 1/4%

The rate of increase in interest rate is well within the level at which it is considered sound underwriting practice to qualify buyers at the initial rate. The effect of the increasing interest rate, for the most expensive unit, the three bedroom unit, is estimated at \$17 per month in each of the three years after the first year, or less than 1% of household income per year.

This, in conjunction with the anticipated cost levels for the other categories included in shelter cost, will enable these units to be affordable

to low and moderate income households who are the subject of Mt. Laurel II. Specifically, it is planned to sell the one bedroom and two bedroom loft units to low income households, and the two and three bedroom units to moderate income households.

(c). Documenting Affordability

The following affordability analysis was based on the mortgage interest rate assumptions described in detail above, and the following assumptions regarding other costs:

- Property taxes @ 1.22% of the market value of the unit. This is the current tax rate in Bedminster Township, which has remain largely stable in recent years.
- Association fees @ \$165 per year per \$10,000 house value (this can be translated into \$40/month for the least expensive units to \$70/month for the most expensive)

Hazard insurance is included in the form of a blanket policy, which is included in the condominium neighborhood association fee. A 90% mortgage was used as the basis for the following analysis, although this is understood that this will vary widely from case to case.

The table on the following page illustrates the points made earlier in the narrative. For example, the minimum qualifying income for the one bedroom unit is roughly \$10,300. This unit will be marketed, as noted earlier, to low income households. Comparing this to the table on page 2-8, it will be found that the range of prospective buyers is:

- single people earning between \$10,300 and \$11,450; and
- couples earning between \$10,300 and 13,100

AFFORDABILITY ANALYSIS FOR MAYFIELDS CONDOMINIUMS

	ONE BEDROOM	TWO BEDROOM (LOFT)	TWO BEDROOM	THREE BEDROOM
Unit Price	\$28,000	\$36,000	\$46,000	\$52,000
(down payment)	(2,800)	(3,600)	(4,600)	(5,200)
Mortgage Amount	\$25,200	\$32,400	\$41,400	\$46,850
Annual Constant	----- .08256 -----		----- .10388 -----	

ANNUAL COST

Mortgage Payment	\$ 2081	\$ 2675	\$ 4301	\$ 4867
Property Taxes	342	439	561	634
Association Fee	<u>462</u>	<u>594</u>	<u>759</u>	<u>858</u>
TOTAL	\$ 2885	\$ 3708	\$ 5621	\$ 6359
Minimum Income Needed at 28% of Income	\$ 10304	\$ 13243	\$ 20075	\$ 22711

Similar comparisons can be made for other units as well. Through the steps above it has been shown that these units will indeed be sold to households categorized as low and moderate income in Mt. Laurel II, with half of the units to be sold to low income households, and the remainder to moderate income households. Absent this proposal it is unlikely that there will be any housing of reasonable quality developed in Somerset County which these households could afford.

D. Construction Timetable

The Hills Development Company has already submitted its application to Bedminster Township for site plan approval for this project, including all of the low and moderate income units. The timetable set forth below assumes a reasonably, expedited approval timetable.

Site Plan Submission	8/26/83
Site Plan Approval	10/31/83
Building Permits Issued (first phase)	11/15/83
Start Site Construction (first phase)	11/1/83
Start Building Construction (first phase)	11/16/83
Complete Construction	5/15/84 to 7/15/84
Initial Marketing & Sales	3/15/84 to 6/1/84
Closings	6/1/84 to 9/1/84

It is anticipated that the total time elapsed, from initial submission to closings should be approximately one (1) year.

It is anticipated that other approvals, from state agencies, will be processed and completed during the period leading up to the anticipated granting of building permits. These include the approval of this application by the Mortgage Finance Agency, approval of the condominium filing by the Department of Community Affairs, and approval of this proposal as being consistent with their views of the Department of the Public Advocate.

III. SPECIAL PROVISIONS GOVERNING PROPOSED LOW AND MODERATE INCOME HOUSING AT THE HILLS

This section will discuss three elements to this project which have been developed in response to the particular circumstances of developing low and moderate income housing without public subsidy, within the context of The Hills PUD, and the dictates of the Mt. Laurel II decision. The elements presented here are first, the role of a nonprofit monitoring corporation; second, the structure of proposed sale and resale controls; and third, the structure of the proposed recapture provisions.

A. The Nonprofit Corporation

Effective compliance with the Mt. Laurel II standards requires that appropriate mechanisms be in place to ensure that both initial and subsequent purchasers of the units be by low and moderate income households. While initial screening of households could be done by the developer, or a broker under contract with the developer, it is clearly preferable that it be done by an independent entity with no financial stake in this project. Administration of resale controls, which will be in effect for an extended period, cannot be performed by the developer both for the above reason, and since the developer should not be expected to retain his involvement in the project indefinitely*.

In order to perform these functions, as well as additional functions dictated by the proposed recapture provisions (see III(c) below), The Hills Development Company proposes to enter into a contractual agreement with a nonprofit corporation capable of performing these functions. At this point, two models are under consideration:

- establishing a nonprofit corporation that would be specific to this development, whose sole purpose would be to perform these functions (along with other functions dictated by the rental units) in The Hills;
- contracting with a nonprofit corporation operating on a regional or statewide basis.

*In addition, under FHLMC regulations, the developer may not administer these controls.

There has been some discussion regarding the desirability, in view of the requirements of Mt. Laurel II, of establishing such a statewide nonprofit housing corporation for this purpose. If such an entity is established, The Hills Development Company will contract with that entity. If not, The Hills Development Company would propose to participate, jointly with the Township of Bedminster and other public interest representatives, in the establishment of a specific entity limited to monitoring The Hills.

In either case, a bona fide independent and nonprofit entity will be in place, well in advance of the initial sales which is capable of carrying out the initial screening of prospective buyers, as well as monitoring the sales and marketing program developed for Mayfields. As shown in the table on page 2-6, The Hills Development Company proposes that a fee of 0.75 of total project development costs be set aside in the low and moderate income project budget to provide start-up funds for this purpose. These funds will be derived independently of individual unit closings and funded in advance.

B. Sale and Resale Controls

As stated above, the nonprofit corporation will have responsibility for managing both the initial screening of prospective purchasers, and the provisions governing the resale of units in the future. Those responsibilities will be carried out as follows:

(1) Initial Screening of Purchasers: The nonprofit corporation will have the responsibility of determining whether prospective purchasers are eligible for the units, on the basis of their income; setting up priority categories for prospective purchasers, if any; and referring prospective purchasers to the mortgage lender. The nonprofit corporation will not be responsible for carrying out either a credit check, or any other action relevant to determining whether a prospective purchaser can qualify for a NJMFA mortgage, all of which will be the responsibility of the lender, under the supervision of the NJMFA.

All recipients of NJMFA mortgages, as required by the Mortgage Bond Subsidy Tax Act, shall only use the unit as their principal residence, and shall be, in effect, first-time home buyers. With regard to any purchaser who may not, for whatever reason, utilize an NJMFA mortgage, the requirement that the owner only use the unit as his or her principal residence will be enforced by the nonprofit corporation, but the first-time home purchaser requirement will not apply.

At this time, two purchaser preference standards, in addition to income, are proposed:

- preference to be given households who, with regard to each unit type, need a unit of that size and bedroom configuration; e.g., preference for a three bedroom unit will be given families with two or more children of different sex.
- preference to be given households working in close proximity to the project, and living either (a) in substandard housing or neighborhood conditions; or (b) an excessive distance from their place of work.

With regard to the latter point, it should be noted that a substantial numbers of jobs at the major employment centers in the area, such as AT&T, are relatively low paying clerical, maintenance, and similar jobs. Many of these jobs, in turn, are held by people living in urban areas of New Jersey and commuting substantial distances to their work places. In view of the history of this project, and the nature of the area, this is considered an appropriate priority category. While additional categories may be developed, consideration is not at present being given to a priority category to residents of the immediate community or area.

The nonprofit corporation will have responsibility for establishing waiting lists, as well as such other procedures as may be necessary to provide for an orderly flow of prospective buyers to the lender, which may include lotteries.

(2) Resale Controls: As the Supreme Court noted in Mt. Laurel II:

The problem of keeping lower income units available for lower income people over time can be a difficult one. Because a mandatory setaside program usually requires a developer to sell or rent units at below their full value so that the unit can be affordable to lower income people,

the owner or the developer, or the initial tenant or purchaser of the unit, may be induced to re-rent or re-sell the unit at its full value (at 112-113)

The court continues by stating that this problem must (their emphasis) be addressed. Since this clearly applies to The Hills (we have noted that there is an approximately 40% difference between the proposed pricing and full value), it is necessary to establish a structure for controlling both price and resale maintenance of resale of the units.

Any legal uncertainty regarding such mechanisms can be considered to have been resolved by the Supreme Court's unequivocal position; furthermore, in recent years, both FNMA and FHLMC* have adopted policies allowing them to purchase mortgages subject to resale controls. Furthermore, given the premium market character of Bedminster, and the attractiveness of the pricing of the Mayfields units, there is no reason to believe that the imposition of such controls will have any effect on the marketing of these units.

The general policies to govern the imposition of resale controls in this project will be as set down here. A specific and more detailed procedural statement will be prepared, and provided to the NJMFA, in keeping with these policies.

(a). Resale controls will be established in order to ensure that all units, upon their resale, will be both affordable to and purchased by households of low and moderate income

(b). The initial sales price shall be increased on the basis of an appropriate inflation index to the time of resale. Under consideration is the Home Purchase Component of the Consumer Price Index (this component is free of interest-related effects).

* Copies of the FNMA and FHLMC policies on inclusionary housing and resale controls are attached to this application as Appendix 3.

(c). Adjustments to the sales price for property improvements, or major fixtures or appliances, may be made, with the determination of the amount of the adjustment in the hands of the nonprofit corporation.

(d). That nonprofit corporation will have the exclusive right to refer potential purchasers to units to be sold, at the price established above, from a waiting list maintained by the nonprofit corporation, for a fixed period of 90 days after it has been notified of the availability of a unit.

(e). If a unit has not been sold (in that no contract of sale has been executed), by the end of that period, the seller may sell it on the open market. In that event, however, the seller will have to pay all or the greater part of the excess of the selling price over the established resale price to the not for profit corporation, which will use the funds as a subsidy.*

The above provisions will be framed in the form of deed covenants, restrictions and reservations and will be fully disclosed to all potential buyers. It is the judgement of The Hills that they are reasonable and most importantly, will ensure that the units continue to provide a source of low and moderate income housing. It is anticipated that these restrictions will govern these units for a period of no more than 30 years.

*It is extremely unlikely that (e) will ever take place; still, if for some reason the corporation is incapable of performing its responsibilities, some alternative must be made available.

(3) Hills Development Company intends to develop the Mayfields low and moderate income property through a subsidiary. The property will be conveyed to the low and moderate purchasers through a deed, which will generally be set forth in the restrictions noted in the proposal herein.

In addition to the covenants and restrictions otherwise discussed here, the purchaser, and each subsequent purchaser will pay, as additional consideration, such funds as required by the income regulation and re-sale recapture provision discussed more fully below.

The Hills Development Company intends to assign various of its rights to manage various aspects of the development, including the income-regulation provision, the recapture provisions and other restrictions contained in this deed and discussed herein, to the nonprofit corporation. As consideration for this, the nonprofit corporation will pay 75% of the recapture proceeds to the Hills Development Company, retaining 25% for administrative purposes and subsequent subsidies.

