

RULS-AD-1984-05

?-?-1984

Agreement of Assignment by "The Hills"

15 pgs.

AGREEMENT OF ASSIGNMENT

THIS AGREEMENT made as of this _____ day of _____, 1984 by and between THE HILLS DEVELOPMENT COMPANY (hereinafter referred to as "HILLS"), a joint venture general partnership organized and existing under the laws of the State of New Jersey, having an office located at 3 Burnt Mill Road, Pluckemin, New Jersey 07978 and THE BEDMINSTER HILLS HOUSING CORPORATION (hereinafter referred to as "the NONPROFIT"), a nonprofit corporation organized and existing under the laws of the State of New Jersey, having a registered office located at Brener, Wallack and Hill, Attorneys at Law, 2-4 Chambers Street, Princeton, New Jersey 08540.

WITNESSETH:

WHEREAS, pursuant to a certain court order issued _____, 1984, by the Honorable Eugene D. Serpentelli in the matter of The Allan-Deane Corporation, et al. v. Township of Bedminster, et al., Dockets No. L 36896-70 P.W. and L 28061-71 P.W. HILLS has been required to provide affordable housing to low income and moderate income individuals; and

WHEREAS, HILLS proposes to develop a condominium regime to be known as The Village Green at Bedminster Neighborhood Condominium (hereinafter referred to as the "Condominium") within the real property shown, described or listed on Exhibit A attached hereto and by this reference made a part hereof as fully as if set out herein provide affordable housing to persons of low income and moderate income; and

WHEREAS, it is one of the founding purposes of the NONPROFIT to promote the social welfare of individuals of low income and moderate income in

the purchase and rental at below market value of affordable housing in The Hills Village, a Planned Unit Development located in the Township of Bedminster, State of New Jersey; and

WHEREAS, HILLS desires that Condominium Units located within The Village Green at Bedminster Neighborhood Condominium be sold to persons of low and moderate income so as to provide affordable housing to such persons in accordance with the founding purposes of the NONPROFIT; and

WHEREAS, the NONPROFIT is willing to formulate, administer and regulate a procedure for the qualification and approval of individuals of low and moderate income for the purchase or rental of Condominium Units within the aforesaid condominium regime at below market value and to assist the operation, maintenance and retention of said Condominium Units as affordable housing; and

WHEREAS, HILLS desires that the NONPROFIT perform such functions; and

NOW, THEREFORE, in consideration of the sums hereinbelow set forth, and the covenants, conditions and promises herein contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.01 Meanings. The following words and terms as used in this Agreement or any Exhibit attached hereto shall have the meanings given to them below unless another meaning is plainly intended:

A. "Agreement of Purchase and Sale" shall mean and refer to a document which, when executed by HILLS and a Buyer, shall provide for the sale to a Buyer of a Unit subjected to The Village Green at Bedminster Neighborhood Condominium Declaration of Covenants, Conditions and Restrictions of Resale, The Village Green at Bedminster Neighborhood Condominium Master

Deed, and The Hills Village Master Declaration of Covenants, Conditions and Restrictions.

B. "Assignment" shall mean and refer to the transfer by HILLS to the NONPROFIT of the rights, duties and obligations of HILLS under the Declaration in accordance with this Agreement and upon such terms as are specified herein.

C. "Fund" shall mean and refer to The Village Green Housing Assistance Fund.

D. "NONPROFIT" shall mean and refer to The Bedminster Hills Housing Corporation, a nonprofit corporation organized and existing under the laws of the State of New Jersey.

E. "Create" shall mean the filing of a master deed to create a condominium pursuant to N.J.S.A. 46:8B-1 et seq.

F. "The Village Green Housing Assistance Fund" shall mean and refer to the fund, which shall be separately held by the NONPROFIT, into which the NONPROFIT shall deposit any monies received pursuant to the Assignment.

All other words and terms as used in this Agreement or any Exhibit attached hereto shall be deemed to have the meanings given to them in The Village Green at Bedminster Neighborhood Condominium Declaration of Covenants, Conditions and Restrictions of Resale attached hereto as Exhibit A and by this reference made a part hereof as fully as if set out herein.

