

RULS-AD-1986-190

5/6/86

Letter from Bernards to Judge re: Alleged misrepresentation  
by Hills

pgs. 50

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RECEIVED

MAY - 6 1986

May 6, 1986

JUDGE SERPENTELLI'S CHAMBERS

RUIS - AD - 1986 - 190

CYNTHIA K. REINHARD  
MARTIN G. CROHIN  
JEANNE A. McMANUS

Honorable Eugene D. Serpentelli, A.J.S.C.  
Ocean County Court House  
Toms, River, New Jersey 08754

Re: Hills Development Company  
v. Bernards Township  
Docket No. L-030039-84 P.W.

Dear Judge Serpentelli:

We have just obtained information evidencing yet another blatant misrepresentation by Hills Development Company to this Court, made by Hills in the present motion papers. We respectfully request that the court accept the enclosed Certification of Howard P. Shaw, and the certified copy of a mortgage attached to it, for consideration in connection with the motion returnable this Thursday, May 8.

Mr. Kerwin's affidavit dated March 24, 1986, recites at paragraph 20(c):

"The EDC plant is financed through a N.J.E.D.A. bond issue in the amount of approximately \$6,380,000, secured by property in Bernards. Failure to go forward with the Bernards development at the approximate zoning provided for by Ordinance 704 would imperil the financing of the sewage plant and, hence, the investments of the numerous bondholders;"

Yet, the clerk's stamp shows that the enclosed mortgage was recorded June 1, 1984, months before Ordinance #704 was enacted,

*copy made 5/15/84*  
*Ordinance adopted 11/12/84 - 2 mos after mortgage*  
*letter sent to court by TT reportedly on 9/25/85*

Honorable Eugene D. Serpentelli, A.J.S.C.  
Page Two  
May 6, 1986

and even months before Mr. Kerwin alleges (affidavit, ¶ 4) that representatives of Bernards first discussed zoning at the densities later provided in Ordinance #704.

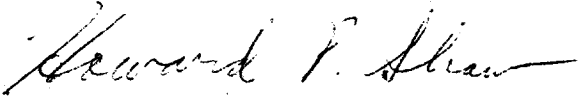
Thus, giving of this mortgage could not possibly have been an action "taken by Hills in reliance on the adoption of Ordinance 704 and the Township's representations" (Kerwin affidavit ¶ 20).

By copy of this letter, we are today serving copies of the enclosed Certification and mortgage upon counsel for Hills by hand, and mailing the original Certification and attachment to the Clerk of the Superior Court for filing.

Respectfully yours,

FARRELL CURTIS, CARLIN & DAVIDSON

By:

  
Howard P. Shaw

HPS/sjm  
Encl.

cc: Henry A. Hill, Esq. (w/encls.) (by hand)  
Clerk of the Superior Court (w/encls.) (for filing)  
Arthur H. Garvin, III, Esq. (w/encls.)

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43 Maple Avenue  
P.O. Box 145  
Morristown, New Jersey 07960  
(201) 267-8130

Attorneys for Defendants, Township of Bernards, et als.

|                                  |   |                              |
|----------------------------------|---|------------------------------|
| THE HILLS DEVELOPMENT COMPANY,   | : | SUPERIOR COURT OF NEW JERSEY |
|                                  | : | LAW DIVISION                 |
| Plaintiff,                       | : | SOMERSET/OCEAN COUNTY        |
|                                  | : | Docket No. L-030039-84 P.W.  |
| vs.                              | : |                              |
|                                  | : |                              |
| THE TOWNSHIP OF BERNARDS in the  | : |                              |
| COUNTY OF SOMERSET, a municipal  | : |                              |
| corporation of the State of New  | : |                              |
| Jersey, THE TOWNSHIP COMMITTEE   | : |                              |
| OF THE TOWNSHIP OF BERNARDS, THE | : | Civil Action                 |
| PLANNING BOARD OF THE TOWNSHIP   | : |                              |
| OF BERNARDS and the SEWERAGE     | : |                              |
| AUTHORITY OF THE TOWNSHIP OF     | : |                              |
| BERNARDS,                        | : |                              |
|                                  | : | CERTIFICATION OF             |
| Defendants.                      | : | <u>HOWARD P. SHAW</u>        |
|                                  | : |                              |

I, HOWARD P. SHAW, certify as follows:

1. Attached to this Certification is a photocopy of a certified copy of a mortgage from The Hills Development Company to the New Jersey Economic Development Authority ("N.J.E.D.A."), in the amount of \$6,380,000, covering property in Bernards Township, which bears the recording stamp of the Clerk of

Somerset County. The original of the attached certified copy is in my possession.

2. My law firm, as attorneys for defendant Township, received information on May 5, 1986, as to the filing date of this mortgage and received a certified copy of the mortgage on May 6, 1986.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

  
\_\_\_\_\_  
HOWARD P. SHAW

Dated: May 6, 1986

c e r t i f i e d c o p y

9771 ✓

MORTGAGE

THIS MORTGAGE, made the 31st day of May, 1984 by THE HILLS DEVELOPMENT COMPANY, a joint venture general partnership, having offices at 3 Burnt Mill Road, Pluckemin, New Jersey 07978 (hereinafter referred to as "MORTGAGOR") in favor of THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, located at Capital Place One, Trenton, New Jersey (hereinafter referred to as "MORTGAGEE").

W I T N E S S E T H:

WHEREAS, Mortgagor is indebted to the Mortgagee in the sum of SIX MILLION THREE HUNDRED EIGHTY THOUSAND DOLLARS (\$6,380,000) lawful money of the United States of America, pursuant to, and evidenced by, its certain obligations of even date herewith as set forth in a Loan Agreement dated as of May 1, 1984 by and between Mortgagor and Mortgagee, with premium and interest thereon as set forth in the Loan Agreement, conditioned for the payment of said sum to Mortgagee, UNTIL THE LAST OF WHICH, IN THE AMOUNT OF THE ENTIRE UNPAID BALANCE OF PRINCIPAL AND INTEREST SHALL BE DUE AND PAYABLE AS PROVIDED IN THE LOAN AGREEMENT, all payments to be made at the principal office of Mortgagee at Capital Place One, Trenton, New Jersey or such other place as Mortgagee may from time to time designate;

NOW THIS INDENTURE WITNESSETH, that Mortgagor, for the better securing the payment of the said sum of money mentioned in the Loan Agreement with interest thereon, the payment of all

*See Ind of Trust # 9775 Mtg Bk 1355 Pg 829  
See Call Assign No 9773 Mtg Bk 1355 Pg 778*

Prepared by Margherita McDonald  
May Anne McDonald

BOOK 1355 PAGE 085

other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and the performance of the covenants and agreements of Mortgagor herein contained and as contained in the Collateral Documents (as defined in the Loan Agreement), the terms and conditions of which are incorporated herein by reference, and for and in consideration of the sum of One Dollar (\$1.00) to Mortgagor in hand paid by Mortgagee at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, mortgaged, and conveyed and and by these presents does grant, mortgage and convey unto Mortgagee, its successors and assigns forever

All that tract or parcel of land and premises situate, lying and being in the Township of Bernards, in the County of Somerset and State of New Jersey, more particularly described as follows:

SEE SCHEDULE A, ATTACHED HERETO AND MADE

A PART HEREOF.

TOGETHER with all and singular the tenements, hereditaments, rights of way, present and future easements and appurtenances thereunto belonging, or in anywise appertaining, and the reversion or reversions, remainder and remainders, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of Mortgagor of, in

and to the same and every part and parcel thereof, with the appurtenances; and also the buildings, structures and improvements now and hereafter constructed thereon, and the fixtures and equipment now and hereafter installed therein and necessary for or adapted to the appropriate use and enjoyment thereof, all of which it is hereby covenanted shall be deemed to be real property; TO HAVE AND TO HOLD the above granted and described premises, with said appurtenances, buildings, fixtures, equipment and improvements (all of which premises, appurtenances, buildings, fixtures, equipment, improvements and other items described above are hereinafter referred to as the "Mortgaged Premises"), unto Mortgagee, its successors and assigns, to its and their own proper use, benefit and behoof forever;

PROVIDED ALWAYS, and these presents are upon this express condition, that if Mortgagor shall pay unto Mortgagee, its successors or assigns, the said sum of money set forth in the Loan Agreement, and the interest thereon, and all additions thereto pursuant to the provisions of said Loan Agreement, the other Collateral Documents or of this Mortgage, without any deduction or credit for any amount payable for taxes, in accordance with the terms of the Collateral Documents, Loan Agreement and this Mortgage, or upon satisfaction of the obligations of Mortgagor pursuant to the terms of the Loan Agreement, then these presents and the estate hereby created shall cease, determine and be void.