C. Provisions for Resale Recapture and Income Regulation

As has been briefly noted above, it is the intention of The Hills Development Company to provide, through deed covenants, restrictions and reservations, for the potential recapture of some or all of the subsidies provided to the low and moderate income homebuyers. Recapture of subsidies shall only be sought from those purchasers whose incomes rise above the ceiling income, as it may be adjusted, for their income category and household size. The purpose of providing for recapture is twofold: (1) to provide The Hills Development Company with a limited return on its land subsidy over time, in a manner which will not affect the initial or continued affordability of the low and moderate income housing units; and (2) to create a cash flow that can be used to benefit

the owners of the Mayfields low and moderate income condominiums. The specific provisions by which this recapture will take place are as follows:

(1). A graduated schedule of recapture payments, starting in the fifth* year after each unit is purchased will be established. This schedule will be based on a land value for the project which will be determined by an independent appraisal and conservative assumptions regarding imputed interest.

The maximum amount of potential recapture from any unit will be that unit's pro rata share of the total subsidy provided by The Hills.

(2). The nonprofit corporation will annually verify the household income of all homeowners households to determine their obligation, if any, to make recapture payments as a result of any increase in household income. No household will be required to make payments which, when added to his or her other housing costs (as previously defined on page 2-11) will exceed 28% of gross income. Similarly, as noted above, no would be obligated to make any payments unless their household income rose above the ceiling income, as adjusted over time, for that household size and income category.

* The fifth year of occupancy will be the first year in which there will be no increase in housing costs as a result of the gradual phasing out of the buydown program.

(3). The nonprofit corporation will be responsible for collecting these funds and will be entitled to retain 25%, passing the balance to The Hills. The nonprofit corporation will use those funds for the benefit of Mayfield low and moderate income units, and their residents. The nonprofit corporation will establish formal procedures for use of these funds, which may allow for use of limited amounts for administrative purposes.

The particular benefit of this approach is that it provides a source of funds to the project, and by extension, to the residents in the future. Since considerable experience has shown that a major problem associated with condominiums is the cost of repairs and replacement of major systems, ten, fifteen or twenty years after initial construction, which costs must be financed through additional levies on the owners, this approach could be a significant protection to the owners against unanticipated increases in the future.

The Hills Development Company believes that this recapture provision is a sensible approach, from a public policy standpoint, of balancing the interest of the low and moderate income homebuyer, and the interest of the developer. It is further recognized that these provisions must be carefully drafted, and incorporated in the deed to the condominium unit. The specific language of the deed restriction, and the determination of the value of the land subsidy and payment schedule are being developed by staff and counsel for The Hills.

In conclusion, it is the position of The Hills Development Company that a creative and responsible approach for providing low and moderate income housing has been set forth in this proposal. It should be apparent that, without below-market interest rate financing for the end-loans, which is being requested from the New Jersey Mortgage Finance Agency, this project simply cannot succeed as low and moderate income housing, at least in the sense that the term

is used in the Mt. Laurel II decision. With such financing, the project can succeed, and can become a prototype for a creative and innovative public-private partnership in this area.

APPENDIX I:

THE HILLS DEVELOPMENT COMPANY

APPENDIX 1: The Hills Development Company

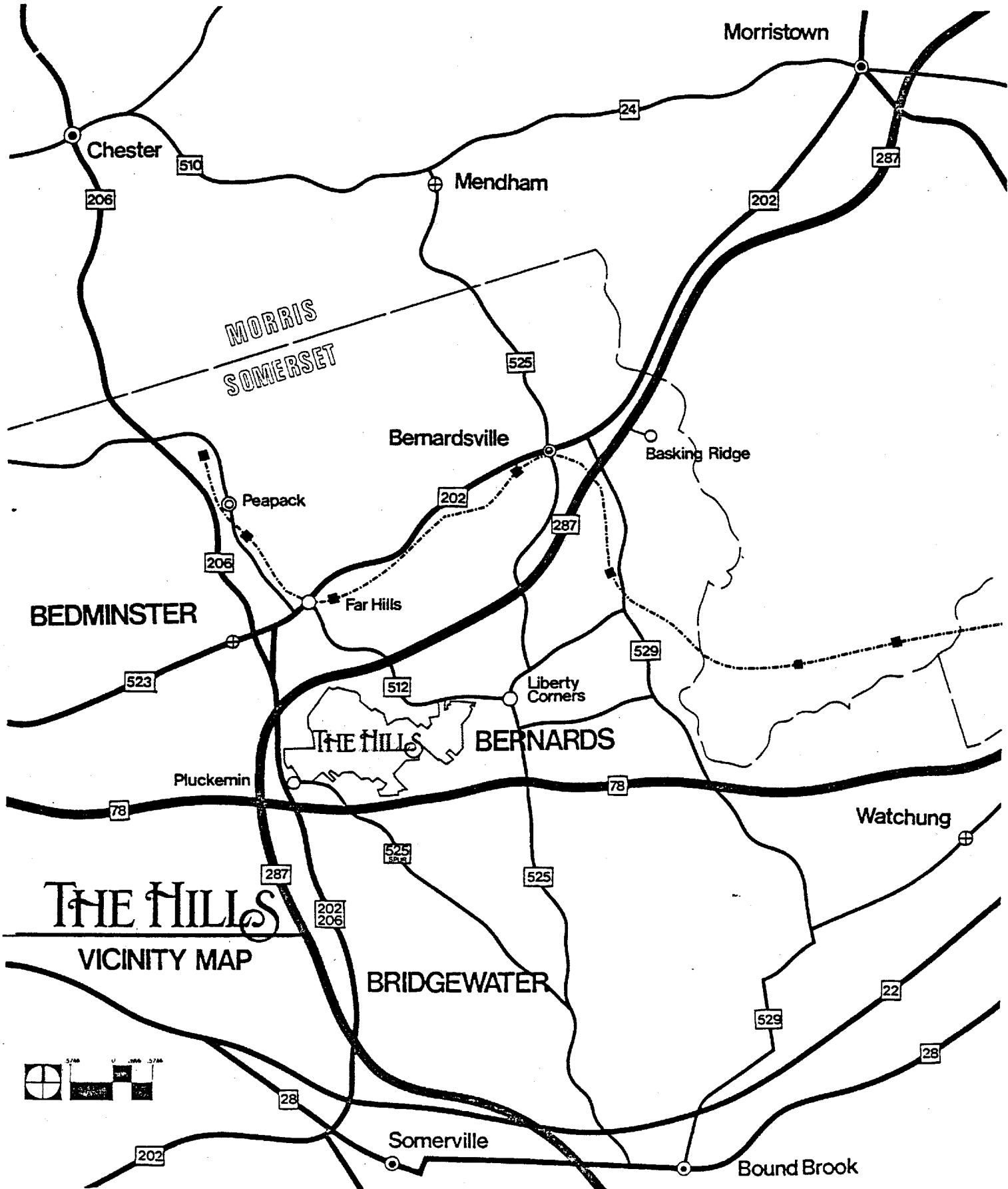
The following will provide a narrative description of the development entity undertaking The Hills PUD.

The Hills Development Company is a New Jersey joint venture general partnership, with two partners owning 100% of the assets of the entity. The two partners are The Allan-Deane Corporation, a wholly-owned subsidiary of Manville Corporation, and Ligone, Inc., a Netherlands Antilles Corporation. The reorganization petition filed in 1982 by the parent corporation of one of the partners, The Manville Corporation, has had no effect on the operations of The Hills Development Company and Hills is not a part of that reorganization. Assets of The Hills have not been frozen, debts continue to be paid, the Company has been consistently managed, and there is no diminution in the construction effort at The Hills. Ligone Inc., is a privately held real estate investment firm.

The Hills Development Company is managed by RecreActions, Inc., a firm specializing in large scale development projects, and an entity totally distinct from The Hills Development Company, or from either joint venture partner. The corporate headquarters of RecreActions, Inc., is in Laguna Beach, California, and the firm has carried out a number of large scale project, including the Ken-Caryl Ranch outside Denver, Colorado; Elkhorn at Sun Valley, Idaho and a number of projects in Southern California. RecreActions personnel are directly responsible for operation of the development activities at The Hills, and report to a policy committee made up of representatives of the joint venture partners.

APPENDIX II:

PROJECT MAPS AND DRAWINGS



Morristown

Chester

Mendham

MORRIS
SOMERSET

Bernardsville

Basking Ridge

Peapack

BEDMINSTER

Far Hills

Liberty
Corners

THE HILLS

BERNARDS

Pluckemin

Watchung

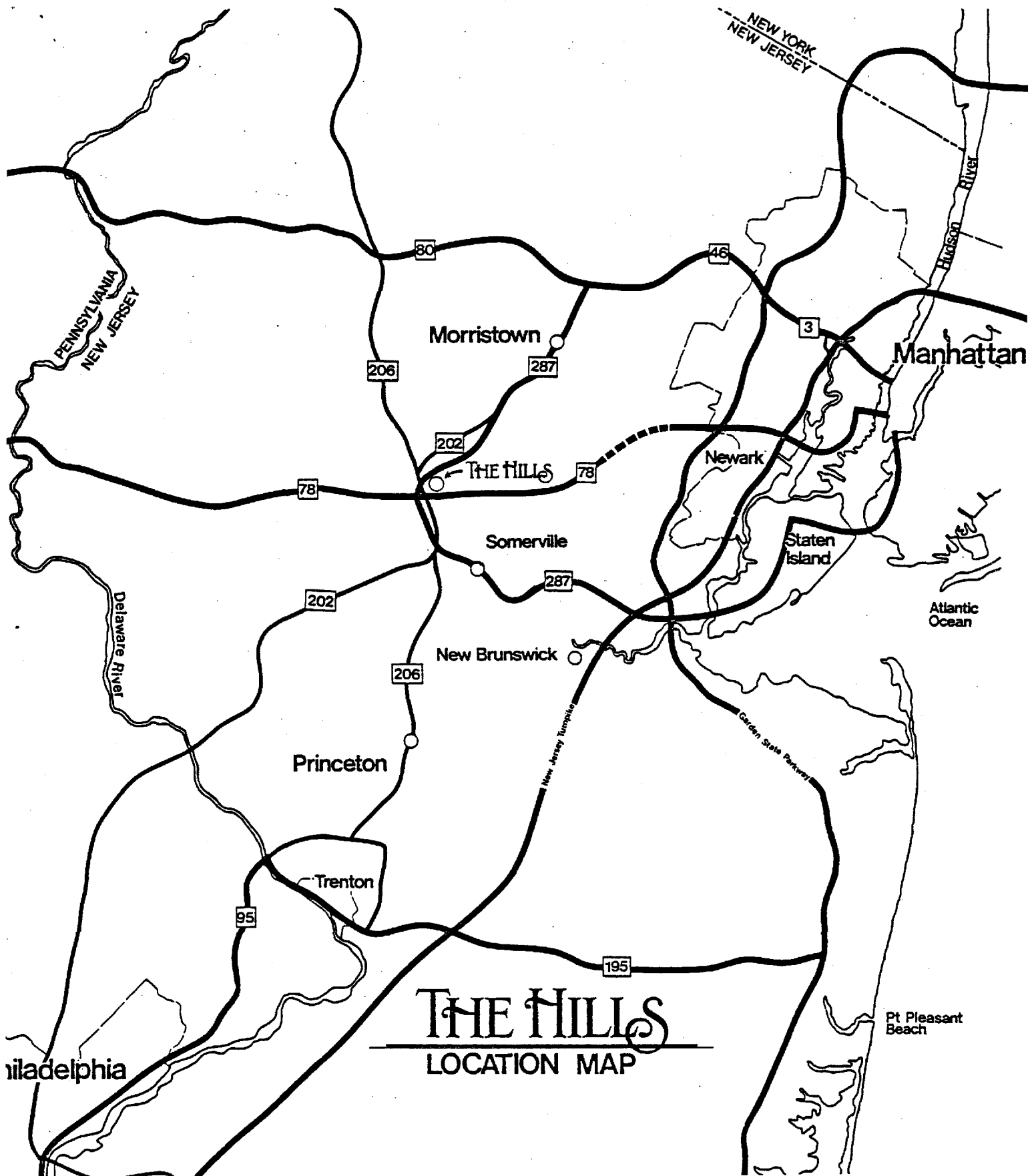
THE HILLS

VICINITY MAP

BRIDGEWATER

Somerville

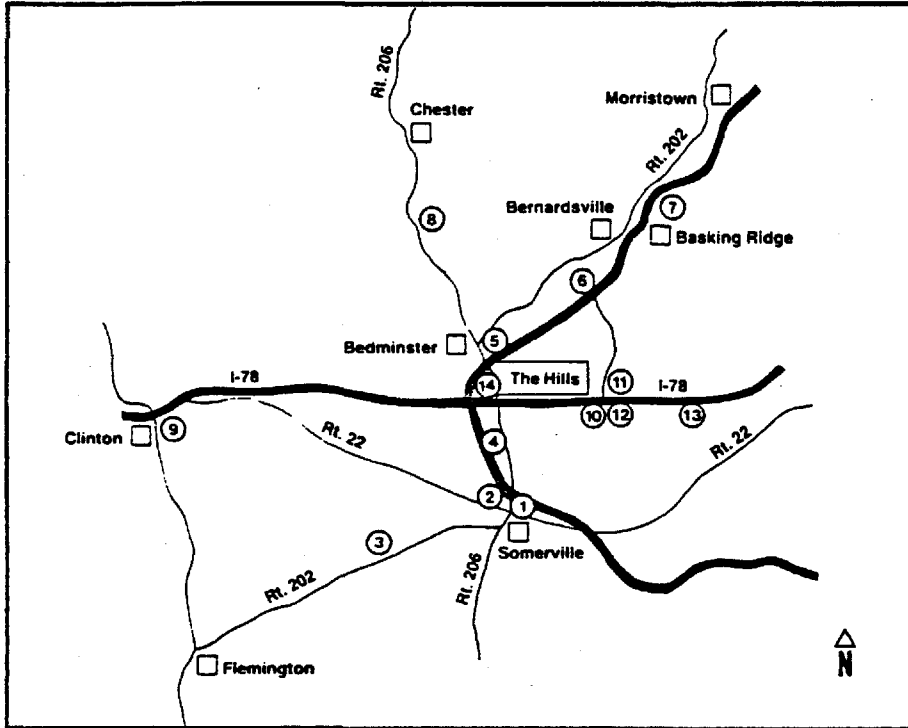
Bound Brook



Perhaps the area's greatest asset is its remarkable location: equidistant and less than an hour's drive from both New York City and Philadelphia. When the few remaining miles of I-78 are completed, a

straight line course to Manhattan — with its many cultural and commercial advantages — will be assured. Also via I-78, Newark Airport is less than a half hour away.

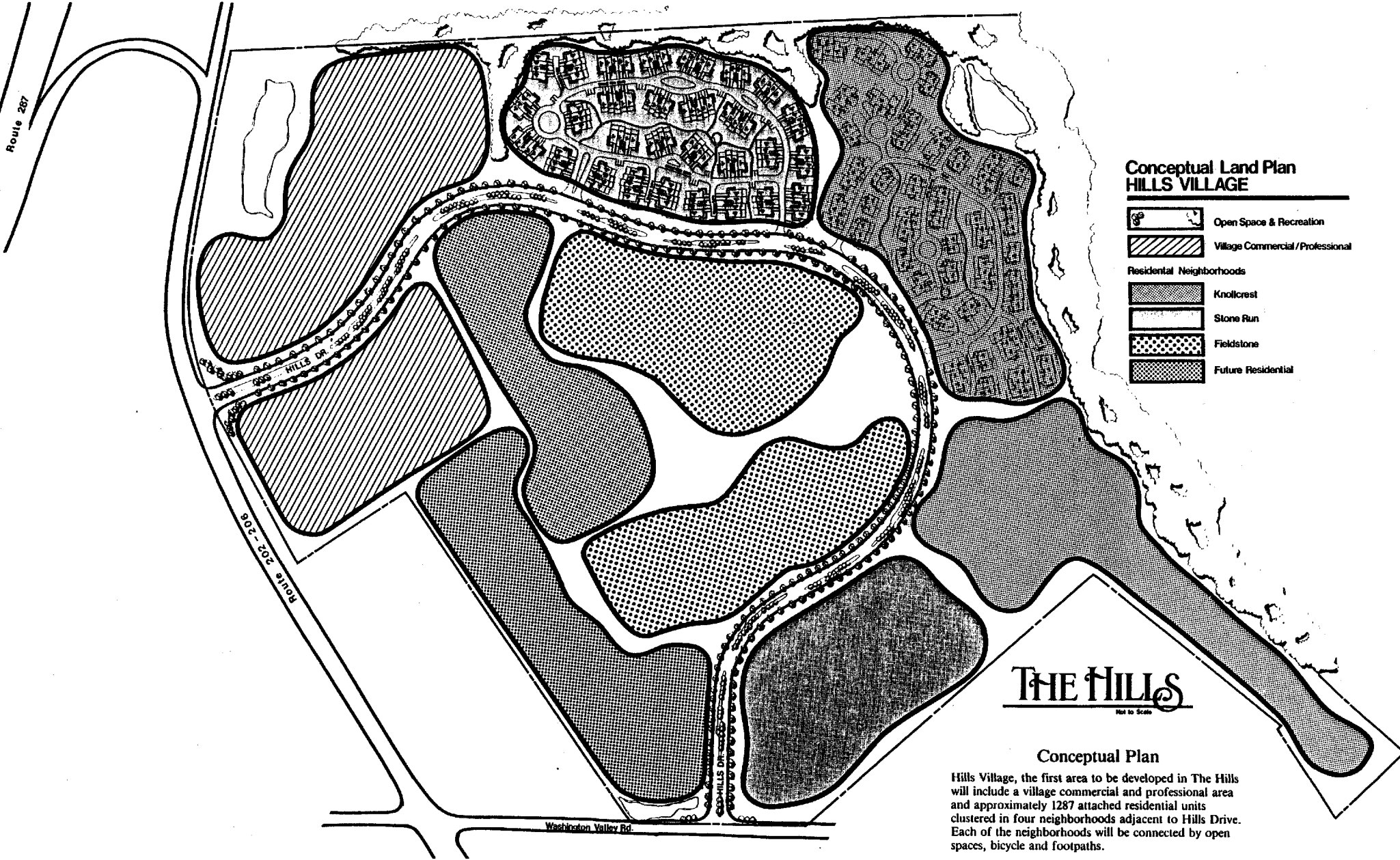
Corporate Neighbors



1. Bridgewater Commons
2. Ethicon, Inc.
3. Ortho Pharmaceutical Corp.
Ortho Diagnostics, Inc.
4. American Hoechst Corp.
5. AT&T Long Lines
6. Mt. Airy Office Park
7. AT&T
8. Beneficial Management
9. Exxon
10. AT&T Long Lines
11. Office Complex
12. Chubb Insurance
13. AT&T
14. City Federal

Major corporations have been drawn by the exceptional quality of life in the area, along with the easy accessibility. They have acquired tracts of land for new corporate headquarters and, at the same time, have maintained the open space quality of the area.

In many cases, the corporations have adapted their facilities to the character of the mansions and estates of the great landowners. With their resources, they are able to maintain the estates in their original glory and provide a luxurious atmosphere for their employees. And all are dedicated to preserving that quality. With this embracing of the community and its values has come rich returns: remarkable economic strength and stability, record high employment and an optimism for a prosperous future.



**Conceptual Land Plan
HILLS VILLAGE**

-  Open Space & Recreation
-  Village Commercial / Professional
- Residential Neighborhoods**
-  Knollcrest
-  Stone Run
-  Fieldstone
-  Future Residential

THE HILLS
Not to Scale

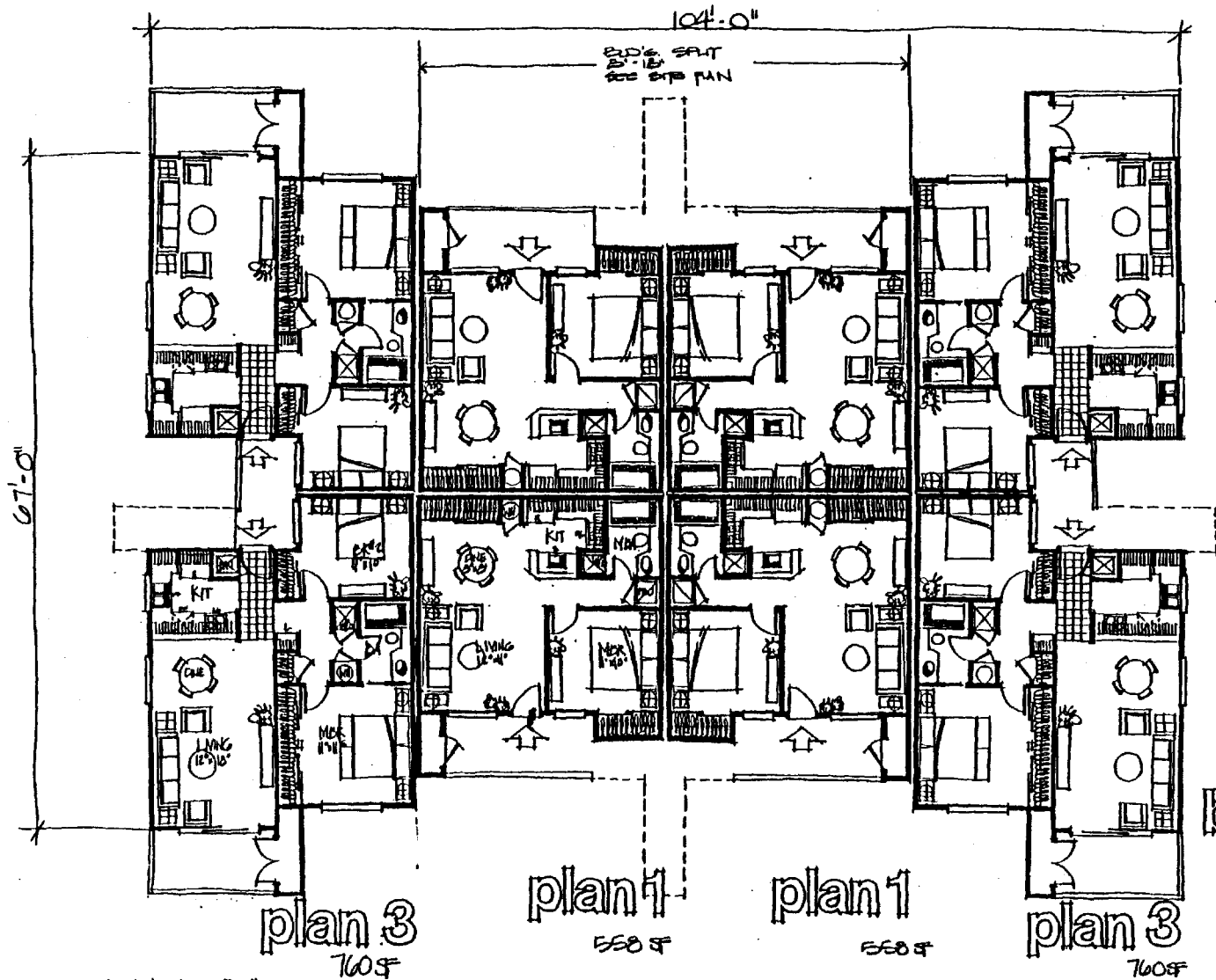
Conceptual Plan

Hills Village, the first area to be developed in The Hills will include a village commercial and professional area and approximately 1287 attached residential units clustered in four neighborhoods adjacent to Hills Drive. Each of the neighborhoods will be connected by open spaces, bicycle and footpaths.



heHills-P.U.D. BEDMINSTER TOWNSHIP, NEW JERSEY
THE HILLS DEVELOPMENT CO.

