

VIII. ADMINISTRATION REPORTS

Mayor Woodruff

Township Administrator – John Bussicolo

IX. HEARING ON AGENDA ITEMS ONLY – 3 minutes per resident

Comments are welcome during the public comment period during this meeting on any agenda item. However, if an ordinance is listed for its own public hearing on the agenda, please hold your comments for that particular public hearing. To make your comment, the speaker must come forward to the microphone and state his/her name and address for the record. Each speaker is limited to 3 minutes. The (Mayor/Council President) will keep time. Please promptly yield on the floor when time is called and return to your seat. Your cooperation in adherence to these rules of order will ensure an orderly and respectful meeting.

X .NEW BUSINESS- RESOLUTIONS

OFFICIAL ACTION WILL BE TAKEN ON THE FOLLOWING:

A. RESOLUTIONS

1. Resolution approving Bill List dated December 1, 2015 in the amount of \$174,742.50.
2. Resolution awarding bid to Jack Doheny Companies, Inc., 777 Doheny Drive, P.O. Box 609, Northville, Michigan, 48167, for Sanitary Sewer System Easement Cleaning Equipment in the amount not to exceed \$144,421.00
3. Resolution authorizing the Township's membership in the Garden State Municipal Joint Insurance Fund.
4. **CONSENT AGENDA** – All matters listed under Consent Agenda are considered routine by the Township Council and will be enacted upon by one motion; there will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.
 - a. Resolution authorizing the Tax Collector to refund the following 2015 tax overpayment:
 1. Francisco and Lydia De Oliveira 56 Rogers Avenue \$3,139.76
 - b. Resolution appointing Matt DeAngelis, 42 Maple Avenue, Berkeley Heights to the active roster of the Berkeley Heights Volunteer Fire Co.
 - c. Resolution authorizing Smith Chiropractic Center to host its annual 5K Charity Road Race & Fitness Walk on Sunday, September 18, 2016.
 - d. Resolution authorizing the release of a Performance Surety Bond and a Cash Bond for Summit Medical Group.

XI. INTRODUCTION OF ORDINANCES:

Public Hearing and Final Adoption scheduled for December 15, 2015:

“AN ORDINANCE OF THE TOWNSHIP OF BERKELEY HEIGHTS, COUNTY OF UNION, STATE OF NEW JERSEY, GRANTING A WATER AND SEWER LATERAL AGREEMENT TO BERKELEY DEVELOPMENT CO., LP, WITHIN THE TOWNSHIP’S RIGHT-OF-WAY KNOWN AS LONE PINE DRIVE.” (Explanation: This Ordinance granting a Water and Sewer Lateral Agreement to Berkeley Development Co., LP, for the construction and maintenance of water and sewer laterals within the Township’s right-of-way known as Long Pine Drive to service the property located at 394 Springfield Avenue as pursuant to the terms of the Planning Board’s grant of land use approval.)

XII. CITIZENS HEARING - 3 minutes per resident

Comments are welcome during the public comment period during this meeting on any matter over which the Township has jurisdiction. To make your comment, the speaker must come forward to the microphone and state his/her name and address for the record. Each speaker is limited to 3 minutes. The Mayor and/or Council will keep time. Please promptly yield the floor when time is called and return to your seat. Your cooperation in adherence to these rules of order will ensure an orderly and respectful meeting.

XIII. ADJOURNMENT

Ana Minkoff, Township Clerk

Agenda Item # /

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

BE AND IT IS HEREBY RESOLVED by the Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey, in meeting assembled, authorizes and directs the Township Treasurer to make payment of vouchers listed on the Bill List dated 12/1/15, in the amount of \$174,742.50 such vouchers having been received by the Township Council, having been satisfied that appropriate procedure has been followed in the processing of said vouchers.

APPROVED this 1st day of December, 2015.

ATTEST:

Ana Minkoff
Township Clerk

Agenda Item #

2

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

WHEREAS, the Township accepted bids on November 13, 2015, for Sanitary Sewer System Easement Cleaning Equipment; and

WHEREAS, by letter dated November 16, 2015, the Waste Water Treatment Superintendent has recommended that the contract be awarded to Jack Doheny Companies Inc., 777 Doheny Drive, P.O. Box 609, Northville, MI 48167 in the amount of \$144,421.00, be accepted and the Township Council concurs.