Mortgagor covenants and agrees with Mortgagee as follows:

1. PAYMENT OF SUMS SECURED. Mortgagor shall pay promptly to Mortgagee the principal, premium and interest owing on said Loan Agreement and all other payments provided for therein, including all other amounts secured hereby from time to time expended by Mortgagee with interest thereon at the rates set forth in the Loan Agreement, without any deduction or credit for any amount paid for taxes assessed or to be assessed upon the Mortgaged Premises, and shall keep and perform every other term, provision, covenant and agreement of the Loan Agreement and this Mortgage and the other Collateral Documents.

2. WARRANTY OF TITLE. Mortgagor warrants that it is lawfully seized of an indefeasible estate in fee simple in the Mortgaged Premises, and will warrant and forever defend the title thereof unto the Mortgagee against all lawful claims whatsoever.

3. WASTE, MAINTENANCE, COMPLIANCE, INSPECTION, AND RESERVES. Mortgagor shall not commit, permit or suffer any waste, impairment or deterioration of the Mortgaged Premises; shall not remove or demolish, or alter in any substantial manner the structure or character of any building at any time erected on the Mortgaged Premises without the prior written consent of Mortgagee; shall maintain the Mortgaged Premises in good condition and repair; shall not remove, sell or otherwise dispose of any fixture without the prior written consent of Mortgagee unless the same shall be replaced or substituted by

fixtures of like character and equivalent value and not subject to any encumbrance or security interest; and shall comply with any present or future municipal, city, county, state, federal or other governmental law, order, rule, ordinance or regulation affecting the Mortgaged Premises. Mortgagee shall have the right, but not the duty, to enter upon the Mortgaged Premises at any reasonable hour to inspect the order, condition and repair thereof. It is provided, however, that nothing herein contained shall prohibit Mortgagor from undertaking alterations, renovations and construction on the Mortgaged Premises in accordance with Paragraph 24 hereof.

In the event any such inspection reveals, in the sole and absolute discretion of the Mortgagee, the necessity for any immediate or future repair, replacement or maintenance of the Mortgaged Premises or any part thereof, Mortgagor shall, subject to all applicable laws, ordinances and regulations, at the direction of the Mortgagee either: (a) cause such repairs, replacements or maintenance to be effected immediately; and/or (b) establish a non-interest bearing reserve fund with the Mortgagee in an amount determined by the Mortgagee for the purpose of effecting such repairs, replacements or maintenance in the future. Mortgagor shall make payments into such reserve fund at such times and in such amounts as shall be determined by the Mortgagee.

4. TAXES AND OTHER CHARGES. Mortgagor shall pay all real estate taxes, water and sewer rents, fines, impositions, and other similar claims and liens assessed, or which may be

assessed, against the Mortgaged Premises or any part thereof, and will not claim any credit on or make any deduction from the interest or principal hereby secured by reason thereof, not later than ten (10) days before the dates on which such taxes, water and sewer rents, fines, impositions, claims and liens commence to bear interest or penalties, and not later than such dates shall produce to Mortgagee receipts for the payment thereof in full and shall pay every other tax, assessment, claim, fine, imposition, lien or encumbrance which may at any time be or become a lien upon the Mortgaged Premises prior to, or on a parity with, the lien of this Mortgage; provided, however, that if Mortgagor shall in good faith, and by proper legal action, contest any such taxes, assessments, fines, impositions, claims, liens, encumbrances, or other charges, or the validity thereof, and shall have established on its books or by deposit of cash with Mortgagee (as Mortgagee may elect) a reserve for the payment thereof in such amount as Mortgagee may reasonably require then Mortgagor shall not be required to pay the same, or to produce such receipts, during the maintenance of said reserve and as long as such contest operates to prevent collections, and is maintained and prosecuted with diligence, and shall not have been terminated or discontinued adversely to Mortgagor. In addition to the foregoing Mortgagor will pay when due and will not suffer to remain outstanding, any charges for utilities, whether public or private, with respect to the Mortgaged Premises; provided, however, Mortgagor shall

be permitted to contest any such charges, at its own expense and in good faith, provided, further, that such contest shall not result in imposition of a lien against the Mortgaged Premises.

5. FUTURE IMPOSITIONS. If at any time the United States Government or any department, agency or bureau thereof shall require internal revenue stamps on the Loan Agreement secured hereby, upon demand Mortgagor shall pay the same; and on default of such payment within fifteen (15) days after demand for same, Mortgagee may pay for such stamps and add the amount so paid to the indebtedness evidenced by the Loan Agreement and secured by this Mortgage, and said additional principal shall bear interest at the Default Interest Rate. If any law, rule, regulation or ordinance adopted hereafter by any federal, state or local government, or any department, agency or bureau thereof, imposes a tax on Mortgagee with respect to the Mortgaged Premises, the value of Mortgagor's equity therein, the amount of the indebtedness secured hereby, the Loan Agreement, or this Mortgage, Mortgagee shall have the right at its election from time to time to give Mortgagor thirty (30) days' written notice to pay such indebtedness secured hereby, whereupon such indebtedness shall become due, payable and collectible at the expiration of such period of thirty (30) days, unless prior thereto, lawfully and without violation of usury or other laws, Mortgagor has paid any such tax in full as the same became due

and payable, in which event such notice shall be deemed to have been rescinded with respect to any right of Mortgagee hereunder arising by reason of the tax so paid. No prepayment charge or premium shall apply to any payment of the indebtedness secured hereby pursuant to any such notice, if the payment is made before the expiration of such period of thirty (30) days.

Notwithstanding anything to the contrary herein contained, if any Future Imposition, as referred to in this Paragraph 5, shall be imposed generally upon mortgagees with regard to mortgaged premises, the value of mortgagors' equity therein or the amount of indebtedness secured thereby, then such Future Imposition shall be the obligation of Mortgagee, and Mortgagor shall have no obligation to pay or reimburse Mortgagee for such Future Imposition.

6. FORECLOSURE SUBJECT TO TENANCIES. Mortgagor authorizes Mortgagee at its option to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Premises, and the failure to make any such tenants parties defendant to any such foreclosure proceeding and to foreclose their rights will not be asserted by Mortgagor as a defense to any proceeding instituted by Mortgagee to collect the indebtedness secured hereby.

7. RIGHT TO REMEDY DEFECTS. Whether or not an event of default shall have occurred, if Mortgagor does not pay any amount payable by it under, or fails to comply with any provision of this Mortgage or the Loan Agreement which it secures,

Mortgagee may pay such amount or comply with such provision and make such expenditures, including reasonable counsel fees, in connection therewith and for enforcing this Mortgage and the Loan Agreement, for repairing, maintaining and preserving the Mortgaged Premises, for establishing, preserving, protecting and restoring the priority of the lien hereof, for obtaining official tax searches of the Mortgaged Premises, for protecting and preserving any use being made of the mortgaged premises now or hereafter, and for advances to any trustee or receiver of the Mortgaged Premises, as Mortgagee deems advisable; and each amount so paid or expended shall become part of the indebtedness and be secured hereby; and Mortgagor shall pay to Mortgagee, on demand, the amount of each payment or expenditure but no such payment or compliance by Mortgagee shall constitute a waiver of Mortgagor's failure so to do or affect any right or remedy of Mortgagee with respect thereto.

8. CONDEMNATION. Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or taking of the Mortgaged Premises by the exercise of the power of eminent domain or purchase under threat thereof, of the whole or any part of the Mortgaged Premises, or any easement or interest therein, shall promptly notify the Mortgagee of the pendency of such proceedings. The Mortgagee may participate in such proceedings and the Mortgagor from time to time will deliver to the Mortgagee all instruments

requested by it to permit such participation. Any award or compensation for property taken, or for damage to property not taken, is hereby assigned to and shall be received and collected by the Mortgagee, and applied, at the option of the Mortgagee in such proportions and priority as Mortgagee may elect toward immediate payment of the principal indebtedness or any other sum secured hereby (notwithstanding that the amount owing thereon may not then be due and payable), or to reimburse the Mortgagor for the cost of the repair and restoration of the Mortgaged Premises, provided that the excess over the amount of the indebtedness shall be paid to the Mortgagor.

Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Mortgaged Premises, the obligations of the Loan Agreement shall continue until any such award or payment shall have been actually received by Mortgagee and any reduction in the principal sum resulting from the application by Mortgagee of such award or payment as hereinabove set forth shall be deemed to take effect only on the date of such receipt.

