

RESOLUTION 2014-02

1-31-14

**RESOLUTION BY STORM AND WASTEWATER COMMITTEE
AUTHORIZING ENTERING INTO AN AGREEMENT WITH THE CHICORY CREEK
HOMEOWNERS ASSOCIATION, INC. FOR POND DREDGING AND SEDIMENT
REMOVAL**

WHEREAS, the Chicory Creek Homeowners Association maintains all storm water detention ponds in the Chicory Creek Subdivision; and

WHEREAS, drainage from outside the subdivision is occurring in two of the ponds; and

WHEREAS, there will be a future need to provide maintenance on the ponds as required by the Wisconsin Department of Natural Resources; and

WHEREAS, the Village Board has determined that it would be in the best interest of the Village to share a percentage of the cost of future maintenance of the two ponds.

NOW THEREFORE, the Village Board of the Village of Sturtevant, Racine County, Wisconsin does hereby resolve:

1. That the execution of a contract with the Chicory Creek Homeowners Association as set forth in Exhibit A, which is attached hereto, and incorporated herein is authorized and approved.
2. That the Village President and the Village Clerk are authorized to execute any agreements or other documents necessary to carry out the intent of this resolution.

Adopted by the Village Board of the Village of Sturtevant, Racine County, Wisconsin, this 4th of February, 2014.

Village of Sturtevant

By _____
Steven Jansen, President

Attest _____
Mary Cole, Village Clerk

**POND DREDGING AND SEDIMENT
REMOVAL AGREEMENT**

THIS AGREEMENT, made and entered into this _____ day of _____, 20__, by and between **Chicory Creek Homeowner’s Association, Inc.**, a non-stock corporation organized and existing under the laws of the State of Wisconsin (“Owner”), and the **Village of Sturtevant**, a Wisconsin municipal corporation located in Racine County, Wisconsin (“Village”).

Recording Area
Name and Return Address

RECITALS

Parcel Identification Number

WHEREAS, Owner is the owner of the following described lands situated in the Village of Sturtevant, Racine County, State of Wisconsin (“Property”), to-wit:

Outlot 1, Chicory Creek Subdivision, Village of Sturtevant, Racine County, Wisconsin, the plat of which was recorded as Document 2036287 in the Racine County Register of Deeds Office on June 30, 2005; and,

WHEREAS, Owner maintains the Property including the maintenance of two particular storm water detention ponds located on the Property, described as the “Northwest Pond” and “East Pond,” respectively. A site plan identified as Exhibit A (“the Plan”), which is expressly made a part hereof, indicates the location of the Northwest Pond and the East Pond. A third pond located on the Property and depicted on the Plan, the “Southwest Pond,” is not included in this Agreement; and,

WHEREAS, over time sediment collects within storm water detention ponds and, pursuant to Wisconsin Department of Natural Resources (“DNR”) requirements, must be removed to allow the ponds to function properly. Said sediment must be disposed of in accordance with the Wisconsin Department of Natural Resources NR 528 Management of Accumulated Sediment from Storm Water Management Structures; and,

WHEREAS, because drainage from outside of the subdivision for which Owner is responsible (“Chicory Creek”) also drains to the Northwest Pond and the East Pond, Owner has requested that the Village share in the cost to remove sediment from said storm water detentions ponds; and,

WHEREAS, of the area that drains to the Northwest Pond, currently 63% of the storm water run-off originates from outside of Chicory Creek; and,

WHEREAS, of the area that drains to the East Pond, currently 2% of the storm water run-off originates from outside of Chicory Creek.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and given the Recitals which the parties acknowledge as being true and correct, and pursuant to the following terms and conditions, and current conditions, the parties agree as follows:

1. At such time, as determined by measurements taken by Owner, at Owner's cost and as required of Owner by the Chicory Creek Restrictions, recorded in the Office of the Register of Deeds for Racine County, Wisconsin, as Document No. 2036750, it is evident that dredging/sediment removal from the detention pond(s) is necessary, this information shall be delivered to the Village for review. If the Village concurs that dredging/sediment removal is required, the parties shall develop the scope of the dredging/sediment removal as mutually agreed upon by both parties. To allow adequate time to budget for the anticipated project costs, the parties agree that dredging/sediment removal shall actually occur no earlier than one year after the determination is made that such dredging/sediment removal is necessary, unless both parties agree to an earlier start date.
2. Owner shall be responsible for applying for any and all permits necessary to complete the dredging/sediment removal, including, without limitation, any required DNR approvals, which cost shall be added to the project cost. The Village shall review the permit application(s) prior to their submission by Owner.
3. Owner shall solicit bids and contract for the dredging/sediment removal work, pursuant to the scope of work agreed to by the parties. The contract for such dredging/sediment removal work shall be a private contract between Owner and the contractor, provided, however, that before Owner executes the contract, the Village must give its prior consent to Owner's selected contractor, to the contract price, and to the form of the contract. Additionally, Owner shall require that the Village be named as an additional insured with respect to all contractor insurance, and the parties mutually waive claims of subrogation.
4. The Village shall have the right to review and approve the progress of the dredging/sediment removal work covered by this Agreement, including any changes to the construction scope that may arise during such work.
5. The Village shall have the right to approve the final project and cost. The Village's cost share shall be 63% of the approved cost for dredging/sediment removal from the Northwest Pond and 2% of the cost for dredging/sediment removal from the East Pond. Owner shall arrange, as necessary, for its contractor to separately document the dredging/sediment removal costs applicable to each pond. Payment by the Village under this Agreement is contingent on Owner following all of the procedures and requirements set forth in this Agreement. Owner shall invoice Village after the project is completed and provide any documentation requested by the Village to substantiate such invoice. Payment of the Village's share of the dredging/sediment work shall be made to Owner by the Village within 60 days of invoice.

6. In the event Owner and Village are unable to reach agreement as to the necessity, scope or cost of the project, the matter shall be submitted to arbitration. In the event that the parties are unable to agree upon an arbitrator, each party shall name an arbitrator and the two arbitrators shall identify a third arbitrator. The award rendered by the arbitrator or by the majority arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Demand for arbitration shall be filed in writing with the other party to this Agreement.
7. The term of this Agreement shall be for 30 years, which may be extended by mutual agreement of the parties. This Agreement may be modified only by mutual written agreement of the parties. Any extension or modification of this Agreement shall be recorded at Owner's cost.
8. Other than as provided herein, this Agreement imposes no liability of any kind whatsoever on the Village. Owner agrees to protect and to hold the Village harmless from any and all liability not caused by acts or omissions of the Village, including any costs and actual attorney fees the Village may reasonably incur in responding to or defending itself from any claim in any way related to this Agreement, arising out of the work described in this Agreement, or in regard to any claimed liability relating to the Northwest Pond or the East Pond (including without limitation such ponds' failure to operate properly) or with respect to the Property generally. Upon notice of any claim, the Village shall notify Owner who may then elect to defend against or settle such claim. The Property shall, in all regards, remain owned solely by Owner, and nothing herein shall be construed as relieving Owner of any responsibility therefore, nor imposing any responsibility therefore on the Village.
9. Upon receipt of this executed Agreement, the Owner shall record said Agreement in the Racine County Office of the Register of Deeds. The Owner shall provide a copy of the recorded Agreement to the Village.

[INTENTIONALLY BLANK. SIGNATURE PAGES FOLLOW]

**CHICORY CREEK HOMEOWNERS
ASSOCIATION, INC.**

By: _____
Printed Name: _____
Title: _____

Attest: _____
Printed Name: _____
Title: _____

STATE OF WISCONSIN)
 : ss.
_____ COUNTY)

The foregoing Agreement was acknowledged before me this ____ day of
_____, 20__ by _____ and _____.

Printed Name of Notary

Notary Public, State of Wisconsin
My commission is/expires _____

VILLAGE OF STURTEVANT

By: _____
Steve Jansen
Village President

Attest: _____
Mary Cole
Village Clerk

STATE OF WISCONSIN)
 : ss.
COUNTY OF RACINE)

The foregoing Agreement was acknowledged before me this _____ day of _____, 20____ by Steve Jansen and Mary Cole.

Printed Name of Notary

Notary Public, State of Wisconsin
My commission is/expires _____

APPROVED AS TO FORM:

Christopher A. Geary
Pruitt, Ekes & Geary, S.C.
Village Attorneys



6.96
ACRES

2.7 ACRES

0.5 ACRES
(1.47 ACRES)

6.4
ACRES

8.3
ACRES

5.56
ACRES

18.7
ACRES

0.38
ACRES

GRAYCE DR

BROADWAY DR

ANGELICA DR

SANDY DR

CHICORY CK

EAST POND

NORTHWEST POND

SOUTHWEST POND

93TH ST

94TH ST

95TH ST

96TH ST

97TH ST

98TH ST

BUCKINGHAM RD

100TH ST

MAJESTIC HILLS DRIVE