NOW, THEREFORE BE IT RESOLVED by the Township Council, Township of Berkeley Heights, County of Union, that the appropriate municipal officials are authorized to execute a contract with Jack Doheny Companies, Inc., and the Treasurer is authorized to pay properly completed vouchers for the provision of Sanitary Sewer System Easement Cleaning Equipment in the amount not to exceed \$144,421.00 for such work.

BE IT FURTHER RESOLVED that the Township Clerk is hereby authorized to advertise the award of this contract in accordance with law.

BE IT FURTHER RESOLVED that the Township Clerk shall forward a copy of this Resolution to Jack Doheny Companies, Inc.

BE IT FURTHER RESOLVED that this Resolution shall take effect pursuant to law.

APPROVED this 1st day of December, 2015.

ATTEST:

Ana Minkoff
Township Clerk

#3

TOWNSHIP OF BERKELEY HEIGHTS
GARDEN STATE MUNICIPAL JOINT INSURANCE FUND
JOINT TRUST AGREEMENT AND RESOLUTION TO JOIN

WHEREAS, a number of local governmental units in the State of New Jersey have joined together to form a Joint Insurance Fund as permitted by the Chapter 372 Laws of 1983 (40A:10-36); and

WHEREAS, the statutes and regulations governing the creation and operation of a Joint Insurance Fund contain elaborate restrictions and safeguards concerning the safe and efficient administration of the public interest entrusted to such a Fund; and

WHEREAS, the Governing Body of the Township of Berkeley Heights has determined that membership in the Garden State Municipal Joint Insurance Fund (hereinafter referred to as the "Fund") is in the best interests of itself and its citizens; and

WHEREAS, the Governing Body of the Township of Berkeley Heights has previously executed a resolution to join the Garden State Municipal Joint Insurance Fund subject to the acceptance of its assessment;

NOW, THEREFORE, BE IT RESOLVED that the Governing Body of the Township/of Berkeley Heights (hereinafter referred to as the "Municipality") does hereby resolve and agree to become a member of the Fund for a period not to exceed three (3) years beginning January 1, 2016 for the purpose of establishing the following types of coverage:

- Workers' Compensation and Employer's Liability;
- General Liability including law enforcement and public officials liability;
- Motor vehicle liability;
- Property damage (buildings, contents, equipment, and motor vehicle);

BE IT FURTHER RESOLVED, that the Municipality has never defaulted on claims and has not been canceled for nonpayment of insurance premiums for a period of at least two years prior to the adoption of this Resolution; and

BE IT FURTHER RESOLVED, that the Mayor and the Municipal Clerk are authorized and directed to execute the Indemnity and Trust Agreement and such other documents signifying membership in the Fund and to deliver same to the Executive Director of the Fund with the express reservation that said document shall become effective only upon approval by the New Jersey Department of Insurance and the Department of Community Affairs.

APPROVED this 1st day of December, 2015

ATTEST:

Ana Minkoff
Township Clerk



GARDEN STATE MUNICIPAL JOINT INSURANCE FUND

INDEMNITY AND TRUST AGREEMENT

THIS AGREEMENT, made this day of _____ in the County of _____ Union _____, State of New Jersey, By and Between the Garden State Municipal Joint Insurance Fund, hereinafter referred to as "FUND", and the Governing Body of the Township/Borough/City of Berkeley Heights _____, a duly constituted local unit of government hereinafter referred to as "MUNICIPALITY";

WITNESSETH:

WHEREAS, several local governmental units have collectively formed or are in the process of forming a Joint Insurance Fund as such an entity is authorized and described in NJSA 40A:10-36 et seq. and the administrative regulations promulgated pursuant thereto and:

WHEREAS, the MUNICIPALITY has agreed to become a member of the FUND in accordance with and to the extent provided for in the bylaws of the FUND and in consideration of such obligations and benefits to be shared by the membership of the FUND;

NOW THEREFORE, it is agreed as follows:

1. The MUNICIPALITY accepts the FUND'S bylaws as approved and adopted and agrees to be bound by and to comply with each and every provision of the said bylaws and the pertinent statutes and Administrative Regulations pertaining to same and as set forth in the Risk Management Plan.
2. The MUNICIPALITY agrees to participate in the FUND with respect to the types of insurance listed in the City/Township/Borough of Berkeley Heights' Resolution.
3. The MUNICIPALITY agrees to become a member of the FUND for an initial period not to exceed three (3) years, beginning January 1, 2016 to December 31st, 2018 the commencement of which shall coincide with the effective date of the FUND'S operation and coverage, or the effective date of membership, whichever occurs later.
4. The MUNICIPALITY certifies that it has never defaulted on any claims if self insured and has not been canceled for non-payment of insurance premiums for a period of at least two years prior to the date thereof.



5. In consideration of membership in the FUND the MUNICIPALITY agrees that it shall jointly and severally assume and discharge the liability of each and every member of the FUND, all of whom as a condition of membership in the FUND shall execute a verbatim counterpart of this Agreement and by execution hereof the full faith and credit of the MUNICIPALITY is pledged to the punctual payment of any sums which shall become due to the FUND in accordance with the bylaws thereof, this Agreement, the Fund's Risk Management Plan or any applicable Statute.
6. If the FUND in the enforcement of any part of this Agreement shall incur necessary expense or become obligated to pay attorney's fees and/or Court costs the MUNICIPALITY agrees to reimburse the FUND for all such reasonable expenses, fees and costs on demand.
7. The MUNICIPALITY and the FUND agree that the FUND shall hold all monies paid by the MUNICIPALITY to the FUND as fiduciaries for the benefit of FUND claimants all in accordance with NJAC 11:15 2.1 et seq.
8. The FUND shall establish a Trust Account for the following categories of risk and liability:
 - Workers' Compensation and Employers' Liability
 - Liability, other than motor vehicle
 - Property Damage, other than motor vehicle
 - Property
 - Motor Vehicle liability and physical damage

The FUND shall maintain Trust Accounts aforementioned in accordance with NJSA 40A: 10-36, NJAC 11:15.2 et seq., NJSA 40A: 5-1 and such other statutes as may be applicable. More specifically, each of the aforementioned separate Trust Accounts shall be utilized solely for the payment of claims, allocated claim expense and excess insurance or reinsurance premiums for each such risk or liability or as "surplus" as such term is defined by NJAC 11:15-2.2.

9. Each MUNICIPALITY who shall become a member of the FUND shall be obligated to execute this Agreement.

TOWNSHIP/BOROUGH OF Township of Berkeley Heights

BY: _____

DATE: _____

Agenda Item
#

491

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

WHEREAS, the Tax Collector has advised that there was an overpayment of a portion of 2015 property taxes for property known as Block #2703 Lot #19 also known as 56 Rogers Avenue which requires a refund in the amount of \$3,139.76; and

NOW, THEREFORE BE IT RESOLVED that the Treasurer is authorized to refund the overpayment for 2015 taxes in the amount of \$3,139.76 to Francisco and Lydia De Oliveira, 56 Rogers Avenue, Berkeley Heights, NJ 07922.

BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to Francisco and Lydia De Oliveira, Treasurer and Tax Collector.

APPROVED this 1st day of December, 2015.

Attest:

**Ana Minkoff
Township Clerk**

46

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

BE AND IT IS HEREBY RESOLVED that the Township Council of the Township of Berkeley Heights, Union County, New Jersey, in meeting assembled, that Matt DeAngelis, 42 Maple Avenue, Berkeley Heights, NJ, is hereby appointed as an Active member of the Berkeley Heights Volunteer Fire Department effective December 1, 2015.

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to Matt DeAngelis, and the Fire Chief.

APPROVED this 1st day of December, 2015.

ATTEST:

Ana Minkoff
Township Clerk

4c

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

WHEREAS, the Smith Chiropractic Center has requested permission to hold its annual 5K Charity Road Race & Fitness Walk which raises money for charity through donations on September 18, 2016; and

WHEREAS, Smith Chiropractic Center has also requested permission to hang its banner across Springfield Avenue and the corner of Plainfield Avenue and Park Avenue as noted in the request dated October 21, 2015; and

WHEREAS, the Township Council believes that the event is in the best interest of the community.

