

MASTER DEED
FOR
THE HIGHLANDS AT BERKELEY HEIGHTS, A CONDOMINIUM

PREPARED BY: _____
JANICE K. SCHERER, ESQ.

Exhibit A to the Public Offering Statement

MASTER DEED
FOR
THE HIGHLANDS AT BERKELEY HEIGHTS, A CONDOMINIUM

TABLE OF CONTENTS

	<u>Page</u>
1. Establishment of Condominium.....	2
2. Definitions.....	2
3. General Description of Condominium.....	7
4. Description of Units.....	8
5. Description of General and Limited Common Elements.....	11
6. Estate Acquired; Interest in Common Elements; Interest in Common Surplus; Voting; Common Expenses.....	15
7. Covenant for Maintenance and Capital Improvement Assessments.....	18
8. Maintenance Responsibilities.....	25
9. Easements.....	28
10. By Laws and Administration; Changes in Documents; Power of Attorney.....	34
11. Damage or Destruction to the Property.....	37
12. Eminent Domain.....	40
13. Insurance.....	41
14. Amendment of Master Deed.....	41
15. Enforcement.....	42
16. Waiver.....	43
17. Gender.....	43
18. Ratification, Confirmation and Approval of Agreements.....	44
19. Rights Reserved to Developer.....	44
20. Protective Provisions for the Benefit of Eligible Mortgage Holders.....	44
21. Duration.....	50
22. Rule Against Perpetuities.....	51
23. Special Developer's Rights.....	51
24. Invalidity.....	55
25. Restrictions.....	55
26. Affordable Housing Units.....	58
27. Rental of Units By Sponsor.....	58
28. Amendments Requiring Approval of 67% of Eligible Mortgage Holders.....	59
29. Maintenance Plan For Drainage Facilities.....	59
30. Exhibits.....	59

EXHIBITS

- A Metes and Bounds Description of the Property
- B Site Plan of the Property.
- C Floor Plans
- D Certificate of Incorporation of The Highlands at
Berkeley Heights Condominium Association, Inc.
- E By-Laws of The Highlands at Berkeley Heights Condominium
Association, Inc.
- F Percentage of Interest Schedule
- G Affordable Housing Ordinances
- H Maintenance Plan For Drainage Facilities

Certificate of Incorporation and By-Laws are incorporated as Exhibits B and C to the Public Offering Statement. Copies are not included as part of the Master Deed.

Yellow

MASTER DEED
FOR
THE HIGHLANDS AT BERKELEY HEIGHTS, A CONDOMINIUM

THIS MASTER DEED, made this day of ,
199 , by HIGHLANDS DEVELOPERS, INC., a New Jersey corporation,
having offices at 72 Nova Drive, P.O. Box 6823, Piscataway, New
Jersey 08855-6823, (hereinafter referred to as "Developer").

WHEREAS, Developer is the owner of the fee
simple title to those lands and premises in the Township of
Berkeley Heights, County of Union, State of New Jersey, more
particularly described in Exhibit "A" attached hereto and made
a part hereof, which lands and premises are hereinafter
referred to as the "Property"; and

WHEREAS, it is the present intention of the
Developer to construct 62 condominium units, hereinafter
referred to collectively as "Units", together with certain
driveways, walkways and other improvements all as are more
particularly shown on that certain map attached hereto and made
a part hereof as Exhibit "B" and on those certain floor plans
attached hereto and made a part hereof as Exhibit "C"; and

WHEREAS, it is the intention of the Developer to
establish the form of ownership of the Property as a
Condominium pursuant to the provisions of the New Jersey
Condominium Act, N.J.S.A. 46:8B-1 et seq., under the name of

"The Highlands at Berkeley Heights, A Condominium", (hereinafter referred to as the "Condominium"); and

WHEREAS, the Developer has established or is about to establish The Highlands at Berkeley Heights Condominium Association, Inc., a New Jersey non-profit corporation, for the administration, operation and management of the Condominium and other improvements intended for the common use and enjoyment of the residents of the Condominium; and

WHEREAS, the Developer causes this Master Deed to be executed and recorded, together with all necessary Exhibits thereto.

THEREFORE, WITNESSETH:

1. ESTABLISHMENT OF CONDOMINIUM.

The Developer does hereby submit, declare and establish in accordance with N.J.S.A. 46:8B-1 et seq. the condominium form of ownership for that parcel of land described in Exhibit "A" as The Highlands at Berkeley Heights, A Condominium, and more particularly shown on Exhibit "B", and to be known as "The Highlands at Berkeley Heights, A Condominium", subject to the Developer's right to amend as set forth below.

2. DEFINITIONS.

2.00. General. The following words and terms, when used in the Master Deed, the Certificate of Incorporation, or the By-Laws, shall have the following meanings unless the context in which same is utilized clearly indicates otherwise. All definitions set forth in N.J.S.A. 46:8B-3 are incorporated herein by reference and the definitions set forth herein shall

be used in conjunction therewith unless the context clearly indicates otherwise.

2.01. Affordable Housing Unit or Affordable Condominium Unit shall refer to those Units designated on Exhibit F as such, and shall also mean Low or Moderate Income Units, all of which shall be held, sold and resold in accordance with Paragraph 26 of this Master Deed.

2.02. "Association" shall mean The Highlands at Berkeley Heights Condominium Association, Inc., a New Jersey non-profit corporation, formed to administer, manage and operate the common affairs of the Unit Owners of the Condominium and to maintain, repair and replace the General and Limited Common Elements of the Condominium as provided in this Master Deed and the By-Laws.

2.03. "Board" shall mean the Board of Directors of the Association and any reference herein or in the Certificate of Incorporation, By-Laws or Rules and Regulations to any power, duty, right of approval or any other right of the Association shall be deemed to refer to the Board and not the Membership of the Association, unless the context expressly indicates to the contrary.

2.04. "Building(s)" shall mean the enclosed structure(s) containing Units and structural improvements appurtenant thereto which are located on the lands described in Exhibit "A" and shown on Exhibits "B" and "C" respectively.

2.05. "By-Laws" shall mean the By-Laws of the Association, a copy of which document is attached hereto and

made a part hereof as Exhibit "E", together with all future amendments or supplements thereto.

2.06. "Certificate of Incorporation" shall mean the Certificate of Incorporation of the Association, a copy of which document is attached hereto and made a part hereof as Exhibit "D", together with all future amendments or supplements thereto.

2.07. "Common Elements" shall mean "General Common Elements" or "Limited Common Elements" of the Condominium.

2.08. "Common Expenses" shall, subject to the provisions of Paragraph 6 hereof, mean all those expenses anticipated by N.J.S.A. 46:8B-3(e), in addition to all expenses including reserves incurred or assessed by the Association, or its respective directors, officers, agents or employees, in the lawful performance of their respective duties or powers.

2.09. "Condominium" shall mean (i) all the lands and premises described in Exhibit "A"; (ii) all improvements now or hereinafter constructed in, upon, over or through such lands and premises, whether or not shown on any Exhibit hereto; (iii) all rights, roads, waters, privileges and appurtenances thereto belonging or appertaining; (iv) the entire entity created by the execution and recording of this Master Deed, and (iv) all lands and improvements submitted to this Master Deed by Amendment thereto.

2.10. "Condominium Act" shall mean the provisions of N.J.S.A. 46:8B-1 et seq. and all applicable amendments and supplements thereto.

2.11. "Developer" and "Sponsor" shall mean and refer to Highlands Developers, Inc., a New Jersey corporation, its successors and assigns, and includes any successor Developer contemplated by this Master Deed.

2.12. "Eligible Mortgage Holder" shall mean and refer to any holder of a first mortgage encumbering any Unit who has requested notice of any matters described in Section 20.02 of this Master Deed.

2.13. "General Common Elements" shall have the same meaning as "common elements" pursuant to N.J.S.A. 46:8B-3(d), except as same may be modified by the provisions of Paragraph 5 hereof.

2.14. "Institutional Lender" shall mean any bank, mortgage banker, savings and loan association or other financial institution, pension fund or governmental agency. It shall also mean and include the Federal National Mortgage Association (FNMA), the Veteran's Administration (VA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Federal Housing Administration (FHA) and any other similar governmental or quasi-governmental entity that provides, acquires, insures or guarantees or purposes to provide, acquire, insure or guarantee mortgage loans.

2.15. "Lease" shall mean any agreement for the leasing or rental of any Unit of the Condominium.

2.16. "Limited Common Elements" shall have the same meaning as "limited common elements" pursuant to N.J.S.A. 46:8B-3(j), except as same may be modified by the provisions of Paragraph 5 hereof.

2.17. "Master Deed" shall mean this instrument together with all exhibits, future amendments or supplements hereto which are recorded in the Office of the Register of Union County.

2.18. "Mortgage" shall mean and refer to the duly recorded instrument and underlying obligation giving rise to a mortgage lien upon any Unit. "Mortgage Holder" shall mean and refer to the holder of record of a Mortgage or one who issues or guarantees any Mortgage of record. "First Mortgage" shall mean and refer to the first or paramount Mortgage of record with respect to a Unit.

