

RESOLUTION NO. 2015 - 346

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE AN AGREEMENT WITH THE RAVENSWOOD FOREST HOMEOWNER'S ASSOCIATION FOR REPAIR OF A RETENTION POND.

WHEREAS, the Ravenswood Forest Homeowner's Association ("Ravenswood"), and St. Johns County (the "COUNTY") desire to enter into an Agreement, in a form substantially similar to that attached and incorporated as Exhibit "A" to this resolution, for the repair of a retention pond to cooperatively work to ameliorate erosion conditions; and

WHEREAS, such Agreement and the undertaking of such work serves the interests of the local citizens and visitors to the County; and

WHEREAS, both Parties agree to the terms of the attached Agreement;

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, THAT:

1. The above recitals are hereby adopted as findings of fact.
2. The County Administrator, or designee, is hereby authorized to execute the Agreement, attached and incorporated as Exhibit "A", on behalf of the County for the purposes mentioned above.
3. To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor, or context of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.
4. This Resolution shall take effect immediately upon its being signed.

PASSED AND ADOPTED by the Board of Board of County Commissioners of St. Johns County, Florida this 17th day of November 2015.

ATTEST: HUNTER S. CONRAD, Clerk

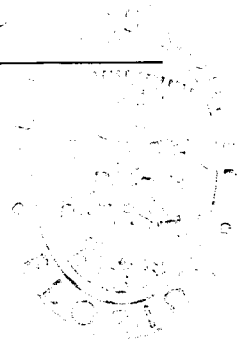
BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: *Pam Hatterman*
Deputy Clerk

By: *Jeb S. Smith*
Jeb S. Smith, Chair

Rendition Date: 11/19/15

Effective Date: 11/17/15



RETENTION POND REPAIR AGREEMENT

THIS AGREEMENT ("Agreement") made on this _____ day of _____, 2015, is entered into by and between St. Johns County ("County"), a political subdivision of the State of Florida, whose mailing address is 500 San Sebastian View, St. Augustine, Florida, 32084, and Ravenswood Forest Homeowner's Association, Inc. ("Ravenswood"), a non-profit corporation authorized to operate in the State of Florida, whose mailing address is P.O. Box 351359, Palm Coast, Florida, 32135.

RECITALS

WHEREAS, Ravenswood owns a retention pond in close proximity to a retention pond owned by St. Johns County located at the West Augustine In-Fill Community; and

WHEREAS, in the past, during times of heavy rain events, storm water from the County's retention pond has entered Ravenswood's retention pond; and

WHEREAS, there is another area in close proximity to the Ravenswood retention pond that is causing the erosion of silt/sand into Ravenswood's retention pond; and

WHEREAS, Ravenswood's retention pond has a liner that appears to be located approximately one (1) foot below grade around the south western part of the pond embankment; and

WHEREAS, neither the County nor Ravenswood have conclusively determined which of these factors, if any, have caused the Ravenswood retention pond to have the current silt/sand levels, however both parties seek to cooperatively work to ameliorate the condition; and

WHEREAS, undertaking such work serves the interests of local citizens and visitors of the County; and

WHEREAS, the County has recently constructed a two to three (2-3) foot high berm along the southwest vicinity of Ravenswood's property which ties into an existing berm around the County's retention pond. This berm was constructed in an effort to ameliorate the existing conditions and prevent future storm water overflows.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises herein contained, the sufficiency of which is acknowledged, the County and Ravenswood agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are true and correct and are hereby incorporated into the body of this Agreement by reference.

2. **The County will:**

- i. Remove the silt in the west corner of the Ravenswood retention pond and use such silt on the bank of the Ravenswood retention pond to fill in an existing eroded area in the same vicinity. All silt material shall be clean sand and free of any organics or debris. The top bank elevation for the western portion of the pond shall be twenty-eight (28) feet above sea level per NGVD 29. If additional fill is necessary to complete the bank, the County shall use A-3 material, clean and free of any organics or debris. The compaction specification will be 95% (ATSM D 1557) not to exceed 12-inch lifts and the County will provide a compaction test concerning the existing eroded area. The side slopes of the eroded area shall be repaired to substantially conform to the conditions of such areas as originally constructed. All such areas shall be hydro-seeded prior to completion of the required work and the County shall be responsible for maintaining the slopes once repaired until grass has been established.
- ii. Maintain the recently constructed berm located between the two retention ponds in accordance with St. Johns River Water Management District Permit #40-109-81153-1, that certain conservation easement recorded at St. Johns County Official Records Book 2554, Page 26, et seq., and all other applicable laws and agreements.
 - a. The grading material for the side slopes of the berm will be A-3 material, clean and free of any organics or debris.
 - b. The compaction specification will be 95%.
 - c. The County will provide a compaction test for the berm.
 - d. The side slopes of the berm will be hydro seeded.
 - e. All drainage water will flow south per the above-referenced permit.
- iii. Patch and repair two torn sections of an existing liner in the Ravenswood retention pond. The County will undertake this work by the placement of two pieces of starboard and stainless all thread with lock washers and nuts. The top piece of material applied to both torn sections shall extend at least twelve (12) inches in circumference beyond the liner holes in all directions. A seal will be created using a neoprene lining or such other material that will sufficiently create a seal under generally accepted engineering standards. Any alternative remedial measures in attempt to repair the torn liner sections may only be undertaken with express written consent of Ravenswood.

