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# **Dam Rehabilitation Co-Borrower Agreement**

**By and Between**

**The Township of Wantage, a municipal  
corporation of the State of New Jersey**

**-and-**

**Friends of Lake Neepaulin, Inc., a not-for-profit  
corporation of the State of New Jersey**

**January 2011**

**DAM REHABILITATION CO-BORROWER AGREEMENT**

This Agreement made and entered into by and between the **TOWNSHIP OF WANTAGE**, a municipal corporation of the State of New Jersey, with administrative offices located at Route 23, Wantage, New Jersey 07461 ("Township") and **FRIENDS OF LAKE NEEPAULIN, INC. ("FOLN")**, a not for profit corporation organized and existing under the laws of the State of New Jersey, with a mailing address of **161 North Shore Drive, Township of Wantage, Sussex County, New Jersey 07461** ("FOLN");

**WITNESSETH:**

**WHEREAS**, FOLN is the owner of a dam ("Lake Neepaulin Dam") that has been determined, based on engineering investigations, to be in need of repair, improvement and rehabilitation in order to bring the dam into compliance with applicable standards established by the State of New Jersey, the Department of Environmental Protection ("NJDEP") so as to render the dam suitably safe and functional ("Dam Rehabilitation Project"); and

**WHEREAS**, FOLN has applied to the NJDEP for a loan ("Loan") of moneys from the Dam, Lake and Stream Project Fund, which Loan has been conditionally approved by the NJDEP; and

**WHEREAS**, the terms and conditions of the Loan are contained in a Loan Agreement which is being contemporaneously entered into by and among the State of New Jersey, acting by and through the NJDEP, FOLN and the Township ("State Loan Agreement"), which Agreement, in its entirety, is incorporated in and made a part of this Agreement by reference; and

**WHEREAS**, the Township has conditioned its agreement to serve as co-borrower of the Loan, upon the execution and delivery of this Agreement by FOLN;

**WHEREAS**, FOLN and Wantage are specifically subject to the terms of a Consent Judgment dated November 29, 2010 in the matter of *Friends of Lake Neepaulin, Inc. v. Wantage Township*, Docket No. SSX-L-616-09, and accordingly the terms and conditions of said Consent Judgment are incorporated by reference herein.

**NOW, THEREFORE,** in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the parties hereto hereby agree as follows:

1. **PRECONDITION:** The Township's obligation to act as co-borrower on behalf of FOLN is expressly conditioned upon and subject to Lake Neepaulin satisfying all of its obligations under this Agreement and the State Loan Agreement.

The Township's agreement to serve as Co-Borrower is strictly conditioned upon the Township not having to spend any of its general revenues in support of this project. As such, the Township's liability is secondary to the Borrower and is strictly limited to imposing a special improvement assessment.

2. **LOAN REPAYMENT ESCROW ACCOUNT:** At the time of the assessment, FOLN shall deposit with the Township, an amount equal to the "FOLN Repayment Obligation" as that is defined in the Consent Judgment between the parties to this Co-Borrower's Agreement which is annexed hereto as Exhibit A. The purpose of the loan repayment escrow account is to permit Wantage Township to fund FOLN's share of loan repayment in the event of default by FOLN.

3. **REPAYMENT OF THE LOAN TO THE STATE OF NEW JERSEY:** In accordance with N.J.S.A. 58:4-12 et seq., N.J.A.C. 7:24A-1.1 et seq. and N.J.S.A. 40:56-1, in order to repay the loan to the State of New Jersey, the Township shall impose a special improvement assessment. Exhibit A is a proposed methodology for the special tax assessment. The total amount of loan repayment cannot at the date of this Co-Borrower's Agreement be determined. Nevertheless, the special improvement assessment funding loan repayment shall be in the manner described in Exhibit A.