 **corbin-yamafuji and partners, inc.**
 architecture - planning

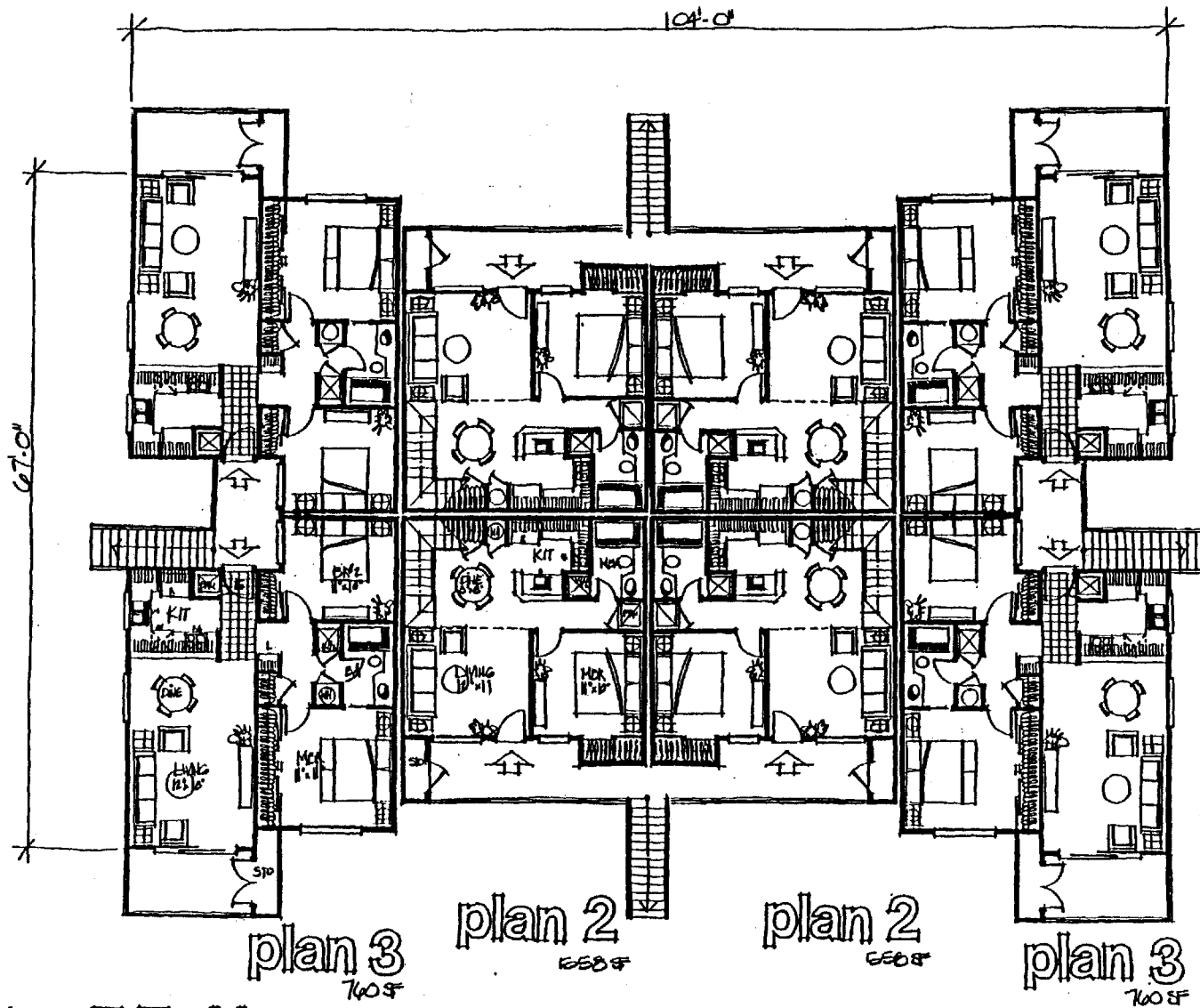


lower level
bldg type a

the Hills - P.U.D. MAYFIELD/AFFORDABLE (AREA 5,6,7)
THE HILLS DEVELOPMENT CO.

corbin-yamafuji and partners, inc.
architecture · planning





upper level
bldg type a

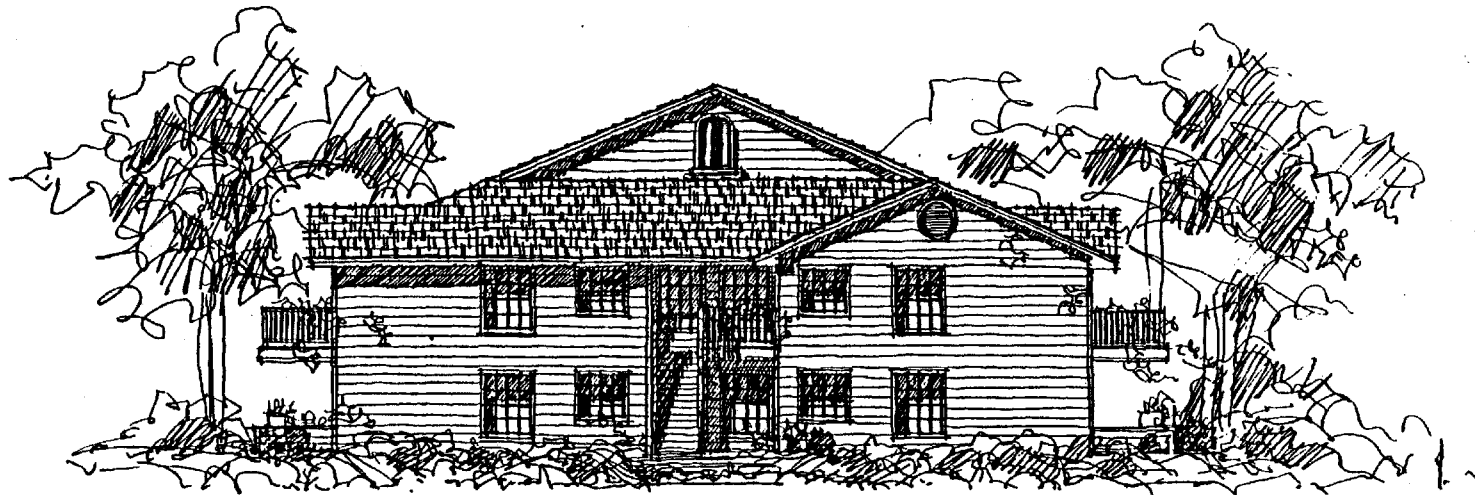
the Hills-P.U.D. MAYFIELD/AFFORDABLE (ARA 5,6,7)
THE HILLS DEVELOPMENT CO.

corbin-yamafuji and partners, inc.
architecture · planning

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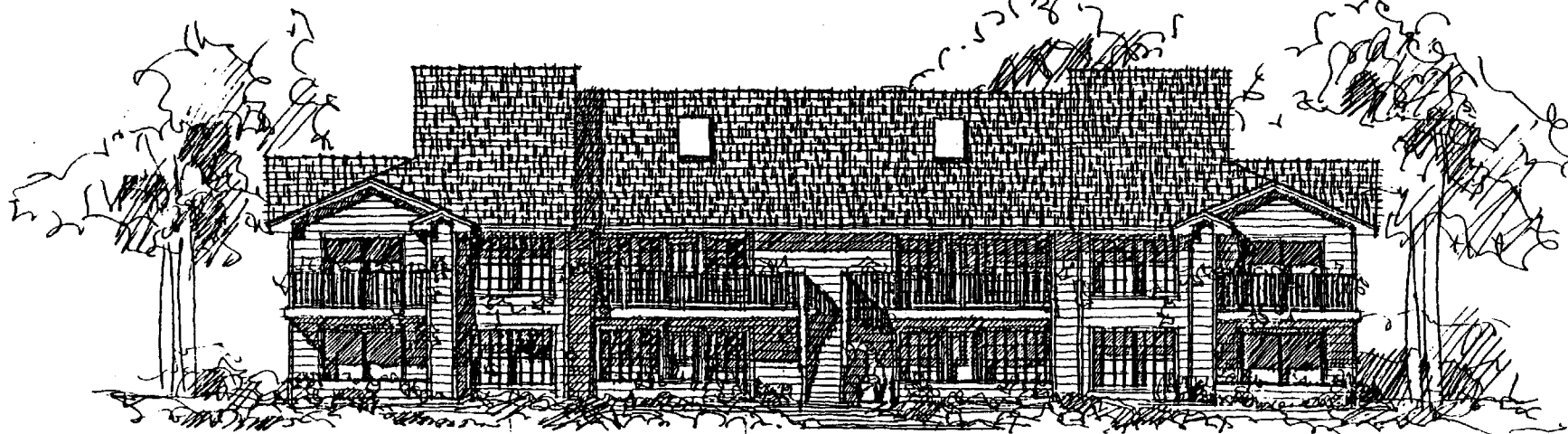
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MSB 20 21



3/3

3/3



3/3

2/1

2/1

3/3

BLDG. TYPE A

the Hills-P.U.D. MAYFIELD/AFFORDABLE (AREA 5,6,7)
 THE HILLS DEVELOPMENT CO.