9. RESTRICTIVE COVENANTS.

A. Mortgagor shall not remove or demolish nor alter the design or structural character of any building now or hereafter erected upon the Mortgaged Premises if the value of the Mortgaged Premises would be substantially impaired thereby; provided, however, nothing herein contained shall prohibit

Mortgagor from undertaking alterations, renovations and construction on the Mortgaged Premises in accordance with Paragraph 24 hereof;

B. Mortgagor shall not permit to exist any interest, lien, charge or encumbrances in or on the Mortgaged Premises ranking prior to or on a parity with the lien hereof, except the co-equal lien of The Howard Savings Bank (the "Bank");

C. Mortgagor shall not sell, encumber, convey or otherwise transfer the Mortgaged Premises or any part thereof or any interest therein without first obtaining written consent of Mortgagee, which may be withheld if Mortgagee, in its sole discretion, reasonably exercised, determines that: (i) such sale, encumbrance, conveyance or transfer does or may impair performance of the obligations hereof, or the obligations of Mortgagor pursuant to or under the Loan Agreement or any of the Collateral Documents; (ii) the priority of the lien hereof is adversely affected, or (iii) the value of the Mortgaged Premises, or value of any collateral or other security pledged to Mortgagee for performance of the obligations pursuant to or under the Loan Agreement or other Collateral Documents is or may be adversely affected. The foregoing phrase "conveyance or any other transfer" shall also be deemed to include the entering into of a lease of all or substantially all of the Mortgaged Premises. The provisions hereof shall



apply to each and every such further sale, encumbrance, conveyance or other transfer, regardless of whether or not Mortgagee has consented to, or waived by its action or inaction, its rights hereunder with respect to any such previous sale, encumbrance, conveyance or other transfer.

10. EVENTS OF DEFAULT. At the election of Mortgagee, the following shall constitute events of default under this Mortgage ("Events of Default"):

A. The failure of Mortgagor to pay any installment of principal, interest, or principal and interest when due and payable pursuant to the Loan Agreement, within ten (10) days after notice from Mortgagee;

B. The failure of Mortgagor to pay any other sum required to be paid in the Loan Agreement or in this Mortgage or in any other Collateral Document when the same is due and payable within ten (10) days after notice from Mortgagee;

C. The failure of the Mortgagor to perform or observe any other term, provision, covenant or agreement in the Loan Agreement, this Mortgage or any other Collateral Document, within ten (10) days after notice from Mortgagee with regard to any monetary term, provision, covenant or agreement, or within thirty (30) days after notice from Mortgagee with regard to any non-monetary term, provision, covenant or agreement, or the violation or attempted violation or breach of any covenant contained in Paragraph 9 or elsewhere in this Mortgage; provided, however, in the event of failure to perform any term,

provision, covenant or agreement which is capable of being performed but cannot with reasonable diligence be performed within thirty (30) days, Mortgagor shall not be in default if Mortgagor diligently commences performance within such thirty (30) day period and thereafter diligently and in good faith proceeds to perform;

D. If any representation or warranty made by the Mortgagor (or its officers or representatives) herein shall prove to be false or misleading in any material respect when made;

E. If the Mortgagor shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator, or other court appointed fiduciary of all or a substantial part of its property; or a custodian shall have been appointed with or without the consent of the Mortgagor; or Mortgagor is generally not paying its debts as they become due by means of available assets and the fair use of credit; or has made a general assignment for the benefit of creditors; or has committed an act of bankruptcy, or has filed a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or seeking to take advantage of any insolvency law, or an answer admitting the material allegations of a petition in any bankruptcy, reorganization or insolvency proceeding; or has taken corporate action for the purpose of effecting any of the foregoing; or if within sixty (60) days after the commencement of any proceeding

against the Mortgagor seeking any reorganization, rehabilitation, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed; or if, within sixty (60) days after entry of an Order for Relief under the present Bankruptcy Code, or similar order under future similar legislation, or the appointment of any trustee, receiver, custodian, liquidator, or other court appointed fiduciary of the Mortgagor (without the consent or acquiescence of such party), or of all or any substantial part of its property or any of the encumbered Mortgaged Premises, such order or appointment shall not have been vacated or stayed on appeal or otherwise or if, within sixty (60) days after the expiration of any such stay, such order or appointment shall not have been vacated; provided, however, that the reorganization proceedings pending on the date hereof with respect to Allan-Deane Corporation, a joint venture general partner of Mortgagor, in the absence of any of the events described in this Paragraph 10E, shall not constitute or be grounds for an Event of Default hereunder; or

F. If either of the following persons shall die, become permanently disabled or disassociated from the management of Mortgagor and a person acceptable to the Bank, in its sole discretion, has not been engaged within ninety (90) days of such death, disability or disassociation to replace the person

who has died or become disabled or disassociated from the management of Mortgagor: John Kerwin or E. James Murar.

11. REMEDIES. Upon the happening of any one or more of said Events of Default, the entire unpaid balance of the principal, premium, interest, and all sums secured by this Mortgage shall, at the option of the Mortgagee, become immediately due and payable without notice or demand, and Mortgagee may forthwith undertake any one or more of the following:

A. Recover judgment of foreclosure against Mortgagor for the entire unpaid principal balance, premium, interest, and all other sums secured by this Mortgage; and neither the recovery of judgment nor the levy of execution thereof on any property, including the Mortgaged Premises, shall affect Mortgagee's rights hereunder or the lien hereof; and/or

B. Subject to all applicable laws, ordinances and regulations, enter upon and take possession of the Mortgaged Premises, and let the same, and receive the rents, issues and profits thereof, and apply the same, after payment of all necessary charges and expenses, on account of the amount hereby secured, with full power and authority to the said Mortgagee to institute and prosecute all legal actions or proceedings as may be necessary for the protection of the Mortgaged Premises and as may be necessary to recover possession of the whole or any part thereof, to collect the rents then due and unpaid and thereafter becoming due, and to remove any and all tenants or other persons from said premises, and to pay the costs and expenses

of all such suits, actions and proceedings out of the rent received, and to maintain said premises and to keep the same in repair, and to pay all costs and expenses of operating and maintaining said premises in good repair and condition, including the services of all employees, and to pay all taxes, assessments, utility charges, and water rents then due or thereafter becoming due and payable, and all premiums of insurance required by the Mortgagee to be carried hereunder, and to pay an agent to rent and manage said premises and collect the rents and profits thereof, and to pay the reasonable value of such agent's services, and all the aforesaid charges and expenses, out of the rent received; and/or

C. Apply for the appointment of a receiver of the rents and profits of the Mortgaged Premises, and be entitled to the appointment of such receiver as a matter of right, without consideration of the value of the Mortgaged Premises as security for the amounts due to Mortgagee or of the solvency of any persons obligated for the payment of such amounts; and/or

D. Prosecute, appeal, defend, compromise and settle all tax appeals respecting the Mortgaged Premises and recover and apply in reduction of the indebtedness secured hereby all proceeds therefrom, which proceeds are hereby assigned by Mortgagor to Mortgagee; and/or

E. Take such other action to protect and enforce Mortgagee's rights hereunder and the lien hereof, as Mortgagee deems advisable, including:

(1) The foreclosure hereof, subject, at Mortgagee's option, to the rights of tenants and other persons in the Mortgaged Premises; and

(2) The sale of the Mortgaged Premises, in a foreclosure proceeding, in one or several parcels, at Mortgagee's option and without obligation to have the Mortgaged Premises marshalled.

F. Notwithstanding anything to the contrary contained in this Mortgage, this Mortgage is non-recourse to the Mortgagor and in the event of a default by Mortgagor hereunder, Mortgagee will not exercise its right to institute any action at law or equity against Mortgagor or its joint venture general partners for the payment of any sum of money which is or may be payable hereunder or under the Loan Agreement secured hereby other than an action to foreclose, which right is specifically reserved; nor will it seek against the Mortgagor or its joint venture general partners any judgment for a deficiency in any action to foreclose this Mortgage, provided, however, that nothing shall be, or deemed to be, a release or impairment of the indebtedness, or of the lien hereof upon the property described in Schedule A annexed or shall preclude Mortgagee from foreclosing the Mortgage in case of any default,

or enforcing any and all rights under and by virtue of this Mortgage, except as provided above with regard to any action for a deficiency judgment.

12. RELEASE OF MORTGAGED PREMISES.

Upon the written request of Mortgagor, release or releases of the Mortgaged Premises, or any part thereof, shall be permitted upon (1) decrease in the amount secured hereby (the "Obligations), (2) acceptance by Mortgagee of collateral in substitution, addition or replacement for the Mortgaged Premises (hereinafter referred to as "Substitute Collateral") or (3) increase in the value of the Mortgaged Premises as determined by appraisal pursuant to the terms of this Paragraph 12; provided, however, such release or releases shall be subject to, and upon compliance with, the following terms and conditions:

(1) There shall be no default pursuant to the terms hereof or the Loan Agreement.