NOW THEREFORE BE IT RESOLVED, that permission is hereby granted to Smith Chiropractic Center for its annual 5K run provided that it complies with all conditions imposed by the Township Police Department, Fire Department and Rescue Squad and it is given permission to place its banner across Springfield Avenue subject to the Board of Freeholders approval. Also hang a banner at the corner of Plainfield Avenue and Park Avenue.

BE IT FURTHER RESOLVED that copies of this resolution are to be forwarded to the Police Department, Fire Department, Rescue Squad, Smith Chiropractic, Township Clerk and Board of Freeholders.

APPROVED this 1st day of December, 2015.

ATTEST:

Ana Minkoff
Township Clerk

4d
**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

WHEREAS, Summit Medical Group was required to post a Performance Bond in connection with work being performed at One Diamond Hill Road, Block 3601, Lot 6. Neglia Engineering Associates, having inspected the work, has recommended by letter dated September 24, 2015 and the Township Engineer by letter dated November 23, 2015 that a full release of the Performance Bond which is comprised of a Performance Surety Bond in the amount of \$152,006.87 and a cash bond in the amount of \$16,889.65 be released.

NOW, THEREFORE BE IT RESOLVED, by the Township Council, Township of Berkeley Heights, County of Union, hereby authorizes the Township Treasurer to release and return the cash bond in the amount of \$16,889.65 to Summit Medical Group, One Diamond Hill Road, Berkeley Heights, together with any applicable interest.

BE IT FURTHER RESOLVED, that a copy of this Resolution is to be forwarded to Summit Medical Group, Township Treasurer and Township Engineer.

APPROVED this 1st day of December, 2015.

ATTEST:

Ana Minkoff
Township Clerk

EXPLANATION: This Ordinance granting a Water and Sewer Lateral Agreement to Berkeley Development Co., LP, for the construction and maintenance of water and sewer laterals within the Township's right-of-way known as Long Pine Drive to service the property located at 394 Springfield Avenue as pursuant to the terms of the Planning Board's grant of land use approval.

TOWNSHIP OF BERKELEY HEIGHTS, UNION COUNTY

ORDINANCE No. _____

An Ordinance of the Township of Berkeley Heights, County of Union, State of New Jersey, Granting a Water and Sewer Lateral Agreement to Berkeley Development Co., LP, within the Township's right-of-way known as Lone Pine Drive.

WHEREAS, the Township of Berkeley Heights owns and controls the right-of-way commonly known as Lone Pine Drive; and

WHEREAS, Berkeley Development Co., LP ("Berkeley Development"), received site plan approval with variance relief for the property identified as Block 701, Lots 2 and 3 (the "Property"), from the Berkeley Heights Planning Board ("Board") (the "Approval"); and

WHEREAS, in connection with the Approval, Berkeley Development is required to make certain improvements at the intersection of Springfield Avenue and Lone Pine Drive, which required the laterals relating to water and sewer service to the Property have been redesigned and installed within the roadbed of Lone Pine Drive; and

WHEREAS, Berkeley Development requested that the Township grant it an easement to construct and maintain the laterals for the water and sewer service for the Property within the Township's right-of-way; and

WHEREAS, the Township is authorized to grant an easement N.J.S.A. 40A:12-13; and

WHEREAS, the Mayor and Township Council of the Township of Berkeley Heights finds it to be in the best interest of the Township and its citizens to grant the requested easement for the construction and maintenance of the water and sewer laterals pursuant to the terms and conditions set forth therein.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Township Council of the Township of Berkeley Heights, in the County of Union and State of New Jersey as follows:

1. Pursuant to N.J.S.A. 40A:12-13, the Township hereby grants an Water and Sewer Lateral Easement within a portion of the right-of-way known as Lone Pine Drive, in substantially the form attached hereto.
2. The Mayor and Clerk are hereby authorized to execute the attached Water and Sewer Lateral Easement.
3. This Ordinance shall not take effect until after final passage, approval by the Mayor pursuant to N.J.S.A. 40:69A-149.7, and publication in accordance with all applicable laws and statutes.