- iv. Warranty the repair in Section 2(iii) for a period of two (2) calendar years, beginning on the day following the day on which the work was completed. Upon written notice from Ravenswood or its representative to the County that any aspect of the work contemplated in Section 2(iii) is found not to be in good repair, the work shall be corrected by the County. Such correction shall be made without further cost to Ravenswood, and the scope of the warranty shall include all damage caused by such defect, deficiency, deterioration, departure, or other condition necessitating correction along with any correction of damages caused by its repair, replacement, or correction. For the purposes of this provision, "good repair" shall mean a condition free from any defect, functional problem or structural deterioration (except from ordinary and natural wear) which appreciably reduces the effectiveness or efficiency of the property or material contemplated for the purpose(s) intended, or any departure from the standards of original construction or applicable permits pertaining to the property at issue.
- v. Provide seventy-two (72) hours' notice to Ravenswood prior to commencement of any work contemplated by this agreement. All work contemplated by this Agreement shall commence within thirty (30) calendar days from the last of the parties to sign below.

3. **Ravenswood will:**

- i. Acknowledge that the County has already constructed a two to three (2-3) foot high berm along the southwest vicinity of Ravenswood's property which ties into the existing berm around the County's retention pond in an effort to ameliorate the existing conditions and prevent future storm water overflows.
- ii. After the expiration of the two (2) calendar year period of time referenced in Section 2.iv. ("Warranty Period"), release and hold the County harmless from any claims related to the Ravenswood retention pond, including the holes in the liner, and any County repairs to such hole, as described in this Agreement that are in existence at the time of the expiration of the Warranty Period. Such release shall be self-executing, and no further documentation or action shall be necessary for the release to become effective; provided, however, that any claims or disputes of which the County has been provided notice prior to the expiration of the Warranty Period shall operate to toll the Warranty Period until such claims or disputes have been resolved or abandoned in writing.

4. **Access to Records.** The access to, disclosure, non-disclosure or exemption of records associated with the Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), and other applicable state or federal law. Access to such public records may not be blocked,

thwarted and/or hindered by placing the public records in the possession of a third party or an unaffiliated party.

5. **Review of Records.** As a condition of entering into this Agreement, and to ensure compliance as it relates to any applicable law, rule or regulation, Ravenswood authorizes the County to examine, review, inspect and/or audit all records associated with this Agreement, except any materials protected by the attorney-client or other legal privilege. It is specifically noted that Ravenswood is under no duty to provide review of records not related to this Agreement, and is otherwise protected by local, state or federal law.
6. **Relationship of County and Ravenswood.** This Agreement shall not be deemed or construed to create any agency relationship, partnership (limited or otherwise), association or joint venture between the County and Ravenswood.
7. **No Third Party Beneficiaries.** Both the County and Ravenswood explicitly agree, and this Agreement explicitly provides that no third party beneficiary status or interest is conferred to, or inferred to, any other person or entity.
8. **Severability.** If any provision of this Agreement or application thereof is declared void, unconstitutional or invalid for any reason, then such provision shall be severable and the remaining provisions of this Agreement shall remain in full force and effect.
9. **Governing Law and Venue.** This Agreement shall be construed according to the laws of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be in St. Johns County, Florida.
10. **Dispute Resolution.** The parties expressly acknowledge that litigating disputes arising out of this Agreement in a court of law could result in substantial financial burdens on the members of Ravenswood and on the taxpayers of the County. Therefore, the parties agree that all disputes arising out of this agreement regarding: whether the work was performed to the required specifications expressed or incorporated herein; whether a defect or other condition requires correction pursuant to the Warranty provided herein; the scope of the Warranty provided herein; and any other dispute regarding the parties' obligations pursuant to this Agreement shall be decided by the following procedure.
 - i. **Notice.** The party claiming that the other party has failed to satisfy an obligation pursuant to this Agreement ("Aggrieved Party") shall provide written notice to the other party ("Responding Party") of the nature of the alleged breach and provide no fewer than fifteen (15) calendar days from receipt within which to cure the alleged breach or provide a written response to the Aggrieved Party affirmatively disputing the Aggrieved Parties' claim(s). The notice provided by the Aggrieved Party must list with reasonable specificity the actions that must be taken to cure the alleged

breach. The notice disputing the breach provided by the Responding Party must be placed in the mail within the time period specified above.