2.19. "Owner" or "Unit Owner" shall mean and refer to those persons or entities in whom record fee simple title to any Unit is vested as shown in the records of the Union County Register, including the Developer unless the context expressly indicates otherwise, but despite any applicable theory of mortgage, shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title to any such Unit pursuant to foreclosure proceedings or any proceeding in lieu of foreclosure, nor shall the term "Unit Owner" refer to any lessee or tenant of a "Unit Owner".

2.20. "Permitted Mortgage" shall mean and refer to any Mortgage, the lien of which encumbers a Unit and that is held by an Institutional Lender, or which is a purchase money mortgage held by the Developer or by the Seller of a Unit. It shall also include any other Mortgage, the lien of which is expressly subordinate to any and all existing or future common

expense liens imposed against the Unit by the Association.

2.21. "Property" shall mean the Building(s), the land and premises described in Exhibit "A" and shown on Exhibit "B" and all improvements now or hereafter constructed in, upon, over or through such lands and premises.

2.22. "Rules and Regulations" shall mean those rules and regulations of the Association that may be promulgated by same together with all future amendments or supplements thereto.

2.23. "Unit" shall mean a part of the Condominium designated and intended for independent ownership and use as a residential dwelling regardless of type and all as more specifically described in Paragraph 4 hereof and shall not be deemed to include any part of the General Common Elements or Limited Common Elements situated within or appurtenant to a Unit.

3. GENERAL DESCRIPTION OF CONDOMINIUM.

As stated in Paragraph 1 herein, the lands and premises owned by Developer which are hereby made subject to this Master Deed are those lands described as The Highlands at Berkeley Heights, A Condominium, on Exhibit "A" attached hereto, and shown on the Map attached hereto as Exhibit "B".

The Condominium will consist of 62 Units, all as shown on Exhibit "B" and includes all rights, roads and appurtenances thereto belonging or appertaining.

4. DESCRIPTION OF UNITS.

4.01. Boundary. The dimensions, area and location of the Building(s) and all of the aforesaid Units within the Condominium are as shown graphically on Exhibits "B" and "C". Each Unit is intended to contain all space within the area bounded by the interior surface of the perimeter walls of each Unit and the floor and the ceiling of each Unit as follows:

BOTTOM: The bottom is an imaginary horizontal plane through the lowest point of the interior surface of each portion of subfloor, if any, within the Unit, and extending in every direction to the point where it closes with a side of such Unit.

TOP: The top is an imaginary plane along and coincident with the unfinished unexposed upper surface of the gypsum board or other material which forms the uppermost ceiling of the Unit, and extending in every direction to the point where it closes with every side of such Unit.

SIDES: The sides are imaginary vertical planes along and coincident with the innermost surface of the studding of the perimeter walls. Where no wall exists, the side is an imaginary vertical plane along and coincident with the exterior surface of the windows or doors located on the perimeter of such Unit. The sides of each such Unit are bounded by the bottom and top of the Unit.

4.02. Items Included in Unit. Each Unit, regardless of type, includes all appliances; fixtures; doors; door frames and hardware; window frames, window panes, hardware and systems; skylights; interior walls and partitions, gypsum board and/or other facing material on the walls and ceilings thereof, the inner decorated and/or finished surface of the floors (including all flooring tile, ceramic tile, finished flooring, carpeting and padding) and all other improvements which are located within the boundaries of the Unit as set forth in Section 4.01, or which are exclusively appurtenant to a Unit, although all or part of the improvement may not be located within the boundaries of the Unit as set forth in Section 4.01. Such appurtenant improvements shall include, but not be limited to the following individual appurtenances to the extent that they serve each individual Unit only and not any other Unit or any portion of the Common Elements:

- (a) So much of the common heating, plumbing and ventilating system as extends from the interior surface of the walls, floors or ceilings into the Unit;
- (b) Hot water heater;
- (c) All electrical wires which extend from the interior surface of walls, floors or ceilings into the Units and fixtures, switches, outlets and circuit breakers;

- (d) That portion of all master antenna wiring or cable television wiring which extends from the interior surface of the walls, floors, or ceilings into the Unit (except as owned by any cable television company servicing the Condominium);
- (e) All utility meters not owned by the public utility agency supplying the service;
- (f) All equipment, appliances, machinery, mechanical or other system, including HVAC systems, which serve the Unit exclusively whether or not same are located with or without the Unit;
- (g) Interior area of garages assigned to each Unit, if any; and
- (h) That portion of the fireplace, chimney or flue which serves the unit exclusively.

While the Developer maintains control of the Board, he shall take no action which adversely affects a homeowner's rights under N.J.A.C. 5:25-5.5 regarding warranty coverage and claims pertaining to these improvements.

4.03. Interior Partitions. Interior partitions or nonbearing walls within the confines of each Unit may, from time to time, be removed or replaced subject to the prior written approval of the Board. In the event a Unit Owner does remove or replace any or all such interior partitions or walls, no amendment of the Master Deed will be necessary or required.

No Unit may be partitioned, or subdivided without the prior written approval of any Institutional Lender for such Unit and the Board. None of the foregoing approvals shall apply to Developer prior to the conveyance of any Unit(s) affected to another Unit Owner.

4.04. Developer's Right as Owner to Dispose of Units. Developer shall, upon the recording of this Master Deed, be the Owner of every Unit within the Condominium, including its appurtenant percentage interest in the Common Elements, regardless of type, and shall have the right to sell and convey, lease, or otherwise dispose of each such Unit as it may deem appropriate in its sole discretion.

5. DESCRIPTION OF GENERAL AND LIMITED COMMON ELEMENTS.

5.01. General Common Elements. All appurtenances and facilities and other items which are not part of the Units hereinbefore described in Paragraph 4 or part of the Limited Common Elements hereinafter described in Section 5.02 shall comprise the General Common Elements as graphically shown on Exhibits "B" and "C" aforesaid. The General Common Elements shall also include by way of description but not by way of limitation:

- (a) All land as shown on Exhibit "B" aforesaid whether improved or unimproved;
- (b) All private streets, driveways, curbs and sidewalks, subject to the easements and provisions set forth in Paragraph 9 hereof;

- (c) The common parking areas located upon the lands as shown on Exhibit "B", the use of which will be subject to the Rules and Regulations of the Association;
- (d) That portion of the chimney and flue serving more than one unit;
- (e) Lawn areas, shrubbery, conduits, utility lines, subject to the easements and provisions set forth in Paragraph 9 hereof;
- (f) Public connections and meters for gas, electricity, telephone and water not owned by the public utility or other agencies providing such services;
- (g) The roof, attic spaces, the foundations, footings, columns, girders, beams, supports, exterior or interior bearing or main walls and floors between Units;
- (h) Exterior lighting and other facilities necessary to the upkeep and safety of the Building(s) and grounds;
- (i) Any easement or other right which may now or hereafter be granted for the benefit of the Unit Owner(s) or others for access to or use of the General or Limited Common Elements not included within the Condominium or for any other purpose;

- (j) All tangible personal property required for the operation, maintenance and administration of the Condominium which may be owned by the Association;
- (k) All other facilities or elements of any improvement within any Building or upon the Property necessary or convenient to the existing management, operation, maintenance and safety of the Condominium or normally in common use.

5.02. Limited Common Elements. The Limited Common Elements shall be as graphically shown on Exhibits "B" and "C", aforesaid, and shall include by way of description and not by way of limitation, all of the following:

- (a) Any exterior landing or stairway to which there is direct access from the interior of an appurtenant Unit(s) shall be a Limited Common Element and shall be for the exclusive use of Owners of such Unit(s). All maintenance of exterior landings, or stairways shall be the responsibility of the Association.
- (b) Any balcony, terrace, patio, deck, or service walk to which there is direct access from the interior of an appurtenant Unit(s) shall be a Limited Common Element and shall be for the exclusive use of Owners of such Unit(s). The

Owner(s) of a Unit(s) having use of any balcony, terrace, patio, deck, or service walk shall be responsible for the cleaning and all snow clearing of such balcony, patio, terrace, deck, or service walk as appropriate. All other maintenance of patios, balconies, terraces, decks, and service walks shall be the responsibility of the Association.

- (c) Driveways appurtenant to each Unit shall be a limited common element and shall be for the exclusive use of Owners of such Unit(s). All maintenance and repairs, except snow removal, of such driveways shall be the responsibility of the Association.

5.03. Repair and Maintenance of Limited Common Elements. The Owner of a Unit(s) having use of any Limited Common Element shall be responsible to pay the cost and expenses of any maintenance, repairs or replacement of that Limited Common Element necessitated by their own negligent act or omission, misuse or neglect, or the negligent act or omission, misuse or neglect of their family member, household pets, guests, occupant or visitor, regardless of whether authorized by the Unit Owner(s). Any other repairs, maintenance, or replacement of the Limited Common Elements shall be the responsibility of the Association, except as provided in Section 5.02, above.

