

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
COMMERCIAL AND COMMUNITY CENTER PROPERTY
AT
WESLEYAN HILLS

DECLARATION made this 1st day of April, 1980, by HILL DEVELOPMENT CORPORATION, a Connecticut corporation having its principal place of business in Middletown, Connecticut ("Hill"),

W I T N E S S E T H :

WHEREAS, Hill is and has been the developer of "Wesleyan Hills", a Planned Residential Development (the "PRD") situated in Middletown, Connecticut, authorized and approved pursuant to Resolution 68-17, namely, "A Resolution Concerning The Planned Residential Development Application of Hill Development Corporation", adopted by the City of Middletown Commission on the City Plan and Zoning (the "Commission") on October 9, 1968, presently consisting of single-family residential houses, residential condominium units, swim and tennis club facilities, permanent parks, open spaces and other common facilities; and

WHEREAS, to provide for the preservation of the values and amenities in Wesleyan Hills and for the preservation, maintenance and improvement of said parks, open spaces and common facilities in Wesleyan Hills, Hill has previously subjected certain real property within Wesleyan Hills to a certain Wesleyan Hills Declaration of Covenants and Restrictions (the "Declaration No. 1"), the original of which is dated August 21, 1969 and recorded in the Middletown Land Records, Volume 365, Pages 523-607, as amended and supplemented from time to time; and

WHEREAS, Article IX of Declaration No. 1 provides for the establishment of an Architecture and Landscape Review Committee (the "ALRC") and grants to the ALRC the exclusive authority to administer the conditions

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and provisions set forth in Article I of Declaration No. 1, which conditions and provisions provide, in part, that no structure or other improvement shall be constructed on land subject to Declaration No. 1 without the prior written consent of the ALRC; and

WHEREAS, the ALRC was duly constituted by Mill pursuant to the terms and conditions of Declaration No. 1 and is presently in existence and functioning pursuant to the terms and conditions of Declaration No. 1; and

WHEREAS, Mill, in its application to the Commission for the approval of the PRD, dated September, 1968, proposed the development of a community center within the PRD pursuant to Section 45.05.018 of the Zoning Code of the City of Middletown (the "Code"), as it existed on September 2, 1972, which reads as follows:

NON-RESIDENTIAL USES

Non-residential uses, limited to those permitted by the Planning Commission, are permitted in a Planned Residential Development provided that such uses primarily are for the service and convenience of the residents of the development and further provided that:

(1) No store shall exceed 10,000 square feet of gross floor area; and

(2) The total mercantile and office space permitted within a Planned Residential Development shall not exceed forty (40) square feet of gross floor area under roof per dwelling unit in the development, excluding in such computation, buildings used for educational, recreational or cultural purposes.";

(NOTE: The PRD, having been approved prior to September 2, 1972, is subject to and shall be completed under the requirements of Section 45 of the Code as it existed on September 2, 1972, and hence, exempt from the provisions of the present Section 44.08.22 of the Code dealing with Planned Residential Developments.); and

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WHEREAS, the proposed community center contained an old farm house and a complex of old barns; and

WHEREAS, within the proposed community center, Hill has installed a paved parking area, renovated the said old barns for multi-purpose use and the said old farm house for office uses and installed a decorative plaza, but has not developed any of the mercantile space within the proposed community center authorized by the Code; and

WHEREAS, Hill is presently the owner of the real property described in Schedule A, annexed hereto and made a part hereof, (the "Property") which Hill intends to develop or have developed for commercial and community center purposes; and

WHEREAS, (i) Lot No. 1, as shown on the map referred to in Schedule A (the "Map") is currently the undeveloped commercial center, except for the paved parking area and decorative plaza, (ii) Lot No. 2, as shown on the Map, contains the said renovated old farm house, (iii) Lot No. 3, as shown on the Map, contains the said renovated old barns and (iv) Lot No. 4 is open space, called "Common Land, which will be conveyed to Wesleyan Hills Association, Inc.; and

WHEREAS, Hill desires to develop or to have developed the Property in such a manner that all buildings and other structures thereon shall be harmoniously designed, landscaped and located and that the commercial and community center uses thereon and thereof are restricted so as to insure the harmony and the integrity of Wesleyan Hills and to those ends desires to subject the Property to (i) Articles II and X of Declaration No. 1 and (ii) the covenants, conditions and restrictions set forth herein.