INTRODUCED the _____ day of _____, 2015.

ADOPTED the _____ day of _____, 2015.

Robert Woodruff, Mayor

ATTEST:

Ana Minkoff, Township Clerk

Record and Return to:
Ana Minkoff, Clerk
Berkeley Heights Township
29 Park Avenue
Berkeley Heights, New Jersey 07920

Prepared by:

Joseph V. Sordillo, Esq.
Berkeley Heights Township Attorney

WATER AND SEWER LATERAL EASEMENT
(R.O.W. – Lone Pine Drive & Block 701, Lots 2 &3)

THIS EASEMENT is made on the _____ day of _____, 2013, between:

THE TOWNSHIP OF BERKELEY HEIGHTS, a Municipal Corporation of the County of Essex and State of New Jersey, having its principal offices at 29 Park Avenue, Berkeley Heights, New Jersey 07922, hereinafter called the "Township" or "Grantor," and

BERKELEY DEVELOPMENT CO., LP, a New Jersey limited partnership, having its principal offices at _____, hereinafter called the "Grantee".

WITNESSETH

WHEREAS, Grantor is the fee simple title owner, on or before the date of recordation hereof, of that certain tract of land lying and being in the Township of Berkeley Heights, County of Union and State of New Jersey, which tract of land is identified on or before the date of recordation hereof as the right-of-way commonly known as Lone Pine Drive; and

WHEREAS, Grantee, on _____, received site plan approval with variance relief for the property identified as Block 701, Lots 2 and 3, commonly known as _____ (the "Property"), from the Berkeley Heights Planning Board ("Board"), with a Memorializing Resolution of Approval adopted on _____ (the "Approval"); and

WHEREAS, in connection with the Approval, Grantee is required to make certain improvements at the intersection of Springfield Avenue and Lone Pine Drive, which required the laterals relating to water and sewer service to the Property have been redesigned and installed within the roadbed of Lone Pine Drive; and

WHEREAS, Grantee requested that the Township grant it an easement to construct and maintain the laterals for the water and sewer service for the Property within the Township's right-of-way, and the Township has agreed to provide such an easement, which this instrument is intended to fulfill; and

WHEREAS, the portion of the Township's right-of-way known as Lone Pine Drive which is subject to this Easement is more particularly described by legal description entitled

“ _____,” dated _____, delineating an area of _____ ± square feet, which description is attached hereto as **Schedule A** and made a part hereof; and as further depicted on a map entitled “ _____,” dated _____ (the “Utility Connection Plan”), which Utility Connection Plan is attached hereto as **Schedule B** and made a part hereof; which description and Utility Connection Plan were prepared by _____ (hereinafter the portion of the Property subject to this Easement are together referred to as the “Easement Area”); and

WHEREAS, Grantor desires to grant to the Grantee a certain easement affecting the Easement Area.

NOW, THEREFORE, Grantor, for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration in hand paid, receipt of which is hereby acknowledged, has granted, conveyed and confirmed, and by these presents does grant, convey and confirm unto the Grantee, and unto its successors and assigns, a non-public, non-exclusive perpetual easement for the purposes of constructing and maintaining the water and sewer laterals within the Easement Area subject to the terms and conditions set forth herein.

Within the Easement Area, the following terms and conditions shall apply:

1. The Township hereby grants Grantee the right to access, use and occupy that portion of the Easement Area for the purposes to construct and maintain the water and sewer laterals to service the Property.
2. Grantee shall construct and design all lateral improvements in accordance with the specifications of the Approval, applicable Township Ordinances and New Jersey State laws and regulations. Grantee shall perform all work in full compliance and observation of all ordinances of the Township. The Developer shall be responsible for securing any and all permits required by law including, but not limited to, road opening permits and any and all other permits required by the ordinances of the Township and to pay the requisite fees called for under the appropriate fee schedules.
3. Any and all traffic control requirements due to the construction and maintenance of the water and sewer laterals shall be coordinated with the Berkeley Heights Township Police Department, and pursuant to all applicable Township Ordinances.
4. Grantee shall have a right to reasonable access to, and use and possession of, the Easement Area with all manner of men, machinery, supplies, materials and equipment for the accomplishment of any and all of the foregoing purposes and any other activity required to accomplish the aforesaid purposes within the Easement Area, subject to all applicable licensing

and permitting requirements from the Township of Berkeley Heights, County of Union and State of New Jersey. The Grantee, and its successors and assigns, agrees to use its best efforts to perform all work requiring its use, access and possession of the Easement Area in a workmanlike manner with a minimum of inconvenience to Grantor, and to complete such work expeditiously.

