

DAM REHABILITATION CO-BORROWER AGREEMENT

By and between:

TOWNSHIP OF ANDOVER, a municipal corporation  
of the State of New Jersey,

-and-

LAKE LENAPE ASSOCIATION, a non- profit corporation  
of the State of New Jersey.

LAW OFFICES  
DOLAN AND DOLAN, P.A.  
P. O. Box D  
Newton, NJ 07860

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## **DAM REHABILITATION CO-BORROWER AGREEMENT**

This Agreement made and entered into by and between the **TOWNSHIP OF ANDOVER**, a municipal corporation of the State of New Jersey, with administrative offices located at 134 Newton-Sparta Road, Newton, New Jersey 07860 (“Township”) and **LAKE LENAPE ASSOCIATION**, a not for profit corporation organized and existing under the laws of the State of New Jersey, with a mailing address of P.O. Box 438, Andover, New Jersey 07860 (“Lake Lenape Association”);

### **WITNESSETH:**

**WHEREAS**, Lake Lenape Association is the owner of a dam (“Lake Lenape 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 the 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**, Lake Lenape Association, has applied to the NJDEP for a loan (“Loan”) of funds from the “Dam, Lake, Stream, Flood Control, Water Resources, Wastewater Treatment Project Bond Act of 2003,” P.L. 2003, Chapter 162, (“2003 Bond Act”), which established a revolving loan fund known as the “2003 Dam, Lake and Stream Project Revolving Loan Fund” (“Fund”) and authorized the issuance of loans at a maximum interest rate of two percent (2 %) per annum to meet the costs and expenses of dam restoration project such as that required for the Lake Lenape Dam; and

**WHEREAS**, the Loan has been approved by the NJDEP and funds have been appropriated pursuant to P.L. 2010, Chapter 16, Senate Bill No. 922, which awarded the Lake Lenape Association \$2,300,000.00 for the repair of the Lake Lenape Dam; 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, Lake Lenape Association 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, as required by N.J.A.C. 7:24A-4.1 (d), upon the execution and delivery of this Agreement by Lake Lenape Association;

**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 and Lake Lenape Association will act as co-borrowers in accordance with the terms and conditions of the State Loan Agreement.
2. **REIMBURSEMENT OF COSTS:** The Township shall be reimbursed through the Special Assessment for the actual, non-duplicative, 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 hereinafter mentioned in succeeding Paragraph 3. 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.
3. **SPECIAL ASSESSMENT ORDINANCE:** The Township will adopt a Special Assessment Ordinance covering the properties hereinafter set forth in succeeding Paragraph 4 for the collection, administration and repayment of the loan moneys pursuant to the Act. The assessments levied under the Special Assessment Ordinance shall constitute first and paramount liens on the aforesaid properties, as provided under N.J.S.A. 58:4-11 et seq. and shall include all of the reasonable and necessary costs incurred by the Township in adopting and administering the Ordinance and in making and collecting the assessments levied thereunder, as well as any other costs incurred by it in connection with the repayment of the Loan, including the repayment of any part of the Loan monies. The cost of the payment of the principle and interest on the Loan shall be assessed, pursuant to the Special Assessment Ordinance, against the real estate benefitted thereby in proportion to and not in excess of the benefits

conferred, and such assessment shall bear interest and penalties from the same time and at the same rate as assessments for local improvements in the Township.

4. **PROPERTIES REPOSIBLE FOR REPAYMENT OF THE LOAN:** The properties which shall be solely 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 Lake Lenape Association may incur as Co-Borrowers of the Loan and which are the subject of the Special Assessment Ordinance shall be those improved and unimproved residential properties in the private lake community known as Lake Lenape Association, more particularly described in Schedule A, attached hereto.
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 hereinabove mentioned in the preceding paragraph 5 and which shall be exempt from the Special Assessment Ordinance the Township adopts, shall be those improved and unimproved non-residential properties in the private lake community known as Lake Lenape Association which include properties that are presently owned by the following:
  - A. Andover Township
  - B. Lake Lenape Association
6. **REPAYMENT OF THE LOAN:** The Township and Lake Lenape Association acknowledge that the loan will be paid pursuant to the terms of the Loan Agreement entered into between the NJDEP, the Township and Lake Lenape Association. The cost of the payment of the principle and interest on the Loan shall be assessed, pursuant to the Special Assessment Ordinance, against the real estate benefitted thereby in proportion to and not in excess of the benefits conferred, and such assessment shall bear interest and penalties from the same time and at the same rate as assessments for local improvements. Upon the completion of the project, the governing body of the Township shall review and certify the total costs of the project, including the amount of funds drawn on the loan, and the allowable costs incurred by the Township, as well as allowable costs incurred by Lake Lenape Association as per the Act. The municipal officer for the Township charged with the duty of making

assessments in the Township shall make an assessment on real estate in the Township benefited by such improvement.

