

On 11/11/07

SPECIAL ASSESSMENT AGREEMENT

This Special Assessment Agreement (the "Agreement") is entered into this 5th day of September, 2007 (the "Effective Date"), by and between the **Township of Lyon, Roscommon County, Michigan**, a general law township, whose address is P.O. Box 48, Higgins Lake, Michigan 48627 (the "Township"), and the **Camp Curnalia Cottage Owner's Association**, a Michigan domestic nonprofit corporation, whose address is 122 Castner Legion Drive, Roscommon, Michigan 48653 (the "Association").

WHEREAS, the Township, in conjunction with the Township of Beaver Creek in Crawford County and the Higgins Lake Utilities Authority, has proposed to undertake a project to acquire, construct, and operate a wastewater collection and treatment facility/sewage disposal and collection system (the "System"), as well as all other necessary and related improvements, which project is generally described in Exhibit A (the "Project"); and

WHEREAS, the Township proposes to finance a portion of its share of the total cost of the Project through special assessments assessed against the property/properties that will benefit from the Project pursuant to the Public Improvements Act (Act 188, Public Acts of Michigan, 1954, as amended) ("Act 188"), and the Municipal Sewage and Water Supply Systems Act (Act 233, Public Acts of Michigan, 1955, as amended) ("Act 233"); and

WHEREAS, the Association holds record title to property that will benefit from the Project, which property is described in Exhibit B (the "Association's Property"); and

WHEREAS, the Association has been created as a domestic nonprofit corporation under Michigan law, currently has valid standing with the Corporation Division of the Michigan Department of Labor and Economic Growth, and has obtained the approval of its members and Board of Directors in accordance with its Articles of Incorporation and Bylaws to enter into this Agreement; and

WHEREAS, the Association desires for the Township to cause the Project to be undertaken by the Higgins Lake Utilities Authority, and further desires to enter into an agreement with the Township by which the Association's Property will be subject to special assessments for the payment of a portion of the total cost of the Project; and

WHEREAS, the parties desire to memorialize the terms and conditions of the Township's special assessment of the Association's Property to pay for a portion of the cost of the Project, upon the terms and conditions contained in this Agreement.

NOW, THEREFOR, THE PARTIES HERETO AGREE AS FOLLOWS:

1. **The Project.** The Township shall use its best efforts to cause the Project to be undertaken by the Higgins Lake Utilities Authority, as generally described in Exhibit A hereto, by entering into an agreement with the Authority for that purpose pursuant to Act 233. In the event that the Township fails to or is prevented from entering into a contract with the Authority

for the Project by September 30, 2007, this Agreement shall become null and void and neither party shall have any further responsibility or liability under this Agreement.

2. **Estimated Project Cost.** The parties agree that the estimated cost for the construction and acquisition of the Project is, as of the Effective Date, approximately Four Million Six Hundred Forty Thousand Dollars (\$4,640,000). Of that amount, the Township's share of the estimated cost for the Project is \$4,239,104.

In addition, the parties recognize that, once the Project has been completed and the System has been put into operation, customers and users of the System will be required to pay costs for the operation, maintenance and replacement/repair of the System ("OMR Costs"), which OMR Costs are not addressed by this Agreement. The parties shall use their best efforts to work with the Higgins Lake Utilities Authority to develop and implement rules, regulations and policies regarding the billing and collection of OMR Costs directly to/from individual customers and users of the System.