5. Grantee shall restore the Easement Area, to the extent practical, to the same condition as existed immediately prior to its entry for access, construction, operation, maintenance, repair or replacement work for the construction and maintenance of the water and sewer laterals servicing the Property, ordinary wear and tear excepted, all of which shall be subject to the review and approval of the Township Engineer. Upon completion of any work by Grantee, Grantee shall remove, or shall cause to be removed, all materials, tools, equipment, building supplies and debris from the Easement Area.

6. The Township shall have no responsibility relating to any maintenance, repair and/or service relating to the water main, which shall be the responsibility of New Jersey American Water, its successors and assigns. Grantee further acknowledges that the Township shall have no responsibility with respect to the water service laterals, even if contained in a portion of the roadbed of Lone Pine Drive.

7. The Township's responsibility relating to any maintenance, repair and/or service is limited to the sewer main, which is identified on plans maintained by the Township set forth in the Utility Connection Plan attached hereto as Exhibit B. The Township shall have no responsibility for any maintenance, repair and/or service with respect to the service laterals, even if contained in the roadbed of Lone Pine Drive and that any such maintenance, repairs and/or service shall be the responsibility of Grantee, its successors and assigns.

8. Grantee shall purchase and maintain during the construction and maintenance of the water and sewer laterals servicing the Property a Comprehensive General Liability Insurance Policy with minimum limits of One Million (\$1,000,000.00) Dollars per occurrence, and One Million (\$1,000,000.00) Dollars in the aggregate. Said insurance coverage shall be in accordance with the requirements of the Township Attorney. The policy shall indicate the Township of Berkeley Heights as additional insureds with respect to their interest in work performed by the above named insured at the above named project. The coverage shall include endorsements for Broad Form Property Damage; explosion, collapse and underground hazards; completed operations; and contractual liability. The contractual liability coverage shall specifically apply to the indemnification clause set forth herein. It shall indemnify the Township, its officials, officers, agents, servants, representatives and employees and Township Attorney and its subsidiaries,

officers, employees, servants and agents. All liability coverage shall be on an occurrence basis. Certificates of Insurance evidencing the foregoing coverage shall be provided to the Township before work on the improvements begins and on an on-going basis, as the insurance is reviewed from time to time.

9. Grantee, its successors, assigns, sub-contractors, agents, servants, officers, employees, designees, guests and invitees, hereby indemnify, defend and hold harmless the Township, its successors and assigns, elected officials, officers, employees, servants, contractors, designees and invitees from and against any and all personal injury and property damage claims, demands, suits, actions at law or equity or otherwise, judgments, arbitration determinations, damages, liabilities, decrees of any person(s) or entities claiming to be or being harmed as a result of Grantee actions under this Easement Agreement, including the construction and ongoing maintenance of the water and sewer laterals servicing the Property, and costs in connection therewith. This indemnification shall specifically include, but not be limited to, any and all costs, reasonable attorneys' fees, court costs and any other expenses that may be incurred by the Township in connection with any and all claims, demands, suits, actions at law or equity or otherwise and/or arbitration proceedings which may arise in connection with Grantee's activities pursuant to the rights granted in this Easement Agreement.

It is understood and agreed that this Easement confers upon the Grantee no rights of title to the Easement Area. Nothing herein shall be construed to limit the Grantor's right of access to and use of the Easement Area except as herein provided.