ARTICLE II

REPRESENTATIONS

2.01 Nonprofit. The NONPROFIT warrants and represents that it is a nonprofit corporation organized and existing under the laws of the State of New Jersey pursuant to Title 15A of the New Jersey Statutes for the purpose of promoting the social welfare of and assisting individuals of low and moderate

income in the purchase or rental of affordable housing in the State of New Jersey.

2.02 Tax Status. The NONPROFIT warrants and represents that it will diligently pursue a favorable determination of tax exemption under Section 501(c)(3) of the United States Internal Revenue Code. The failure to obtain such a favorable determination by the NONPROFIT shall not result in a breach of this Agreement.

ARTICLE III

ASSIGNMENT

3.01 Declaration. HILLS hereby assigns and transfers to the NONPROFIT, and the NONPROFIT hereby accepts from HILLS, all of the rights, duties, obligations, title and interest of HILLS in, to and under the Declaration which subjects the real property shown, described or listed on Exhibit A attached hereto to the covenants, conditions, restrictions and payments therein contained. This assignment shall remain in full force and effect until and unless the NONPROFIT shall default in its obligations or covenants pursuant to the terms of this Assignment.

3.02 Covenants. The NONPROFIT promises and covenants to HILLS as follows:

A. The NONPROFIT shall keep and perform all of the duties and obligations of HILLS under the Declaration assigned pursuant to Section 3.01 above and shall save and hold HILLS harmless from the consequences of any failure to perform such duties and obligations.

B. The NONPROFIT shall not assign the rights, duties, obligations, title and interest of HILLS, assigned to the NONPROFIT pursuant to Section 3.01 above, in, to and under the Declaration, or any part thereof, without the prior written consent of HILLS which consent may be withheld in the sole discretion of HILLS.

C. In the event of a default by the NONPROFIT of the duties and obligations as set forth herein, or a breach of any of the promises and covenants of the NONPROFIT, herein contained, then the NONPROFIT shall reassign to HILLS all of the right, title and interest in, to and under the Declaration assigned to the NONPROFIT pursuant to Section 3.01 above and under this Agreement of Assignment and shall execute and acknowledge such documents as HILLS may request to effectuate the foregoing. In furtherance of the foregoing, the NONPROFIT hereby irrevocably names, appoints, constitutes and affirms HILLS as its attorney-in-fact for the purpose of executing such a reassignment and any other documents necessary to effectuate the foregoing. The power of attorney as aforesaid is hereby declared and acknowledged to be coupled with an interest in the subject matter thereof and hereof and the same shall run with the interest in the real property described, shown or listed on Exhibit A attached hereto and be binding upon the successors and assigns of the NONPROFIT. Further, said power of attorney is intended to deliver to HILLS all right, title and interest of the NONPROFIT in and to said power.

ARTICLE IV

PERFORMANCE

4.01 Declaration. Upon creation of the Condominium by HILLS, the NONPROFIT shall immediately commence to perform faithfully and diligently the duties and obligations to be performed under the Declaration assigned pursuant to Section 3.01 above.

4.02 Continuing Administration. During the term of the Declaration the NONPROFIT shall:

A. Deposit all funds received pursuant to this Agreement in a separate escrow account Said account shall be known as "The Village Green Housing Assistance Fund", hereinafter, "Fund".

B. Administer any subsidy program necessary in the discretion of the NONPROFIT to assist Condominium Unit Owners. These Condominium Unit Owners shall be assisted by means of the Fund in accordance with the rules and regulations of the NONPROFIT.

C. Work to achieve the goals set forth in the Certificate of Incorporation of the NONPROFIT.

4.03 Rules and Regulations. The NONPROFIT shall formulate rules and regulations for the exercise and performance of the rights, duties and obligations of Declarant under the Declaration assigned pursuant to Section 3.01 above; provided, however, that such rules and regulations shall not be operative promulgated the NONPROFIT without the prior written consent of HILLS thereto, which consent shall not be unreasonably withheld.

ARTICLE V

OBLIGATIONS OF HILLS

5.01 Condominiumization. HILLS shall, within a reasonable time after the receipt of final subdivision and site plan approval for The Village Green at Bedminster Neighborhood Condominium:

A. Make application for all necessary governmental approvals for the sale of Condominium Units.

B. Upon receipt of such governmental approvals, create The Village Green at Bedminster Neighborhood Condominium and construct the Condominium Units.