3. **The Association's Assessment.**

- (A) The Township shall, based upon the estimated cost for the construction and acquisition of the Project, assess the Association's Property for the Township's entire portion of the total Project cost in the amount of \$4,239,104 (the "Association's Assessment"). The Association's Assessment is subject to reduction if the actual costs of the construction and acquisition of the Project are less than the estimate described in Section 2 above. If the actual costs of the construction and acquisition of the Project are greater than the estimate described in Section 2 above, the Township may unilaterally increase the Association's Assessment to an amount not exceed five percent (5%) of the above-described Association's Assessment. Any increase in the actual costs of the construction and acquisition of the Project that would necessitate an increase of the Association's Assessment in excess of five percent (5%) shall require the prior written consent of the Association.
- (B) The special assessment district for the Project is hereby designated as the "Higgins Lake Utilities Authority Special Assessment District No. 1" (the "Special Assessment District"), which Special Assessment District shall be comprised of the Association's Property described in **Exhibit B**. The Special Assessment Roll for the Association's Assessment shall be designated as the "Higgins Lake Utilities Authority Special Assessment District No. 1 Special Assessment Roll" (the "Roll"), which Roll shall conform to the provisions of this Special Assessment Agreement.
- (C) The Association's Assessment shall be divided into twenty (20) annual installments as provided in **Exhibit C**. The first installment shall be due on December 1, 2007, and shall not be considered delinquent or in default in any manner until March 1, 2008 (*i.e.*, no interest or penalties shall be added to the installment until March 1, 2008). The nineteen (19) subsequent installments shall be due on December 1 of the succeeding years thereafter, and shall not be considered delinquent or in default in any manner until March 1 of the year following the year in which the annual installment comes due (*i.e.*, no interest or penalties shall be added to the

installment until March 1, 2008). The unpaid principal amount of the Association's Assessment shall bear interest as provided in **Exhibit C**, commencing on December 1, 2007, and payable annually on the due date of each installment.

- (D) The Association's Assessment shall be billed to the Association annually, as provided in **Section 3(C)** above, on the Association's winter tax bill. However, the Township agrees, as agent for the Association, to bill the individual Association cottage owners for portions of each respective year's installment of the Association's Assessment, apportioning the total installment among the individual Association cottage owners on an equal per cottage/structure basis. The Association shall cooperate with the Township with respect to the Township's billing efforts. The billing for each installment shall be issued by the Township to the individual Association cottage owners that are identified on the Township's most recent personal property tax roll or as provided by the Association. The billings shall include, in addition to the apportioned principal and interest amount of the annual installment of the Association's Assessment, an additional amount equal to one percent (1%) of the individual Association cottage owner's billed amount (the "Administrative Fee"). The billings to the individual Association cottage owners shall state that they are due on or before February 15 of the following year. The Township will apply each amount collected from an individual Association cottage owner to the total installment amount, including interest and Administrative Fees, owed by the Association for the respective year. On February 15 of the following year, the Township shall provide the Association with a revised winter tax bill, which bill shall reflect and give credit to the Association for the amounts collected from the individual Association cottage owners, and which revised assessment shall be paid by the Association in accordance with the law.

The Association shall be solely responsible for the payment to the Township of, and/or the billing and collection from the individual Association cottage owners of, such unpaid portions of the annual installment of the Association's Assessment. Any payments received by the Township after February 15 from individual Association cottage owners shall be reimbursed to the Association.

- (E) If any installment, or portion thereof, is not paid when due then the same shall be deemed to be delinquent and there shall be collected thereon in addition to the interest above provided, a penalty at the rate of one percent (1%) for each month or fraction thereof that the same remains unpaid before being reported for reassessment upon the Township's tax roll.
- (F) It is anticipated that the Higgins Lake Utilities Authority will issue bonds to finance the cost of the Project, which bonds will pledge the receipts of the Special Assessment Roll and the full faith and credit of the Township.
- (G) It is agreed that the Association's Assessment made pursuant to the Special Assessment Roll is ordered and directed to be collected. The Township Supervisor shall deliver the Roll to the Township Treasurer with the

proper warrant attached, commanding the Township Treasurer to collect the assessments therein in accordance with the provisions of this Special Assessment Agreement and the directions of the Township Board with respect thereto, and the Treasurer is authorized and directed to collect the amounts assessed as they become due pursuant to the terms of this Agreement and the provisions of the applicable statutes of the State of Michigan.