NOW, THEREFORE, Hill declares that the real property described in Schedule A is and shall be held, transferred, sold, conveyed, used and

occupied subject to the covenants, conditions and restrictions hereinafter set forth.

ARTICLE I

DEFINITIONS

1.1 The following words, terms and initials when used in this Declaration shall have the following meanings:

ALRC

The Architecture and Landscape Review Committee as defined in Declaration No. 1.

COMMON FACILITIES

The parking areas, streets, driveways, aisles, sidewalks, pathways, malls, plazas and other common and service areas within the Property shown and designated as "Common Facility" or "Common Facilities" on a map of the Property filed or recorded in the Middletown Land Records.

DECLARATION NO. 2

This Declaration of Covenants, Conditions and Restrictions For Commercial And Community Property At Wesleyan Hills, as the same may from time to time be supplemented or amended in the manner prescribed hereon.

DEVELOPER

DEVELOPMENT CORPORATION, its successors and assigns, if such successors and assigns should acquire all or any part of the Property.

OWNER

The record owner, whether one (1) or more persons or entities of a fee simple title to all or any part of the Property. A Tenant, as hereinafter defined, shall not be deemed an Owner, as herein defined.

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No mortgagee shall be deemed an Owner until such mortgagee shall acquire fee title to all or any part of the Property pursuant to a foreclosure or proceeding in lieu thereof.

PROPERTY

All the real property at any time subject to Declaration No. 2.

TENANT

Any one (1) or more persons, other than an Owner, occupying any structure or building on the Property pursuant to an agreement made by him or them with the Owner.

WESLEYAN HILLS

A Planned Residential Development situated in Middletown, Connecticut, consisting of single-family residential houses, residential condominium units, permanent parks, open spaces and other common facilities.

WHA

Wesleyan Hills Association, Inc., a non-stock corporation, organized under the Laws of the State of Connecticut and having its principal place of business in Middletown, Connecticut, its successors and assigns, whose members consist of Owners of Lots and/or Living Units within Wesleyan Hills as defined in Declaration No. 1.

ARTICLE IIJURISDICTION

2.1 Articles II and X of Declaration No. 1, as heretofore and hereafter amended from time to time, are hereby made covenants, conditions and restrictions applicable to the Property with the same force and

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effect and as fully as if set forth herein so that the ALRC shall have and is hereby granted all of the rights, powers and duties over the Property as set forth in Articles IX and X of Declaration No. 1 subject only to the provisions and conditions set forth therein.

ARTICLE III

USE RESTRICTIONS

3.1 No portion of the Property shall be used except for one or more of the following purposes:

- (a) business and professional offices;
- (b) facilities for the retail sales of goods and services, banks and other financial institutions;
- (c) places of worship;
- (d) community, civic, social, and cultural clubs and centers, libraries, nursery and other schools, including schools of special instruction; child care facilities;
- (e) restaurants, theatre, and recreational facilities;
- (f) public transportation terminals and stations; automobile parking facilities;
- (g) facilities maintained by any governmental authority for administrative, cultural, educational, health, or welfare purposes; and
- (h) residential purposes.

3.2 No animals, livestock, or poultry, of any kind shall be raised, bred, or kept, on any portion of the Property except that dogs, cats, and other household pets, may be kept for retail sale.

3.3 Tanks for the storage of fuel maintained on any part of the Property shall be buried.

3.4 No garbage, rubbish, junk, cuttings, or other refuse shall be deposited or permitted to remain on the Property unless placed in a closed container suitably located.