5.04. Rights to Use Limited Common Elements. Each Unit Owner's right to use the Limited Common Elements appurtenant to his Unit or Building may not be transferred apart from the conveyance of title to his Unit.

5.05. Reserved Common Elements. The Board shall have the power in its discretion to: (1) temporarily designate from time to time certain Common Elements as "Reserved Common Elements"; (ii) grant reserved rights therein to the Association and to any or less than all of the Unit Owners; and (iii) establish a reasonable charge to such Unit Owners for the use and maintenance thereof. Such designation by the Board shall not be construed as a sale or disposition of the Common Elements. Any fee paid for such reserved rights shall be paid to the Association and shall be available for use by the Association as operating funds. Despite the foregoing, no part of the Common Elements shall be designated as Reserved Common Elements for exclusive use by non-Unit Owners.

6. ESTATE ACQUIRED; INTEREST IN COMMON ELEMENTS;
INTEREST IN COMMON SURPLUS; VOTING; COMMON EXPENSES

6.01. Estate Acquired. The Owner of each Unit shall have such an estate therein as may be acquired by grant, by purchase or by operation of law, including an estate in fee simple; and shall acquire as an appurtenance thereto an undivided proportionate interest in the Common Elements of the Condominium, which shall not be divisible from the Unit to which it appertains, as set forth in Exhibit "F" attached hereto and made a part hereof. Said proportionate interest is

expressed as a percentage of the whole. This percentage has been adjusted to permit it to be expressed as a finite number to avoid an interminable series of digits.

6.02. Manner of Sharing Common Expense. Common Expense Assessments shall be apportioned equally among all Market Units, and Low and Moderate Income Units shall pay 50% of the assessment paid by Market Units. This proportional relation between assessments for Affordable and Market Units shall not be changed by amendment to this Master Deed while Developer owns any Units for sale in the ordinary course of business. Any common surplus of the Association resulting from the operations of the Association shall be allocated among all Units including Sponsor's, as set forth in this §6.02.

6.03. Voting Rights in Association. Each Unit shall be entitled to one (1) vote in the affairs of the Association as set forth in the By-Laws. The Developer shall be entitled to cast all votes appurtenant to Units owned by it, whether said Units are completed or prospective, but shall not be permitted to amend this Master Deed or the By-Laws or any other document for the purpose of changing the permitted use of a Unit or reducing the Common Elements.

6.04. Membership in the Association. Upon acceptance of a Deed to a Unit, each Unit Owner shall automatically become a member of the Association and shall be a member for so long as he shall hold legal title to his Unit subject to all provisions of this Master Deed, the New Jersey

Condominium Act, the Certificate of Incorporation, and the By-Laws and Rules and Regulations which may now or hereafter be established by the Association, and any other documents, amendments or supplements thereto.

6.05. No Partition. Subject to the provisions of this Master Deed, the Certificate of Incorporation and By-Laws and the New Jersey Condominium Act, the Common Elements shall remain undivided and no Unit Owner(s) shall bring any action for partition or division thereof. In addition, the undivided percentage interest in the Common Elements shall not be separated from the Unit to which it appertains and shall be deemed conveyed or encumbered with the Unit even if such interest is not expressly mentioned or described in the conveyance or other instrument.

6.06. Compliance by Owners. Each owner or occupant of a Unit shall comply with, and shall assume ownership or occupancy subject to the law, rules and regulations of governmental authorities having jurisdiction over the Condominium, the provisions of this Master Deed, the Certificate of Incorporation, By-Laws, Rules and Regulations or any other documents, amendments or supplements to the foregoing. Failure to comply with any of the foregoing shall be grounds for commencement of an action for the recovery of damages, or for violating or attempting to violate or circumvent any of the aforesaid, and against any Unit Owner, to enforce any lien created by this Master Deed or any covenant

contained herein. Failure by the Developer, the Association, or any Unit Owner to enforce any covenant herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to thereafter enforce the same.

7. COVENANT FOR MAINTENANCE AND CAPITAL IMPROVEMENT ASSESSMENTS.

7.01. Covenant to Pay Assessments. Every Unit Owner, by acceptance of a deed or other conveyance for a Unit, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association such sums, by way of any assessments contemplated herein or in the By-Laws.

7.02. Liability for Assessments. No Unit Owner may waive or otherwise avoid liability for any assessments by non-use of the Common Elements. Each assessment and all fines and other charges shall be a continuing lien upon the Unit against which they were made and shall also be the joint and several personal obligation of the Owner of such Unit at the time when the assessment, fine or other charge fell due, and of each subsequent record Owner of such Unit, except as otherwise contemplated in this Master Deed or N.J.S.A. 46:8B-21, together with such interest thereon and cost of collection thereof (including reasonable attorney's fees). Liens for unpaid assessments, fines or other charges may be foreclosed by suit brought in the name of the Association in the same manner as a foreclosure of a mortgage on real property. Suit to recover a money judgment for unpaid assessments, fines or other charges

may be maintained without waiving the lien securing the same.

Further, the Township of Berkeley Heights shall have a continuing lien against each unit for its pro rata share of all real estate taxes due and payable to Berkeley Heights by the Association for real estate taxes, if any, assessed against the common elements. Such lien shall be apportioned equally among all units and shall be enforceable by Berkeley Heights in the manner provided by law with respect to the real estate taxes assessed directly against each such unit.

7.03. Annual Common Expense Assessments. It shall be an affirmative and perpetual obligation of the Board to fix Annual Common Expense Assessments in an amount at least sufficient to maintain the exterior of the Building(s) and to maintain and operate the Common Elements, as contemplated by the Master Deed or By-Laws and as required by the Condominium Act. The amount of monies for Common Expenses of the Association deemed necessary by the Board and the manner of expenditure thereof shall be a matter for the sole discretion of the Board.

The manner of sharing common expenses shall be as set forth in Section 6.02 of this Master Deed.

7.04. Notice. The Board shall cause to be prepared annually, at least thirty (30) days in advance of the due date of the first Annual Common Expense Assessment installment, a list of the Units and the Annual Common Expense Assessments applicable to each, according to the names of the Unit Owners, which list shall be kept in the Office of the Association and shall be open to inspection upon request by any

Unit Owner. Written notice of the Annual Common Expense Assessments shall be sent by mail or delivered to every Unit Owner, as more particularly described in the By Laws.

7.05. Use of Annual Common Expense Assessments.

The Annual Common Expense Assessments levied by the Board shall be used exclusively for promoting the health, safety, pleasure and welfare of the members of the Association, including, but without limitation: street lighting; snow clearing from parking areas, roadways, and sidewalks; landscaping of General Common Elements, the maintenance and repair of the exterior and roofs of the Building(s), including but not limited to cleaning and painting of the exterior surfaces and finishes as necessary; maintenance, repair and replacement of the Common Elements or any other improvements on the Property; maintenance and repair of all fences, if any; payment of taxes, if any; and insurance premiums; all costs and expenses incidental to the operation and administration of the Association and its Property; and such other items as may from time to time be deemed appropriate by the Board. Annual Common Expense Assessments shall not be used for capital improvements subject to Section 7.11.

7.06. Obligations of Developer. Until the

conveyance of title to the first Unit, the Developer shall be solely responsible for all Common Expenses. Following the first conveyance, the Owners of Units to whom title shall have been conveyed shall be responsible for their proportionate share of all Common Expenses and the Developer shall be responsible for payment of all Common Expenses in proportion to

the benefit derived by the Unit from the items included in the budget. Developer shall make no contribution which will artificially lower the budget. While the Developer maintains a majority on the Board of Directors, it shall make no additions, alterations, improvements or purchases which would necessitate a Special Common Expense Assessment or a substantial increase in the Annual Common Expense Assessment installments unless required by a governmental agency, title insurance company or Institutional Lender or in the event of an emergency.

7.07. Annual Common Expense Assessment Not Made.

If an Annual Common Expense Assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior year's assessment, and any installments of such annual assessments shall be due upon each installment payment date until a new Annual Common Expense Assessment is made.

7.08. Due Dates of Annual Common Expense Assessment. Annual Common Expense Assessments shall be made for a yearly period to be determined by the Board, and shall be payable in advance in monthly installments or in such other installments as may be established by the Board. Upon the conveyance of title to a Unit, the portion of the then current Annual Common Expense Assessment payable by the new Unit Owner shall be an amount which bears the same relationship to the Annual Common Expense Assessment as the remaining number of months in the then current annual assessment period bears to twelve. Such first annual assessment or portion thereof for

which a new Unit Owner is liable shall be immediately due upon the closing of title to the Purchaser.

7.09. Emergency Assessment. In the event the Annual Common Expense Assessment proves to be insufficient for an immediate need or emergency, the budget and assessment may be amended at any time by the Board, and the Board may impose an Emergency Assessment. The determination of an immediate need or emergency shall be in the sole discretion of the Board.