- (H) Except as otherwise provided in **Section 3**, the special assessment monies received by the Township from the Association shall be accounted for separately on the Township's books, and such monies shall only be used by the Township for paying its portion of costs related to the Project and/or to make contractual payments to the Higgins Lake Utilities Authority for the Township's portion of the cost of acquiring and constructing the Project.

4. **Prepayment.** The Association may pay the unpaid balance of the Association's Assessment in full on any installment date, together with interest due to said payment date.

5. **Consents and Waivers.** In consideration for the Township causing the Project to be undertaken by the Higgins Lake Utilities Authority as generally described in **Exhibit A** hereto, the Association consents to the special assessment of the Association's Property for the Township's entire portion of the Project cost as described herein. The Association further consents to the inclusion of the Association's Property in the Special Assessment District for the Project, and waives any and all rights it may have under PA 188, PA 233, and other applicable laws of the State of Michigan and/or local ordinance, including, but not limited to, its rights to notices of hearings, its rights to hearings, its rights to object to the Project and/or the Township's determination regarding the necessity of, or benefit to the Association's Property from, the Project, its rights to object to the Association's Assessment, and its rights to appeal the Association's Assessment to the Michigan Tax Tribunal or a court of competent jurisdiction. The Association understands that the Association's Assessment will constitute a lien on the Property pursuant to PA 188.

6. **Reapportionment.** In the event that the Association takes action to subdivide the Property, the Township shall, if requested by the Association, apportion the Association's Assessment between/among the resulting subdivisions of the Property. The provisions of this section shall only apply if record title to the resulting subdivisions of the Property is held by the Association, members of the Association, an association or associations comprised of members of the Association, or any combination thereof.

7. **Affidavit.** The Association shall, concurrently with the execution of this Agreement, provide to the Township a sworn and notarized affidavit signed by the President of the Association, which affidavit shall state that, to the best of the President's knowledge and information, (A) the Association has been and is validly incorporated, (B) the Association's Articles of Incorporation and Bylaws have been validly enacted and comply with all applicable laws and regulations of the State of Michigan, (C) the Association has filed all necessary annual reports, paid any and all required fees, and is in good standing under the laws of the State of Michigan.

8. **Whole Agreement.** This Agreement constitutes the entire agreement between the parties and shall be deemed to supersede and cancel any other agreement between the parties

relating to the transactions that are in conflict herewith. None of the prior and contemporaneous negotiations, preliminary drafts or prior versions of this Agreement leading up to its execution and not set forth herein shall be used by any of the parties to construe or affect the validity of this Agreement. Each party acknowledges that no representation, inducement or condition not set forth herein has been made or relied upon by either party.

9. **Amendments.** This Agreement may be amended or modified only by a document in writing executed by each of the parties named above.

10. **Successors and Assigns.** This Agreement shall bind and benefit the parties hereto and their respective successors and assigns.

11. **Governing Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of Michigan.

12. **Authorization.** Each party represents and warrants to the other that it is authorized to enter into this Agreement and that the Agreement is binding on it.

13. **Execution in Counterpart.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Special Assessment Agreement to be executed as of the Effective Date.

WITNESSES:

Julie A. Barton
Julie A. Barton

TOWNSHIP OF LYON

By: Paul Tatro
Title: Supervisor

Dated: 9-4, 2007

Julie A. Barton
Julie A. Barton

By: Annamarie Reno
Title: Clerk

Dated: 8-4, 2007

WITNESSES:

Julie A. Barton
Julie A. Barton

CAMP CURNALIA COTTAGE
OWNER'S ASSOCIATION

By: Dean English
Title: President

Dated: Sept. 5, 2007

Julie A. Barton
Julie A. Barton

By: Kenneth R. Green
Title: Treasurer

Dated: 9-5, 2007

EXHIBIT A

The construction of a wastewater collection and treatment facility for the Camp Curnalia area within Lyon Township and Beaver Creek Township, in general conformance with the State Revolving Fund Project Plan Amendment adopted May 16, 2007, and as further described as follows:

1. The construction of a sanitary sewer collection system within the Camp Curnalia area to serve the existing 405 dwelling units, including submersible packaged sewage grinder pumping stations, sanitary sewer service leads, pressure sewer mains, pump station electrical services, connection to existing house leads and miscellaneous appurtenant work; and
2. The construction of a wastewater treatment facility to be located north of N. Higgins Lake Drive, west of Old US-27 and east of US-127, consisting of a main sewage pumping station, two aerated lagoon cells, two storage lagoon cells, interconnecting piping and structures, an irrigation system main pumping station, a crop irrigation system and miscellaneous appurtenant work.

EXHIBIT B

Real property located in the Township of Lyon, County of Roscommon, State of Michigan, legally described as follows:

Township of Lyon

Town 24 North, Range 04 West, Section 2

Entire fractional Section 2 EXCEPT that part lying Easterly of a Southerly extension of a North-South $\frac{1}{4}$ line of Section 35, T25N, R4W from the South $\frac{1}{4}$ corner of said Section 35.

EXHIBIT C

The Association's Assessment: \$4,239,104.00.

The portion of the Association Assessment allocated the Higgins Lake Utilities Authority's bonds to be issued through the State of Michigan in the principal amount of \$3,815,000 (the "State Bonds"): \$3,485,384.00. The unpaid principal of this portion of the Association's Assessment shall bear interest at a rate of 1.625%, which interest rate represents the interest rate on the State Bonds.

The portion of the Association's Assessment allocated to the Higgins Lake Utilities Authority's bonds to be issued through a financial institution in a principal amount not to exceed \$825,000 (the "Bank Bonds"): \$753,720.00. The unpaid principal of this portion of the Association's Assessment shall initially bear interest at a rate of 6.0%. Pursuant to **Section 3(F)** of the Agreement, once the Bank Bonds have been issued, the interest rate shall be adjusted to a rate that equals the average interest rate at which the Bank Bonds were sold.

Schedule of Installment Payments—Principal Only

<u>Year</u>	<u>State Bonds Portion</u>	<u>Bank Bonds Portion¹</u>	<u>Total</u>
2007	\$200,992.00	\$37,686.00	\$238,678.00
2008	\$178,837.20	\$37,686.00	\$216,523.20
2009	\$178,837.20	\$37,686.00	\$216,523.20
2010	\$178,837.20	\$37,686.00	\$216,523.20
2011	\$178,837.20	\$37,686.00	\$216,523.20
2012	\$178,837.20	\$37,686.00	\$216,523.20
2013	\$178,837.20	\$37,686.00	\$216,523.20
2014	\$174,269.20	\$37,686.00	\$211,955.20
2015	\$174,269.20	\$37,686.00	\$211,955.20
2016	\$174,269.20	\$37,686.00	\$211,955.20
2017	\$174,269.20	\$37,686.00	\$211,955.20
2018	\$174,269.20	\$37,686.00	\$211,955.20
2019	\$174,269.20	\$37,686.00	\$211,955.20
2020	\$174,269.20	\$37,686.00	\$211,955.20
2021	\$174,269.20	\$37,686.00	\$211,955.20
2022	\$174,269.20	\$37,686.00	\$211,955.20
2023	\$174,269.20	\$37,686.00	\$211,955.20
2024	\$174,269.20	\$37,686.00	\$211,955.20
2025	\$147,203.80	\$37,686.00	\$184,889.80
2026	\$147,203.80	\$37,686.00	\$184,889.80
Totals	\$3,485,384.00	\$753,720.00	\$4,239,104.00

¹ Assumes that the Bank Bonds will be issued in the principal amount of \$825,000. Subject to reduction if the Bank Bonds are issued by the Higgins Lake Utilities Authority in a principal amount less than \$825,000.