(2) Determination of the value of the Mortgaged Premises remaining after release, and the value of the Substitute Collateral, shall be made upon the following conditions:

a. Mortgagor shall submit to Mortgagee an appraisal of the Mortgaged Premises and/or the Substitute Collateral, as applicable, which appraisal shall be prepared by an M.A.I. certified appraiser in accordance with generally accepted appraisal methods.

b. Within twenty (20) days of receipt of such appraisal supplied by Mortgagor, Mortgagee shall either accept same (in which case the provisions of Paragraph 12 (3) shall apply), or advise Mortgagor in writing that said appraisal is unacceptable.

c. In the event Mortgagee advises Mortgagor that the appraisal supplied by Mortgagor is unacceptable, Mortgagee shall have a period of thirty (30) days from the date of Mortgagee's notice that Mortgagor's appraisal is unacceptable to obtain a second appraisal of the Mortgaged Premises and/or the Substitute Collateral, as applicable, which second appraisal shall be at Mortgagee's sole cost and expense.

d. Upon receipt of the second appraisal, Mortgagee shall submit same to Mortgagor, whereupon Mortgagor shall have ten (10) days to either accept same (in which case the provisions of Paragraph 12 (3) shall apply) or advise Mortgagee that said appraisal is unacceptable.

e. In the event Mortgagor advises Mortgagee that the second appraisal is unacceptable, the first and second appraisals shall be compared, and:

(i) if the values set forth therein differ by an amount in excess of ten percent (10%) of the value of the lower appraisal, the appraisers providing the first and second appraisals shall select a third appraiser of the Mort-



7)

gaged Premises and/or the Substitute Collateral (as applicable), who shall appraise such property or select either of the previous two appraisals as the determination of the value of such property, and whose determination of value shall be binding on Mortgagor and Mortgagee; or

(ii) if the values set forth therein differ by an amount equal to or less than ten percent (10%) of the value of the lower appraisal, the average of two appraisals shall be determined, which average of the value of the Mortgaged Premises and/or Substitute Collateral shall be binding upon Mortgagor and Mortgagee.

f. In the event a third appraisal is required pursuant to the provisions of Paragraph 12 e. (i) hereof, Mortgagor, within thirty (30) days of the date of selection of the third appraiser, shall deposit Two Thousand Dollars (\$2,000) in an escrow account (with the Bank to act as escrow agent), as security for the payment of its share of fees and expenses charged by the third appraiser. The fees and expenses charged by such third appraiser shall be borne equally by Mortgagor and Mortgagee, and the event Mortgagor's deposit pursuant to the provisions of the preceding sentence is in excess of its share of such fees and expenses, the difference will be returned to Mortgagor.

(3) Upon the determination (pursuant to the terms set forth herein) of the value of the Mortgaged Premises

or the Substitute Collateral, as applicable, and provided the value of premises which will be, or have been and will continue to be, mortgaged to secure the Obligations shall not be less than as set forth in Paragraph 12(6) hereof, Mortgagee shall approve the release of the requested portion of the Mortgaged Premises from the lien of this Mortgage.

(4) Any portion of the Mortgaged Premises which is to be released pursuant to the provisions of this Paragraph 12 shall be designated by Mortgagor.

(5) The instrument of release shall be prepared by Mortgagor and shall be subject to the review and approval of Mortgagee.

(6) In no event shall any portion of the Mortgage Premises be released from the lien of this Mortgage unless the value of the property, which will be, or has been and will continue to be, mortgaged, pledged, or otherwise encumbered to serve as security for the Obligations, is (a) in the case of real estate without fully completed buildings thereon for which certificates of occupancy have been issued, at least twice as great as the amount of the Obligations for which such collateral serves as security, or (b) in the case of collateral not described in Paragraph 12(6)(a), at least sufficient to satisfy federal and state statutes, rules and regulations, and the standard lending policies of the Bank, relating to the valuation of such collateral.

(7) All costs and fees, including reasonable attorney fees, incurred in connection with release proceedings hereunder shall be paid by Mortgagor, including costs and fees of Mortgagee and any outside representatives or experts engaged by Mortgagee in connection with such release proceedings, except as otherwise set forth herein.

B. Acceptance by the Bank of Substitute Collateral or a release of collateral pursuant to the terms of the mortgage to the Bank from Mortgagor executed simultaneously herewith shall be deemed to be acceptance of Substitute Collateral or a release of collateral by Mortgagee hereunder. Upon receipt by Mortgagee of evidence of acceptance by the Bank of Substitute Collateral or a release of collateral pursuant to the terms of the mortgage to the Bank from Mortgagor, Mortgagee shall execute, acknowledge and deliver to Mortgagor instruments reasonably requested by Mortgagor (and similar in form and substance to those executed by the Bank) evidencing acceptance of such Substitute Collateral or release of collateral by Mortgagee hereunder.

13. ASSIGNMENT OF RENTS. Mortgagor hereby expressly assigns, sets over and transfers to the Mortgagee, as additional security for the amounts hereby secured, upon any such default as aforesaid, all the rents, issues and profits of the said Mortgaged Premises, accruing both before and after default by the Mortgagor; and the Mortgagor hereby agrees to pay the

Mortgagee, upon demand after any such default, a reasonable rental for the premises occupied by the Mortgagor, in advance on the first day of each and every month thereafter, as a tenant from month to month, hereby recognizing the Mortgagee as landlord in such event, and in default of such payment, the Mortgagor may be dispossessed by summary proceedings brought by the Mortgagee. Any such tenancy of the Mortgagor shall terminate upon delivery of a deed by any Sheriff or Master under execution and sale, to the Mortgagee or purchaser at such sale. The Mortgagor further agrees that this covenant shall be effective and enforceable by the Mortgagee with or without any action being brought to foreclose this Mortgage, and with or without any application by the Mortgagee for the appointment of a receiver of rents. The aforesaid assignment of rents shall be additional security for the performance of all obligations of the Mortgagor hereunder, and the failure at any one or more times on the part of the Mortgagee to assert its rights under such assignment shall not be deemed a waiver of said Mortgagee's right to said security and the right to collect said rents, nor shall it impair the security of the Mortgage or have any effect on the amount due hereunder. Mortgagee, while in possession of the Mortgaged Premises, shall be liable to account only for the rents, issues and profits actually received.

14. NOTICE. A written notice which is mailed by first class certified mail, return receipt requested and postage

prepaid, to Mortgagor or to the person or persons who are then the owner or owners of the Mortgaged Premises at said premises or at such other address as Mortgagor shall designate to Mortgagee in writing, and a notice to Mortgagee or such other person as shall be designated by Mortgagee to Mortgagor in writing by first class certified mail, return receipt requested and postage prepaid, shall be sufficient notice when required under this Mortgage; provided, however, notice shall be deemed received upon the earliest of the following events: (a) actual receipt, (b) second attempted delivery, or (c) ten days after mailing in the manner above provided. Unless otherwise provided by notice in accordance herewith, all notices shall be addressed and sent to the persons or parties following:

New Jersey Economic Development Authority  
Capital Place One  
Trenton, New Jersey

-copy to-

Hawkins, Delafield & Wood  
67 Wall Street  
New York, New York

The Hills Development Company  
3 Burnt Mill Road  
Pluckemin, New Jersey 07978  
Attn: John H. Kerwin, President

-copy to-

Brener, Wallack & Hill  
2-4 Chambers Street  
Princeton, New Jersey 08540  
Attn: Michael D. Masanoff, Esq.

Constructive notice shall not be deemed to be notice in accordance herewith, nor shall any notice not given as set forth herein be deemed to be notice.

15. MORTGAGEE'S RIGHTS CUMULATIVE. The rights and remedies of Mortgagee hereunder shall be in addition to every other right and remedy now and hereafter provided by law; the rights and remedies of Mortgagee shall be cumulative and not exclusive one of the other; Mortgagee may exercise the same at such times, in such order, to such extent, and as often as Mortgagee deems advisable, and without regard to whether the exercise of one precedes, concurs with, or succeeds the exercise of another; no delay or omission by Mortgagee in exercising a right or remedy shall exhaust or impair the same, or constitute a waiver of, or acquiescence in, the default; and no waiver of a default by Mortgagee shall extend to or affect any other default or impair any right or remedy with respect thereto.

16. INDULGENCES: EXTENSIONS. Mortgagee may allow Mortgagor any indulgences, forbearances and extensions with respect to the mortgage indebtedness, the Mortgaged Premises and Mortgagor's obligations hereunder, may waive compliance with any of the provisions hereof, and may release all or any part of the Mortgaged Premises from any lien hereof at its sole discretion, without affecting the priority of the lien hereof upon the remainder of the Mortgaged Premises.

17. ESTOPPEL AFFIDAVITS. The Mortgagor within ten (10) days after written request from the Mortgagee shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Loan Agreement and whether or not any offsets or defenses exist against such principal and interest to the knowledge of Mortgagee. Mortgagee, within ten (10) days after written request from Mortgagor shall furnish a written statement, duly acknowledged, stating whether any default then exists pursuant to the terms hereof, the Loan Agreement or the other Collateral Documents, and identifying the nature of such default.