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3.5 No building material of any kind or character shall be placed upon the Property except in connection with construction approved by the ALRC and the Commission.

3.6 There shall not be installed, kept, or maintained on the Property any external antenna or aerial of any kind or description; provided, however, Hill shall have the right to erect and maintain master antenna towers or aeriels and to transfer same to a cable television company. Also, there shall not be installed, kept, or maintained on the Property any internal antenna or aerial of any kind or description without the prior written approval of Hill.

3.7 No excavation shall be made on the Property except in connection with construction or grading approved by the ALRC and the Commission.

3.8 Telephone and power lines and other utilities installed after the recording of this Declaration shall be connected to structures located on the Property only by underground conduit.

3.9 No unregistered or inoperable motor vehicle shall be moved onto or kept on the Property.

3.10 No motor vehicle or trailer of any kind may be disassembled, serviced or repaired on the Property.

3.11 No sign of any kind shall be displayed on the Property or on any structure or from the windows of any structure on the Property without the prior written approval of the ALRC and the Commission.

3.12 The provisions of Articles II and I of Declaration No. 1 shall be applicable to this Article III.

3.13 The Site Plan review procedure under the Code shall be followed for all proposed development of the Property and in conjunction with said development all of the off-street parking requirements under the Code shall be adhered to.

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ARTICLE IV.

COMMON FACILITIES

4.1 Hill, at its sole cost and expense, shall hard surface, mark and properly drain a parking area or areas, together with the necessary access roads thereto and therefrom, within that portion of the Property shown and designated as Lot No. 1 on the map referred to in Schedule A, said parking area or areas to be sufficient in area or areas to include therein the minimum number of parking spaces required for the buildings now or hereafter situated on the Property and the uses made thereof by the Zoning Code of the City of Middletown. Said parking area or areas and access road or roads shall be designated as "Common Facilities" on a map of said Lot No. 1 filed or recorded in the Middletown Land Records.

4.2 It is the intention of Hill, and in part one of the purposes of Declaration No. 2, that the Property as a whole be owned, operated and maintained as an integral commercial and community center. In accordance with said intention and purpose, every Owner shall have a right and easement of enjoyment and use in and to the Common Facilities, which right and easement shall be appurtenant to and shall pass with the title to any part of the Property.

4.3 Each Owner shall have the right to delegate such rights of enjoyment and use to his and his Tenant's employees, agents, servants, customers, guests, and other invitees.

4.4 All Common Facilities shall be subject to the exclusive control and management of Hill. Hill shall have the right to construct, maintain and operate lighting and other facilities within said Lot No. 1; to police the same; to change the area, level, location and arrangement of parking areas and other facilities; to close all or any portion of the Common Facilities to such extent as may be legally sufficient to prevent

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a dedication thereof or the actual of any right to the public. Hill shall operate and maintain the Common Facilities in such manner as Hill in its reasonable discretion shall determine.

4.5 Hill shall keep and maintain the Common Facilities in good condition and repair. Such obligation shall include, but not be limited to, lighting, landscaping and the removal of refuse, obstructions, ice and snow.

4.6 Each Owner agrees to pay to Hill, upon demand, but not more than once each calendar month, his pro-rata share of the cost of operating and maintaining the said parking area or areas and the other outdoor Common Facilities situated on said Lot No. 1. Such operating and maintenance costs shall include all costs of operating and maintaining such parking areas and Common Facilities in such manner as Hill may, from time to time, deem appropriate for the best interests of all the Owners within the Property, including, without limitation, real estate taxes, labor, rubbish removal, snow removal, lawn maintenance and plantings, compensation insurance, payroll taxes, materials, supplies and all costs of operating, repairing, lighting, cleaning and painting such parking areas and Common Facilities and the cost of casualty and such other insurance in such amounts and coverages as Hill shall deem appropriate, and all costs other than those which are properly charged to capital account under generally accepted accounting principles, of replacements of paving, curbs, walkways, remarking, directional or other signs, landscaping, drainage and lighting facilities and six (6%) per cent of all of the foregoing costs to cover Hill's administrative and overhead cost. There shall be excluded the cost of construction of improvements to such Common Facilities which is properly chargeable to capital account and depreciation of the original cost of construction of such Common Facilities.