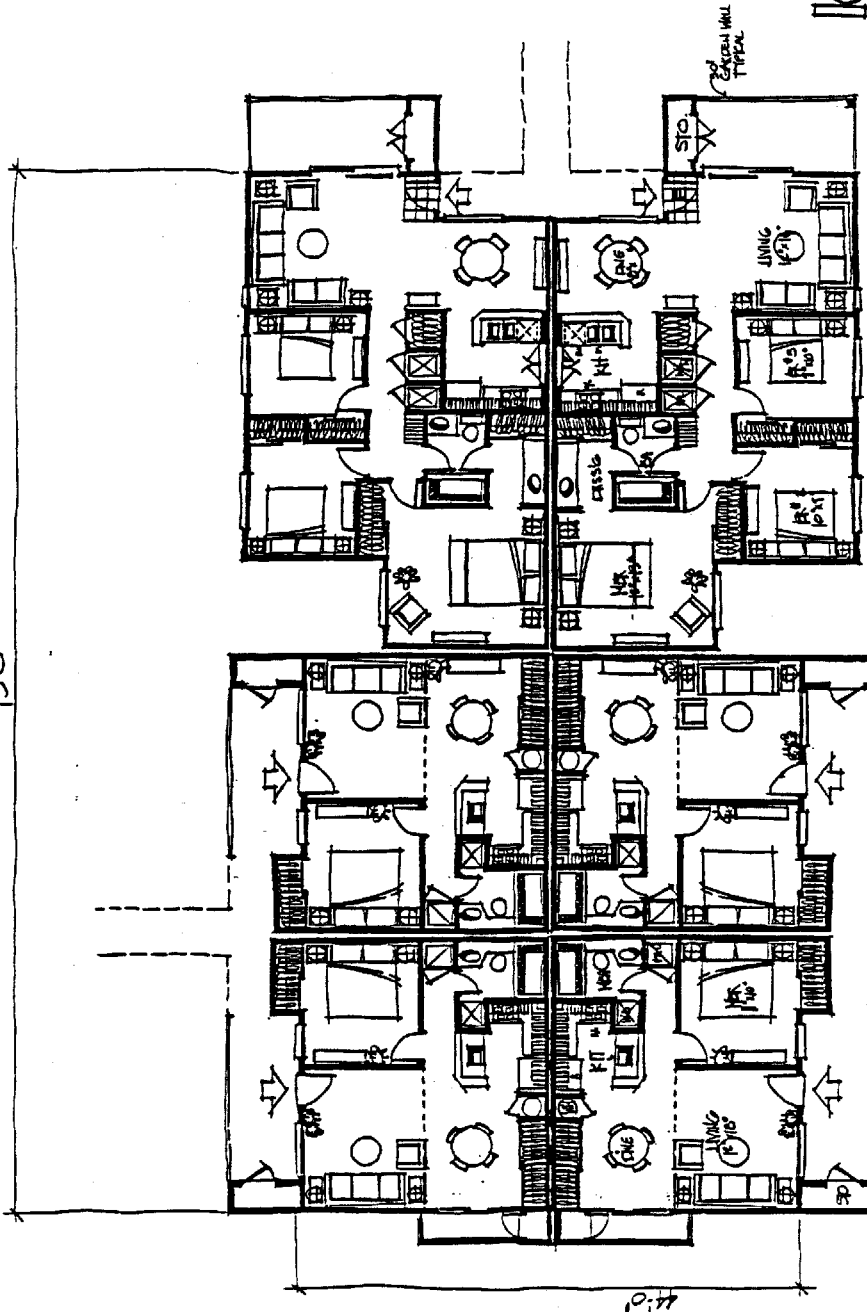
corbin-yamafuji and partners, inc.
 architecture · planning

DATE 8/23/05

3

JOB 05015

33'



lower level
bldg type b

plan 4
790 SF

plan 1

plan 1
588 SF

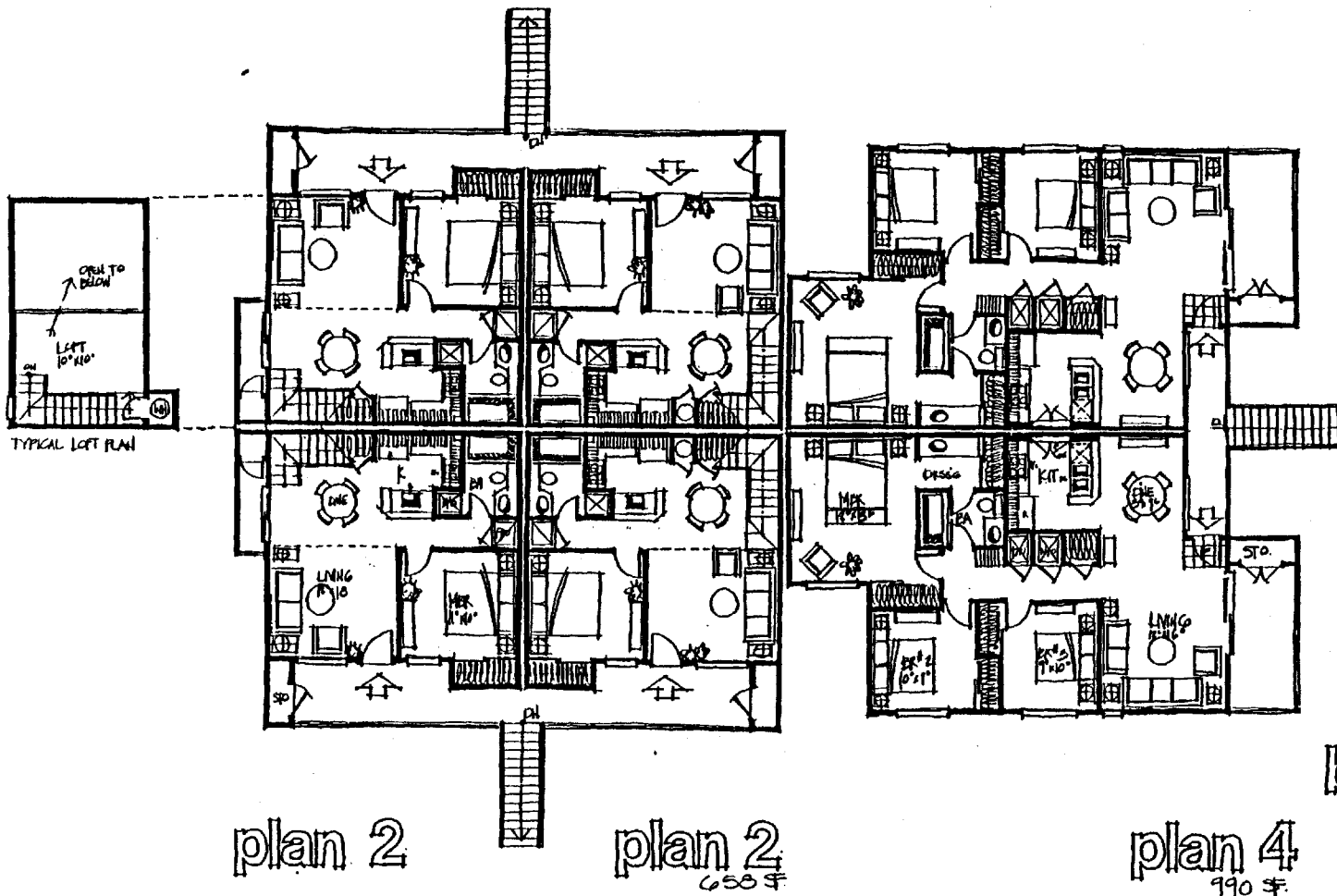
theHILLS-P.U.D. MAYFIELD/AFFORDABLE (AM 5.6.7)
 THE HILLS DEVELOPMENT CO.

WING 118

4

00000

corbin yamafuji and partners, inc.
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upper level
 bldg type b

plan 2

plan 2
 650 SF

plan 4
 990 SF

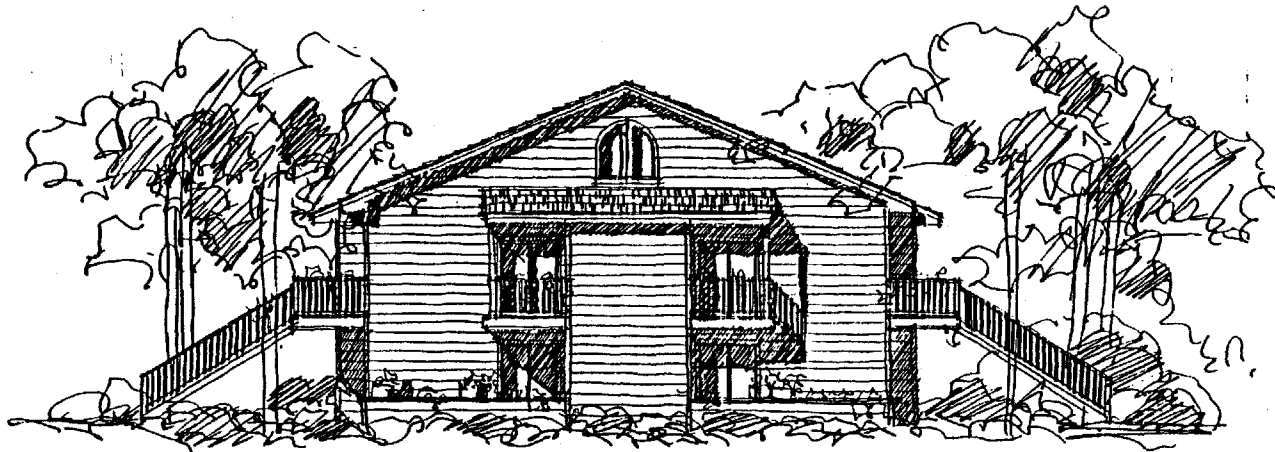
the Hills - P.U.D. MAYFIELD/AFFORDABLE (A/R 5,6,7)
 THE HILLS DEVELOPMENT CO.

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 architecture - planning

DATE 8.23.83

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NO. 236



2/1

2/1



2/1

2/1

4/4 BLDG. TYPE B

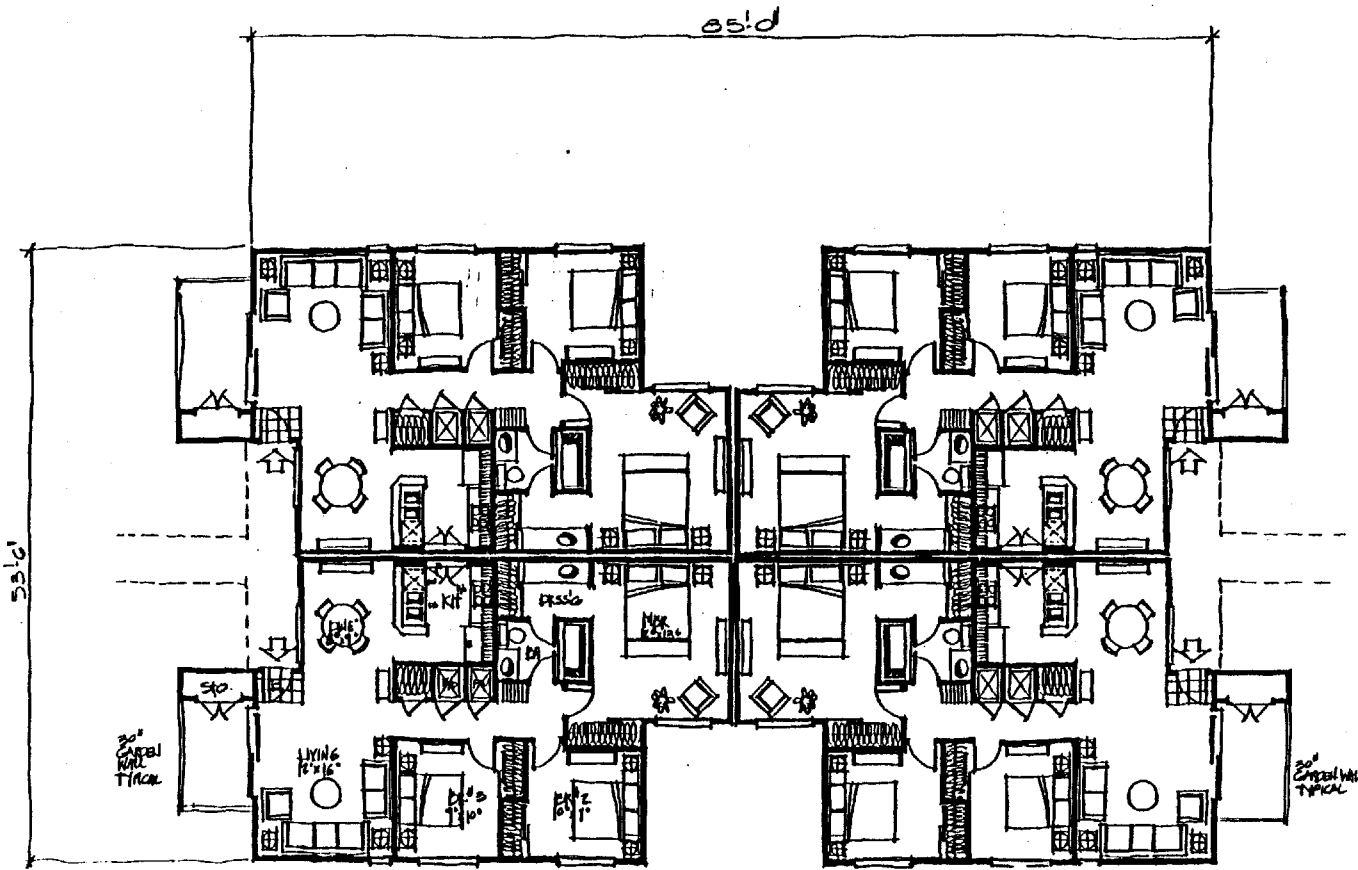
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01102583