18. TAXATION OF NOTE AND MORTGAGE. If at any time before the debt hereby secured is fully paid any law of the State of New Jersey be enacted, deducting from the value of the Mortgaged Premises, for the purposes of taxation, the amount of any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor or revising or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Mortgaged Premises or the manner of collection of taxes, so as to affect adversely this Mortgage or the debt hereby secured, or the owner and holder thereof in respect thereto, then, and in any such event, the Mortgagor upon demand by the Mortgagee, shall pay such taxes or assessments or

reimburse the Mortgagee therefor; provided, however, that if, in the opinion of counsel for the Mortgagee, (a) it might be unlawful to require Mortgagor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then in such event, the Mortgagee may elect by notice in writing given to the Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable within sixty (60) days from the giving of such notice. Notwithstanding the foregoing, it is understood and agreed that Mortgagor is not obligated to pay any portion of Mortgagee's federal or state income taxes.

Notwithstanding anything to the contrary contained herein, if any of the taxes, assessments, charges or liens (collectively referred to herein as "Taxes") referred to in this Paragraph 18 shall be imposed generally upon mortgagees deducting from the value of mortgaged premises, for purposes of taxation, the amount of any lien thereon, or imposing upon mortgagees the payment of the whole or any part of the taxes or assessment or charges or liens required to be paid by mortgagors, then such Taxes shall be the obligation of Mortgagee, and Mortgagor shall have no obligation to pay or reimburse Mortgagee for such Taxes.

19. INVALID PROVISIONS TO AFFECT NO OTHERS. In case any one or more of the covenants, agreements, terms or provi-



sions contained in this Mortgage or in the Loan Agreement shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein and in the Loan Agreement shall be in no way affected, prejudiced or disturbed thereby.

20. FURTHER ASSURANCES. At any time, and from time to time, upon request by the Mortgagee, the Mortgagor will make, execute, acknowledge and deliver or cause to be made, executed, acknowledged and delivered to the Mortgagee any and all further instruments, mortgages, conveyances, deeds, certificates, and other documents as may, in the opinion of the Mortgagee be necessary or desirable in order to effect, complete, confirm, or perfect or to continue and preserve the obligation of the Mortgagor under the Loan Agreement and the lien of this Mortgage. Upon any failure by the Mortgagor so to do, the Mortgagee may make, execute and record any and all such instruments, certificates and documents for and in the name of the Mortgagor and the Mortgagor hereby irrevocably appoints the Mortgagee the agent and attorney-in-fact of the Mortgagor so to do. The Mortgagor agrees to pay all filing, registration and recording fees and all federal, state, county and municipal stamp taxes or other duties, imposts, assessments and charges on all such instruments, certificates and documents.

21. SUCCESSORS and ASSIGNS. All of the grants, covenants, terms, provisions and conditions of this Mortgage

shall run with the land and bind the Mortgagor, the heirs, distributees, legal representatives, successors and assigns of the Mortgagor and all subsequent owners, encumbrancers, tenants and subtenants of the mortgaged premises and shall inure to the benefit of the Mortgagee, the successors and assigns of the Mortgagee and all subsequent holders of this Mortgage. As used herein the singular shall include the plural and any word denoting gender shall include all persons, natural and artificial, as the context requires.

22. CAPTIONS. The captions herein are inserted only for convenience of reference and in no way define, limit or describe the scope or intent of this Mortgage or any particular paragraph or section hereof, nor the proper construction hereof.

23. GOVERNING LAW. This Mortgage has been executed and delivered in the State of New Jersey and is to be construed and enforced according to and governed by the laws of the State of New Jersey.

24. DEVELOPMENT REQUIREMENTS. Notwithstanding anything to the contrary herein contained, Mortgagor shall be permitted to encumber the Mortgaged Premises with certain easements, and undertake certain alterations, renovations and construction on the Mortgaged Premises, in accordance with and subject to the following terms and conditions:

(1) Easements shall be permitted for distribution of utility services necessary or desirable in connection with residential development of the Mortgaged Premises or adjacent premises owned by Mortgagor on date hereof ("Adjacent Premises"), including without limitation, natural gas, water, electric, telephone, cable television, storm sewer and sanitary sewer.

(2) Easements for roadways, and construction of such roadways, necessary or desirable in connection with residential development of the Mortgaged Premises or Adjacent Premises, shall be permitted.

(3) There shall be permitted such other easements, declarations, roadways, facilities, improvements and anything else required as a condition of, or pursuant to, municipal and other governmental approvals of applications for development of the Mortgaged Premises or Adjacent Premises, subject to the consent of Mortgagee, which shall not be unreasonably be withheld and shall be deemed to have been given unless Mortgagee, within ten business days after notice of the foregoing, shall have by notice disapproved of same.

(4) None of the foregoing easements, roadways, facilities, or improvements will, in the reasonable opinion of Mortgagee, materially impair the security of the Mortgaged Premises.

(5) Any plans, specifications, documents, agreements or instruments prepared or executed in connection with the foregoing easements, roadways, facilities or improvements shall have been submitted to Mortgagee and approved.

(6) Mortgagor shall maintain insurance on the Mortgaged Premises as required by the terms of the Mortgage executed simultaneously herewith in favor of the Bank.

Approval of the items described in Paragraphs (1) to (5) above shall be deemed to have been given unless Mortgagee, not later than ten business days after notice of the foregoing, shall have by notice disapproved of same. Mortgagor shall maintain insurance on the Mortgaged Premises as required by the terms of the Mortgage executed simultaneously herewith in favor of the Bank.

All costs and expenses incurred in connection with the provisions of this Paragraph, including reasonable counsel fees, shall be paid by Mortgagor.

25. ADDITIONAL COLLATERAL.

Mortgagor represents and warrants that Parcel B of the Mortgaged Premises consists of not materially less than 118.488 acres, and Parcel C of the Mortgaged Premises consists of not materially less than 34.285 acres, upon which at least 300 single family detached residential dwellings can be constructed upon compliance with all applicable laws and ordinances, including zoning ordinances (Parcel A, Parcel B and Parcel C, referred to in this Paragraph 25, are shown in a survey of the Mortgaged Premises by Keller and Kirkpatrick, P.A., dated May 25, 1984, revised May 29, 1984). Mortgagor represents and warrants that Parcel A of the Mortgaged Premises consists of not materially less than 350.4848 acres, upon which at least 211 single family detached residential dwellings can


be constructed in compliance with all applicable laws and ordinances, including zoning ordinances. In the event it is not possible to construct at least 211 single family detached residential dwellings upon Parcel A and at least 300 single family detached residential dwellings upon Parcels B and C of the Mortgaged Premises in compliance with all applicable laws and ordinances, including zoning ordinances, Mortgagee shall have the right to require additional collateral from Mortgagor, in an amount sufficient to satisfy the valuation requirements of Paragraph 12 (6), which valuation shall be determined by appraisal as set forth in Paragraph 12 (2).

In the event the Bank exercises its rights to demand additional collateral from Mortgagor pursuant to Paragraph 25 of the mortgage executed simultaneously by Mortgagor in favor of the Bank, such additional collateral shall be held equally and ratably for the benefit of Mortgagee and shall satisfy Mortgagor's obligations pursuant to this Paragraph 25.

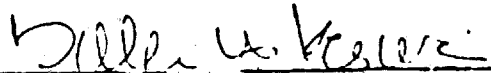
IN WITNESS WHEREOF, Mortgagor has signed and sealed this Mortgage, or has caused this Mortgage to be executed, by its authorized representatives, the day and year first above mentioned.

MORTGAGOR ACKNOWLEDGES RECEIPT OF A TRUE  
COPY HEREOF WITHOUT CHARGE

Witness:

  
\_\_\_\_\_  
William C. Orlowski,  
Secretary

THE HILLS DEVELOPMENT COMPANY, a  
Joint Venture General Partnership

By:   
\_\_\_\_\_  
John H. Kerwin, President

May 29, 1984  
790804

DESCRIPTION OF A PARCEL OF LAND SITUATE IN THE TOWNSHIP OF  
BERNARDS, SOMERSET COUNTY, NEW JERSEY

*General  
Description*

: BEGINNING at a point in the westerly sideline of Somerville Road as established, thirty and zero hundredths (30.00') feet from the centerline on a certain map entitled "Final Map Showing Section I of Subdivision of Lands of Ross Bayes, Bernards Township, Somerset County, N.J." said map filed on June 22, 1961 as Map No. 754, said point being a point of curve leading into proposed Allen Road extension, and running; thence, the following four courses along said westerly sideline of Somerville Road as established on said filed map,