7. **NJDEP SUBMISSIONS:** In the event that any provision of the State Loan Agreement or N.J.S.A. 58:4-11 et seq. or N.J.A.C. 7:24A-1.1 et seq. requires the submission by the Township of any data to the NJDEP in connection with the Loan and/or the Dam Rehabilitation Project, then, to the extent that Lake Lenape Association is in possession of such data or the same is available to it, Lake Lenape Association shall make available and/or furnish such data to the Township.
8. **INDEMNIFICATION:** Lake Lenape Association agrees to indemnify the Township against 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 Lake Lenape Association involving the Dam Rehabilitation Project, the State Loan Agreement and/or this Co-Borrower Agreement.
9. **PERFORMANCE BONDS AND INSURANCE:** Lake Lenape Association hereby agrees that its contract with the successful bidder for the Dam Rehabilitation Project will require the following:
  - A.** That the Township and the Lake Lenape Association be named as a parties in interest in the Performance and Labor and Material Bond, the Maintenance Bond and any other performance guarantee which Lake Lenape Association shall require such bidder to post with it prior to the commencement of any work; and
  - B.** That the Certificate of Insurance evidencing such bidder's general liability insurance coverage, which Lake Lenape Association shall require to be issued to it prior to the commencement of any work, contain a provision naming the Township and Lake Lenape Association as an additional insured thereunder and a further provision that the insurance coverage certified therein will not be cancelled or materially changed by the company providing the same without a prior ten (10) day written notice of cancellation or material change thereof having first be given to the Township and Lake Lenape Association by said company.

Lake Lenape Association hereby also agrees to deliver copies of the aforesaid performance guarantees and Certificate of Insurance to the Township within a reasonable period of time following its receipt of the same.

10. **PROJECT COSTS**: If at any time during the repair construction of the Lake Lenape Dam it becomes apparent that the total project costs will exceed those shown in the summary of the total project costs as set forth in Exhibit C of the State Loan Agreement, Lake Lenape Association shall, if requested by the Township, provide proof of its financial ability to pay such additional project costs.
11. **BOOKS AND RECORDS**: Throughout the term of this Loan, Lake Lenape Association Club shall, upon reasonable notice and during regular business hours, make its books and records concerning the Dam Rehabilitation Project available for inspection by Township officials and their designees for the purpose of evaluating Lake Lenape Association's compliance with the State Loan Agreement and its ability to pay the excess cost of the Dam Rehabilitation Project.
12. **ASSUMPTION OF RIGHTS AND REMEDIES**: Lake Lenape Association hereby acknowledges that the Township agreed to serve as a Co-Borrower of the Loan as an accommodation to Lake Lenape Association to qualify it for the same. Accordingly, in the event that Lake Lenape Association defaults on any of its obligations, then and in such event the Township shall have the right to exercise any of the rights and remedies which are afforded the NJDEP in the State Loan Agreement to the extent that the NJDEP knowingly waives the same.
13. **NOTICES**: Any and all notices required to be given hereunder by the Township or Lake Lenape Association shall be effective only if 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 Lake Lenape Association and its attorney at their respective addresses hereinafter set forth or at such other addresses as either the Township or Lake Lenape Association may from time to time advise the other by notice in writing as aforesaid:

TOWNSHIP

Township of Andover  
Municipal Building  
134 Newton-Sparta Road  
Newton, New Jersey 07860

Dorsey & Semrau  
714 Main St., P.O. Box 228  
Boonton, NJ 07005  
Fred Semrau, Esq

LAKE LENAPE ASSOCIATION

Lake Lenape Association  
P. O. Box 438  
Andover, New Jersey 07871

Dolan & Dolan, P.A.  
P. O. Box D  
Newton, New Jersey 07860  
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.

14. **AMENDMENTS**: Any changes or amendments to this Co-Borrower Agreement must be made in writing and signed by the Township and Lake Lenape Association.
15. **ENTIRE AGREEMENT**: This Co-Borrower Agreement contains the entire agreement between the Township and Lake Lenape Association and any changes or amendments hereto must be made in accordance with the provision of preceding paragraph 14.
16. **LAW**: This Co-Borrower Agreement shall be interpreted and construed in accordance with the laws of the State of New Jersey.
17. **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.
18. **CAPTIONS**: All heading preceding the text of the several paragraphs and sub-paragraphs hereof are inserted solely for the convenience of reference and shall not be construed to be a part of this Co-Borrower Agreement, nor affect its meaning, construction or effect.
19. **BENEFIT**: This Co-Borrower Agreement shall be binding upon and inure to the



benefit of the Township and Lake Lenape Association and their respective successors and permitted assigns.


20. **EFFECTIVE DATE:** This Co-Borrower Agreement shall become effective on the date of execution which hereinafter appear above the signatures of the parties.

**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be executed and delivered by their proper officers and their corporate seals to be hereto affixed, as all of the dates indicated below.