7.10. Special Assessments. In addition to the other assessments herein authorized, in any assessment year, the Board may levy a Special Common Expense Assessment for the purpose of defraying in whole or in part, the cost of any reconstruction, repair or replacement of an existing Common Element not determined by the Board to constitute an emergency or immediate need but for which funds held in reserve are inadequate, or for any other lawful purpose (excepting new capital improvements subject to Section 7.11 hereof). If, during any assessment year, a Special Common Expense Assessment exceeds in the aggregate the sum of \$10,000 increased by the percentage of increase in the Consumer Price Index since 1992, it shall receive the assent of two-thirds (2/3) in interest of the affected Unit Owners in good standing. This vote shall be taken at a meeting duly called for this purpose. Written notice of such meeting, stating the purpose of the meeting, shall be sent to all Unit Owners no less than thirty (30) days in advance. The due date(s) of any Special Common Expense Assessment or any installment(s) thereof shall be fixed in the resolution authorizing the Special Common Expense Assessment.

7.11. Capital Improvement Assessment. In addition to the other assessments herein authorized, in any assessment year, the Board may levy a New Capital Improvement Assessment for the purpose of acquiring or constructing a new capital improvement, provided that the acquisition or construction of any new capital improvement, the cost of which exceeds the sum of \$5,000.00 increased by the percentge of increase in the Consumer Price Index for all Urban Consumers since 1992, shall have been authorized by the assent of two-thirds (2/3) in interest of the affected Unit Owners in good standing. This vote shall be taken at a meeting duly called for this purpose. Written notice of such a meeting, stating the purpose of the meeting, shall be sent to all Unit Owners no less than thirty (30) days in advance. The due date(s) of any Capital improvement Assessment, or any installment(s) thereof, shall be fixed in the resolution authorizing the Capital Improvement Assessment.

7.12. Exemption for Capital Improvement Assessment. Despite anything to the contrary herein, neither Developer nor any Permitted Mortgage Holder shall be required to pay any Capital Improvement Assessment. Further, this provision may not be amended without the written consent of Developer and every Permitted Mortgage Holder.

7.13. Remedial Assessment. In addition to the other assessments herein authorized, the Board may levy a Remedial Assessment against any individual Unit(s) whenever

required or permitted to do so by the provisions of Article 8 herein regarding Unit maintenance performed by the Association. The Board may also provide, by its Rules and Regulations, for ordinary maintenance and minor repairs and replacements to be furnished to Units by Association personnel or representatives and charged as a Remedial Assessment.

7.14. Miscellaneous Assessments. Any and all fines, late charges, costs of collection (including reasonable attorney's fees), interest on unpaid Assessments, capital contributions, membership fees, escrow deposits or any other sums required to be paid to the Association by a Unit Owner(s) by the provisions of this Master Deed, the By-Laws, the Certificate of Incorporation, the Rules and Regulations of the Association or any duly adopted Resolution of the Board, shall be deemed Assessments which each Unit Owner has covenanted and agreed to pay according to the provisions of Section 7.01 herein and for which each Unit Owner is liable according to the provisions of Section 7.02 herein, and shall be collectible by the Association in the same manner as other Assessments pursuant to the provisions hereof and N.J.S.A. 46:8B-21.

7.15. Certificate of Payment. Upon the request of any Unit Owner liable for a Common Expense Assessment, or of the Permitted Mortgage Holder for any Unit, the Association shall furnish to such Unit Owner or Permitted Mortgage Holder, a certificate in writing, signed by an officer of the Association, setting forth whether or not such Common Expense

Assessment has been paid. Such certificate shall constitute conclusive evidence of the payment of any assessments therein stated to have been paid.

7.16. Interest in Common Surplus. Any common surplus of the Association resulting from the excess of income over expenses shall be allocated among the Members in the same manner as those expenses were assessed. Any common surplus of the Association resulting from the proceeds of any distribution of assets of the Association shall be allocated among the Members of the Association including Developer, according to the relative fair market value of each Unit.

8. MAINTENANCE RESPONSIBILITIES.

8.01. Responsibilities of Unit Owners. Each Unit Owner is responsible to perform all of the maintenance, repairs and replacements that may be required within the boundaries of his own Unit, at his own expense, and in accordance with the requirements of this Master Deed and the By-Laws and any Rules and Regulations of the Association. Unit Owners are responsible for all of the improvements appurtenant to his Unit described in Section 4.02 when same are located within the boundaries of their Units.

In addition, each Unit Owner shall be responsible to perform all of the maintenance, repairs and replacements that may be required for improvements appurtenant to his Unit, as such improvements are defined in Section 4.02 herein, which are not located within the boundaries of his Unit when the following conditions are met:

- (i) the improvement is accessible without a breaking or intrusion into the Common Elements or any other Unit; and
- (ii) the improvement is not functionally connected with a Common Element or a component of an integrated system which serves more than one Unit.

8.02 Responsibilities of the Association. The Association shall furnish the maintenance, repairs and replacements that are required for the functioning of any common plumbing, common heating, common air conditioning, common mechanical, common electrical or common water supply systems within a Building. It shall furnish all maintenance, repairs and replacements required for the General Common Elements as such are defined in Section 5.01 herein, including but not limited to the exteriors and roofs of the Buildings, the parking areas, sidewalks, walkways, General Common Element stairways, fences, and recreation areas. Claims relative to defects in Common Elements shall be processed in accordance with N.J.A.C. 5:25-5.5 regarding warranty coverage and claims. The Association shall also furnish the maintenance, repairs and replacements that are required for any improvement appurtenant to a Unit as such improvements are defined in Section 4.02 herein, not located within the boundaries of the Unit that does not meet the conditions set forth in Section 8.01 herein. The

expenses incurred by the Association in doing so shall be levied against the Owner of that Unit as a Remedial Assessment.

8.03. Rights of the Association. The Association may effect emergency repairs to any Unit which the Owner of that Unit has failed to perform, but the expenses incurred by the Association in doing so shall be levied against the Owner of that Unit as a Remedial Assessment. The Association may also effect non-emergency repairs within the boundaries of a Unit which the Unit Owner has failed to perform and charge the reasonable expenses of the repair to the Unit Owner as a Remedial Assessment, but only if (i) any such failure to maintain by the Unit Owner will have a material and adverse impact upon any other portion of the Condominium and (ii) the Unit Owner(s) responsible for such maintenance, repair or replacement have failed to remedy the situation within sixty (60) days after written notice is given by the Association to do so.

8.04. Damage Due to Negligence, Omission or Misuse. If, due to the negligent act or omission of or misuse by a Unit Owner, or a member of his family or household pet, or a guest, occupant or visitor (whether authorized or unauthorized by the Unit Owner), damage shall be caused to the Common Elements, or to a Unit(s) owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then the Unit Owner so

responsible shall pay for such damage and be liable for any damages, liability, costs and expense, including attorney's fees, caused by or arising out of such circumstances; and such maintenance, repairs and replacements to the General or Limited Common Elements or the Unit(s) shall be subject to the By-Laws and the Rules and Regulations.

9. EASEMENTS.

9.01. Unit Owner Easements. Every Unit Owner, his successors and assigns, shall have the following perpetual easements with respect to the Property:

- (a) A non-exclusive easement in, upon, over, under, across and through the Common Elements to keep, maintain, use, operate, repair and replace his Unit in its original position and in every subsequent position to which it changes by reason of the gradual forces of nature and the elements;
- (b) An exclusive easement for the existence and continuance of any encroachment by his Unit upon any adjoining Unit or upon any Common Elements, now existing or which may come into existence hereafter as a result of construction, reconstruction, repair, shifting, settlement or movement of any

portion of a Building or a Unit, or as a result of condemnation or eminent domain proceedings, so that any such encroachment may remain undisturbed so long as the Building stands.

- (c) A non-exclusive easement for ingress and egress to his Unit in, upon, under, over, across and through the General Common Elements;
- (d) An exclusive easement to use and enjoy the surfaces of the main walls, (including any windows, doors, chimneys, balcony, stoops, or patio therein), ceilings and floors contained within his Unit;
- (e) An easement in common with the owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines, television, master antenna and other General Common Elements located in any of the other Units and serving his Unit; and
- (f) A perpetual and non-exclusive easement in, over and through the General Common Elements of the Condominium and to use the driveways, walks and other common facilities within the Condominium subject to the right of the Board to:

- (i) promulgate rules and regulations for the use and enjoyment thereof; and
- (ii) suspend the voting rights of any Unit Owner for any period during which any assessment for Common Expenses remains unpaid, or for any period during which any infraction of its published Rules and Regulations continues, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Unit Owner's obligation to pay the assessment.