4. **SPECIAL ASSESSMENT ORDINANCE:** In accordance with N.J.S.A. 58:4-12 et seq., N.J.A.C. 7:24A-1.1 et seq. and N.J.S.A. 40:56-1, the Township may adopt a Special Improvement Assessment Ordinance covering the properties contained in Exhibit A.

5. **PROPERTIES NOT RESPONSIBLE FOR REPAYMENT OF THE LOAN:** The properties which shall not be responsible for the repayment of the Loan and the associated items and which shall be exempt from the Special Assessment Ordinance

the Township may adopt shall be those improved and unimproved properties owned by the Township of Wantage.

6. **PROPERTIES RESPONSIBLE FOR REPAYMENT OF THE LOAN:** The properties which shall be responsible for the repayment of the Loan, the interest thereon and any associated administrative costs, penalties and late payment and other charges imposed in connection with, which the Township or FOLN may incur as co-borrowers of the Loan and which are the subject of the Special Improvement Ordinance shall be those improved and unimproved residential properties in the lake community known as Lake Neepaulin except those owned by the Township of Wantage numbering approximately 750 properties.

7. **REPAYMENT OF THE LOAN:** To the extent that the total cost of the Dam Rehabilitation Project exceeds the total amount of the proceeds of the Loan, FOLN hereby acknowledges its sole responsibility for the payment of such excess.

8. **NJDEP SUBMISSIONS:** FOLN is responsible for performing and completing all of the terms, conditions and obligations of the Borrower as contained in the State Loan Agreement and related regulations. To the extent that the State Loan Agreement or regulations require submissions to NJDEP of certifications, reports and data, etc. from Wantage, FOLN shall furnish and make available such items as required. FOLN will furnish and make available to Wantage all receipts, reports, certificates and compliance data which is necessary under the State Loan Agreement or applicable regulations, without cost to the extent that FOLN is in possession of such data, or the same is available to it.

FOLN shall be solely responsible for the payment of any charges and costs and expenses needed to complete the dam rehabilitation project not included within or covered by any loan proceeds received from the State.

9. **PERFORMANCE BONDS AND INSURANCE:** In addition to the escrows provided herein, FOLN shall include the Township as a named beneficiary on any and all performance, payment and/or other bonds obtained in connection with the State Loan Agreement. FOLN shall also name, or have named, the Township, as an additional insured with respect to any and all insurance policies obtained in connection with the State

Loan Agreement. FOLN shall supply the Township with copies of any and all performance, payment and other bonds as well as certificates of insurance.

10. **WAIVER:** FOLN waives the defenses of presentment and dishonor to the State Loan Agreement and this agreement.

11. **INDEMNIFICATION:** FOLN hereby agrees to defend and indemnify the Township and save the Township harmless from any and all liabilities, claims, demands, losses, suits, causes of action, judgments, damages, costs and expenses, including reasonable attorney's fees, arising from or as the result of any action or inaction on the part of FOLN involving the Dam Rehabilitation Project, the State Loan Agreement and/or this Co-Borrower Agreement. This indemnification is to be construed as broadly as possible in favor of the Township.

12. **BOOKS AND RECORDS:** Throughout the term of the loan, FOLN shall, upon reasonable notice, make its books and records concerning the dam rehabilitation project available for inspection by Township officials and their designees in order to evaluate FOLN's compliance with the Loan Agreement and its ability to pay any additional costs as required thereby.

13. **DEFAULT:** In the event of default on the loan repayment by FOLN, FOLN shall deed to the Township of Wantage for one dollar (\$1.00), Block 69.01, Lot 40 and Block 69.02, Lot 55, which are Lake Neepaulin and its dam and the Lake Neepaulin beach respectively.

FOLN specifically acknowledges that the Township is serving as an accommodating party to FOLN in order to comply with the terms of N.J.S.A. 58:4-12 et seq. and the Consent Judgment entered into between the parties and attached hereto as Exhibit B. In the event FOLN defaults in any way under the terms of the State Loan Agreement or this Co-Borrower Agreement, and Wantage has to assume any of FOLN's responsibilities under either Agreement, Wantage shall have the right to exercise any of the rights or remedies provided to the State in the State Loan Agreement to the extent the State either waives or fails to exercise such rights.