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Owner's pro-rata share of such costs and expenses is defined as Owner's portion of square footage of building owned by said Owner divided by the total square footage of buildings existing in or authorized for the Property, whichever is greater, and that fraction shall be Owner's pro-rata share of such costs and expenses.

4.7 Hill shall have the right to grant easements or rights of access within the Common Facilities to the City of Middletown, the State of Connecticut or any public agency thereof and to any public utility corporation.

ARTICLE V

ZONING AND SPECIFIC RESTRICTIONS

5.1 The use restrictions set forth in Article III hereof shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provisions of such laws, rules, regulations, deeds, leases or the use restrictions set forth in Article III hereof shall be taken to govern and control.

ARTICLE VI

DURATION AND AMENDMENT

6.1 The Covenants, Conditions and Restrictions contained in this Declaration shall run with and bind the Property, shall inure to the benefit of and shall be enforceable by Hill, WMA, ALEC and the Owner or any portion of the Property, their respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded in the Middletown Land Records, after which time the said Covenants, Conditions and Restrictions shall be automatically extended for successive periods of ten (10) years. This

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Declaration shall be amended only by the execution of an instrument signed by the Owner or Owners of not less than seventy-five (75%) per cent of the land area contained within the Property; except that if such amendment of this Declaration directly or indirectly changes (a) any of the permissible uses of the Property set forth and described in Article III herein and/or (b) either (i) the percentage of administrative and overhead cost referred to in Paragraph 4.6 above or (ii) the formula by which each Owner's pro-rata share of the cost of operating and maintaining the parking area or areas and other outdoor Common Facilities situated on said Lot No. 1, as set forth in Paragraph 4.6 above, or both, such amendment shall require the execution of an instrument signed by the Owner or Owners of ninety (90%) per cent of the land area contained within the Property. No amendment shall be effective until recorded in the Land Records of the Town of Middletown.

ARTICLE VII

GENERAL

7.1 Violation or breach of any Covenant, Condition or Restriction herein contained shall give Hill, WEA, or the ALRC, their respective legal representatives, heirs, successors and assigns, in addition to all other remedies, the right to enter upon the land upon or as to which such violation or breach exists, and summarily to abate and remove, at the expense of the Owner thereof, any erection, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof; and the said parties shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal. Nothing herein contained shall be deemed to affect or limit the rights of the Owners of land within the Property to enforce the Covenants, Conditions and Restrictions by appropriate judicial proceedings.

7.2 The failure of Hill, the WEA, ALRC or the Owner of any land included in the Property, their respective legal representatives, heirs,

successors and assigns, to enforce any Covenant, Condition or Restriction herein shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto.

7.3 No Covenant, Condition or Restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

7.4 The determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

7.5 Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled to relief by way of injunction as well as any other available relief either at law or in equity.

7.6 Any party to a proceeding who succeeds in enforcing a Covenant, Condition or Restriction or enjoining the violation thereof against an Owner may be awarded reasonable attorneys' fee against such Owner.

7.7 The headings of the Articles herein are for convenience only and shall not affect the meanings or interpretation of the contents thereof.

7.8 No violation of any of the Covenants, Conditions or Restrictions herein contained shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property; provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagee's or foreclosure sale shall be bound by and subject to this Declaration as fully as any other Owner of any portion of the Property.

7.9 Each grantee accepting a deed, lease or other instrument conveying any interest in any portion of the Property, whether or not the same incorporates or refers to covenants for himself, his heirs, successors and assigns to observe, perform and be bound by these Restrictions and to

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incorporate the same by reference in any deed or other conveyance of all or any portion of his interest in any real property subject thereto.

7.10 Whenever used herein, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, HILL DEVELOPMENT CORPORATION has caused its corporate name and seal to be hereunto affixed by Richard W. Greene, its President, hereunto duly authorized, this 1st day of April, 1980.

Signed, Sealed and Delivered
in the Presence of:

HILL DEVELOPMENT CORPORATION

Robert S. Palmer

Robert S. Palmer

Chester J. Dzialo
Chester J. Dzialo

By

Richard W. Greene

Richard W. Greene, Its President
Hereunto Duly Authorized

STATE OF CONNECTICUT: ss. Middletown
COUNTY OF MIDDLESEX:

On this, the 1st day of April, 1980, before me, Chester J. Dzialo, the undersigned officer, personally appeared Richard W. Greene, who acknowledged himself to be the President of Hill Development Corporation, a corporation, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand.

Chester J. Dzialo

Chester J. Dzialo
Notary Public

My Commission Expires:

MY COMMISSION EXPIRES
MARCH 31, 1981

SCHEDULE A

All those certain pieces or parcels of land, together with all buildings and improvements thereon, situated on the northerly and easterly sides of Long Hill Road, in the Town of Middletown, County of Middlesex and State of Connecticut, shown and designated as Lot 1, Lot 2, and Lot 3, respectively, on a map entitled, "Wesleyan Hills Community Center Hill Development Corp., Middletown, Conn." having a scale of 1" = 40', dated 7/25/79, Ident. No. 101-A, which map was prepared and certified to be in accordance with the standards of a Class A-2 survey, as defined by the Code of Practice for Standards of Accuracy of Surveys and Maps of the Connecticut Association of Land Surveyors, Inc. by Richard W. Gates, Land Surveyor, which map is on file or is to be filed in the Land Records of the Town of Middletown, and to which map reference is hereby made and may be had for a more particular description and location of said premises, bounded and described as follows:

Beginning at a point in the northerly line of Long Hill Road, which point marks the southeasterly corner of the herein described premises and the southwesterly corner of land now or formerly of Hill Development Corporation; thence running along the northerly and easterly lines of Long Hill Road the following courses, directions and distances: (i) in a general westerly direction along the arc of a curve deflecting to the right, having a radius of 142.76 feet for an arc length of 47.14 feet to a point, (ii) N 82° 18' 54" W, 121.37 feet to a point, (iii) N 82° 18' 54" W, 40.73 feet to a point, (iv) N 82° 18' 54" W, 110.76 feet to a point, (v) in a general westerly direction along the arc of a curve deflecting to the right, having a radius of 186.31 feet for an arc length of 56.07 feet to a point, (vi) in a general northwesterly direction along the arc of a curve deflecting to the right, having a radius of 186.31 feet for an arc length of 33.36 feet to a point, (vii) in a general northwesterly direction along the arc of a curve deflecting to the right, having a radius of 194.77 feet for an arc length of 201.66 feet to a point, (viii) in a general northerly direction along the arc of a curve deflecting to the right, having a radius of 545.39 feet for an arc length of 291.52 feet to a point and (ix) in a general northerly direction along the arc of a curve, having a radius of 539.57 feet for an arc length of 131.32 feet to a point; thence running N 79° 26' 37" E, along the southerly line of land now or formerly of Hill Development Corporation, 429.35 feet to a point; thence running along the westerly line of land now or formerly of Hill Development Corporation the following courses and distances: (i) S 5° 10' 06" W, 358.00 feet to a point, (ii) S 1° 29' 28" W, 162.05 feet to a point, (iii) S 37° 49' 51" W, 69.31 feet to a point and (iv) S 8° 53' 13" W, 135.38 feet to the point or place of beginning.

Read & for Record *[Signature]* 3/16/80 P.M.
 Recorded by *[Signature]*
 Town Clerk