5.02 Sale of Units. HILLS shall only offer a Condominium Unit for sale to a Purchaser with respect to whom HILLS has obtained notice of Certification as a Qualified Purchaser. Upon receipt of such Certification from the NONPROFIT, HILLS shall enter into an Agreement of Purchase and Sale with such Qualified Purchaser of a Condominium Unit, upon the terms and conditions of the Certification.

BRENER, WALLACK & HILL
ATTORNEYS AT LAW

ARTICLE VI

FUNDING

6.01 Initial Funding. Upon the execution of this Agreement, HILLS shall contribute to the NONPROFIT as an administration fee, the sum of Seventy Thousand Forty-Seven (\$70,047) Dollars for the organization and administrative expenses of the NONPROFIT in performing its obligations.

6.02 Other Funding. In the event that The Township of Bedminster or any other person or entity seeks to supply housing for persons of low and moderate income within the Township of Bedminster and seeks to enter into an arrangement to use the services of the NONPROFIT to promote the social welfare of and assist individuals of low and moderate income by assisting in the purchase and/or rental, at below market value, of affordable housing, the NONPROFIT may execute with such other person or entity or with the Township of Bedminster an Agreement of Assignment. Such Agreement shall provide for a return to HILLS of a pro-rata share of the costs of the establishment of the NONPROFIT.

ARTICLE VII

ACCOUNTS AND AUDIT

7.01 Accounts. The NONPROFIT shall keep books and accounts which shall clearly indicate the funds received from any Condominium Unit Owner pursuant to the Assignment by HILLS, and the costs and expenses of the NONPROFIT necessary and normal to fulfill the performance of its duties and responsibilities under this Agreement, apart from any other funds, costs and expenses of the NONPROFIT.

7.02 Audit. HILLS, at its own sole cost and expense, shall have the right to review the books and accounts of the NONPROFIT for the purpose of assuring compliance with the terms and conditions of this Agreement.

ARTICLE VIII

TERMINATION

8.01 For Cause. This Agreement may be terminated on thirty (30) days advance written notice of termination from HILLS to the NONPROFIT if any of the following events occur in the future:

A. The NONPROFIT is in default under any provision of this Agreement, and after notice of such and same has not been cured within ninety (90) days if same is curable within ninety (90) days, or if the same is not curable within said time period, if the NONPROFIT has failed within said ninety (90) days to commence cure and thereafter diligently prosecute the same to completion; or

B. The NONPROFIT is adjudged bankrupt or insolvent by a court of competent jurisdiction, or an order is made by a court of competent jurisdiction for the appointment of a receiver, liquidator or trustee of the NONPROFIT or of all or substantially all of its property by reason of the foregoing, or approving any petition filed against the NONPROFIT for its reorganization, and such adjudication or order shall remain in force for a period of thirty (30) days; or

C. The NONPROFIT institutes proceedings for voluntary bankruptcy or files a petition seeking reorganization under the federal bankruptcy laws or for relief under any law for the relief of debtors, or consents to the appointments of a receiver of itself or of all or substantially all of its property, or makes a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

D. The NONPROFIT makes an assignment of any of its rights and obligations under this Agreement, except an assignment permitted pursuant to the terms hereof.

E. This Agreement is finally adjudicated to be terminated by order of a court of competent jurisdiction, following the expiration of the time period permitted for the prosecution or defense of any appeal.

8.02 Mutual Consent. This Agreement may be terminated at any time upon the mutual agreement by HILLS and the NONPROFIT for such termination.