14. **MUNICIPAL PROPERTIES:** Any municipal owned properties within the Lake Neepaulin community, whether currently owned by the Township or subsequently acquired by the Township, shall not be subject any special assessments. Any amount for

such assessments shall be apportioned amongst the remaining properties within Lake Neepaulin. To the extent allowable pursuant to the State Loan Agreement, and the laws of the State of New Jersey, and without making any representations as to the validity thereof, FOLN agrees that in the event the State is unable to fund the Loan for whatever reason, the Township shall have no further obligation to FOLN in regard to funds that have not been disbursed or otherwise utilized for the project.

15. **PROJECT COSTS:** To the extent allowable pursuant to the State Loan Agreement, and the laws of the State of New Jersey, and without making any representations as to the validity thereof, FOLN agrees:

- A. That in the event the project costs exceed the Project Budget contained in the State Loan Agreement, FOLN shall provide proof to the Township that it has sufficient funds to cover these additional costs. The Township may request and FOLN shall establish an escrow account dedicated specifically to covering these additional project costs.
- B. That if FOLN does not have sufficient funds to complete the project and is unable to secure the funds from the State or otherwise, the Township is under no obligation to furnish any funds needed to complete the project.
- C. The Township shall be reimbursed through the Special Assessment for the actual non-duplicable, reasonable and necessary costs and expenses which the Township may incur in connection with the Loan, including but not limited to the State Loan Agreement, this Co-Borrower Agreement, the Dam Rehabilitation Project and/or the Special Assessment Ordinance. Such costs shall include but shall not be limited to the actual, non-duplicative, reasonable and necessary professional fees billed to the Township for services rendered in connection with the preparation of this Agreement, as well as any reasonable and necessary costs and expenses incurred by the Township, its employees, agents and professionals.

16. **AUTHORITY:** FOLN represents that it is authorized under its governing documents to enter into this Agreement. Further FOLN has the consent and approval of the members of its Association and/or its Board of Trustees in order to secure the loan from the State and this Agreement.

17. **BALANCE OF PROJECT FUNDING:** FOLN acknowledges that the engineer's estimate of the cost to the State loan agreement is \$1,000,000.

18. **EXECUTION IN COUNTERPARTS:** This Agreement may be signed in any number of counterparts, each of which shall be executed by all parties, and all of which shall be regarded for all purpose as one original.

19. **NOTICES:** Any and all notices required to be given hereunder by the Township or FOLN shall be effective only if the same are in writing and are delivered personally or sent by Federal Express or similar overnight delivery or mailed by certified mail, return receipt requested, postage prepaid, and addressed to the Township and its attorneys or FOLN and its attorney at their respective addresses hereinafter set forth or at such other addresses as either the Township or FOLN may, from time to time, advise the other by notice in writing as aforesaid:

WANTAGE TOWNSHIP ADMINISTRATOR  
TOWNSHIP OF WANTAGE  
Municipal Building  
Route 23  
Wantage, New Jersey 07461

LADDEY, CLARK & RYAN  
Attn: Michael S. Garofalo  
60 Blue Heron Road  
Wantage, New Jersey 07871

FRIENDS OF LAKE NEEPAULIN, INC.  
161 North Shore Drive  
Wantage, NJ 07461

DOLAN & DOLAN, P.A.  
1 Legal Lane  
Box D  
Newton, NJ 07860  
Attention: Eileen McCarthy Born, Esq.

Whenever in this Co-Borrower Agreement a party is required to send a notice to the other party by a date certain, such notice shall be deemed to have been "sent" on the date such notice was personally delivered or deposited for overnight delivery or mailed to the other party.