- ii. **Failure to Cure or Respond.** If the Responding Party fails to cure the breach or dispute the alleged breach in writing within fifteen (15) calendar days from receipt of the Aggrieved Party's notice, then such failure shall constitute an admission of breach of the items specified in the notice and shall entitle the Aggrieved Party to pursue a lawsuit in a court of law for any and all legal and equitable relief available. The Responding Party's failure to respond shall be admissible in evidence and shall be conclusive proof of breach regarding the items listed in the Aggrieved Party's notice, leaving only the issue of damages or nature of injunctive relief to be decided by the court. In any such action, the prevailing party shall be entitled to reasonable attorney's fees and costs, including pre-suit investigation, preparation, and through all appellate proceedings, if any.
- iii. **Procedure after Written Dispute.** If the Responding Party provides a written response to the Aggrieved Party's notice within the above-prescribed time period disputing the alleged breach, then the parties agree to resolve the dispute as follows:
 - a. The Aggrieved Party shall choose one duly-licensed engineer. After the Aggrieved Party has chosen an engineer, the Responding Party shall have twenty (20) calendar days within which to choose a duly-licensed engineer. The engineers chosen by each party shall choose a third engineer. In the event that the engineers chosen by each party are unable to agree on a third engineer, then they shall meet and call the Florida Board of Professional Engineers ("FBPE") for a recommendation as to a third engineer. The engineers recommended by the FBPE shall be contacted in the order recommended and the first to respond and agree shall serve as the third engineer. No engineer shall be liable to any party for any actions, events, or omissions that occur as a result of his or her participation in this dispute resolution process.
 - b. After three engineers have been selected, each engineer shall review this Agreement and the notices provided by the Aggrieved and Responding Party to determine whether a breach has occurred. The engineers shall be entitled to perform a physical inspection of the property concerning all items in dispute. The engineers shall be entitled to ask the parties questions regarding the dispute and all responses shall be communicated to both parties and all engineers. Such questions may be posed in writing or at a meeting at which all parties have notice and the right to be present.

- c. Within sixty (60) calendar days of the selection of the third engineer or fifteen (15) calendar days of the last response to any question posed by the engineers, whichever occurs later, the engineers shall make a decision, by majority vote, as to whether a breach has occurred and what steps the Responding Party must take, if any, to cure the breach or correct the issues listed in the Aggrieved Party's notice. The engineers shall provide a reasonable time period within which the Responding Party must take the action determined by the engineers, if any. Such decision shall be in writing and shall be admissible in any proceeding to enforce the engineers' determination. If the Responding Party fails to take the specified action within the time provided by the engineers, the Aggrieved Party shall be entitled to file an action in a court of law to enforce the engineers' decision. In any such action, the prevailing party shall be entitled to reasonable attorney's fees and costs, including pre-suit investigation, preparation, and through all appellate proceedings, if any.
 - iv. **Costs.** All costs associated with the dispute resolution procedure herein, including any fees charged by the engineers to consider any disputes, shall be borne equally by Ravenswood and the County.
 - v. **Good Faith.** Failure to comply with the dispute resolution procedures herein in good faith shall also constitute a breach of this agreement.
11. **Amendment.** Both the County and Ravenswood acknowledge that this Agreement constitutes the complete agreement and understanding of the parties. Any change, amendment, modification, revision or extension of this Agreement shall be in writing and shall be executed by duly authorized representatives of each party.
12. **Notices.** All official notices to the County shall be delivered either by hand (receipt of delivery required), or by first class mail to:

Press Tompkins, P.E., County Engineer
2740 Industry Center Road
St. Augustine, FL 32084

With a copy to:

Office of County Attorney
500 San Sebastian View
Saint Augustine, Florida 32084

All official notices to Ravenswood shall be delivered either by hand (receipt of delivery required), or by first class mail to:

Ravenswood Forest Homeowner's Association, Inc.
Attn: Marc Bellapianta, manager
P.O. Box 351359
Palm Coast, FL 32135-1359

All other correspondence, not classified as official notice, may be delivered, disseminated or submitted by any means acceptable to both parties.

13. **Authority to Execute.** Each party covenants to the other party that it has lawful authority to enter into this Agreement, and consents to the execution of this Agreement by the party's authorized representative.
14. **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

St. Johns County

Signed: _____

Date: ___/___/___

Printed: _____

As its: _____

Ravenswood Forest Homeowner's Association, Inc.

Signed: _____

Date: ___/___/___

Printed: _____

As its: _____