0002316



lower level
 bldg type c

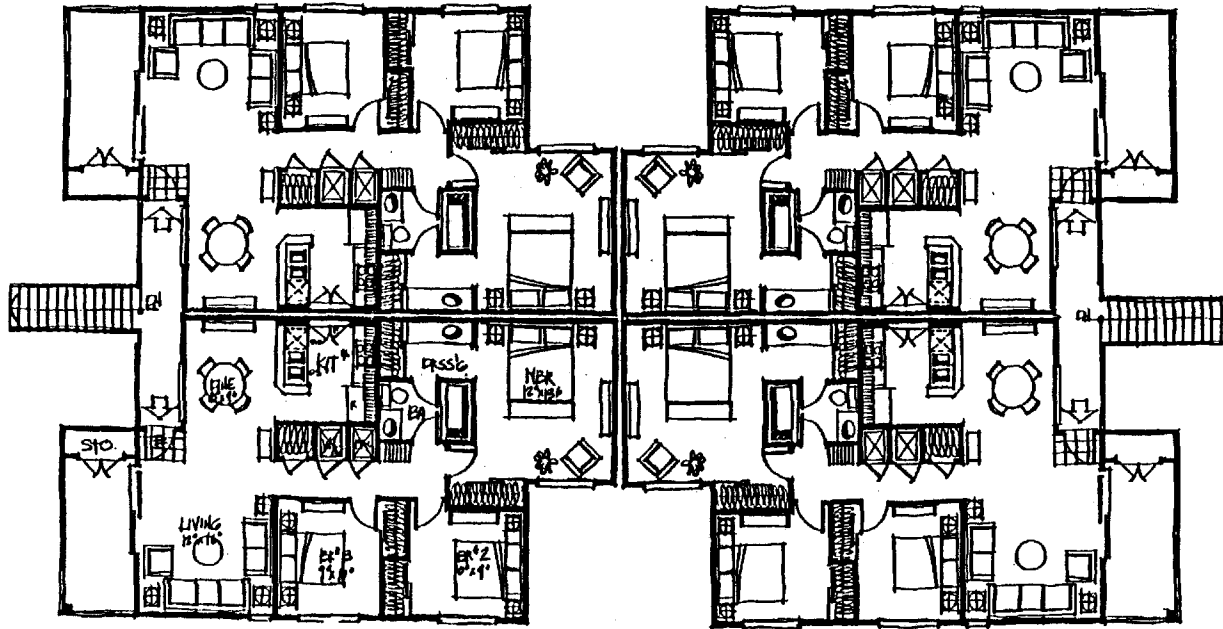
plan 4

plan 4
 990 SF

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upper level
bldg type c

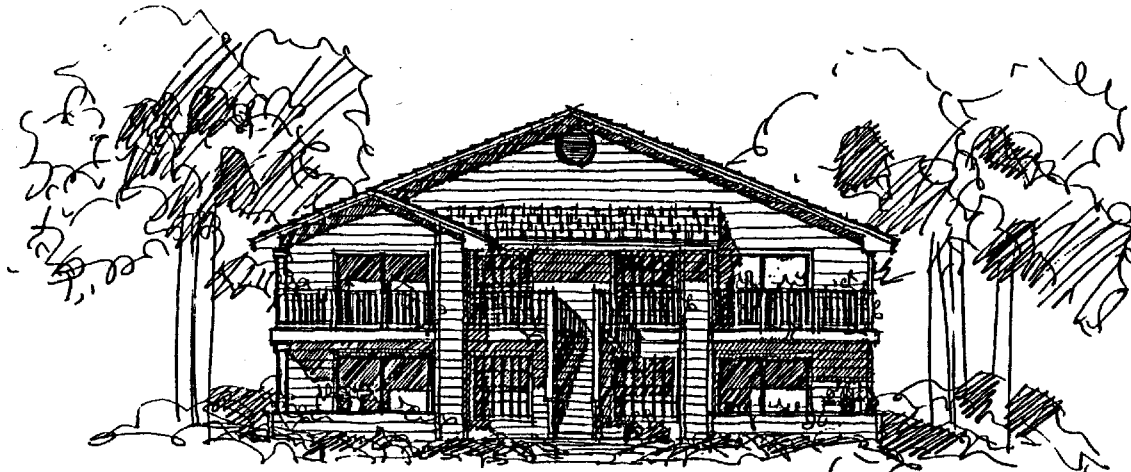
plan 4

plan 4
990 SF

the Hills-P.U.D. MAYFIELD/AFFORDABLE (AREA 5,6,7)
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4/4

4/4



4/4

4/4 BLDG. TYPE C

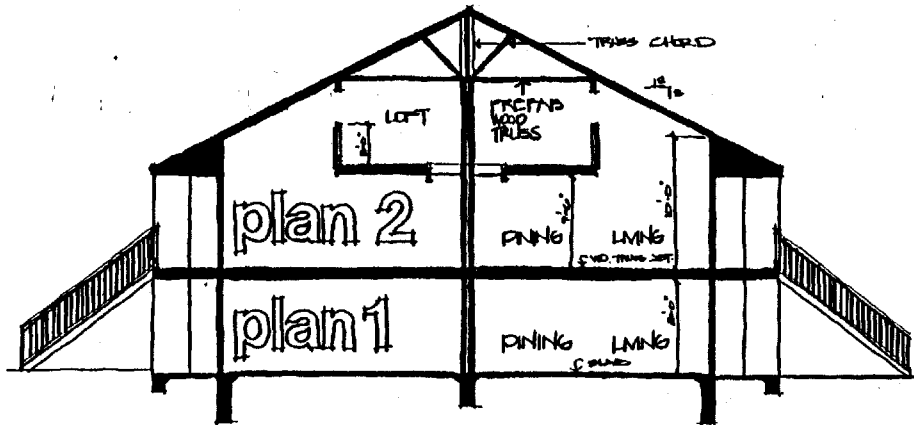
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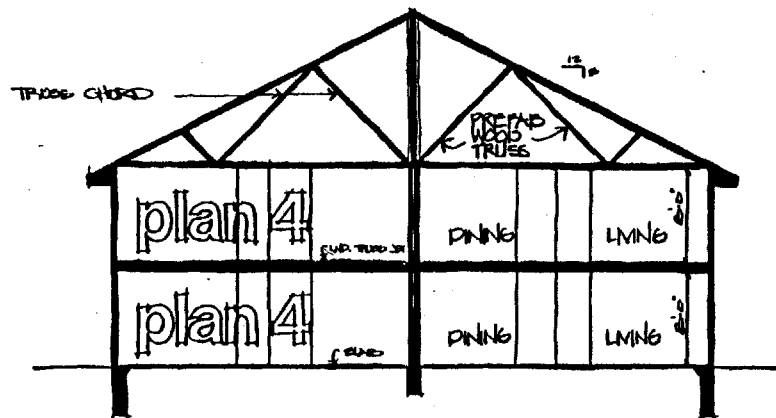
DATE 03/05

9

008 P.2/5



bldg type b



bldg type c

the Hills-P.U.D. MAYFIELD/AFFORDABLE (ANA 5.6.7)
 THE HILLS DEVELOPMENT CO.

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DATED 12-03

10

JAN 03/06

APPENDIX III:

FNMA AND FHLMC POLICY STATEMENTS ON INCLUSIONARY HOUSING

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Mortgages Subject to Inclusionary Zoning Restrictions

To provide affordable housing for low and moderate income persons, some state and local governments have introduced the concept of "inclusionary zoning". We will purchase 1st mortgages secured by properties subject to this type of zoning restriction as long as the property is owner-occupied. The deed restrictions must be subordinate to our mortgage and we must have the 1st claim to any hazard insurance settlement or condemnation award. In addition, the restrictions cannot impair our legal rights to remedy a default under the mortgage terms, nor should they require us to send notice of default or foreclosure to any 3rd party. The source of the deed restrictions must be included in the public land records so that it is readily identifiable in a routine title search.

Any resale controls that affect the restricted units must be for a fixed time period, up to 30 years. They must be administered by an authorized governmental unit that has established procedures for screening and processing applicants. The zoning authority or local jurisdiction may retain the "right of 1st refusal" to purchase a restricted unit that is being resold. This right must be exercised within 90 days after the property is listed for sale. However, the deed restrictions cannot obligate us to separately notify the zoning authority or local jurisdictions about a pending foreclosure sale of the restricted unit.

When we acquire a restricted unit through foreclosure or acceptance of a deed in lieu of foreclosure, future sales of the unit must not be subject to any resale restrictions.

s Section 3.201a(8), new provisions regarding "inclusionary zoning" are added to loan eligibility requirements:

age 122. (8) *Inclusionary Zoning.* FHLMC considers "inclusionary zoning" to cover any subdivision or project where deed restrictions are placed on specified number or percentage of the units as a condition of securing zoning approval, density approval, building permits or conversion approval. Such deed restrictions may limit the rights of a mortgage lender or subject the unit to sale or resale controls. FHLMC considers properties subject to such restrictions to be "restricted units;" noncontrolled properties are considered to be "nonrestricted units."

FHLMC will purchase loans secured by units within a subdivision or project covered by inclusionary zoning if the requirements set forth in (i) and (ii) below are met. By submitting such loans for purchase, the Seller warrants that the requirements have been met.

(i) *For loans secured by nonrestricted units:*

(a) FHLMC purchase requirements, including all applicable condominium/PUD warranties, must be fully met.

(b) If the unit is in a condominium or PUD project, the FHLMC 70 percent presale requirements, as described in Sections 3.207 and 3.208 of the *Sellers' Guide*, will apply individually to the nonrestricted and the restricted units in that project. FHLMC will not purchase loans secured by either nonrestricted or restricted units until the presale requirement has been met for both categories.

(c) In the market data analysis section of the appraisal form, the appraiser must show analysis of three comparable sales, two of which are outside the subdivision or project if it is in the initial-sale stage. The three comparable sales must be sales of nonrestricted units.

(d) If the unit is in a condominium or PUD project, the homeowners association assessment must be based on the size of the unit or on the ratio of one to the total number of units in the entire project, but may not be based on the sale price of the unit. Exterior maintenance must be the responsibility of the homeowners association and the charges for such maintenance included in the monthly assessment.

(e) The mortgagee must have first claim to any hazard insurance payment or condemnation award.

(ii) *For loans secured by restricted units:*

(a) The requirements set forth in (i)(a) through (e) above must be met.