20. **AMENDMENTS:** Any changes or amendments to this Co-Borrower Agreement must be made in writing and signed by the Township and FOLN.

21. **ENTIRE AGREEMENT:** This Co-Borrower Agreement contains the entire agreement between the Township and FOLN and any changes or amendments must be made in accordance with the provisions of preceding paragraph 21.

22. **SEVERABILITY:** The terms, conditions, covenants and provisions of this Co-Borrower Agreement shall be deemed to be severable. If any clause or provision contained herein shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision herein but such other clauses or provisions shall remain in full force and effect.

23. **CAPTIONS:** Any headings preceding the text of the several paragraphs and subparagraphs hereof are inserted solely for the convenience of reference and shall not constitute a part of this Co-Borrower Agreement, nor affect its meaning, construction or effect.

24. **BENEFIT:** This Co-Borrower Agreement shall be binding upon and inure to the benefit of the Township and FOLN and their respective successors and permitted assigns.

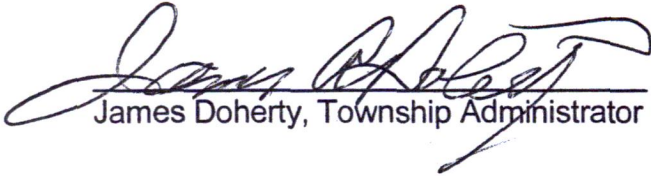
26. **GOVERNING LAW:** This Agreement shall be governed by the laws of the State of New Jersey.

27. **EFFECTIVE DATE:** This Co-Borrower Agreement shall become effective on the more recent of the dates of execution which hereinafter appear below the signatures of the parties.

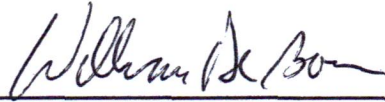


IN WITNESS WHEREOF, the parties hereto sign and seal this Agreement.

ATTEST:

  
James Doherty, Township Administrator

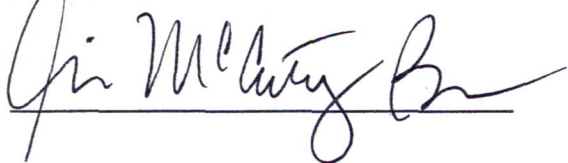
**TOWNSHIP OF WANTAGE**

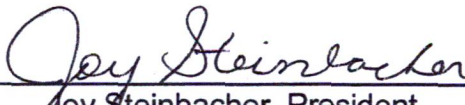
By:   
William DeBoer, Mayor

Date: 1/27/11

**FRIENDS OF LAKE NEEPAULIN, INC.**

ATTEST:

  
Jim McLarty

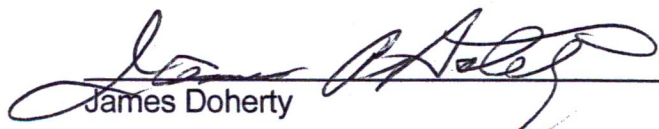
By:   
Joy Steinbacher, President

Date: 1/27/11

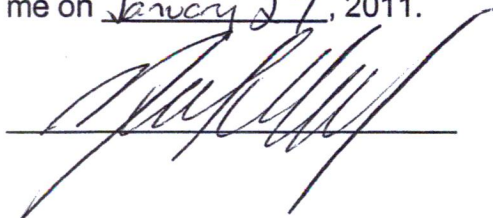
STATE OF NEW JERSEY, COUNTY OF SUSSEX SS:

I CERTIFY that on January 27, 2011, **JAMES DOHERTY** personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- (a) this person is the Municipal Administrator of Wantage Township, the municipal corporation named in this document;
- (b) this person is the attesting witness to the signing of this document by James Doherty, the proper corporate officer who is the Township Clerk/Administrator of the municipal corporation;
- (c) this document was signed and delivered by the municipal corporation as its voluntary act duly authorized by the Township Committee;
- (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.