- (1 ) South forty-seven degrees, fifty-nine minutes, thirty seconds West ( $S47^{\circ}-59'-30''W$ ), twenty-six and seventeen hundredths (26.17') feet to an angle point in same; thence
- (2 ) South fifty degrees, fourteen minutes, thirty seconds West ( $S50^{\circ}-14'-30''W$ ) one hundred sixty-three and forty-one hundredths (163.41) feet to an angle point in same; thence
- (3 ) South fifty-five degrees, forty-four minutes, thirty seconds West ( $S55^{\circ}-44'-30''W$ ) one hundred seventy-three and seventy-four hundredths (173.74) feet to an angle point in same; thence

( 4 ) South forty-eight degrees, fifty-four minutes, thirty seconds West (S48°-54'-30"W) one hundred thirty-eight and ninety-five hundredths (138.95) feet to a point where the same is intersected by the division line between Lots 6-1 and 6-2 as shown on said filed map, said point marked by a concrete monument; thence

( 5 ) along said division line between Lots 6-1 and 6-2, North forty-eight degrees, twelve minutes, thirty seconds West (N48°-12'-30"W) six hundred fourteen and ninety-one hundredths (614.91) feet to a point on the Northwesterly line of said filed map; thence

( 6 ) South thirty-four degrees, fourteen minutes, thirty seconds West (S34°-14'-30"W) two hundred seven and thirty-one hundredths (207.31) feet to an angle point in said Northwesterly line thence

( 7 ) South fifty-four degrees, fourteen minutes, thirty seconds West (S54°-14'-30"W) fifty-eight and seven hundredths (58.0) feet to a point where the same is intersected by the eleventh course of Tract I of a certain deed between Mary Ross Bayes Ryan et als and the Allan-Deane Corporation dated November 4, 1969, recorded in the Somerset County Clerk's Office in Deed Book 1217 at page 435; thence

( 8 ) along said eleventh course in said deed from Mary Ross Bayes Ryan to the Allan-Deane Corporation and along lands now or formerly of Katherine Crofts, North fifty-one degrees, twenty-four minutes, thirty-one seconds West (N51°-24'-31"W) one thousand eight hundred sixty-two and seventy-six hundredths (1,862.76) feet to a point in a line of lands now or formerly of the R. Gregory Construction Company, Inc., said point being the terminus of the ninth course in a certain deed from the R. Gregory Construction Company, Inc., to the Allan-Deane Corporation dated October 28, 1969, recorded in the Somerset County Clerk's Office in Deed Book 1216 at Page 517; thence

( 9 ) along said ninth course in reverse in said deed from the R. Gregory Construction Company, Inc., to the Allan-Deane Corporation, South three degrees, six minutes, ten seconds West (S03°-06'-10"W) one thousand one hundred twelve and ninety-seven hundredths (1,112.97) feet to the terminus of the eighth course in said deed, said point marked by a concrete monument; thence

(10) along said eighth course in reverse in said deed, South eighty-one degrees, thirty-one minutes, thirty-seven seconds West (S81°-31'-37"W) one thousand thirty-seven and nineteen hundredths (1,037.19) feet to the terminus of the seventh course in said deed, said point marked by a concrete monument; thence

(12) along the seventh course in said deed in reverse; South forty-two degrees, thirty-nine minutes, ten seconds West (S42°-39'-10"W) one thousand four hundred twenty-nine and ninety-five hundred (1,429.95) feet to a point where the same is intersected by the twenty-third course in a certain deed between J. Elwood Henderson and Anna B. Henderson, his wife, and the Allan-Deane Corporation, dated October 31, 1969, and recorded in the Somerset County Clerk's Office in Deed Book 1216 at Page 526, said point marked by a concrete monument; thence

(13) along said twenty-third course in reverse in said deed between J. Elwood Henderson and Anna B. Henderson, his wife, and the Allan-Deane Corporation, South thirty-five degrees, fourteen minutes, ten seconds East (S35°-14'-10"E) five hundred ninety-one and fifteen hundredths (591.15) feet to an angle point in same; thence

(14) along the twenty-second course in reverse in said deed from J. Elwood Henderson and Anna B. Henderson, his wife, to the Allan-Deane Corporation and along the third course in a certain deed between Andrew P. Barabas, Jr., and Grace B. Barabas, his wife, and the Allan-Deane Corporation dated October 31, 1969, and recorded in the Somerset County Clerk's Office in Deed Book 1216 at Page 529, South forty-six degrees, forty minutes, zero seconds East (S46°-40'-00"E) one thousand one hundred eleven and forty-seven hundredths (1,111.47) feet to the terminus of said third course, said point marked by a concrete monument; thence the following fourteen courses along Courses 4 through 18 in said deed between Andrew P. Barabas, Jr., and Grace B. Barabas, his wife, and the Allan-Deane Corporation

(15) South one degree, thirty-one minutes, thirty seconds East (S01°-31'-30"E) eighty-three and ninety-three hundredths (83.93) feet to a point in same marked by a concrete monument; thence



(15) South eighty-three degrees, twenty-four minutes, forty seven seconds West ( $S83^{\circ}-24'-47''W$ ) three hundred ninety-four and seventy-seven hundredths (394.77) feet to a point in same marked by a concrete monument; thence

(16) South five degrees, thirty-nine minutes, thirty seconds East ( $S05^{\circ}-39'-30''E$ ) fifty-six and thirteen hundredths (56.13) feet to a point in same; thence

(17) South eighty degrees, twenty-one minutes, zero seconds West ( $S80^{\circ}-21'-00''W$ ) three hundred sixty-one and eighty hundredths (361.80) feet to a point in same marked by a concrete monument; thence

(18) South thirteen degrees, forty-nine minutes, zero seconds East ( $S13^{\circ}-49'-00''E$ ) two hundred sixty-eight and thirty-five hundredths (268.35) feet to a point in same marked by a concrete monument; thence

(19) South eighty-three degrees, twenty-five minutes, twenty-seven seconds West ( $S83^{\circ}-25'-27''W$ ) one thousand three hundred ninety and fifty-eight hundredths (1,390.58) feet to a point where the same is intersected by the centerline of Old Stagecoach Road, said point marked by an iron pipe; thence the following seven courses along the centerline of Old Stagecoach Road

(20) North forty-nine degrees, fifty-four minutes, forty-eight seconds West ( $N49^{\circ}-54'-48''W$ ) forty-one and forty-one hundredths (41.41) feet to an angle point in same; thence

(21) North thirty-nine degrees, seven minutes, ten seconds West ( $N39^{\circ}-07'-10''W$ ) one hundred thirty-four and twenty-four hundredths (134.24) feet to an angle point in same; thence

(22) North thirty degrees, two minutes, zero seconds West ( $N30^{\circ}-02'-00''W$ ) two hundred thirteen and sixty-three hundredths (213.63) feet to an angle point in same; thence

(23) North fifteen degrees, ten minutes, fifty seconds West ( $N15^{\circ}-10'-50''W$ ) one hundred forty-four and eighty-two hundredths (144.82) feet to an angle point in same; thence

(24) North nine degrees, twenty-eight minutes, forty seconds West ( $N09^{\circ}-28'-40''W$ ) forty-one and sixty-five hundredths (41.65) feet to an angle point in same; thence

(25) North four degrees, one minute, twenty seconds West (N04°-01'-20"W) thirty-four and forty-nine hundredths (34.49) feet to an angle point in same; thence

(26) North three degrees, forty-four minutes, thirty-five seconds East (N03°-44'-35"E) twenty-nine and twenty-three hundredths (29.23) feet to a point in same, said point being marked by an iron pipe; thence

(27) North eighty-three degrees, twenty-seven minutes, fifty-one seconds East (N83°-27'-51"E) three hundred thirty and fifty-seven hundredths (330.57) feet to a point in same, said point marked by an iron pipe; thence

(28) North twenty-nine degrees, fifteen minutes, fifty seconds East (N29°-15'-50"E) four hundred seventy-one and three hundredths (471.03) feet to an angle point in same; thence

(29) along the nineteenth course in said deed from Andrew P. Barabas, Jr., and Grace B. Barabas, his wife, and the Allan-Deane Corporation and along the eighteenth course in reverse in the aforementioned deed between J. Elwood Henderson and Anna B. Henderson, his wife, and the Allan-Deane Corporation, North forty-seven degrees, sixteen minutes, thirty seconds West (N47°-16'-30"W) four hundred seven and eighty-five hundredths (407.85) feet to the beginning of said eighteenth course in said deed from J. Elwood Henderson and Anna B. Henderson, his wife, to the Allan-Deane Corporation, said point marked by an iron pipe; thence the following seventeen courses along the seventeenth through the first courses in reverse in said deed from J. Elwood Henderson and Anna B. Henderson, his wife, to the Allan-Deane Corporation

(30) North sixty-five degrees, forty-six minutes, thirty seconds West (N65°-46'-30"W) three hundred twenty-six and thirty-six hundredths (326.36) feet to an angle point in same; thence