9.02. Developer's Easements. Developer, its successors and assigns, shall have the following easements with respect to the Property:

- (a) A blanket and non-exclusive easement in, upon, through, under and across the Common Elements for the purpose of construction, installation, maintenance and repair of any improvements to the Units or the Common Elements, for ingress and egress for the use of all driveways, parking areas, and for the utilization of existing and future model Units for sales promotion and exhibition, until the expiration

of two (2) years from the date the last Unit is sold and conveyed in the normal course of business, but in no event more than ten (10) years from the date of recording this Master Deed. In addition, Developer hereby reserves the irrevocable right to enter into, upon, over or under any Unit for such purposes as may be reasonably necessary for the Developer or its agents to service such Unit or any part of a Building provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate whether the Unit Owner is present at the time or not; and

- (b) A perpetual, blanket and non-exclusive easement in, upon, over, under, across and through the Common Elements for surface water runoff and drainage caused by natural forces and elements, grading, and/or the improvements located upon the Property. No individual Unit Owner shall directly or indirectly interfere with or alter the drainage and runoff patterns and systems within the Condominium.

9.03. Association Easements.

- (a) The Association shall have a perpetual

exclusive easement for the maintenance of any Common Elements, which presently or may hereafter encroach upon a Unit;

- (b) The Association, through the Board or any manager, or managing agent, or their respective agents or employees shall have the perpetual and non-exclusive right of access to each Unit (i) to inspect same; (ii) to remedy any violations of the provisions set forth in this Master Deed, the By-Laws or in any Rules and Regulations of the Association; and (iii) to perform any operations required in connection with the maintenance, repairs or replacements of or to the Common Elements, or any equipment, facilities or fixtures affecting or serving other Unit(s) or the Common Elements; provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate, whether the Unit Owner is present at the time or not.

9.04. Permitted Mortgage Holder Easements. Any Permitted Mortgage Holder, its officers, agents and employees, shall have a blanket, perpetual and non-exclusive easement to enter the Condominium or any part thereof to inspect the condition and repair of the Common Elements, or any Units so

encumbered by a Mortgage owned by it. This right shall be exercised only during reasonable daylight hours, and then whenever practicable, only after advance notice to and with the permission of the Board and the Unit Owner.

9.05. Easement for Service. A blanket, perpetual and non-exclusive easement in, upon, over, across and through the Common Elements or any Units for the purpose of the installation, maintenance, repair, service and replacement of all sewer, water, power and telephone pipes, lines, mains, conduits, waters, poles, transformers, cable television lines, master television antennas and any and all other equipment or machinery necessary or incidental to the proper functioning of any utility systems serving the Property, which easement shall be for the benefit of the Township of Berkeley Heights and any governmental agency or utility company, cable television company, the Association or other entity which requires same for the purpose of furnishing one or more of the foregoing services. This easement shall include but not be limited to a right of access to any utility meter located in any Unit as provided herein.

9.06. Easement to the Township of Berkeley Heights and Association. A blanket, perpetual and non-exclusive easement of unobstructed ingress and egress in, upon, over, across and through the Common Elements to the Township of Berkeley Heights, the Association, their respective officers, agents and employees (but not the public in general) and all police, fire, and ambulance personnel in the proper performance of their respective duties, (including but not limited to

emergency or other necessary repairs to a Unit which the Unit Owner has failed to perform), and for repair and maintenance of the Common Elements. Except in the event of emergencies, the rights accompanying the easements provided for in this subparagraph shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to and with permission of the Unit Owner(s) directly affected thereby.

10. BY-LAWS AND ADMINISTRATION; CHANGES IN DOCUMENTS;
POWER OF ATTORNEY

10.01. Administration of Common Elements. The administration of the Common Elements of the Condominium and other common facilities shall be by the Association in accordance with the provisions of the New Jersey Condominium Act, this Master Deed, the Certificate of Incorporation, the By-Laws, any Rules and Regulations and of any other agreement, document, amendment or supplement to the foregoing which may be duly adopted or subsequently be required by any Eligible Mortgage Holder designated by the Developer or by any governmental agency having regulatory jurisdiction over the Condominium or by any title insurance company selected by Developer to insure title to any Unit(s).

10.2. Developer's Power of Attorney. Developer hereby reserves for itself, its successors and assigns, until the last unit is conveyed or for a period of no longer than five (5) years from the date the first Unit is conveyed to an individual purchaser, the right to execute on behalf of all

contract purchasers, Unit Owners, mortgagees, other lienholders or parties claiming a legal or equitable interest in the Condominium, any such agreement, document, amendment or supplement to the above described documents which may be so required by any such Eligible Mortgage Holder, governmental agency or title insurance company; provided, however, that no such agreement, document, amendment or supplement which adversely affects the value or substantially alters the floor plan of any Unit, or changes the means of calculation of the proportion of the undivided interest of Unit Owners in the Common Elements, increases the financial obligations of the Unit Owner or reserves any additional or special privileges shall be made without the prior written consent of the affected Unit Owner(s) and all owners of any mortgage(s) encumbering same; or if such agreement, document, amendment or supplement adversely affects the priority or validity of any mortgage which encumbers any Unit, without the prior written consent of the owners of all such mortgages. The aforesaid power of attorney is subject to the consent provisions regarding material amendments as set forth in this Master Deed.

10.03. Appointment of Developer and Association as Attorneys-In-Fact. By acceptance of a deed to any Unit or by the acceptance of any other legal or equitable interest in the Condominium, each and every such contract purchaser, Unit Owner, mortgagee, or other lienholder or party having a legal or equitable interest in the Condominium does automatically and irrevocably name, constitute, appoint and confirm (i)

Developer, its successors and assigns, as attorney-in-fact for the purpose of executing such amended Master Deed(s) and other instrument(s) necessary to effect the foregoing subject to the limitations set forth above in the preceding paragraph; and (ii) the Association as attorney-in-fact to acquire title to or lease any Unit whose owner desires to surrender, sell or lease the same, in the name of the Association or its designees, corporate or otherwise, on behalf of all Unit Owners to convey, sell, lease, mortgage (but not to vote the votes appurtenant thereto) or otherwise, dispose of any such Units so acquired or to sublease any Units so leased by the Association.

The powers of attorney aforesaid are expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to any and all Units and be binding upon the heirs, personal representatives, successors and assigns of any of the foregoing parties. Further, said powers of attorney shall not be affected by the death or disability of any principal in and to said powers. Said powers of attorney shall be vested in the Developer, its successors and assigns until same effectuate the initial conveyance of all Units. Thereafter, said powers of attorney shall automatically vest in the Association to be exercised through its Board of Directors.

10.04. Developer Prohibited Voting. The Developer may use the right granted in this paragraph to effectuate the following changes, enumerated by way of description and not limitation:

- (a) Adding to or altering the location, size and/or purpose of easements and lands for utilities, roads, access, egress, drainage and/or financing purposes.
- (b) Permitting the users or occupants of lands owned by or controlled by the Developer or its successors in title to utilize easements, roads, drainage facilities, utility lines and the like within or servicing the Condominium, on fair and equitable terms.
- (c) Correcting, supplementing and providing technical changes to the Master Deed and any of its amendments.

No amendment shall be effective until recorded in the Office of the Register of Union County, New Jersey.

Despite the foregoing, the Developer shall not be permitted to cast any votes held by it for unsold Units for the purpose of amending this Master Deed, the By-Laws of The Highlands at Berkeley Heights Condominium Association, Inc. or any other document for the purpose of changing the permitted use of a Unit or the purpose of reducing the Common Elements or facilities.

11. DAMAGE OR DESTRUCTION TO THE PROPERTY.

11.01. Damage or Destruction to Property; Disposition of Insurance Proceeds. If a Building, any improvement or Common Element or any part thereof is damaged or destroyed by fire or casualty, the repair, restoration or

ultimate disposition of any insurance proceeds shall be in accordance with the provisions of this Section 11.

11.02. Insurance Proceeds Up to or Equal to \$25,000. If the insurance proceeds derived from such loss amount to \$25,000 or less, then the Board shall contract with any licensed contractor or contractors to rebuild or repair such damage or destroyed portions of the Property in conformance with the original plans and specifications, or if adherence to such original plans and specifications is impracticable in the Board's opinion, then in conformance with revised plans and specifications provided such repairs or rebuilding shall be of a quality and kind substantially equivalent to the original construction. The Board shall accept bids only in specific amounts and shall not enter into any cost-plus or other sliding scale arrangement for compensation to the contractor.

11.03. Insurance Proceeds Greater than \$25,000. If the insurance proceeds derived from such loss exceed \$25,000, all such insurance proceeds shall be paid directly to an Insurance Trustee as may be designated by the Board, as trustee for all Mortgage Holders holding first mortgages on the Property, and all Unit Owners as their interests may then appear. Disbursement of such funds shall be made only upon the signatures of a majority of the members of the Board.

11.04. Responsibility of Unit Owner. If the damage is only to those parts of a Unit for which the responsibility for maintenance and repair is that of the Owner,

then that Owner shall be responsible for reconstruction and repair, but the proceeds of any insurance that may have been obtained by the Association shall be made available for such purpose. Subject to the provisions of this Master Deed, in all other instances the responsibility of reconstruction and repair after casualty shall be that of the Association.