  
James Doherty

Signed and sworn to before  
me on January 27, 2011.



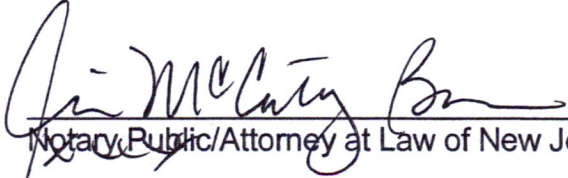
**STATE OF NEW JERSEY, COUNTY OF SUSSEX SS:**

**I CERTIFY** as follows:

1. On 1/27, 2011, Joy Stembach personally appeared before me;

2. I was satisfied that this person is the person who executed this instrument as President of Friends of Lake Neepaulin, the corporation named in this instrument; and

3. This person stated that (s)he was authorized to execute the instrument on behalf of the corporation, and that (s)he executed the instrument as the act of such corporation.

  
\_\_\_\_\_  
Notary Public/Attorney at Law of New Jersey

**Lake Neepaulin  
Preliminary Dam Assessment**

Loan Amount	1,000,000.00					
Annual Interest	2%					
Term in Years	20					
Avg. Annual Payment	\$60,500.00	FOLN Share over 20 years				
Total of all Payments	\$1,210,000.00	Less 10%	\$121,000.00			
Principal	1,000,000.00					
Interest	\$210,000.00					
Total special assessment	\$1,089,000.00					
		Share	Total	Total \$ share	Total share each	Per Month each
Lake Front residents	56	45.00%	\$1,089,000.00	\$490,050.00	\$8,750.89	\$36.46
Middle Tier	225	35.00%	\$1,089,000.00	\$381,150.00	\$1,694.00	\$7.06
Outer Tier	436	20.00%	\$1,089,000.00	\$217,800.00	\$499.54	\$2.08
Total	717	100.00%		\$1,089,000.00		

There are a total of 717 residents within the boundaries of the subdivision known as Lake Neepaulin. This neighborhood is well defined by sales as well as geographical boundaries.

The above shows the division of properties and the percentage of responsibility of the properties which benefit from the dam improvement. The properties that will receive the greatest direct benefit are the lake and the properties located directly on the lakefront. The benefit to the remaining properties will effect the community to a lesser degree.

**FILED**

NOV 29 2010  
A. THEODORE ... J.S.C.  
JUDGE ...  
MORRIS COUNTY COURTHOUSE

**LADDEY, CLARK & RYAN, LLP**

Attorneys-at-Law

60 Blue Heron Road, Suite 300

Sparta, New Jersey 07871-2600

(973) 729-1880

*Attorneys for Defendant, Township of Wantage, et. al.*

Friends of Lake Neepaulin, Inc.,

Plaintiff,

-vs-

Township of Wantage, Mayor and  
Committee of Township of Wantage,  
Tax Assessor of Township of Wantage,  
Tax Collector of Township of Wantage,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: SUSSEX COUNTY

Docket No. SSX-L-616-09

CIVIL ACTION

**CONSENT JUDGMENT**

**THIS MATTER** having been opened to the Court upon mutual application of Laddey, Clark & Ryan, LLP, attorneys for Defendant Township of Wantage, et al. and Schenck, Price, Smith & King, LLP, attorneys for Plaintiff, Friends of Lake Neepaulin ("FOLN"), and the Court having considered the papers submitted and for good cause shown,

IT IS, on this 29 day of November, 2010, ORDERED:

1. Wantage Township shall co-sign loan documents issued by the New Jersey Department of Environmental Protection under the "Dam, Lake and Stream

Project Fund" on behalf of FOLN. The funds provided to FOLN under the loan shall be used for the purpose of repairing the Lake Neepaulin Dam and reimbursing allowable project costs as provided under N.J.S.A. 58:4-12 et seq., N.J.A.C. 7:24A-1.1 et seq. and N.J.S.A. 40:56-1 et seq.