(31) South forty-seven degrees, seventeen minutes, thirty seconds West (S47°-17'-30"W) five hundred nine and twelve hundredths (509.12) feet to a point where the same is intersected by the centerline of Old Stagecoach Road, said point marked by an iron pipe; thence the following fourteen courses along the centerline of Old Stagecoach Road

(32) North thirty-eight degrees, thirty-nine minutes, forty-eight seconds West (N38°-39'-48"W) forty-nine and four hundredths (49.04) feet to an angle point in same; thence

(33) North twenty-nine degrees, forty-nine minutes, ten seconds West (N29°-49'-10"W) forty-two and nine hundredths (42.09) feet to an angle point in same; thence

(34) North twenty-six degrees, fifty-three minutes, twenty seconds West (N26°-53'-20"W) seventy-one and seventy-six hundredths (71.76) feet to an angle point in same; thence

(35) North thirty-two degrees, eighteen minutes, zero seconds West (N32°-18'-00"W) thirty-nine and eighteen hundredths (39.18) feet to an angle point in same; thence

(36) North thirty-eight degrees, nine minutes, zero seconds West (N38°-09'-00"W) fifty-eight and twenty-three hundredths (58.23) feet to an angle point in same; thence

(37) North forty-five degrees, seventeen minutes, ten seconds West (N45°-17'-10"W) fifty-two and four hundredths (52.04) feet to an angle point in same; thence

(38) North fifty-five degrees, fifty-three minutes, forty seconds West (N55°-53'-40"W) forty-one and fifty-five hundredths (41.55) feet to an angle point in same; thence

(39) North seventy-seven degrees, fifteen minutes, zero seconds West (N77°-15'-00"W) one hundred twenty-seven and seventy-six hundredths (127.76) feet to an angle point in same; thence

(40) North eighty-seven degrees, seven minutes, fifty seconds West (N87°-07'-50"W) eighty-six and two hundredths (86.02) feet to an angle point in same; thence

(41) North eighty-six degrees, seven minutes, forty seconds West (N86°-07'-40"W) forty-eight and fifteen hundredths (48.15) feet to an angle point in same; thence

(42) North seventy-four degrees, forty-four minutes, twenty seconds West (N74°-44'-20"W) forty-five and twenty-five hundredths (45.25) feet to an angle point in same; thence

(43) North sixty-six degrees, thirty-three minutes, ten seconds West (N66°-33'-10"W) twenty-seven and thirty hundredths (27.30) feet to an angle point in same; thence

(44) North seventy-three degrees, twenty-six minutes, forty seconds West (N73°-26'-40"W) thirty-nine and six hundredths (39.06) feet to an angle point in same; thence

(45) North eighty-nine degrees, twenty-four minutes, twenty seconds West (N89°-24'-20"W) twelve and fifty-four hundredths (12.5) feet to an angle point in same; thence

(46) North thirty-nine degrees, three minutes, zero seconds West (N39°-03'-00"W) nineteen and eighty-seven hundredths (19.87) feet to the BEGINNING point in said deed said point also being the terminus of the ninth course of Parcel 1 in a certain deed between Charles M. Kritzman et als and the Allan-Deane Corporation dated November 3, 1969, and recorded in the Somerset County Clerk's Office in Deed Book 1217 at Page 828, said point marked by a stone monument; thence

(47) along the tenth course in Parcel 1 in said deed from Charles M. Kritzman to the Allan-Deane Corporation, South eighty-two degrees, thirty-eight minutes, eight seconds West (S82°-38'-08") five hundred one and thirty-eight hundredths (501.38) feet to the terminus of same, said point being marked by a concrete monument; thence

(48) along the eleventh course in Parcel 1, North twenty-one degrees, thirty-six minutes, thirty-nine seconds West (N21°-36'-39"W) one hundred forty-eight and twenty-one hundredths (148.21) feet to the terminus of same; thence

(49) along the twelfth course in Parcel 1 in said deed and along the one hundred tenth course in Parcel 2 in said deed, North fifty-five degrees, twenty-six minutes, zero seconds West (N55°-26'-00"W), two hundred and zero hundredths (200.00') feet to a point in same; thence the following ten courses by a new line through lands of the Hills Development Co., formerly the Allan-Deane Corporation,

(50) North four degrees, forty-seven minutes, twelve seconds East (N04°-47'-12"E), six hundred ninety-seven and eighty-three hundredths (697.83') feet to an angle point in same; thence

51) North twenty-two degrees, thirty-five minutes, twenty seconds East (N22°-35'-20"E), three hundred fifty and zero hundredths (350.00') feet to an angle point in same; thence

52) North twenty-two degrees, eight minutes, twelve seconds East (N22°-08'-12"E), four hundred forty-eight and fifty-seven hundredths (448.57') feet to an angle point where the same is intersected by the centerline of existing oil pipeline; thence,

53) North three degrees, nineteen minutes, thirty seconds East (N03°-19'-30"E), two hundred twenty-six and sixty-three hundredths (226.63') feet to an angle point in same; thence

54) North seven degrees, seven minutes, thirty seconds West (N07°-07'-30"W), one hundred sixty-one and twenty-five hundredths (161.25') feet to an angle point in same; thence,

55) North thirty-two degrees, sixteen minutes, thirty seconds East (N32°-16'-30"E), four hundred forty-nine and forty-five hundredths (449.45') feet to an angle point in same; thence

56) North five degrees, forty-two minutes, forty seconds East (N05°-42'-40"E) two hundred and ninety-nine hundredths (200.99') feet to an angle point in same; thence

57) North forty-two degrees, thirty minutes, forty seconds East (N42°-30'-40"E), three hundred twenty-five and fifty-nine hundredths (325.59') feet to an angle point in same; thence

58) North sixty-two degrees, fifty-seven minutes, zero seconds East (N62°-57'-00"E), seven hundred sixty and forty-nine hundredths (760.49') feet to an angle point in same; thence

59) North thirty-two degrees, twenty-three minutes, twenty-two seconds East (N32°-23'-22"E), one thousand four hundred and zero hundredths (1400.00') feet to a point where the same is intersected by the centerline of Mount Prospect Road, said point marked by a railroad spike set in said centerline, said point also being the terminus of the fifty-second course of Parcel 2 in the aforementioned deed between Charles M. Kritzman et als and the Allan-Deane Corporation; thence the following ten courses along the centerline of Mount Prospect Road; thence

( 60 ) North forty-three degrees, twenty-seven minutes, forty seven seconds East (N43°-27'-47"E) one hundred eighty-four and three hundredths (184.03) feet to an angle point in same; thence

( 61 ) North forty-four degrees, thirteen minutes, twenty seconds East (N44°-13'-20"E) thirty-one and eight hundredths (31.0 feet) to an angle point in same; thence

( 62 ) North fifty-three degrees, thirty-three minutes, forty seconds East (N53°-33'-40"E) seventy-one and eighty-two hundredths (71.82) feet to an angle point in same; thence

( 63 ) North sixty-six degrees, six minutes, fifty seconds East (N66°-06'-50"E) sixty-nine and twenty-six hundredths (69.25) feet to an angle point in same; thence

( 64 ) North sixty-nine degrees, twenty-one minutes, thirty seconds East (N69°-21'-30"E) one hundred ninety-eight and seventeen hundredths (198.17) feet to an angle point in same; thence

( 65 ) North seventy degrees, fifty-one minutes, fifty seconds East (N70°-51'-50"E) four hundred thirty-one and sixty-one hundredths (431.61) feet to an angle point in same; thence

( 66 ) North seventy-four degrees, three minutes, fifty second East (N74°-03'-50"E) one hundred twenty-two and twenty-seven hundredths (122.27) feet to an angle point in same; thence

( 67 ) North seventy-two degrees, sixteen minutes, forty seconds East (N72°-16'-40"E) four hundred eighty-four and two hundredths (484.02) feet to an angle point in same; thence

( 68 ) North sixty-nine degrees, ten minutes, ten seconds East (N69°-10'-10"E) fifty-seven and two hundredths (57.02) feet to an angle point in same; thence

( 69 ) North fifty degrees, thirty-five minutes, zero seconds East (N50°-35'-00"E) twelve and eleven hundredths (12.11) feet to a point where the same is intersected by the fourteenth course in

the aforementioned deed between the R. Gregory Construction Company and the Allan-Deane Corporation; thence

( 70 ) along said fourteenth course in reverse in said deed between the R. Gregory Construction Company and the Allan-Deane Corporation, South fifty degrees, forty minutes, ten seconds East ( $S50^{\circ}-40'-10''E$ ) one thousand one hundred eighty-one and thirty-two hundredths (1,181.32) feet to the BEGINNING of same; thence

( 71 ) partially along the thirteenth course in reverse in said deed, North thirty-eight degrees, forty-six minutes, one second East ( $N38^{\circ}-46'-01''E$ ) three hundred twenty-three and twenty-two hundredths (323.22) feet to a point where the same is intersected by the fourth course in a certain deed from the Allan-Deane Corporation to Allyn P. Kidwell recorded in the Somerset County Clerk's Office in Deed Book 1221 at Page 426, said point marked by a concrete monument; thence

( 72 ) along said fourth course in said deed, South fifty-two degrees, forty-three minutes, thirty-six seconds East ( $S52^{\circ}-43'-36''E$ ) two hundred four and twenty-one hundredths (204.21) feet to a point where the same is intersected by the ninth course in a certain deed between Allyn P. Kidwell and Doris B. Kidwell, his wife, and the Allan-Deane Corporation dated October 31, 1969, and recorded in the Somerset County Clerk's Office in Deed Book 1216 at Page 520; thence

( 73 ) along the tenth course in said deed from Allyn P. Kidwell and Doris B. Kidwell, his wife, to the Allan-Deane Corporation, South fifty-seven degrees, thirteen minutes, thirty-six seconds East ( $S57^{\circ}-13'-36''E$ ) four hundred twenty-five and twenty hundredths (425.20) feet to the terminus of same; thence the following thirteen courses by a new line through lands of the Hills Development Co., formerly the Allan-Deane Corporation.

