

RESOLUTION NO. 2016- 236

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR HIS DESIGNEE, TO EXECUTE A RECEIPT, RELEASE, REFUNDING AND INDEMNIFICATION AGREEMENT AND WAIVER OF ACCOUNTING IN CONNECTION WITH THE WILLIAM O'CONNOR CHARITABLE REMAINDER UNITRUST.**

**RECITALS**

**WHEREAS**, the William O'Connor Charitable Remainder Unitrust was created for the benefit of William and Edna O'Connor during their lifetimes; and

**WHEREAS**, upon the death of William and Edna O'Connor, the terms of the trust dictate that the principal and income of the trust be distributed to certain charitable organizations; and

**WHEREAS**, the Ponte Vedra Beach Branch Library is identified in the trust as one of the charitable organizations designated to receive a portion of the trust's principal and income; and

**WHEREAS**, both William and Edna O'Connor are now deceased; and

**WHEREAS**, in order for the trust's principal and income to be distributed to the organizations named in the trust, it is necessary to terminate the trust; and

**WHEREAS**, the trust is currently being administered by U.S. Trust, a subsidiary of Bank of America, N.A. (the Bank); and

**WHEREAS**, in order to avoid the time and expense of terminating the trust through the judicial process, the Bank has provided a Receipt, Release, Refunding and Indemnification Agreement (the Release) to the County for signature; and

**WHEREAS**, a copy of the Release is attached as an exhibit to this resolution, and its contents are incorporated herein; and

**WHEREAS**, execution of the Release will serve a public purpose.

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

**Section 1.** The above recitals are incorporated by reference into the body of this resolution and are adopted as findings of fact.

**Section 2.** The Board of County Commissioners authorizes the County Administrator, or his designee, to execute the Release in substantially the same form as attached to this resolution on behalf of the County.

**Section 3.** To the extent that there are typographical or administrative errors that do not change the tone, tenor, or concept of this resolution, this resolution may be revised without subsequent approval by the Board of County Commissioners.

**PASSED AND ADOPTED** by the Board of County Commissioners this 2<sup>nd</sup> day of August, 2016.

**BOARD OF COUNTY COMMISSIONERS OF  
ST. JOHNS COUNTY, FLORIDA**

By: \_\_\_\_\_

Jeb S. Smith, Chair

**ATTEST:** Hunter S. Conrad

By: \_\_\_\_\_

Deputy Clerk

**RENDITION DATE** 8/3/16



# **RECEIPT, RELEASE, REFUNDING AND INDEMNIFICATION AGREEMENT AND WAIVER OF ACCOUNTING**

## **Charitable Remainder Unitrust under the Agreement of William J. O'Connor Dated June 2, 1997**

In consideration of the final distribution by Bank of America, N.A. (the "Bank") as the trustee (the "Trustee") of the William O'Connor Charitable Remainder Unitrust, Dated June 2, 1997 (the "Trust"), of all assets of the Trust, due to the death of September 5, 2015, without a judicial accounting and decree, the undersigned charitable beneficiaries of the Trust, individually, hereby:

- 1) Approve receipt by the Trustee of its periodic trustee's fees as shown in the transaction statements.
- 2) Acknowledge that there have been made available to them the transaction statements for the Trust covering the period from inception of the Bank's administration of the Trust through the current date, and that they have examined such statements to the extent they deem appropriate or waive their right to do so, and they further accept and approve the same and ratify and confirm all acts of the Trustee as reflected therein;
- 3) Acknowledge receipt of the property described on the attached asset statement dated January 29, 2016, in the attached dispositive provision of the Trust Instrument, exclusive of the payments described in paragraph one above, and exclusive of any fiduciary income taxes and administration expenses that may become due and payable, the same being in the aggregate all property belonging to the Trust and belonging to them after making such payments (the "property");
- 4) Release and discharge the Trustee, as trustee and in its corporate capacity, its predecessors, successors, affiliates, and directors and employees of the Trustee or its affiliates, of and from any and all liabilities or claims whatsoever that they or any other person or entity may now have or may in the future have against the Trustee by reason of any act done or omitted to be done by the Trustee in connection with the administration of the Trust;
- 5) Agree to refund and pay over to the Trustee such amounts as may be requested in writing by the Trustee to reimburse the Trust for any over-distribution to them or to satisfy their pro-rata portion of any debt of the Trust, any tax deficiency owed by the Trust to the Internal Revenue Service or to any state or other taxing authority (including all penalties and interest), any demand or claim presented by another beneficiary, creditor or other claimant of the Trust; however, their obligation to refund and pay over shall be limited to the amount of the distribution made by the Trustee to them;
- 6) To an extent of the property distributed to them, agree to jointly and severally indemnify and hold harmless the Trustee, as trustee and in its corporate capacity, its predecessors, successors, affiliates, and directors and employees of the Trustee or its affiliates, against all claims (including taxes of every kind and character), demands, suits, actions, expenses, accountants' fees, attorneys' fees and all losses and damages of every kind and character whatsoever attributable to the Trustee in connection with the administration of the Trust and the distribution of the property to them without a judicial accounting or decree;
- 7) Acknowledge that they are entitled to an account of the Trustee's acts as Trustee of the Trust, and waive all right to any such account and further waive all right to a judicial settlement of the Trustee's account and to the issuance and service of citation or other process in any action or proceeding for the judicial settlement of the account, and consent that a judgment or decree may be entered in any court, without notice to them settling the account and discharging the Trustee from all liability and accountability in respect of all matters embraced therein or in this instrument;
- 8) Acknowledge that the approvals, consents, releases and ratifications presented herein are granted in accordance with state law, and acknowledge they were not induced by improper conduct of the Trustee and that they have knowledge of the material facts relating to the matters contained herein and are aware of their rights;
- 9) Understand that the provisions of this Agreement are severable, and if any part of it is found to be unenforceable, the other provisions shall remain fully valid and enforceable;

- 10) Acknowledge that they have not assigned, transferred or in any way encumbered their right, title and interest in and to the property distributed in accordance with the terms of this Agreement;
- 11) Acknowledge that (i) this Agreement is a legal document; (ii) they have been advised to have this Agreement reviewed by their attorney(s); and (iii) they have had the Agreement reviewed by such attorney(s) or voluntarily chose to execute it without a review by such attorney(s);
- 12) Agree that the provisions of this Agreement shall bind and inure to the benefit of them and their successors and assigns and the successors and assigns of the Trustee; and
- 13) Agree that this Agreement may be signed in counterparts, each of which shall be an original and all of which together shall constitute one Agreement.
- 14) Nothing in this Agreement shall operate as a waiver of St. Johns County's sovereign immunity. Any indemnification agreed to under this Agreement by St. Johns County shall be subject to and within the limitations set forth in Section 768.28, Florida Statutes."

**St. Johns County – a political subdivision of the State of Florida  
For the benefit of Ponte Verde Beach Branch Library**

Dated: \_\_\_\_\_

BY: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  ) ss:  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ personally known to me to be the person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he/she is the \_\_\_\_\_ of \_\_\_\_\_, and is authorized to sign and deliver this instrument on behalf of said institution.

\_\_\_\_\_  
Notary Public