8.03 Rights of HILLS. In the event this Agreement is terminated by HILLS for cause as provided in Section 8.01 above, HILLS shall have any and all of the following rights:

A. To assume the duties and perform the functions by the NONPROFIT to be performed under this Agreement, without any liability on the part of HILLS to the NONPROFIT for the acts of HILLS pursuant thereto; and the NONPROFIT hereby irrevocably names, appoints, constitutes and affirms HILLS as its attorney-in-fact for the purpose of performing such duties and functions; and

B. To possess and retain any then existing or future monies in The Village Green Housing Assistance Fund, and/or, in the sole discretion of HILLS, to transfer The Village Green Housing Assistance Fund to a third party, without any liability on the part of HILLS to the NONPROFIT for the acts of HILLS pursuant thereto; and the NONPROFIT hereby irrevocably names, appoints, constitutes and affirms HILLS as its attorney-in-fact for the purpose of executing any and all necessary documents in the name of the NONPROFIT to accomplish the foregoing; and

C. To contract with any third party entity for the performance of the duties and functions of the NONPROFIT to be performed hereunder; and

D. To cause the Assignment to revert to HILLS through the exercise of the power of attorney granted in Section 3.02 above or otherwise; and

E. To exercise and claim any and all other rights available at law or in equity.

8.04 Cooperation. In the event that this Agreement is terminated as provided herein the parties agree that the NONPROFIT shall cooperate fully with HILLS in any action reasonable or necessary to effectuate the rights of HILLS pursuant to Section 8.03 above.

ARTICLE IX

PERSONAL SERVICES

9.01 Irreparable Harm. The NONPROFIT acknowledges that the duties and functions of the NONPROFIT to be performed under this Assignment are essential to the successful provision of affordable housing to low and moderate income purchasers and are of such an unusual and personal nature that they are not capable of being adequately performed to the satisfaction of HILLS by another entity, and that the failure by the NONPROFIT to perform such duties and functions would result in immediate and irreparable harm to HILLS. Accordingly, the NONPROFIT acknowledges that HILLS shall have the right to sue for specific performance by the NONPROFIT of the performance of the duties and functions of the NONPROFIT herein contained in any court having jurisdiction thereof, in addition to such other rights and remedies available at law or in equity.

9.02. Exclusive Service. The NONPROFIT may incur additional responsibilities to promote the social welfare of individuals of low and moderate income by assisting in the purchase and/or rental, at below market value, of affordable housing within the Township of Bedminster, pursuant to a written agreement or otherwise, subject to the following terms and conditions: (i) the execution of an acceptable cost agreement between the NONPROFIT and such party desiring such functions to be performed which shall include, as a minimum,

the payment of all expenses by such other party; (ii) a requirement that HILLS has been reimbursed for the administrative fee contributed to the NONPROFIT pursuant to Article VI hereof and the costs and expenses incurred by HILLS with respect to the establishment of the NONPROFIT on a prorata basis; (iii) the prior written approval of HILLS is obtained for the performance by the NONPROFIT of such functions, which approval may be withheld in the sole discretion of HILLS.

The NONPROFIT shall not perform functions outside of the legal boundaries of the Township of Bedminster.

9.03. Housing Assistance Fund. All funds which the NONPROFIT is entitled to retain pursuant to the Assignment shall be held in a separate escrow account, and known as the Fund. The NONPROFIT expressly recognizes that the rights of the NONPROFIT to use the monies in the Fund are limited to the defrayment of the administrative expenses of the NONPROFIT with respect to its duties and functions pursuant to this Agreement or as otherwise permitted by a subsidy program to be agreed upon between HILLS and the NONPROFIT for the purpose of performing similiar duties and functions with respect to any other project providing low and moderate income housing in the Township of Bedminster in accordance with the requirements of Mount Laurel II. Any such allocation of funds to a project pursuant to Section 9.02 other than one undertaken by HILLS so long as HILLS is constructing residential units within the Township of Bedminster shall be done in accordance with the rules and regulations of The NONPROFIT and require a unanimous resolution of the Board of Trustees of the NONPROFIT. The NONPROFIT shall draw against the Fund for no other purpose unless the prior written consent of HILLS has been obtained.

At such time as HILLS has completed its construction program in Bedminster and has terminated its membership on the NONPROFIT, no written

consent of HILLS shall be required for the NONPROFIT to undertake additional functions or additional projects within the Township of Bedminster.

ARTICLE X

ASSIGNMENT

10.01. Assignment. The covenants of this Agreement shall extend to and bind the assigns and successors of the respective parties hereto. The NONPROFIT shall not assign any of the benefits or obligations of this Agreement except as provided in Section 3.02 B.

Any proposed attempted assignment not conforming herewith, whether or not by operation of law, shall be void ab initio unless approved in a writing signed by the parties hereto.