11.05. Insurance Proceeds Insufficient. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for payment of the costs thereof are insufficient, assessments shall be made against all Owners whose Units are damaged or destroyed, in sufficient amounts to provide funds for the payment of such costs. Despite anything to the contrary in this Master Deed or By-Laws, such assessments shall be in proportion to the Unit Owner's payment of Common Expense assessments as set forth in this Master Deed. The foregoing provisions of this subparagraph are applicable to the repairs and reconstruction to be undertaken by the Association and do not cover damages to those portions of the Unit for which the responsibility of maintenance and repair is that of the Unit Owner for which the costs and expenses must be borne by each Owner; provided, however, any portion of the insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with an individual Unit Owner shall be paid to said Unit Owner, or if there is a mortgage endorsement as to such

Unit, then to the Unit Owner and mortgagee, jointly.

11.06. Excess Insurance Proceeds. If the amount of available insurance proceeds should exceed the cost of any such reconstruction or repair, the excess shall be retained by the Association and supplied by it to reduce the Common Expenses.

11.07. Assignment to Eligible Mortgage Holder. In the event the Association determines not to repair or restore the damaged property in accordance with N.J.S.A. 46:8B-24, any insurance proceeds payable to a Unit Owner as a result of damage or destruction to his Unit and/or interest in the Common Elements are hereby assigned and shall be paid to any appropriate Mortgage Holder(s), as their interests may appear, for application to the appropriate mortgage indebtedness and the excess, if any, shall be paid to the appropriate Unit Owners.

12. EMINENT DOMAIN.

12.01. Notice and Participation of Unit Owners. If any building, improvement or Common Element or any part thereof shall be taken, injured or destroyed by eminent domain, each Unit Owner affected shall be entitled to notice of such taking and to participate through the Association in the proceeding incident thereto. Each institutional holder of any first mortgage on any Unit so affected shall receive timely written notice thereof. No owner of any Unit or any other party shall have any priority over such institutional holder with respect to the distribution to such Unit of the proceeds

of any claim, award, settlement or judgment.

13. INSURANCE.

As required by N.J.S.A. 46:8B-14(d) and (e), the Board shall obtain and continue in effect blanket property insurance on the Common Elements in an amount equaling replacement value, but without prejudice to the right of the Owner of any Unit to obtain individual Unit insurance at his own cost. In addition, the Board shall obtain and continue such other amounts of insurance as may be required by the provisions of the By-Laws. Premiums for all such insurance coverage except for individual Unit coverage shall be a Common Expense to be included in the monthly assessment for Common Expenses.

14. AMENDMENT OF MASTER DEED.

This Master Deed may be amended at any time after the date hereof by a vote of at least sixty-seven percent (67%) of all Unit Owners, at any meeting of the Association duly held in accordance with the provisions of the By-Laws and, where required by law, with the consent of any applicable Mortgage Holder. No amendment shall be effective until recorded in the Office of the Register of Union County, New Jersey. This paragraph is by way of supplement to and not in derogation of the powers of amendment reserved to Developer pursuant to Paragraph 10 hereof. In the alternative, an amendment may be made by an agreement, signed and acknowledged by all of the Unit Owners in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the

Office of the Register of Union County, New Jersey. Any amendment so requiring it under the provision of Paragraph 20 shall have the written approval or joinder of each Eligible Mortgage Holder.

15. ENFORCEMENT.

Enforcement of this Master Deed, the Certificate of Incorporation, the By-Laws, Rules and Regulations, or any supplement or amendment to the foregoing shall be by any appropriate proceeding in law or equity in any Court or administrative tribunal having jurisdiction against any person or persons, firm or corporation violating or attempting to violate any covenant herein contained; either to restrain or enjoin such violation or threatened violation, or to recover damages; and against any Owner to enforce any lien created by this Master Deed in any covenant herein contained. Failure by the Association or any Member thereof to enforce any covenant herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to thereafter enforce the same.

In the event the Condominium is not maintained in reasonable order and condition, the Township of Berkeley Heights shall have the right to enter upon and maintain the Condominium. Default in maintenance by the Association shall result in the imposition of liens against the interests of Unit Owners. The assumption of such responsibility shall be in accordance with the procedure set forth in N.J.S.A. 40:55D-43(b). Cost of same shall be assessed, enforced and

collected in accordance with the provisions of N.J.S.A. 40:55D-43(c). Despite any limitations as to the applicability of N.J.S.A. 40:55D-43(b) and (c) aforesaid to the maintenance of "open space", provisions of this paragraph shall be deemed to apply to all maintenance obligations as set forth in this Master Deed, including but not limited to drainage facilities. The cost of such maintenance by the municipality shall be assessed pro rata against the Owners of each Unit affected thereby and shall be enforceable by the Township of Berkeley Heights in the manner provided by law with respect to real estate taxes assessed directly against each such Unit. This paragraph shall create a right of maintenance, but shall impose no obligation on the part of the Township of Berkeley Heights to enter upon and maintain the condominium. There shall be no liability on the part of the Township of Berkeley Heights if this right is not exercised. Should either the Association or any of its Members at any time fail to enforce the provisions hereof, the Township of Berkeley Heights upon thirty (30) days notice to the Association, shall have the right to institute appropriate legal proceedings in the name of the Association to effect such enforcement and to that end the municipality is hereby automatically and irrevocably named, appointed and confirmed as attorney-in-fact of and for the Association for the purpose of instituting such legal proceedings and executing such instruments as may be necessary to effect the same. This power-of-attorney is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the

same shall be binding on the Association and its Members, as successors to the Developer, and their successors and assigns.

16. WAIVER.

No provision contained in this Master Deed shall be deemed to have abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

17. GENDER.

The use of the masculine gender in this Master Deed shall be deemed to refer to the feminine gender and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context so requires.

18. RATIFICATION, CONFIRMATION AND APPROVAL OF AGREEMENTS.

The fact that some or all of the Officers, Directors, Members or employees of the Association and the Developer may be identical, and the fact that the Developer or its nominees, have heretofore or may hereafter enter into agreements with the Association or with third parties, will not invalidate any such agreements and the Association and its Members, from time to time, will be obligated to abide by and comply with the terms and conditions thereof. The purchase of a Unit, and the acceptance of the Deed therefor by any party, shall constitute the ratification, confirmation and approval by such purchaser, his heirs, legal representatives, successors and assigns, of the propriety and legality of said agreements or said agreement, or any other agreements authorized and permitted by the New Jersey Condominium Act, this Master Deed, the Certification of Incorporation or the By-Laws.

19. RIGHTS RESERVED TO DEVELOPER.

Despite anything to the contrary herein or in the Certificate of Incorporation or By-Laws of the Association, Developer hereby reserves for itself, its successors and assigns, for so long as it owns one or more Units in the Condominium, the right to sell, lease, mortgage or sublease any unsold Units within the Condominium in its sole discretion.

20. PROTECTIVE PROVISIONS FOR THE BENEFIT OF ELIGIBLE MORTGAGE HOLDERS.

20.01. Definitions. "Eligible Mortgage Holder" shall mean and refer to any First Mortgage Holder which has requested in writing that the Association provided notice of any of the proposed actions described in Section 20.02.

20.02. Notice to Eligible Mortgage Holder. Each Eligible Mortgage Holder shall be entitled to timely written notice of the following:

- (1) Any proposed amendment to the Certificate of Incorporation, the By-Laws or this Master Deed.
- (2) Any condemnation or casualty loss that affects either a material portion of the Common Elements or the Unit securing the Eligible Mortgage Holder's mortgage.
- (3) Any sixty (60) day delinquency in the payment of Common Expense assessment installments or other assessments or charges owed to the Association by the Unit Owner of the Unit upon which the Eligible Mortgage Holder holds a first mortgage.

- (4) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- (5) Any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

20.03. Prior Written Approval of 51% of Eligible Mortgage Holders. Despite any provision to the contrary contained in the Certificate of Incorporation, the By-Laws or this Master Deed, the prior written approval of at least fifty one (51%) percent of the Eligible Mortgage Holders is required for any material amendment to the Certificate of Incorporation, the By-Laws and this Master Deed, including, but not limited to, any amendment which would change:

- (1) Voting rights;
- (2) Reserves for maintenance, repair and replacement of Common Elements;
- (3) Responsibility for maintenance and repairs;
- (4) Assessment allocations, assessment liens or subordination of assessments liens;
- (5) Reallocation of interests in the General or Limited Common Elements or rights to their use;
- (6) Boundaries of any Unit;
- (7) Convertibility of Units into Common Elements or vice versa;
- (8) Expansion or contraction of the development, or the addition, annexation or withdrawal of land to or from the Condominium;

- (9) Insurance or fidelity bonds;
- (10) Leasing of Units;
- (11) Imposition of any restrictions upon a Unit Owner's right to sell or transfer his or her Unit;
- (12) A decision by the Association to establish self-management rather than professional management;
- (13) Restoration or repair of the development (after damage, destruction or condemnation) in a manner other than that specified in this Master Deed or the By-Laws;
- (14) Any action to terminate the legal status of the development after substantial damage or condemnation occurs; or
- (15) Any provisions that expressly benefit Eligible Mortgage Holders.