Grantor may convey, mortgage, lease or otherwise transfer title or interest in the lands subject to this Easement provided, however, that the covenants and conditions herein remain superior to such conveyance, mortgage, lease or transfer, it being the intention of the parties that this Easement and its terms and conditions shall become a part of the chain of title and shall run with the land. The Easement hereby granted and conveyed to the Grantee and all rights and obligations set forth in this Grant shall be construed as running with the land and shall be binding upon and inure to the benefit of the Grantor and the Grantee, their heirs, executors, administrators, successors and assigns in title or interest, in perpetuity.

Wherever in this Easement any party shall be designated or referred to by name or general reference, such designation is intended to and shall have the same effect as if the words "heirs, executors, administrators, personal or legal representatives, successors and assigns" had been inserted after each and every such designation. All the terms, covenants and conditions herein contained shall be for and shall inure to the benefit of and shall bind the respective parties

hereto and their heirs, executors, administrators, personal or legal representatives, successors and assigns, respectively. In all references herein to any party, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

The Grantor covenants that it is lawfully seized of the Property and Easement Area and that it has the right to restrict the same. The Parties hereto each warrant and represent to each other, knowing and intending that the respective Parties are relying thereon in executing this Agreement, that they each have the power and authority to enter into this Agreement, to grant and receive the Easement contemplated herein, and to perform their respective obligations hereunder.

It is agreed by and between the Parties that mere lack of use or interruption of use of the Easement for an indefinite time shall not be constituted as an abandonment or other extinguishment of the Easement except as may be subsequently agreed in a separate Easement Extinguishment Agreement which may be entered into between the Grantee or its successors and assigns and the Township of Berkeley Heights and its successors and assigns.

This Easement shall be subject to and read in conjunction with:

- (a) Any other easements shown on the Map; and
- (b) Any other easements entered into by the parties hereto.

This Easement shall in all respects be governed by and construed in accordance with the laws of the State of New Jersey. In the event any one or more of the provisions in this Easement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, but this Easement shall be construed as if such invalid, illegal or unenforceable provision had never been included herein.

The provisions of the Agreement may not be amended, modified or terminated without the express written consent of the Grantee, and no such amendment, modification or termination shall be effective for any purpose unless set forth in writing, signed by the appropriate Township officials and recorded with the appropriate county recording officer.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, or caused this document to be signed by their proper corporate officers and their corporate seal to be set hereto.

ATTEST:

GRANTOR:
TOWNSHIP OF BERKELEY HEIGHTS

By: _____

Ana Minkoff, Township Clerk

Mayor Robert Woodruff

Dated: _____, 2015

ATTEST:

GRANTEE:
BERKELEY DEVELOPMENT CO., LP

Name:
Title:

By: _____
Name:
Title:

Dated: _____, 2015

S
STATE OF NEW JERSEY)
) ss:
COUNTY OF SOMERSET)

I CERTIFY that on _____, 2015, Ana Minkoff personally came before me and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the Clerk of the **TOWNSHIP OF BERKELEY HEIGHTS**, the municipal corporation named in the attached document;
- (b) this person is the attesting witness to the signing of this document by the proper municipal officer who is Robert Woodruff, the Mayor of the municipal corporation;
- (c) this document was signed and delivered by the municipal corporation as its duly authorized voluntary act;
- (d) this person knows the proper seal of the municipal corporation which was affixed to this document; and
- (e) this person signed this proof to attest to the truth of these facts.

Ana Minkoff, Township Clerk

Signed and sworn to before me on _____, 2015.

Name:
Title:

STATE OF NEW JERSEY)
) ss:
COUNTY OF _____)

I CERTIFY that on _____, 2015, _____ *[Name of Attesting Witness]* personally came before me and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the _____ *[Title of Attesting Witness]* of **BERKELEY DEVELOPMENT CO., LP**, the limited partnership named in the attached document;
- (b) this person is the attesting witness to the signing of this document by the proper officer who is _____ *[Name of Signatory]*, the _____ *[Title of Signatory]* of the limited partnership named in this document;
- (c) this document was signed and delivered by the limited partnership as its duly authorized voluntary act by proper resolution; and
- (d) this person signed this proof to attest to the truth of these facts.

Name:

Title:

[Attesting Witness]

Signed and sworn to before me on
_____, 2015.

Name:

Title: