CITY OF ST. CHARLES ILLINOIS • 1834	**AGENDA ITEM EXECUTIVE SUMMARY**	Agenda Item number: 4c
	Title:	Recommendation to Approve and Execute an Acceptance Resolution for roadway improvements for Anthem Heights Subdivision
	Presenter:	Russell Colby

Meeting: Planning & Development Committee	Date: February 13, 2023	
Proposed Cost: N/A	Budgeted Amount: N/A	Not Budgeted: ☐

Executive Summary (*if not budgeted please explain*)**:**

Background

The Anthem Heights Subdivision, located with the Corporate Reserve of St. Charles PUD, is fully built out. All utilities were previously accepted by the City in 2017-2018. The roadway improvements constructed by the developer, Lennar, have been completed and inspected. (Roadway improvements include Sidewalks, Curb and Gutter, Final Pavement Surface Course, and Parkway Trees).

Staff had a concern with the Final Surface Pavement slope as it appeared to be less than the City standard of 2% in some areas, which could impact the longevity of the pavement surface.

Proposal from November 2022

Staff presented a proposal to accept an extended warranty for the Final Pavement Surface Course, from the pavement contractor, Orange Crush, in the form of a 5-year maintenance bond (in lieu of the standard 1-year guarantee). The contractor would also apply a pavement rejuvenation product (Reclamite) that will enhance the pavement durability and improve surface drainage. The Committee reviewed the request and directed staff to secure an extended warranty period of 10 years.

Current Proposal

- The contractor is agreeable to a 10-year warranty period, and has provided a letter of agreement to the City providing for this warranty period.
- A 10-year maintenance bond is not available in the bond marketplace; therefore, a 5-year bond is provided, with a letter agreeing to extend for an additional 5 years.
- There is still some risk that the contractor may not be willing or able to extend the bond after 5 years, however staff believes the contractor intends to honor their obligation, and if not, staff will conduct an in-depth condition evaluation prior to the end of the current bond term.

Considerations

- The developer's engineer provided an analysis and opinion that the roadways, as constructed, were within construction tolerances and were therefore adequate for drainage purposes. Although the street cross-slope standard is not met in all areas, there is positive drainage throughout. There are only limited sections that the City could require replacement, which would not be an ideal condition for a newer roadway.
- The standard warranty under the code is 1 year after City acceptance. Even the 5-year guarantee, plus the Reclamite treatment, well exceeds what the City typically receives for a warranty period. Although having the 10-year bond in place is preferred, staff believes this arrangement is a reasonable compromise, given the circumstances.

Attachments (*please list*)**:**

Warranty letter, Bond, Acceptance Resolution, Bill of Sale, Exhibit

Recommendation/Suggested Action (*briefly explain*)**:**

Staff is seeking direction to Approve and Execute an Acceptance Resolution for roadway improvements for Anthem Heights Subdivision, subject to the 10-year warranty for the Final Surface Course.

Letter of Agreement

Orange Crush, LLC
321 Center Street
Hillside, IL 60162

12/6/2022

Russell Colby
Director of Community Development
City of St. Charles
2 E. Main Street
St. Charles, IL 60174-1984

Dear Russell

Orange Crush, LLC warrants to the City of St. Charles that all material and or workmanship for installation of the Hot-Mix Asphalt Surface Course for the Anthem Heights subdivision in St. Charles shall be first class and free from defects for ten (10) years from the date of acceptance which is 11/21/22.

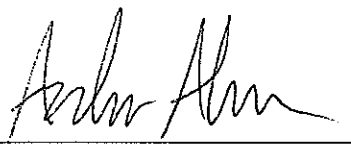
Orange Crush, LLC will, upon notice and without undue delay or expense to the Owner, make good or repair the whole or any part of the work which shall fail or develop unfitness for the purpose for which it is intended within ten (10) years after the date of acceptance. This warranty excludes defects or damages caused by normal wear and tear, use for a purpose for which the Project was not intended and improper or insufficient maintenance.

Orange Crush, LLC has already provided a 5 year bond and during the fifth year Orange Crush, LLC agrees to renew the bond for an additional 5 years.

Additionally, reclamite treatment of the entire subdivision is to be completed by Orange Crush, LLC in Spring 2023 unless otherwise mutually agreed to by the City of St. Charles and Orange Crush, LLC.

Best regards,

Andy Ahern
Orange Crush, LLC



Signature

Recipient's Signature

HUB International Midwest
1411 Opus Place, Suite 450
Downers Grove, IL 60515
(630) 468-5600
www.hubinternational.com

February 6, 2023

City of St. Charles
2 East Main Street
St. Charles, IL 60174

Re: Orange Crush, LLC – Bonding Prequalification

To Whom This May Concern:

Please be advised that Hub International Midwest provides surety support and services to Orange Crush, LLC and our experience with them has been exemplary.

We maintain an active surety bond program for Orange Crush, LLC and have an established $50 million single / $150 million aggregate bond program in place with Zurich American Insurance Company (A+, XV rated by A.M. Best Company / U.S. Treasury limit of $600 million) and/or its affiliate Fidelity & Deposit Company of Maryland. Please understand that these limits are established to service day-to-day bonding needs for Orange Crush, LLC but in no way preclude their ability to bid larger projects/work programs as needed. Their current available bonding capacity is over $100 million. Orange Crush, LLC has always completed its bonded and unbonded projects successfully and we welcome their next bond request.

Please note that the approval and execution of any specific surety bond will always be conditioned upon the surety's complete underwriting review including, but not limited to, the review and acceptance of the final contract terms, evidence of 100% project financing and the use of acceptable bond forms. This letter is not to be construed as an agreement to provide surety bonds for any particular project but is offered as an indication of our past experience and complete confidence in Orange Crush, LLC.

We offer our highest recommendation to you of our valued client, Orange Crush, LLC. Should you have any questions, please contact me directly.

Sincerely,

Amy Wickett

Amy Wickett
Vice President

MAINTENANCE BOND

Bond No. 9406745

KNOW ALL MEN BY THESE PRESENTS:

That Orange Crush, LLC, as Principal, hereinafter called Contractor, and Fidelity and Deposit Company of Maryland, as Surety, hereinafter called Surety, are held and firmly bound unto City of St. Charles, as Obligee, hereinafter called Owner, in the penal sum of One Hundred Eight Thousand Nine Hundred Sixteen and 50/100 ($ 108,916.50) Dollars for payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has constructed various public improvements: In Athem Heights
in accordance with the General Conditions, the Drawings and Specifications, which Plans are by reference incorporated herein, and made a part hereof, and is referred to as the Plans.

NOW, THEREFORE, the condition of this obligation is such that, if Contractor shall remedy any defects due to faulty materials or workmanship, and pay for any damage to other work resulting there from, which shall appear within a period of Five (5) Year(s) from the date of acceptance of the improvements by the Obligee, then this obligation to be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that Owner shall give Contractor and Surety notice of observed defects with reasonable promptness.

SIGNED and sealed this 28th day of October, 2022

In the presence of:

ANDY AHERN - SECRETARY

Orange Crush, LLC
Principal

By: DANIEL AHERN
VICE PRESIDENT
Title

Fidelity and Deposit Company of Maryland
Surety

By: James I. Moore, Attorney-in-Fact

FIDELITY AND DEPOSIT COMPANY INCORPORATED OF MARYLAND 1890

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by **Robert D. Murray, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Kelly A. GARDNER, Sherry BACSKAI, Stephen T. KAZMER, Jennifer J. MCCOMB, Diane M. RUBRIGHT, James I. MOORE, Elaine MARCUS, Dawn MORGAN, Melissa SCHMIDT of Downers Grove, Illinois, EACH,** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings,** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 26th day of April, A.D. 2021.

ATTEST:
ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By: Robert D. Murray
Vice President

By: Dawn E. Brown
Secretary

State of Maryland
County of Baltimore

On this 26th day of April, A.D. 2021, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposeth and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

Constance A. Dunn, Notary Public
My Commission Expires: July 9, 2023

Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify of revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 28th day of October, 2022.

Brian M Hodges

By: Brian M. Hodges
Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:

Zurich Surety Claims
1299 Zurich Way
Schaumburg, IL 60196-1056
www.reportsfclaims@zurichna.com
800-626-4577

Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790

STATE OF ILLINOIS}
COUNTY OF DUPAGE}

On October 28, 2022, before me, Alexandra Sartori, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared James I. Moore known to me to be Attorney-in-Fact of Fidelity and Deposit Company of Maryland the corporation described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument in behalf of the said corporation, and he duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year stated in this certificate above.

My Commission Expires July 5, 2024

Alexandra Sartori, Notary Public
Commission No. 840142

OFFICIAL SEAL
ALEXANDRA SARTORI
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires July 5, 2024

(Roadway, Sidewalks, Parkway Trees)

City of St. Charles
Kane and DuPage Counties

ACCEPTANCE RESOLUTION

Subdivision Name: Anthem Heights

Whereas Lennar, the Developer of Anthem Heights, constructed Public Sidewalks, Curb and Gutter, Final Pavement Surface Course, and Parkway Trees in right-of-way as described in the attached exhibits in the aforesaid Subdivision; and

Whereas, the Developer has constructed Sidewalks, Curb and Gutter, Final Pavement Surface Course, and Parkway Trees in accord with the plans and specifications, heretofore approved by the City of St. Charles; and

Whereas, the constructed Sidewalks, Curb and Gutter, Final Pavement Surface Course, and Parkway Trees and appurtenances have been inspected by the Engineer for the sub divider and by a representative for the City of St. Charles and are found to be satisfactory;

Now, Therefore, Be It Resolved by the City Council of St. Charles, that said Council hereby approves and accepts the constructed including Sidewalks, Curb and Gutter, Final Pavement Surface Course, and Parkway Trees. It being understood that this acceptance and/or approval in no way relieves the Developer of his Surety of any obligation for maintenance for a period of one (1) year as provided for in said Contract for Sidewalks, Curb and Gutter, and Parkway Trees, and an extended period of five (5) years for Final Pavement Surface Course, per letter of agreement with the Pavement Contractor, Orange Crush LLC.

Passed by the City Council of the City of St. Charles, this__day of November, 2022, and APPROVED by the Mayor of said City of St. Charles, this ___ day of November, 2022.

_____

MAYOR

ATTEST:

_____
CITY CLERK

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that Cal Atlantic Group, LLC, an Illinois Limited Liability Company ("Seller"), in consideration of One ($1.00) Dollar and other good and valuable consideration, does hereby grant, sell, transfer and deliver unto the CITY OF ST. CHARLES, an Illinois municipal corporation in Kane County, Illinois, ("City") the following goods, chattels or other items of personal property, to wit:

ONE: Each and every part of Anthem Heights Subdivision- Public Sidewalks, Curb and Gutter, Final Pavement Surface Course, Parkway Trees, as fully described in a certain set of plans and specifications attached hereto and incorporated herein as Exhibit "A",as Final Engineering Plans for Anthem Heights Subdivision prepared by Mackie Engineering and dated April 5, 2017.

TWO: The object of this Bill of Sale is to grant, sell, transfer and deliver to the CITY, with the exceptions noted, the ownership in all items of personalty, which comprise Anthem Heights Subdivision- Public Sidewalks, Curb and Gutter, Final Pavement Surface Course, Parkway Trees by SELLER to date within the CITY.

SELLER does hereby covenant and warrant to the CITY that SELLER is the lawful owner of the aforedescribed goods, chattels and personalty; that such items are free and clear from all encumbrances; that SELLER has the absolute right to sell the same as aforesaid; and that SELLER warrants and will defend the same against the claims and demands of all persons; and that the execution of this Bill of Sale is an authorized act of said SELLER.

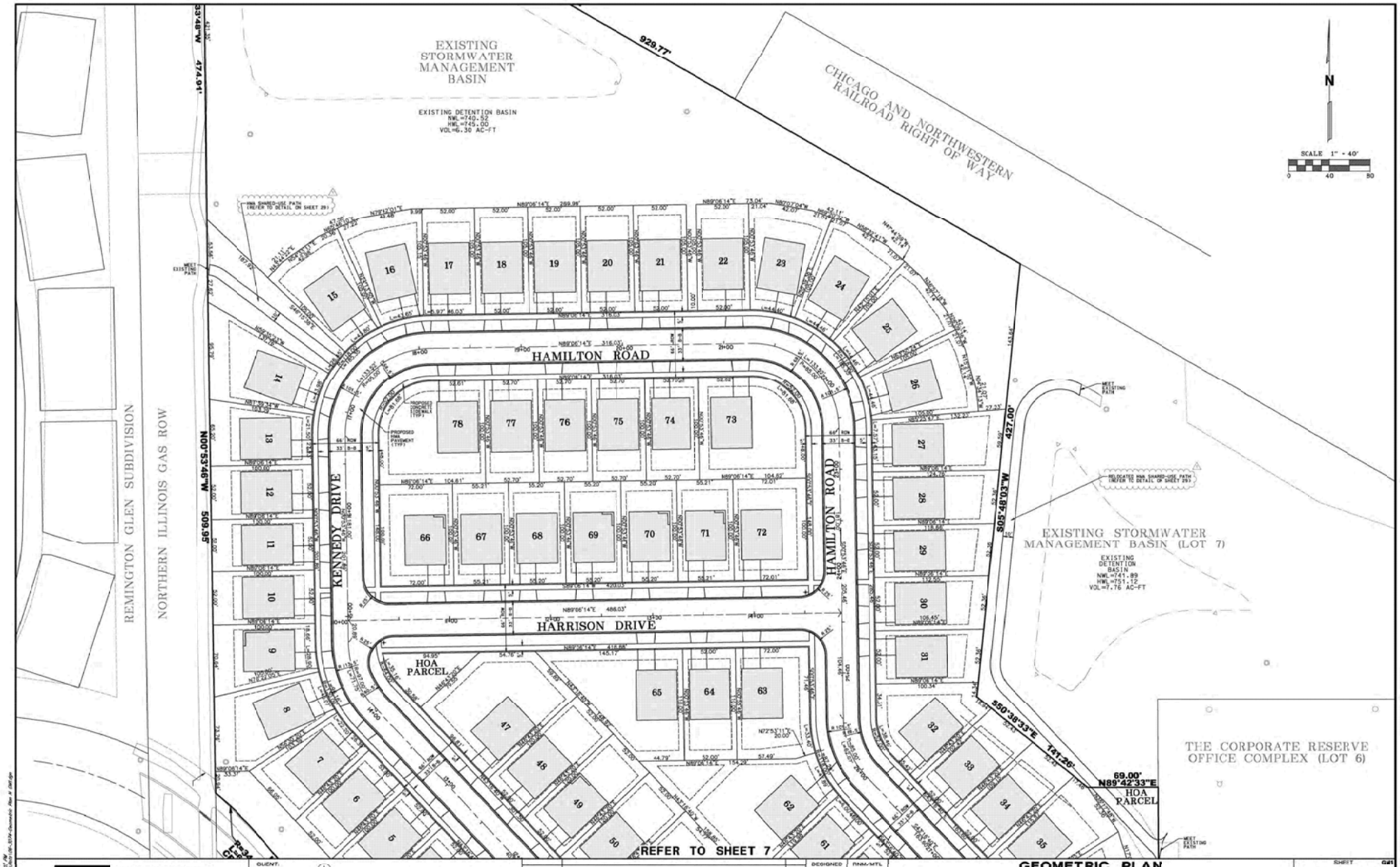
IN WITNESS WHEREOF, SELLER has signed and sealed this Bill of Sale at Cook County, this 15 day of November, 2022.

(SELLER)
CAL ATLANTIC GROUP, LLC,
an Illinois LIMITED LIABILITY COMPANY.

BY: _____

ITS: DIVISION PRESIDENT

ATTEST:
_____



Mackie Consultants, LLC
9575 W. Higgins Road, Suite 500
Rosemont, IL 60018
(847)695-1400
www.mackieconsult.com

CLIENT:
CALATLANTIC HOMES
CalAtlantic Homes
1141 East Main Street, Suite 108
East Dundee, IL 60118
Phone: 224-293-3100 Fax: 224-293-3101

DATE	DESCRIPTION OF REVISION	BY
04/05/17	REVISIONS PER PUBLIC WORKS DEPARTMENT COMMENT	RNN
03/29/17	REVISIONS PER CITY COMMENT	RNN
03/16/17	REVISIONS PER CITY COMMENT	RNN

DESIGNED	RNN-MTL
DRAWN	DWP
APPROVED	AJM
DATE	01/13/2017
SCALE	1" = 40'

GEOMETRIC PLAN
ANTHEM HEIGHTS SUBDIVISION OF LOT 8
(FORMERLY CORPORATE RESERVE)
ST. CHARLES, ILLINOIS

SHEET 6 OF 33

PROJECT NUMBER: 3074

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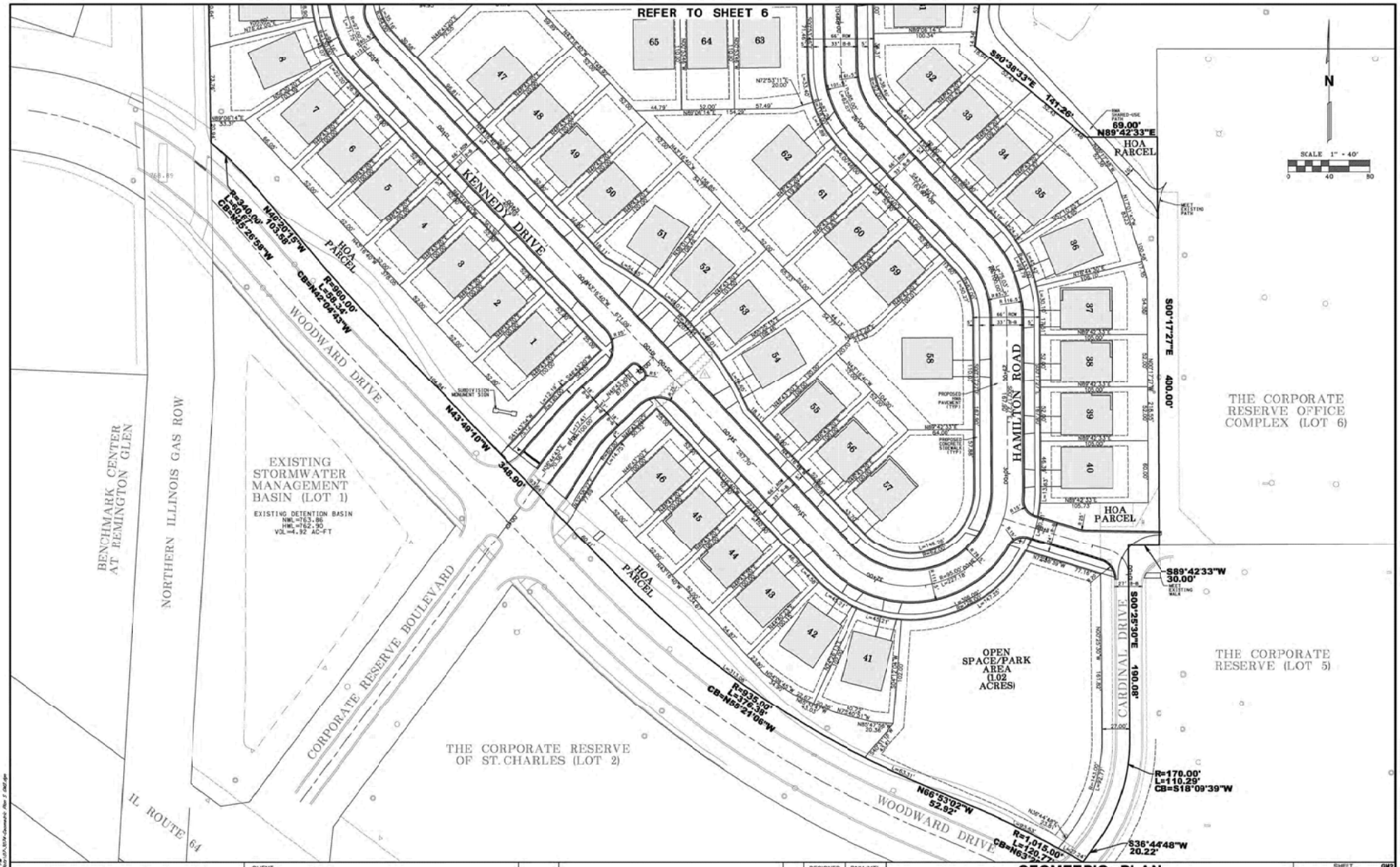
ILLINOIS FIRM LICENSE 184-002694



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DRAWN	DWP
APPROVED	AJM
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GEOMETRIC PLAN
ANTHEM HEIGHTS SUBDIVISION OF LOT 8
(FORMERLY CORPORATE RESERVE)
ST. CHARLES, ILLINOIS

SHEET 7 OF 33

PROJECT NUMBER: 3074

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