20.04. Notice of Non-Material Amendments to Constituent Documents. Each Eligible Mortgage Holder shall receive thirty (30) days advance notice, to be sent certified mail, return receipt requested, of any proposed non-material amendment to this Master Deed, the By-Laws or the Certificate of Incorporation permitted by same, which notice shall include a copy of the proposed change. Any Eligible Mortgage Holder being served with such notice shall be deemed to have implicitly approved such change as proposed unless it states in a written response to the Association its objections or

comments relative to such proposed change.

20.05. Additional Provisions for Benefit of Eligible Mortgage Holders. The following additional provisions are for the benefit of Eligible Mortgage Holders:

- (1) Any lien the Association may have on a Unit for the payment of Common Expense assessments attributable to each Unit is subordinate to the lien or equivalent security interest of any First Mortgage on the Unit recorded prior to the date any such Common Expense assessment becomes due.
- (2) The Association shall maintain current copies of the Master Deed, Certificate of Incorporation, By-Laws and Rules and Regulations of the Association, and any respective amendments thereto, as well as its own books, records and financial statement available for inspection by Unit Owners and Eligible Mortgage Holders. Any Eligible Mortgage Holder shall upon written request,
 - (i) be permitted to inspect the books and records of the Association during normal business hours;
 - (ii) receive an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association; and
 - (iii) receive written notice of all meetings of the

association and be permitted to designate a representative to attend all such meetings.

- (3) Any Eligible Mortgage Holder who holds a first mortgage lien on a Unit who obtains title to such Unit as a result of foreclosure of the First Mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser in a foreclosure sale, or their respective successors and assigns, is not liable for the share of Common Expenses or other assessments by the Association pertaining to such Unit or chargeable to the former Unit Owner which become due subsequent to recordation of the First Mortgage and prior to acquisition of title. Such unpaid share of Common Expenses and other assessments shall be deemed to be Common Expenses collectible from all of the remaining Unit Owners including such acquirer, his successors and assigns.
- (4) Any management agreement for the Property, except the initial management agreement, if any, will be terminable by the Association with or without cause and without penalty upon thirty (30) days prior written notice, and the term of any such agreement shall not exceed one year.
- (5) Any lien the Association may have on any Unit for the payment of Common Expense assessments

attributable to such Unit is subordinate to the lien or equivalent security interest of any First Mortgage on the Unit recorded prior to the date any such Common Expense assessment became due.

- (6) Nothing contained in this Section 20.05 shall be deemed to limit or preclude an Eligible Mortgage Holder from exercising any right established elsewhere in this Master Deed and arising in its favor in its capacity as a First Mortgage Holder. Nothing in this Paragraph 20 shall be deemed to limit the rights established elsewhere in this Master Deed in favor of Mortgage Holders who are not Eligible Mortgage Holders.

21. DURATION

The provisions of this Master Deed shall be perpetual in duration, shall run with and bind all of the land included in the Condominium and shall inure to the benefit of and be enforceable by the Association and the Unit Owners, their respective successors, assigns, heirs, executors, administrators, and personal representatives, except that the covenants and restrictions set forth in Paragraph 25 shall have an initial term of forty (40) years from the date this Master Deed is recorded in the Office of the Union County Register, at the end of which period such covenants and restrictions shall automatically be extended for successive periods of ten (10)

years each, unless at least two-thirds (2/3) of the Unit Owners at the time of expiration of the initial period, or of any extension period, shall sign an instrument, or instruments (which may be in counterparts), in which they shall agree to change said covenants and restrictions in whole or in part; but no such agreement shall become binding unless written notice containing the terms of the proposed agreement is sent to every Owner at least ninety (90) days in advance of the action taken in authorizing said agreement; and, in any event, any changes concerning any such agreement shall not become effective and binding until the recording of the aforesaid fully executed instrument or instruments containing such agreement, and provided further, that in no event may the Common Elements be conveyed to any third person, firm or corporation, without the express consent, by ordinance, of the governing body of the Township of Berkeley Heights, (or such municipal corporation or other governmental entity as may then have zoning and subdivision jurisdiction over the Property).

22. RULE AGAINST PERPETUITIES.

If any provision of this Master Deed, or the By-Laws shall be interpreted to constitute a violation of the rule against perpetuities, then such provision shall be deemed to remain in effect until the death of the last survivor of the now living descendants of Robert F. Kennedy, deceased, former Senator of the State of New York, plus twenty-one (21) years thereafter.

23. SPECIAL DEVELOPER'S RIGHTS.

23.01. Effectiveness of Transfer of Special Developer Rights. No special rights created or reserved to the Developer under this Master Deed ("Special Developer Rights") may be transferred except by an instrument evidencing the transfer recorded in the Register of Union County, New Jersey. The instrument shall not be effective unless executed by the transferee.

23.02 Effectiveness of Transfer of Special Developer Rights. Upon transfer of any such Special Developer Right, the liability of the transferor is as follows:

- (a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him. Lack of privity does not deprive any Unit Owner of standing to bring an action to enforce any obligation of the transferor.
- (b) If a transferor retains any such Special Developer Right, or if a successor to any such Special Developer is an affiliate of the Developer, the transferor is subject to liability for all obligations and liabilities imposed on a Developer or by the Master Deed, arising after the transfer, and is jointly and severally liable with the successor for the liabilities and obligations of the successor which relate to the Condominium.

(c) A transferor who retains no such Special Developer Rights has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of any such Special Developer Right by a successor Developer who is not an affiliate of the transferor.

23.03. Transfer of Rights After Foreclosure, Trustee's Sales or Bankruptcy. Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, sale by a trustee under a deed of trust, or sale under Bankruptcy Act or receivership proceedings, of any Units owned by Developer in the Condominium, a person acquiring title to all the Units being foreclosed or sold, but only upon his request, succeeds to all such Special Developer Rights, or only to any such Special Developer Rights to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the Special Developer Rights requested.

Upon foreclosure, sale by a Trustee under a deed of trust, or sale under Bankruptcy Act or receivership proceedings, of all Units in the condominium owned by Developer:

- (i) The Developer ceases to have any such Special Developer Rights, and
- (ii) The period of Developer control terminates unless the judgment or instrument conveying title provides for transfer of all such

Special Developer Rights to a successor to Developer.

23.04. Liability of Successors to Special Developer Rights. The liabilities and obligations of persons who succeed to all Special Developer Rights are as follows:

- (a) A successor to all such Special Developer Rights who is an affiliate of the Developer is subject to all obligations and liabilities imposed on any Developer by law or by the Master Deed.
- (b) A successor to all such Special Developer Rights, other than a successor described in Paragraphs 3 or 4 hereof who is not an affiliate of Developer, is subject to all obligations and liabilities imposed upon Developer by law or the Master Deed, but he is not subject to liability for misrepresentations of warranty obligations on improvements made by any previous Developer or made before the Condominium was created, or for a breach of fiduciary obligation by any previous Developer.
- (c) A successor to only Special Developer Rights to maintain models, sales offices and signs, if he is not an affiliate of Developer, may not exercise any other Special Developer Rights, but is not subject to any liability or

obligation as a Developer.

- (d) A successor to all Special Developer Rights who is not an affiliate of Developer and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to Units under subparagraph (c) aforesaid, may declare his intention in a recorded instrument to hold those rights solely for transfer to another party. Thereafter, until transferring all such Special Developer Rights to any person acquiring title to any Unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than right to control the Board for the duration of any period of Developer control, and any attempted exercise of those rights is void. So long as a successor Developer may not exercise special rights under this subparagraph, he is not subject to any liability or obligation as a Developer other than liability for the successor's act and omissions under the Master Deed.

23.05. Limitation of Successor's Liability.

Nothing in this paragraph subjects any successor to a Special Developer Right to any claims against or other

obligations of a transferor other than claims and obligations arising under the Master Deed.

24. INVALIDITY.

The invalidity of any provision of this Master Deed, the Certificate of Incorporation, or By-Laws of the Association shall not be deemed to impair or affect in any manner the validity, enforceability or affect the remainder of this Master Deed or said By-Laws and in such event all of the other provisions of this Master Deed and said By-Laws shall continue in full force as if such invalid provisions had never been included.

25. RESTRICTIONS.

25.01. General Restrictions. The Condominium is subject to all covenants, restrictions and easements of record and to the following restrictions:

(a) No Unit is to be used for any purpose other than single family residence. Same cannot be rented for hotel purposes nor can less than the entire Unit be rented. All leases are to be in writing and subject to Master Deed and By-Laws.

(b) No nuisance shall be maintained, nor shall any use or practice be allowed which is an annoyance or interferes with the peaceful possession or proper use of the Units or Common Elements.

(c) Common elements, property and facilities of the Association shall be used for the furnishing of services and facilities for which they are suited and which are incident

to the use and occupancy of the Units, garage spaces and parking spaces.

(d) No immoral, improper, offensive or unlawful use shall be made of any Unit or part thereof or of any common element and all valid laws, zoning ordinances and regulations shall be observed.