2. The cost of repayment of the principal and interest of the loan funds provided to FOLN shall be by way of local improvement assessment implemented by ordinance of the Township of Wantage upon certification of the Wantage Township Chief Financial Officer of the total loan funds expended by FOLN.

3. The total loan funds to be expended by FOLN are not known as of the date of this Consent Judgment. Nevertheless, upon certification and adoption of the appropriate ordinances, the local improvement assessment shall be implemented as follows:

- a. FOLN shall be solely responsible for repayment of funds totaling ten percent (10%) of the certified loan funds.
- b. The balance of the loan repayment (loan balance) shall be by local improvement assessment levied on properties designated by the Wantage Township Tax Assessor.
- c. The Tax Assessor shall devise three tiers of properties within the Lake Neepaulin community recognized for the purpose of this Consent Judgment as (i) lakefront properties, (ii) middle tier properties, and (iii) outer tier properties. The share of each tier for repayment of the loan balance shall be respectively forty five percent (45%), thirty five percent (35%) and twenty percent (20%).

d. The properties owned by FOLN within the lakefront tier shall be assessed and the assessment shall be a repayment obligation of FOLN in addition to the amount specified in paragraph 3a above.

e. The amount specified in paragraphs 3a and 3d above shall be designated for purpose of this Consent Judgment as "FOLN Repayment Obligation."

4. Upon certification of the total loan funds, FOLN shall deposit in escrow with the Township of Wantage an amount equal to 1/20th the "FOLN Repayment Obligation." The escrow funds shall be placed in an interest bearing account and all interest earned shall be returned to FOLN upon payment in full of the loan. The purpose of the funds held by Wantage Township shall be for loan repayment in the event of default by FOLN.

5. In the event of default on the loan repayment by FOLN, FOLN shall deed to the Township of Wantage for one dollar (\$1.00), Block 69.01, Lot 40, which is Lake Neepaulin and its dam and Block 69.02, Lot 55, which is the Lake Neepaulin beach. The deed from FOLN to the Township of Wantage shall contain a restrictive covenant preventing the Township from using or conveying the beach property for a use other than access, parking, boat launch or other use integral to the use of Lake Neepaulin. Default under the provisions of this paragraph shall be defined as:

i. Upon the event of depletion of the escrow fund balance to be held by Wantage Township and/or (ii) upon failure to pay the assessment on FOLN owned properties in accordance with law.

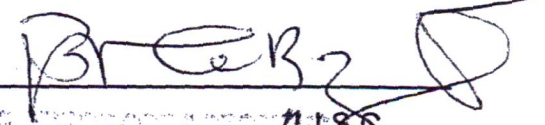
6. FOLN and Wantage Township shall execute a co-borrower's agreement memorializing the provisions of this Consent Judgment in substantially the form as annexed to this Consent Judgment.

7. FOLN shall be solely obligated to repay loan funds expended in excess of one million dollars (\$1,000,000.00).

8. The Plaintiff's Complaint is hereby dismissed with prejudice.

9. This pleading closes the case and terminates all claims made in the pleadings.

10. A copy of this Order shall be served upon all parties forthwith.

  
\_\_\_\_\_  
M.S.G.


The undersigned hereby consent to the form and entry of the within Order; the defendant hereby consents to the dismissal of his Answer and Counterclaim and to the entry of the within Order for the amount stated herein.

**LADDEY, CLARK & RYAN, LLP**  
Attorneys for Defendant,  
Township of Wantage, et al.

  
\_\_\_\_\_  
Michael S. Garofalo, Esq.

Date: 11/11/10

**SCHENCK, PRICE, SMITH & KING, LLP**  
Attorneys for Plaintiff,  
Friends of Lake Neepaulin, Inc.

  
\_\_\_\_\_  
Edward J. Trawinski, Esq.

Date: 10/27/10