(b) Any "right of first refusal" must run to the enabling authority or jurisdiction with a time period not to exceed 90 days. In the event of foreclosure or deed in lieu of foreclosure, any resale restrictions will cease to be effective as to the mortgagee and subsequent purchasers of the property.

(c) If the subdivision or project contains both restricted and nonrestricted units, the number or percentage of restricted units within the subdivision or project cannot exceed 30 percent of the total number of units.

(d) The restricted units must have effective resale controls for a fixed period of time. The controls must be administered by a duly authorized authority (or an agent thereof) of state, local or municipal government that has established mechanisms to provide applicant screening and processing on an ongoing basis. The controls may not be administered by the developer.

(e) Hazard insurance coverage in the amount of replacement cost is required.

(f) The mortgagee shall not be required to send notice of default or foreclosure to any third party.

(g) Agreements or requirements, i.e., enacted ordinance, statute, published policy or imposed restrictions, must show in the public land records for the project in a manner so as to be discoverable by a routine title search performed by a title searcher of normal competence.

SECTION III

DESCRIPTION OF RENTAL HOUSING COMPONENT

PLAN FOR DEVELOPMENT OF LOW AND MODERATE INCOME RENTAL HOUSING
IN THE HILLS PUD, BEDMINSTER, NEW JERSEY

The Hills Development Company (HDC) proposes to construct 88 of the total number of 260 low and moderate income housing units in The Hills PUD as rental housing. These units are to be located in Area 7 of the Mayfields section of the PUD, as shown in the site plan map on the following page. As shown in Table 1, these units will be divided equally between low and moderate income households, with the proposed distribution as shown in the table.

TABLE 1

NUMBER OF UNITS	UNIT TYPE	SQUARE FOOTAGE	DISTRIBUTION OF UNITS	
			LOW INCOME	MODERATE INCOME
24	one bedroom	567	12	12
24	two bedroom/loft	675	16	8
32	two bedroom	769	12	19*
8	three bedroom	997	4	4

*one two bedroom unit will provide rent-free to the superintendent

The proposed rent schedule for the units, which is shown in Table II, was derived from an analysis of the maximum rents that could be paid by low and moderate income households, respectively, by household size, and the anticipated mix of households by size for each unit type. Specifically, it was assumed that one bedroom units would be occupied in roughly equal proportions by one and two member households; the two bedroom loft units by three member households; the two bedroom units by three and four member households; and the three bedroom units by four and five member households. The average rent for each unit type projected is 90% of the ceiling rent for each category; individual rents will vary, of course, on the basis of the income of each household.



theHills-P.U.D. BEDMINSTER TOWNSHIP, NEW JERSEY
THE HILLS DEVELOPMENT CO.

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This proposed rent schedule is based on the first year's operation and the existing figures based on the Newark Standard Metropolitan Statistical Area (SMSA). It is possible that these figures will be adjusted, depending on the income levels of the persons renting in these Units and/or due to the adoption of different income figures by the U.S. Department of Census/U.S. Department of Housing & Urban Development. The Hills Development Company has proposed a rental surcharge system which would operate in the event of a rise of a household's income beyond a threshold to be established.*

Table II

PROJECTED RENT LEVELS AND PROJECT INCOME FOR PROPOSED MAYFIELDS RENTAL HOUSING

<u>LOW INCOME</u>		<u>MODERATE INCOME</u>		<u>TOTAL RENT ROLL</u>	
<u>NUMBER</u>	<u>RENT</u>	<u>NUMBER</u>	<u>RENT</u>	<u>LOW INCOME</u>	<u>MODERATE INCOME</u>
12	\$230	12	\$380	\$33,120	\$54,720
16	\$270	8	\$450	\$51,840	\$43,200
12	\$285	19	\$475	\$41,040	\$108,300
4	\$300	4	\$500	\$14,400	\$24,000
<u>44</u>		<u>43</u>		<u>\$140,400</u>	<u>\$230,220</u>
				\$370,620	

It should be readily apparent that it is not possible, through conventional means, to develop a rental housing project today which can provide rents such as those above on a break-even basis. In order to achieve these rents, The Hills Development Company will have to utilize a number of approaches, all or most of which must take place if rents affordable to low and moderate income households, particularly low income households, are to be achieved.

* The figure of 125% over ceiling income has been proposed for the threshold.

(1) Financing: It is the intention of HDC to seek below-market mortgage financing, through the tax-exempt bond based mortgage program of the New Jersey Housing Finance Agency (NJHFA), or other governmental entities. Meetings have been held with the staff of the Housing Finance Agency to explore that possibility, and an application has been submitted to the U.S. Department of Agriculture, Farmers Home Administration, as well. Pending satisfactory resolution of the long-term financing of this project, HDC expects to use conventional bridge financing (up to five years) on a balloon basis from an institutional lender, with whom discussions have been held. The illustrative pro forma contained as Exhibit A has been prepared on the assumption that HDC will use this conventional financing. NJHFA financing would provide a lower interest rate.

(2) Reducing Land and Improvement Costs: HDC will significantly reduce the share of land and site improvement costs associated with units actually included in the rental project.

(3) Rent Skewing: As noted above, the project rents will be skewed, or adjusted, in order to ensure that approximately half of the units will be affordable by low income households.

(4) Tax Abatements: It is the intention of HDC to seek tax abatement from the Township of Bedminster, as provided by statute. The attached operating budget has been prepared on the basis on a payment in lieu of taxes to the Township of 3% of the gross shelter expense of the project.*

(5) Syndication Proceeds: At the present time HDC contemplates selling the project to investors as a syndication. HDC intends to utilize 80% of the proceeds obtained from that sale in order to provide rent reduction in the project.

* HDC is eager to explore other means by which the Township may be able to further facilitate making this project affordable to low income households, including potential use of Community Development Block Grant funds.

Table III presents the preliminary development cost budget. Table IV presents a sample first year operating cost budget for the proposed Mayfields rental units.

Table III

DEVELOPMENT COST ANALYSIS FOR PROPOSED MAYFIELDS LOW AND MODERATE INCOME RENTAL HOUSING ELEMENT		
Land @ \$2000/DU	\$	176,000.00
Site Improvements @ \$5000/DU		440,000.00
Landscaping and finishing @ \$2000/DU		176,000.00
Construction @ \$32/SF		1,746,976.00
Arch. & Engineering @ 3.5%	61,200	
Arch. & Supervision	6,120	
Consulting & Legal	50,000	
Insurance during construction	10,000	
Title & recording	10,000	
Permits	5,000	
Prop. taxes during construction	4,400	
Marketing expense @ \$250/DU		<u>22,000.00</u>
SUBTOTAL	\$	2,707,696
Construction financing @ 12% for 9 months		141,682
Financing fees @ 3%		94,454
Supervision & overhead @ 2.5%		78,712
Nonprofit corporation fee @1%		31,485
Contingency @3%		<u>94,455</u>
TOTAL DEVELOPMENT COST	\$	3,148,484
Less 10% Equity		<u>(314,848)</u>
TOTAL MORTGAGE REQUIRED	\$	2,833,636

It is essential that these units not only be designed and constructed in a manner that is compatible with the balance of The Hills PUD, but also that an operating and maintenance budget be established which provides reasonable assurance that the units will be well maintained over an extended period. The project budget, therefore, provides for two full-time employees (the superintendent and a maintenance worker), as well as a rent-free apartment for the superintendent, so that he/she will be on call

after normal business hours. Ample allowance for repairs, and for accumulation of reserves, has also been made.

Table IV

ESTIMATED ANNUAL OPERATING COST ANALYSIS FOR THE FIRST YEAR OF OPERATION FOR THE PROPOSED MAYFIELDS LOW AND MODERATE INCOME RENTAL HOUSING ELEMENT (note 1)

Debt Service on \$2,833,636 @ 11.5% (note 2) \$325,868.00		
Management Fee	\$20,000	
Consulting (note 3)	2,000	23,500.00
Audit	1,500	
Payroll (note 4)		\$ 31,050.00
Insurance	6,000	
Materials and Supplies	20,000	\$ 32,500.00
Exterminator	1,500	
Maintenance contingency	5,000	
Sewer use fee	\$26,400	
Trash collection	5,280	\$ 31,680.00
Reserves @ .004 mortgage amount		
Payment in lieu of taxes @ 3% gross shelter expense		\$ <u>14,101.00</u>
GROSS SHELTER EXPENSE		\$ 470,034.00
Return on equity @2.5%		<u>7,871.00</u>
Vacancy & collection loss @ 3%		\$ 477,905.00
		\$ <u>14,337.00</u>
TOTAL EXPENSE		\$ 492,242.00
Less anticipated syndication proceeds (note 5)		<u>(124,680.00)</u>
TOTAL EXPENSE TO BE COVERED BY RENT ROLL		\$ 367,562.00

NOTES:

- (1) All figures are based on 1983 dollars. Allocations to specific line items are projections. Specific allocations and total dollar amounts are subject to change.
- (2) Based on balloon mortgage @ ½% above prime interest rate
- (3) Includes legal retainer and a budget for advertising the availability of the units.

- (4) Payroll includes superintendent @ \$15,000.00 and maintenance worker @ \$12,000.00 and 15% fringe benefits. An apartment is provided rent-free for the superintendent.
- (5) Anticipated syndication proceeds are 22% of the mortgage amount or $(\$2,833,686 \times .22) = \$623,400$. 20% of that amount has been budgeted for the first year of occupation.

Finally, it should be noted that, in order to obtain the syndication proceeds, which will provide for a substantial part of the rent reduction needed to make the units affordable to lower income households, it will be necessary to establish provisions whereby this project may be sold by the owners (the limited partnership made up of the investors who have purchased the equity) at some point in the future. If and when the units are sold, the Corporation will have the right of first refusal to purchase the project. If the Corporation does not purchase the units, the units will be offered at prices affordable to persons of moderate income, as then defined, to the residents of those units. Thereafter, any unsold units will be offered on the open market to persons of moderate incomes.

EXHIBIT A
 PRO FORMA RENTAL AFFORDABILITY ANALYSIS
 FOR PROPOSED MAYFIELDS LOW AND MODERATE INCOME RENTAL UNITS

UNIT TYPE HOUSEHOLD SIZE	ONE BEDROOM		TWO BEDROOM		THREE BEDROOM	
	1	2	3	4	4	5
<u>LOW INCOME HOUSEHOLDS</u>						
INCOME CEILING*	\$11450	\$13100	\$14700	\$16350	\$16350	\$17650
	X .3	X .3	X .3	X .3	X .3	X .3
MAX SHELTER AMT.	<u>3425</u>	<u>3930</u>	<u>4410</u>	<u>4905</u>	<u>4905</u>	<u>5295</u>
(UTILITY ALLOWANCE)	(600)	(600)	(840)	(840)	(1080)	(1080)
MAXIMUM NET RENT	<u>\$2835</u>	<u>\$3330</u>	<u>\$3570</u>	<u>\$4065</u>	<u>\$3825</u>	<u>\$4215</u>
90% MAX NET RENT	\$2552	\$2997	\$3213	\$3659	\$3443	\$3794
MONTHLY AMOUNT	213	250	268	305	287	316
<u>MODERATE INCOME HOUSEHOLDS</u>						
INCOME CEILING*	\$17650	\$20150	\$22700	\$25200	\$25200	\$26750
	X .3	X .3	X .3	X .3	X .3	X .3
MAX. SHELTER AMT.	<u>5295</u>	<u>6045</u>	<u>6810</u>	<u>7560</u>	<u>7560</u>	<u>8025</u>
(UTILITY ALLOWANCE)	(600)	(600)	(840)	(840)	(1080)	(1080)
MAXIMUM NET RENT	<u>\$4695</u>	<u>\$5445</u>	<u>\$5970</u>	<u>\$6720</u>	<u>\$6480</u>	<u>\$6945</u>
90% MAX NET RENT	\$4226	\$4901	\$5373	\$6048	\$5832	\$6251
MONTHLY AMOUNT	352	408	448	504	486	521

*These income ceilings are those currently in effect for the Newark SMSA. If and when the U.S. Department of Housing and Urban Development adjusts these ceilings to reflect the relocation of Somerset County to the newly created Hunterdon-Somerset-Middlesex PMSA, they will be changed accordingly.