Date of execution by Township:

2/28, 2010

ATTEST:

  
\_\_\_\_\_

Vita Thompson  
Township Clerk

TOWNSHIP OF ANDOVER

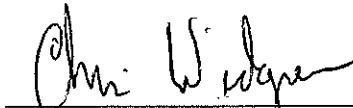
  
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Phil Boyce  
Mayor

Date of execution by Lake Lenape Association

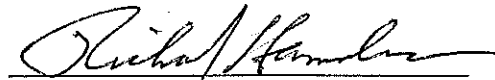
3/8, 2010

ATTEST:

  
\_\_\_\_\_

James McGovern,  
Secretary *CHRIS WIDGREN*

LAKE LENAPE ASSOCIATION

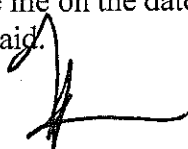
  
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Richard Hammler,  
President

STATE OF NEW JERSEY)  
  ) SS.:  
COUNTY OF SUSSEX   )

BE IT REMEMBERED, that on this 28 day of February, 2010, before me, the subscriber, an Attorney at Law of the State of New Jersey, personally appeared Vita Thompson, who being by me duly sworn on her oath, deposes and makes proof to my satisfaction that she is the Municipal Clerk of the TOWNSHIP OF ANDOVER, the municipal corporation named in the within Co-Borrower Agreement; that Phil Boyce is the Mayor of said Township; that the execution as well as the making of this Co-Borrower Agreement have been duly authorized by a proper resolution of the Township Council of said Township; that the deponent well knows the corporate seal of said Township; and that the seal affixed to said Co-Borrower Agreement is such corporate seal and was thereto affixed and said Co-Borrower Agreement signed and delivered by the Mayor as and for the voluntary act and deed of said municipality, in the presence of the deponent, who thereupon subscribed her name thereto as witness.

Sworn to and subscribed  
before me on the date  
aforesaid.



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Fred Semrau  
An Attorney at Law of New Jersey



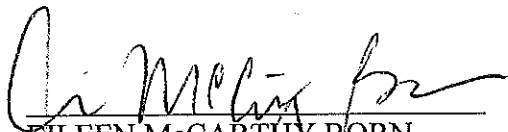
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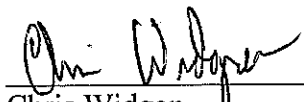
Vita Thompson

STATE OF NEW JERSEY)  
  ) SS.:  
COUNTY OF SUSSEX    )

BE IT REMEMBERED, that on this 8 day of MARCH, 2011, before me, the subscriber, an Attorney at Law of the State of New Jersey, personally appeared Chris Widgen, who being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the Secretary of the LAKE LENAPE ASSOCIATION, the not for profit corporation named in the within Co-Borrower Agreement; that Richard Hammler is the President of said corporation; that the execution as well as the making of this Co-Borrower Agreement have been duly authorized by a proper resolution of the Board of Trustees of said corporation; that the deponent well knows the corporate seal of said corporation; and that the seal affixed to said Co-Borrower Agreement is such corporate seal and was thereto affixed and said Co-Borrower Agreement signed and delivered by said President as and for the voluntary act and deed of said corporation, in the presence of the deponent, who thereupon subscribed her name thereto as witness.

Sworn to and subscribed  
before me on the date  
aforesaid.

  
EILEEN McCARTHY BORN  
An Attorney at Law of New Jersey

  
Chris Widgen

**AMENDMENT TO THE CO-BORROWER AGREEMENT**  
**By and between:**

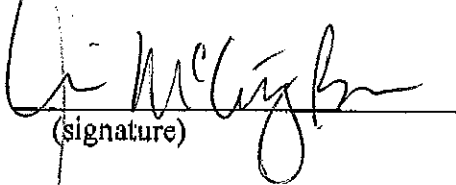
**TOWNSHIP OF ANDOVER, a municipal corporation**  
**of the State of New Jersey**

**-and-**

**LAKE LENAPE ASSOCIATION, a non-profit corporation**  
**of the State of New Jersey**

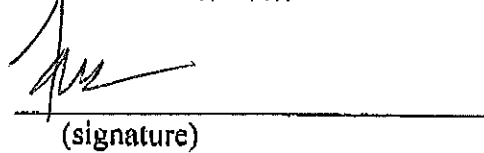
The Association shall provide any and all documentation required to demonstrate the inclusion of the individual property owners in the direct assessment as contemplated by the Act, including but not limited to filed maps by the original developer, and chain of title searches, where necessary. In the event the Association and the Township are named defendants in any action by a resident of the lake community who challenges the special assessment, the Association represents that it will vigorously defend against such action.

For the Borrower:

  
(signature)

Eileen McCarthy Born,  
(print name)  
Attorney for Borrower

For the Co-Borrower:

  
(signature)

Fred Semrau,  
(print name)  
Attorney for Co-Borrower

Date: 3-8-, 2011

Date: 2-28, 2011