(e) No owner shall make structural additions, alterations or improvements in or to his Unit (or elsewhere on the property) without the prior written consent of the Board of Directors or impair any easement without the written consent of the Board of Directors or the Unit Owner(s) for whose benefit such easement exists.

(f) An owner shall not place in any area or part of the common elements other than a deck to which the owner has sole access, and other than the areas designated as storage areas, any furniture, packages or objects of any kind.

(g) The designated parking area or driveway shall not be used as storage for vehicles, motor or recreational, boats or trailers.

(h) There shall be no parking, temporarily or permanently, of any type of vehicle or on any internal roads.

(i) Each Unit Owner grants a right of access to his Unit to the Association for the purpose of maintaining and replacement of the common elements located within the particular Unit.

(j) Units designated as Affordable Housing Units shall be governed by Paragraph 26 and Exhibit G to the Master Deed.

(k) The right of the Unit Owner to sell, transfer or otherwise convey his or her Unit shall not be subject to any right of first refusal.

(l) Nothing herein shall be construed to prohibit the reasonable adaptation of any Unit for handicap use.

25.02. Powers and Duties.

(a) Subject to the Master Deed and restrictions or other instruments of creation, the Association may do all that it is legally entitled to do under the laws applicable to its form of organization.

(b) The Association shall discharge its powers in a manner that protects and furthers the health, safety and general welfare of the residents of the community.

(c) The Association shall provide a fair and efficient procedure for the resolution of disputes between individual Unit Owners and the Association, and between different Unit Owners, that shall be readily available as an alternative to litigation.

26. AFFORDABLE HOUSING UNITS.

The twelve affordable housing units within The Highlands at Berkeley Heights shall be held, used, sold and resold in accordance with the Affordable Housing District Regulations set forth in Part 18 of the Municipal Land Use Procedures Code of the Township of Berkeley Heights, and in accordance with Chapter 5A of the Code of the Township of Berkeley Heights, adopted August 15, 1989 by Ordinance #15-89, both of which are consistent with the Order of Compliance &

Final Judgment of Repose filed 12/12/89 in the Superior Court of New Jersey, and both of which are attached as Exhibit G to this Master Deed.

27. RENTAL OF UNITS BY SPONSOR.

Sponsor reserves the right to rent any unsold unit, including Affordable Housing Units. If Sponsor retains title to any Units, and rents those Units, then Sponsor shall pay the common expense assessments due on behalf of that Unit. If Developer retains title to and rents condominium Units to non-contract purchaser occupants, Developer may not use the rental of Units to avoid turnover of control to Unit Owners pursuant to the Bylaws of the Association.

28. AMENDMENTS REQUIRING APPROVAL OF 67% OF ELIGIBLE MORTGAGE HOLDERS.

The prior written approval of at least sixty-seven (67%) of the Eligible Mortgage Holders is required before the effectuation of any decision by the Unit Owners to terminate the legal status of the Condominium as a Condominium for reasons other than substantial destruction or condemnation of the Property.

29. MAINTENANCE PLAN FOR DRAINAGE FACILITIES.

Pursuant to the Resolution of the Planning Board of the Township of Berkeley Heights, maintenance of the drainage facilities shall be in accordance with the plan attached hereto as Exhibit H.

30. EXHIBITS.

Attached hereto and made a part hereof are the following exhibits:

- Exhibit "A" -- Metes and bounds description of the Property.
- Exhibit "B" -- Site Plan of the Property.
- Exhibit "C" -- Floor Plans.
- Exhibit "D" -- Certificate of Incorporation of The Highlands at Berkeley Heights Condominium Association, Inc.
- Exhibit "E" -- By-Laws of The Highlands at Berkeley Heights Condominium Association, Inc.
- Exhibit "F" -- Percentage of Interest Schedule.
- Exhibit "G" -- Affordable Housing Ordinances
- Exhibit "H" -- Maintenance Plan For Drainage Facilities.

IN WITNESS WHEREOF, the Developer has caused this instrument to be executed the day and year first above written.

ATTEST:

HIGHLANDS DEVELOPERS, INC.
A NEW JERSEY CORPORATION

Michael A. Seidner, Secretary

Erwin Fisch, President

Lot 1, Block 301, Springfield Avenue, Berkeley Heights

All that certain tract of land situated and lying in the Township of Berkeley Heights, the County of Union, the State of New Jersey, being known and designated as Lot 1 in Block 301 as shown on the Tax Map of Berkeley Heights and also being known and described as Lot 1 in Block 301 on a certain map entitled subdivision of Lots 1, 27 and 7.01 in Block 301, Township of Berkeley Heights, dated October 20, 1989, last revised June 12, 1991 and which map was prepared by Yannaccone Associates, Inc. and which tract of land is bound and more particularly described as follows:

BEGINNING at a point in the easterly sideline of Daisy Road (a 41.50' wide ROW) therein distant N 31° 01' 30" W 22.72 ft. from the northerly sideline of Springfield Avenue (a 60' wide ROW) if said sidelines were extended to form an intersection and from said beginning running thence,

- 1) Along the easterly sideline of Daisy Road N 31° 01' 30" W 311.00 ft. to a point, thence.
- 2) Along the northerly terminus of Daisy Road and along the lands of now or formerly Brookside Partnership S 59° 32' 30" W 264.50 ft. to a point, thence.
- 3) Along lands of now or formerly Theodore W. England, Robert & Suzanne Nelson, Benjamin & Edith Cashman, N 30° 27' 30" W 221.76 ft. to a point, thence.
- 4) The next two courses along lands of now or formerly Township of Berkeley Heights and this course running N 65° 09' 50" E 785.96 ft. to a point, thence.
- 5) Along lands of now or formerly Main Course Enterprises, Inc. S 23° 31' 00" E 285.00 ft. to a point, thence.
- 6) Along lands of now or formerly Boleslaw & Evelyn Kozlik and lands of now or formerly John & Tina Manso S 66° 29' 00" W 150.00 ft. to a point, thence.
- 7) Still along lands of now or formerly John & Tina Manso S 23° 31' 00" E 50.00 ft. to a point, thence.
- 8) Along lands of now or formerly Arthur Kuntz S 66° 29' 00" W 100.00 ft. to a point, thence.
- 9) Still along lands of Kuntz S 23° 31' 00" E 50.00 ft. to a point, thence.
- 10) The next two courses along lands of now or formerly Joseph & Mary Verni and this course running S 66° 29' 00" W 100.00 ft. to a point, thence.

Exhibit A to the Master Deed

CERTIFICATE OF INCORPORATION

OF

THE HIGHLANDS AT BERKELEY HEIGHTS CONDOMINIUM ASSOCIATION, INC.

In compliance with the requirements of Title 15A, Chapter 1, et seq. of the New Jersey Statutes, the undersigned, all of whom are of full age, have this day voluntarily associated themselves together for the purpose of forming a corporation not for profit, and do hereby certify:

ARTICLE I

The name of the corporation is The Highlands at Berkeley Heights Condominium Association, Inc., hereinafter called the "Association".

ARTICLE II

The principal office of the Association is located at 72 Nova Drive, P.O. Box 6823, Piscataway, NJ 08855-6823.

ARTICLE III

Michael A. Seidner, whose address is 72 Nova Drive, P.O. Box 6823, Piscataway, NJ 08855-6823, is hereby appointed the initial registered agent of this Association.

ARTICLE IV

PURPOSE AND POWERS OF THE ASSOCIATION

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for the maintenance, preservation and control of the common elements

Exhibit B to the Public Offering Statement

18.03. Minutes at Open Meetings. At each meeting required to be open to all Unit Owners, minutes of the proceedings shall be taken, and copies of those meetings shall be made available to all Unit Owners before the next open meeting.

- (a) The Association shall keep reasonably comprehensible minutes of all its Board meetings showing the time and place, the Directors present, the subjects considered, the actions taken, the vote of each Board member, and any other information required to be shown in the minutes by the Bylaws. Such minutes shall be made available to the public within 30 days.

18.04. Notice Requirements For Open Meetings. Adequate notice of any open meeting shall be given to all Unit Owners.

18.05. Adequate Notice. Adequate notice means written advance notice of at least 48 hours, giving the date, time, location and, to the extent known, the agenda of any regular, special, or rescheduled meeting such notice shall accurately state whether formal action may or may not be taken. This notice shall be:

- (a) Prominently posted in at least one place within the condominium property reserved for such or similar announcements.

(b) Mailed, telephoned, telegraphed or hand delivered to at least two newspapers designated by the association governing board.

(c) Filed with the association secretary or administrative officer responsible for administering the association business office.

18.06 Annual Posting of Open Meetings. At least once each year within (7) seven days following the annual meeting of the association, the governing body shall post and maintain posted throughout the year, notice of meetings in those locations set forth above.

18.07 Emergency Meetings. In the event that a board of directors association meeting is required to deal with such matters of urgency and importance that delay, for the purpose of providing 48 hours advance notice would result in substantial harm to the interests of the association the notice shall be deemed adequate if it is provided as soon as possible following the calling of the meeting.

WP+449