SECTION IV

**STATEMENT OF POLICIES, PROCEDURES AND ORGANIZATION
OF THE BEDMINISTER HILLS HOUSING CORPORATION**

**STATEMENT OF POLICY, PROCEDURE AND ORGANIZATION
OF THE BEDMINSTER HILLS HOUSING CORPORATION**

I. Purpose of the Document

In order to accomplish the provision and retention of housing affordable to persons of low and moderate income within The Hills Planned Unit Development in Bedminster, a mechanism is needed to formulate and implement policy, to direct the means by which tenants are selected, rents are set, and costs are controlled. This document represents the position of The Hills Development Company, and covers the following major areas:

- A. Organization of the policy-making body which will directly control the operation of the low and moderate income housing system. The working title for the entity is The Bedminster Hills Housing Corporation.
- B. Purposes and responsibilities of The Bedminster Hills Housing Corporation.
- C. Procedures to be used by The Bedminster Hills Housing Corporation in solving specified problems, such as determination of rents, administration of resale controls, and selection of tenants and homebuyers.

II. Organization of The Bedminster Hills Housing Corporation

A. Purposes and Structure

The Bedminster Hills Housing Corporation (the "Corporation") will be organized as a nonprofit corporation under Title 15A of the New Jersey Statutes. It will be a policy-making body, representing the interests of The Hills Development Company, The Township of Bedminster, the Public Advocate, and other interested parties. The purpose set forth in the Articles of Incorporation will be to ensure that the 260 units of low and moderate housing to be constructed in a portion of The Hills PUD ("the Project") are, and will remain, affordable to persons of low and moderate income, and to provide a means whereby the tenants and potential homebuyers can be screened and selected, the rents and purchase prices controlled, and all other matters related to the Project can be resolved.

B. Governance of the Corporation.

The Corporation will be governed by a five-member Board of Trustees. The Township of Bedminster, the Public Advocate, and the New Jersey Mortgage Finance Agency will each appoint one member of the Board. The Hills Development Company will appoint two members to the Board, one of whom shall serve as its initial chairperson. The Members of the Board will serve for two year terms, but can be replaced by their appointing authority. Further, the Board can be expanded by an affirmative vote of 3/4 of the Board, which increases will be filled by the Board.

C. Powers of the Board.

The Board will have the powers of a Nonprofit Corporation organized under the New Jersey statutes. It will be able to hire staff, adopt a budget, spend money, appoint committees, delegate responsibility, and generally carry out the purposes of the Corporation. The By-laws will provide mechanisms for such delegation of responsibilities, including the requirements for formal action by the Board and composition of any trustee committees. The Articles of Incorporation and the By-laws recognize that the Project is an integral part of The Hills PUD, and that no action will be taken which adversely affects the construction or marketing of the remainder of the PUD.

D. Officers

The Corporation will have the right to appoint officers, and compensate them for their services. These officers will direct the work of the day-to-day management of the Project, and will report to, and can be replaced by, the Board of Trustees. This right will be subject to the approval of The Hills Development Company.

E. Duration, Functions, Status

The Corporation will be organized as a perpetual entity, but appropriate provisions within the Articles of Incorporation will provide for its dissolution in the event circumstances obviate the need for such an organization. Further, the Corporation will enter into an Agreement with The Hills Development Company which provide the Corporation with

authority to regulate various aspects of the Project, including eligibility, rents, purchase prices of units, and other matters. The Corporation will be a nonprofit entity, and as such, will apply for recognition as a tax-exempt organization under the U.S. Internal Revenue Code. Regardless of whether or not that tax-exempt status is granted, the organization will be operated as a nonprofit entity under New Jersey law.

III. Purposes and Functions of the Corporation

A. General

The Corporation will serve as the policy-making body regulating the operation of the Project. It will have the responsibilities for:

1. Supervision of the procedures for tenant selection and the qualification by homebuyers for the rental and sales sections of the Project.
2. Administration of the controls on rents and prices for the units within the Project.
3. Determination of the level of subsidy required by the rental section of the Project and administration of any internal subsidy program to assist particular renters or homebuyers.
4. Administration of the subsidy re-capture mechanism which operates as a result of any improvement in tenant incomes; and administration of the recapture provisions which operate within the units sold to persons of low and moderate income.
5. To carry out any other responsibilities and functions which can assist in the operation, maintenance and retention of affordable housing within the Project.

B. Specific Issues

Specific guidelines on major areas of concern have been developed. These include:

1. Tenant and Homebuyer Selection
2. Regulation of Rents

3. Recapture of subsidy and resale controls
4. Potential Conversion of Rental Units to Fee Ownership.

Generally, these specific guidelines parallel the language set forth in the Application for Setaside of Bond Proceeds which The Hills Development Company has filed with the New Jersey Mortgage Finance Agency on September 21, 1983 ("the Application"). This Application covers the 172 units which The Hills Development Company proposes to offer for sale to persons of low and moderate income. The language also parallels that of the Rental Component Description, affecting 88 units of rental housing, support for which is the subject of negotiations with the New Jersey Housing Finance Agency ("The Rental Component").

The guidelines are as follows:

I. Tenant and Homebuyer selection

A. Units within the Project will only be available to households composed of persons of low and moderate income, as defined in the Application and the Rental Component.

B. The Corporation will establish procedures whereby persons seeking to live within the Project will file applications, which will be ranked according to family size and composition*, priority category** and other criteria which are set by the Board. This ranking system will result in a priority list which the Corporation will use to refer applicants to units. The Corporation will have the right to revise that waiting list as necessary.

* The Corporation will be guided by the principle that appropriate units should be allocated to appropriate households. For example, preference for three bedroom units would be given to families with two or more children of different sex; and more accessible units would be allocated to handicapped people.

** The only category already established is set forth in the Application--employment in the vicinity, coupled with either (a) living in substandard living conditions or (b) living an excessive distance from the place of employment.

C. The Corporation will use the services of a management agent (in the case of rental units) or the lender (in the case of sales units) to conduct credit checks and other financial investigations, and will not undertake these tasks directly.

D. The Corporation will direct one applicant per unit available to the management agent or lender, and use the waiting list to fill any openings. The Corporation will establish an appeals system so that individuals whose application is denied, or who object to their place on the waiting list can receive a final determination of their status. The decision of the Corporation will be final.

2. Regulation of Rental Housing Costs

A. Leases in the rental units will be for a one year period. The rent will not include utilities, although for purposes of computing rent, the Corporation will include a calculated utility allowance. Households in the rental section will pay 30% of their gross income for rent, including the utility allowance.*

B. The Corporation will determine the necessity for an annual rental adjustment. If such an adjustment is required, it will not exceed the greater of 7% or the rise in the rental component of the Consumer Price Index.

C. There will be provisions whereby the Corporation will attempt to adjust an individual's rent downward, if the household income declines, although there may be a minimum rent established, the non-payment of which would be grounds for eviction.

*The utility allowance will be based on consumption patterns under reasonable usage conditions for a comparable unit and will be adjusted annually. This allowance is not charged to the tenant, but is simply used to set the rent level. Utilities will be individually metered, and each household will be responsible for paying its own utility costs. A household with a low consumption pattern will pay total costs less than 30% of their income; a household with higher utility consumption patterns may pay total costs higher than 30% of their income.

D. The Corporation will also establish provisions for a surcharge of a household's rent in the event that the household income rises above the limits set for their income category. However, a rise in family income will not result in eviction.

3. Recapture of subsidy and resale controls

Resale Controls

In the case of units sold to low and moderate income buyers, the Corporation will establish procedures to ensure that the units remain available to low and moderate buyers. The Corporation will have a right of first refusal to buy any unit which a resident of the project wishes to sell, and the Corporation will have an exclusive right to refer low/moderate buyers to units for a 90 day period. The price set for that unit will be based on the initial sales price of the unit, plus the Corporation's determination of the value of any improvements made to the unit as well as the increase in the value of the unit due to rises in the home purchase component of the Consumer Price Index (the "computed value"). It is anticipated that the Corporation's procedures will ensure that the units, when sold, will be purchased by another low or moderate income homebuyer. If, for any reason, the unit is not sold to a qualified low or moderate income person within the period set by the Corporation, a homeowner can sell the unit on the open market. Then, the Corporation will have the right to recapture 80% of the difference between the computed value and whatever the unit sells for on the open market.

Recapture of Subsidy.

A. The Hills Development Company anticipates syndicating and selling to a limited partnership the rental portion of the Project. If this is done, The Hills Development Company will contribute 80% of the proceeds to the

Corporation. If syndication does not take place, The Hills Development Company will, over a six year period, contribute to the Corporation an amount comparable to that which would otherwise have been realized by the Corporation by the syndication process.

B. The Hills Development Company will not include a cost for land on that portion of the project on which units will be constructed for sale to persons of low and moderate income. However, if a household's income rises beyond a threshold to be set by the Corporation*, the unit owner will be liable to pay additional consideration to the Corporation, which will pay 75% of the collected amount to The Hills Development Company as payment for the land costs. The Corporation will retain up to 25% of the recaptured amount for its operations.

C. In addition, the Corporation will have the right to receive additional consideration if a rental household's income rises.

D. These recapture funds will be used to keep prices, rents, and homeowner's associations costs within the low and moderate income range and as payment to The Hills Development Company as reimbursement for its previously-contributed subsidies.

4. Potential Conversion to Fee Ownership.

A. In order to obtain the syndication proceeds, it will be necessary to establish a mechanism whereby the owner of the rental portion of the project can sell it. Thus, The Hills Development Company reserves the right to convert the Rental units to fee ownership. If this is done, it will be done no sooner than 10 years after the units are first built. The

* The New Jersey Housing Finance Agency uses a figure of 125% of the ceiling income as the threshold for surcharge of rents. A similar threshold will be suggested to the Corporation.

Corporation will not do anything which would jeopardize the possibility of converting these units from rentals to fee ownership if The Hills Development Company exercises its right.

B. It is understood that The Hills Development Company will provide an opportunity for the Corporation or the tenants to purchase the project; that if the units are converted to condominiums that the tenants will be given an opportunity to purchase the units; and that all units not sold to tenants will be sold at prices affordable to moderate income households, as then defined, under conditions similar to those established for the previously-described fee ownership units.

C. The Board of Trustees will establish a budget for the use of any subsidy monies which are contributed by The Hills Development Company , which will be generally directed towards defraying the costs of debt service, establishing reserves for repair or replacement of facilities, and operational expenses of the Corporation. The Corporation will return any unused funds to The Hills Development Company.

In addition to these specific guidelines which The Hills Development Company has developed, the Corporation's Board of Trustees will also establish such other guidelines and policies as are necessary to carry out the function of assuring affordable housing within The Hills Village Planned Unit Development, as outlined in the Application and the Rental Component.