ARTICLE XI

RELATIONSHIP

11.01 No Partnership. Nothing contained in this Agreement shall be construed as making the NONPROFIT or HILLS the partner, agent, joint venturer or fiduciary of the other, and the parties shall have no relationship to each other hereunder other than employer and independent administrator. Except as expressly provided herein nothing in this Agreement shall be construed to confer any proprietary interest in the Condominium to the NONPROFIT.

ARTICLE XII

MISCELLANEOUS

12.01 Compliance. The NONPROFIT shall comply with all statutes, rules and regulations of all governmental agencies with respect to the Condominium and the administration and regulation of the duties and functions to be performed by the NONPROFIT and shall hold HILLS harmless from any failure to so comply.

12.02 Construction. The titles to the paragraphs are for reference only and neither broaden nor confine the scope, content or intent of the paragraphs. This Agreement shall be construed in accordance with the laws of the State of New Jersey and shall not be construed in conjunction or integration with any other agreement by and between the parties hereto, unless expressly stated within each such agreement.

12.03 Recording. This Agreement or any part thereof shall not be recorded by any party hereto without the prior consent of each of the parties hereto attached to such instrument prepared for recording. Any recording in violation of this provision shall be void ab initio and the party who records this Agreement, or any part thereof, shall be liable for attorneys' fees and costs resulting to clear said recorded instruments from the records.

12.04 Invalid Clause. The invalidity of any clause contained herein shall not render any other provision invalid and the balance of this Agreement not held invalid shall be binding upon all parties hereto.

12.05 Preparation. The parties acknowledge and agree that this Agreement has been approved by the Superior Court of New Jersey pursuant to Court Order dismissing the case of The Allan-Deane Corporation, et al., v. Township of Bedminster, et al., Dockets No. L36896-70 P.W. and L28061-71 P.W. The parties further acknowledge that this Agreement shall be construed on a parity as between the parties.

12.06 Waiver. Failure to enforce any of the provisions of this Agreement by any of the parties shall not be construed as a waiver of these provisions.

12.07 Waiver of Compliance. The parties hereto may, by mutual agreement in writing, extend the time for the performance of any of the obligations hereunder. The party for whose benefit a warranty, representation,

covenant, obligation, condition or occurrence of default is intended may in writing waive any inaccuracies in any such warranty or representation or waive compliance with any such covenant or condition and so waive performance of any of the obligations of the other party hereto and any default hereunder; provided, however, that any such waiver shall not affect or impair the waiving party's rights with respect to any other warranty, representation, condition, obligation, covenant or default hereunder.

12.08 Force Majeure. In the event that either party is prevented from performing any of its obligations herein by reason of an Act of God or any other reason beyond the reasonable control of such party, including weather, strikes, inavailability of materials and building moratorium, the time of such performance by either party shall be extended by a time equal to the amount of such delay, provided that neither party shall be entitled to claim such delay unless it has promptly notified the other party in writing of such delay and the cause thereof.

12.09 Notice. Any Notice required or allowed to be sent to a party pursuant to this Agreement shall be sent by Certified Mail, Return Receipt Requested, as follows:

If to the NONPROFIT:

THE BEDMINSTER HILLS
HOUSING CORPORATION
c/o Michael D. Masanoff, Esquire
2-4 Chambers Street
Princeton, New Jersey 08540

If to HILLS:

THE HILLS DEVELOPMENT COMPANY
3 Burnt Mill Road
Pluckmin, New Jersey 07978

Copy of any notice
shall be sent to:

Michael D. Masanoff, Esquire
Brenner, Wallack & Hill
2-4 Chambers Street
Princeton, New Jersey 08540

12.10 Amendments or Modifications. This Agreement may not be amended, altered or modified in any manner except by Agreement between the parties in writing.

IN WITNESS WHEREOF, the parties have executed this Agreement the date first written above.

WITNESS:

**THE HILLS DEVELOPMENT COMPANY
A Joint Venture General Partnership**

WILLIAM C. ORLOWSKI
Secretary

By: _____
JOHN H. KERWIN, President

ATTEST:

**THE BEDMINSTER HILLS HOUSING
CORPORATION**

By: _____