( 74 ) South twenty-four degrees, zero minutes, zero seconds West ( $S24^{\circ}-00'-00''W$ ), ninety-eight and seven hundredths (98.07) feet to an angle point in same; thence

the aforementioned deed between the R. Gregory Construction Company and the Allan-Deane Corporation; thence

( 70 ) along said fourteenth course in reverse in said deed between the R. Gregory Construction Company and the Allan-Deane Corporation, South fifty degrees, forty minutes, ten seconds East ( $S50^{\circ}-40'-10''E$ ) one thousand one hundred eighty-one and thirty-two hundredths (1,181.32) feet to the BEGINNING of same; thence

( 71 ) partially along the thirteenth course in reverse in said deed, North thirty-eight degrees, forty-six minutes, one second East ( $N38^{\circ}-46'-01''E$ ) three hundred twenty-three and twenty-two hundredths (323.22) feet to a point where the same is intersected by the fourth course in a certain deed from the Allan-Deane Corporation to Allyn P. Kidwell recorded in the Somerset County Clerk's Office in Deed Book 1221 at Page 426, said point marked by a concrete monument; thence

( 72 ) along said fourth course in said deed, South fifty-two degrees, forty-three minutes, thirty-six seconds East ( $S52^{\circ}-43'-36''E$ ) two hundred four and twenty-one hundredths (204.21) feet to a point where the same is intersected by the ninth course in a certain deed between Allyn P. Kidwell and Doris B. Kidwell, his wife, and the Allan-Deane Corporation dated October 31, 1969, and recorded in the Somerset County Clerk's Office in Deed Book 1216 at Page 520; thence

( 73 ) along the tenth course in said deed from Allyn P. Kidwell and Doris B. Kidwell, his wife, to the Allan-Deane Corporation, South fifty-seven degrees, thirteen minutes, thirty-six seconds East ( $S57^{\circ}-13'-36''E$ ) four hundred twenty-five and twenty hundredths (425.20) feet to the terminus of same; thence the following thirteen courses by a new line through lands of the Hills Development Co., formerly the Allan-Deane Corporation.

( 74 ) South twenty-four degrees, zero minutes, zero seconds West ( $S24^{\circ}-00'-00''W$ ), ninety-eight and seven hundredths (98.07') feet to an angle point in same; thence



75) South sixty-six degrees, zero minutes, zero seconds East ( $S66^{\circ}-00'-00''E$ ), three hundred fifty-five and fifty hundredths (355.50') feet to a point of curve in same; thence

76) Southeasterly, along a curve to the right having a radius of three hundred twenty and zero hundredths (320.00') feet, an arc length of one hundred eighty and twelve hundredths (180.12') feet to a point of tangency in same; thence

77) South thirty-three degrees, forty-five minutes, zero seconds East ( $S33^{\circ}-45'-00''E$ ), three hundred and zero hundredths (300.00') feet to a point of curve in same; thence

78) Easterly, along a curve to the left having a radius of one thousand thirty and zero hundredths (1030.00') feet, an arc length of five hundred seventy and seventy-seven hundredths (570.77') feet to a point of tangency in same; thence

79) South sixty-five degrees, thirty minutes, zero seconds East ( $S65^{\circ}-30'-00''E$ ), two hundred fifty-seven and sixty-two hundredths (257.62') feet to a point of curve in same; thence

80) Southerly, along a curve to the right having a radius of four hundred seventy and zero hundredths (470.00') feet, an arc length of six hundred thirty-five and seventy-four hundredths (635.74') feet to a point of tangency in same; thence

81) South twelve degrees, zero minutes, zero seconds West ( $S12^{\circ}-00'-00''W$ ), one hundred thirty-eight and seventy-one hundredths (138.71') feet to a point of curve in same; thence

82) Southeasterly, along a curve to the left having a radius of four hundred thirty and zero hundredths (430.00') feet an arc length of six hundred thirteen and fifty-three hundredths (613.53') feet to a point of tangency in same; thence

83) South sixty-nine degrees, forty-five minutes, zero seconds East ( $S69^{\circ}-45'-00''E$ ), one hundred thirty-five and zero hundredths (135.00') feet to a point of curve in same; thence

84) Southeasterly, along a curve to the right having a radius of three hundred twenty and zero hundredths (320.00') feet an arc length of one hundred fifty-three and forty-six hundredths (153.46') feet to a point of tangency in same; thence

85) South forty-two degrees, sixteen minutes, twenty-five seconds East (S42°-16'-25"E), thirty-four and seventy-five hundredths (34.75') feet to a point of curve leading into the westerly sideline of Somerville Road in same; thence

86) Southerly, along a curve to the right having a radius of twenty-five and zero hundredths (25.00') feet, an arc length of thirty-nine and thirty-nine hundredths (39.39') feet to a point of tangency in the aforementioned westerly sideline of Somerville Road, and the place of BEGINNING.

Containing 503.2578 Acres.

All in accordance with a survey by Keller & Kirkpatrick, P.A. Florham Park, New Jersey, dated May 25, 1984, revised to May 29, 1984.

RECORDED

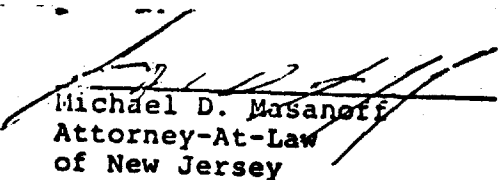
JA 1 3 05 PM '84

STATE OF NEW JERSEY :  
 : SS.:  
 COUNTY OF ESSEX :

SOMERSET COUNTY  
 L.R. OLSON, CLERK

BE IT REMEMBERED, that on this 31st day of May, 1984, before me, the subscriber, personally appeared WILLIAM C. ORLOWSKI, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that he is the Secretary of The Hills Development Company, a Joint Venture General Partnership, the entity named in the within Instrument; that John H. Kerwin is the President of said entity; that the execution, as well as the making of this Instrument, has been duly authorized by a proper resolution of the Partnership Management Committee of said entity; and that said Instrument was signed and delivered by said President as and for the voluntary act and deed of said entity, in presence of deponent, who thereupon subscribed his name thereto as attesting witness.

Sworn to and subscribed before me, the date aforesaid.

  
 Michael D. Marsanoff  
 Attorney-At-Law  
 of New Jersey

  
 William C. Orłowski

R + R

GENERAL LAND ABSTRACT CO. INC.  
 P.O. BOX 1161  
 PRINCETON, N.J. 08540

BOOK 1355 PAGE 729

END OF DOCUMENT

STATE OF NEW JERSEY:  
COUNTY OF SOMERSET : <sup>ss.</sup>

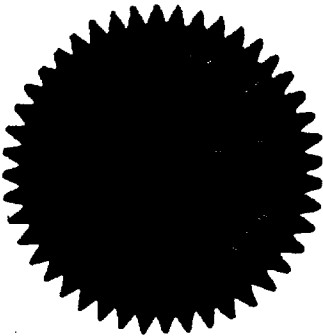
I, LAWRENCE R. OLSON, Clerk of the County of Somerset and  
also Deputy Clerk of the Superior Court, in and for said County.

DO HEREBY CERTIFY the foregoing to be a true and correct  
copy of a certain MORTGAGE between THE HILLS DEVELOPMENT COMPANY  
and THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, recorded  
June 1, 1984 at 3:25 PM in Mtg. Bk 1355 Pg 685 and known  
as Instrument No. 9771

as the same is of record in my office.

In Witness Whereof, I have hereunto  
set my hand and affixed the seal of  
the County of Somerset,

on May 6, 1986



Lawrence R. Olson, County Clerk

by Ethel Brown  
Special Deputy Clerk