 <p>CITY OF ST. CHARLES ILLINOIS • 1834</p>	<b>AGENDA ITEM EXECUTIVE SUMMARY</b>		Agenda Item number: 6a
	Title:	<p>- Recommendation to approve a Resolution Authorizing the Mayor to Demand Payment Under a Letter of Credit – The Reserve of St. Charles Subdivision Phase 2 (To obtain \$343,249 from Bank for City Use to Complete the Streets)</p> <p>- Recommendation to Waive the Formal Bid Procedure and approve a Resolution to Authorize a Construction Contract with Geneva Construction for Street Pavement Work in The Reserve of St. Charles Subdivision Phase 2 (In the amount of \$385,818)</p>	
	Presenter:	Russell Colby, Community Development Director	
<b>Meeting:</b> Planning & Development Committee		<b>Date:</b> September 11, 2023	
<b>Proposed Cost:</b> \$385,818 contract, Requires \$42,569 in City Funds		<b>Budgeted Amount:</b> \$343,249 available from Bank (Developer Letter of Credit)	<b>Not Budgeted:</b> <input checked="" type="checkbox"/> \$42,569
<b>TIF District:</b> None			
<p><b>Executive Summary</b> (if not budgeted, please explain): The item was discussed at P&amp;D Committee on Sept. 11. In response to questions from Committee, staff is providing the following supplemental information:</p>			
<p><b><u>Project History</u></b></p> <ul style="list-style-type: none"> <li>• The original developer of the Reserves was Ryland Homes. Ryland constructed the existing roads in Phase 2 in 2006-2007. This included the roadway curbing and base pavement.</li> <li>• Omni-Tech LLC purchased Phase 2 from Ryland in 2009. The City returned the original Financial Guarantee to Ryland and accepted a new Financial Guarantee from Omni-Tech for the remaining improvements in Phase 2. This guarantee did <u>not</u> include the base pavement, as this had already been constructed by Ryland. Land Improvement Agreements with Omni-Tech from 2009 and 2012 are attached for reference. The current Letter of Credit is also attached.</li> </ul>			
<p><b><u>Communication with the Developer</u></b></p> <ul style="list-style-type: none"> <li>• Omni-Tech LLC, through manager Gary Janko, has designated Jay Dulla of Meritus Homes to represent their interests in discussions with the City. Meritus is an affiliate of Janko Group.</li> <li>• Staff has been in contact with Meritus representatives regularly since last year regarding the status of the road completion. Staff has communicated the City’s position that the base pavement requires full replacement, and that this work needs to be part of the final street construction in order for the City to accept the completed roadways. Meritus obtained quotes for the work as recently as this Spring and shared these quotes with the City. Their position has been that they will not be responsible for any cost that exceeds the Letter of Credit.</li> <li>• In July, after a meeting with Jay Dulla, staff formally directed Omni-Tech to complete the improvements this year and requested a response and construction schedule by August 4. We have received no written response. There has been communication by phone and email with Dulla, but Omni-Tech has not offered any official position to the City in writing. A written response was again requested this week following the recent Committee discussion.</li> <li>• Staff has consulted with the City Attorney regarding the status of the project and Land Improvement Agreement. The City has not yet declared the developer to be in default of the Land Improvement Agreement, pending consideration of these agenda items.</li> </ul>			

### **Work Scope for the Project**

The work scope proposed includes the following:

- Contractor Mobilization
- Curb and Sidewalk repair as identified by our engineering inspector. This estimate includes sections of curbing that appear to have structural issues, not cosmetic damage.
- Driveway Aprons. This is only for driveways impacted by curb work. City practice with street work has been to replace entire aprons if impacted by curb work. Alternately, a shorter section of apron could instead be replaced if needed (1 to 2 ft.). However, aprons may not be impacted by the curb work given that the driveways in the subdivision are relatively new. This will be determined during the actual construction.
- Remove and replace deteriorated base pavement
- Final surface pavement course

### **Quotes**

Staff obtained the following 5 quotes from paving contractors. The results are listed in the table below. Quotes are attached for reference.

<b>Name of Firm</b>	<b>Quote</b>
Geneva Construction	\$385,818
Builder's Paving	\$390,000
Schroeder Asphalt Services	\$413,444
J.A. Johnson Paving	\$424,200
Superior	\$435,000

### **Splitting up the project scope**

If there was an interest to complete improvements up to the Financial Guarantee amount of \$343,249, staff would offer the following:

- The initial work would include: All curb/sidewalk/driveway aprons, and all roadway base removal/ replacement. Final surface course pavement could be installed next year, or alternately could also be installed to the extent possible within the budget amount this year. Final surface on the more highly trafficked roadways used to enter and exit the subdivision would be a priority (Reserve Dr. and Foley Ln.)
- The remaining work could then be budgeted and bid in Spring 2024. Note, costs would include a new mobilization by the paving contractor, and unit costs could be higher due to reduced project size.
- The City would need to complete the full project in order to try to recover any costs from the developer, so splitting the project would delay any legal process until Spring/Summer 2024.

### **Potential policy changes**

- This is a unique situation as a result of the lengthy build out timeline for the subdivision. This timeline was not anticipated when the City accepted the 2009 guarantee.
- Going forward, staff will consider policy or code changes to prevent returning any financial guarantee for partially constructed roadways, and set more regular intervals to increase the guarantee amount as costs and conditions change over time.

*Note, in this instance, despite the guarantee not including a line item cost to remove/replace the base pavement, the City still expects to cover 89% of the construction cost, if completed in a single project.*

***From Sept. 11 P&D Meeting summary:***

**Background**

The Reserves Subdivision, located on the north end of the City along Route 31, was approved in 2005 and subdivision site improvements were installed by the original developer in 2006-2008. Phase 2, the western portion of the site, was purchased by the current developer, Omni-Tech, LLC, in 2009. The houses in Phase 2 were constructed by Meritus Homes and the build out was recently completed. At this time, the only remaining subdivision improvement to be completed are the streets in Phase 2, which includes curb/sidewalk repair and final paving surface. Completion of the street is the responsibility of Omni-Tech, LLC per their 2009 Land Improvement Agreement with the City.

Staff determined that because the base/binder course was exposed to the elements for nearly 15 years, the pavement has deteriorated and needs to be removed and new base/binder course installed before the final paving surface. The developer has informed the City that they are not willing to complete this full work scope, as they are not willing to fund any additional improvements over the remaining financial guarantee for the project, which is a Letter of Credit in the amount of \$343,249.

**Proposal**

The unwillingness of the developer to complete the full street improvements has left the City with 2 bad options; either attempt to force the developer to fulfill their obligation to construct all required public improvements—which would push the completion timeline into 2024—or assume the responsibility and expense to complete the required work. After discussion, staff concluded that City completion of the work this year is preferable, as the streets need maintenance prior to winter. Additionally, the residents of the “new” subdivision have been living with incomplete streets for a number of years, and are understandably frustrated.

The City requested quotes from 5 different street-paving contractors and the lowest quote to complete the required work is \$385,818. This quote is from Geneva Construction, the low bidder on the City’s 2023 Street Rehabilitation work. If the City decides to complete the work, the ‘shortfall’ between the available security funds and the project cost is \$42,569, but may be slightly more or less than this exact amount pending the final quantities needed for the work.

Geneva Construction has indicated that they can mobilize to complete this project during the current paving season *if the city commits to hire them for this project no later than the end of September.*

Should the Committee recommend that the City draw on the Letter of Credit and proceed with completion of the project, a Bid Waiver and Contract will be presented for City Council approval. This approval would be contingent upon the City successfully obtaining the Letter of Credit funds, and would require an additional budget add of \$42,569 to complete the project.

The developer, Omni-Tech, LLC, has indicated that they would not dispute the City drawing on the Letter of Credit. However, staff has not agreed to waive any rights under the Land Improvement Agreement to seek reimbursement from the developer, if possible.

**Attachments** (please list):

Aerial photo, Resolutions, Bid Waiver, Quotes, Letter to Developer, Land Improvement Agreements, Financial Guarantee

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

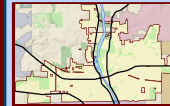
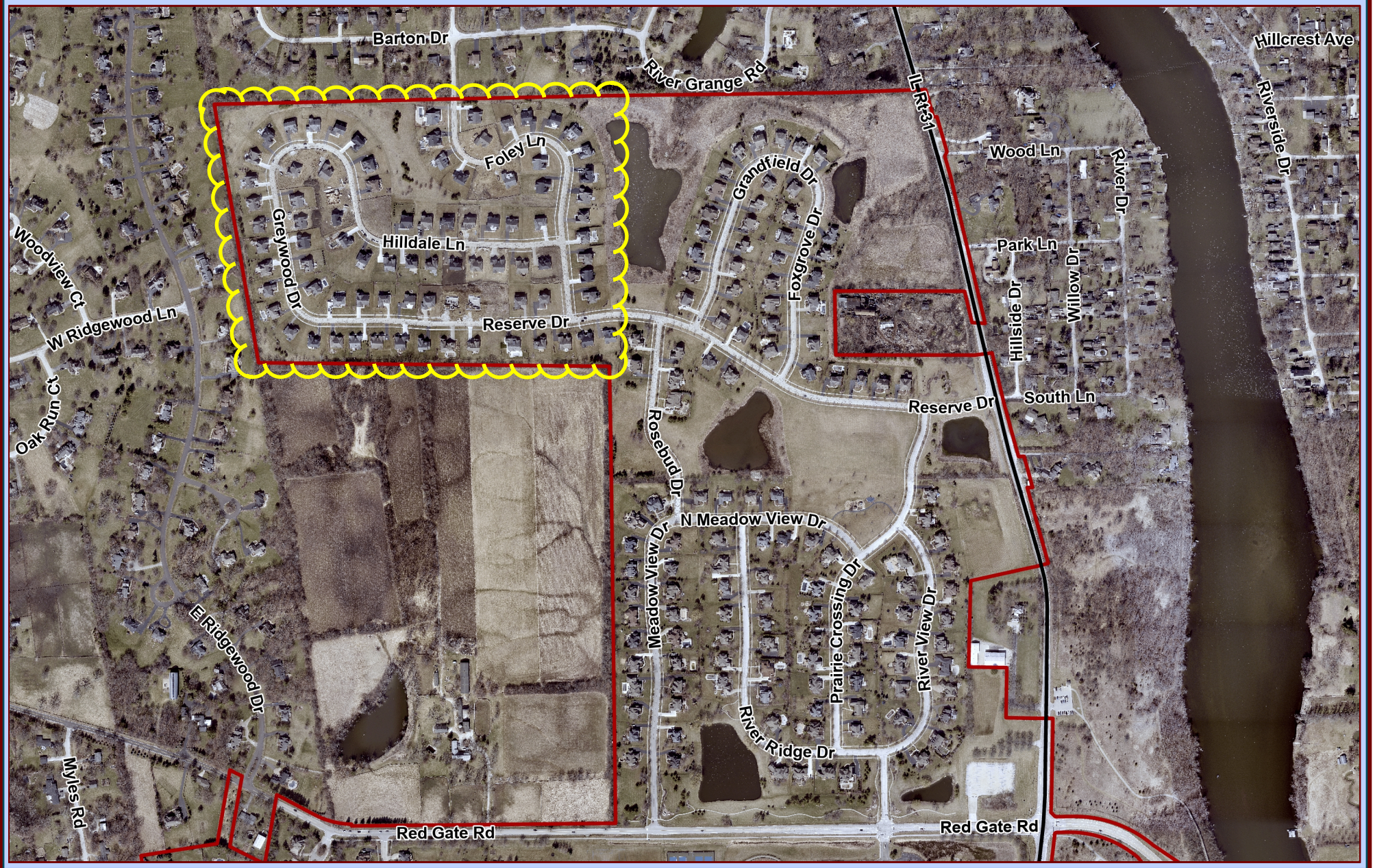
**Two separate motions are suggested-**

***The first motion would recommend authorizing the City to obtain the financial guarantee funds from the bank:***

- Recommendation to approve a Resolution Authorizing the Mayor to Demand Payment Under a Letter of Credit – The Reserve of St. Charles Subdivision Phase 2 (To obtain \$343,249 from Bank for City Use to Complete the Streets)

***The second motion would recommend approving a construction contract to complete the work:***

- Recommendation to Waive the Formal Bid Procedure and approve a Resolution to Authorize a Construction Contract with Geneva Construction for Street Pavement Work in The Reserve of St. Charles Subdivision Phase 2 (In the amount of \$385,818)



Data Source:  
 City of St. Charles, Illinois  
 Kane County, Illinois  
 DuPage County, Illinois  
 Projection: Transverse Mercator  
 Coordinate System: Illinois State Plane East  
 North American Datum 1983  
 Printed on: September 6, 2023 11:39 AM



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 Prepared by Precision GIS

**City of St. Charles, Illinois**  
**Resolution No. 2023- \_\_\_\_**

**Resolution Authorizing the Mayor to Demand Payment Under a Letter of Credit- The Reserve of St. Charles Subdivision, Phase 2**

WHEREAS, the City of St. Charles approved the final plat of subdivision entitled "The Reserve of St. Charles", and had the same recorded in the recorder of Deeds Office, Kane County, Illinois, on February 14, 2006, as Document No. 2006K01694; and

WHEREAS, pursuant to a Land Improvement Agreement (the "Agreement") dated July 20, 2009 and amended November 19, 2012, Omni-Tech, LLC (the "Developer") was required to complete the required Land Improvements by October 31, 2016 (the "Completion Date"); and

WHEREAS, as required by the Agreement, the Developer has provided Irrevocable Letter of Credit No. 70505, dated July 22, 2009, as amended, from Morton Community Bank in order to secure completion of the Land Improvements; and

WHEREAS, the Developer has failed to satisfactorily complete the work of the installation and construction of the required Land Improvements, and the subdivision is now fully built out; and

WHEREAS, City staff has made contacts and met with the Developer regarding said failure, without resolution; and,

WHEREAS, the Developer's failure to complete the Land Improvements constitutes a default of the Agreement; and,

WHEREAS, the City further finds and determines that the public interest requires that the City construct or cause the construction of the Land Improvements; and,

WHEREAS, the City further finds and determines that it is necessary to draw on the Letter of Credit to pay for the construction of the Land Improvements, all in accordance with the Agreement and Letter of Credit.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois that the Mayor is hereby authorized and directed to demand payment pursuant to the Agreement and Letter of Credit and to take such other and further actions as may be necessary.

PRESENTED to the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, this 18th day of September, 2023.

PASSED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, this 18th day of September, 2023.

APPROVED by the Mayor of the City of St. Charles, Kane and DuPage Counties, Illinois, this 18th day of September, 2023.

\_\_\_\_\_  
Lora A. Vitek, Mayor

Attest:

\_\_\_\_\_  
City Clerk

Council Vote:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Abstain: \_\_\_\_\_

Absent: \_\_\_\_\_

**City of St. Charles, Illinois  
Resolution No. 2023-\_\_\_\_\_**

**Resolution to Waive the Formal Bid Procedure and Authorize a Construction Contract with Geneva Construction for Street Paving Work in the Reserve of St. Charles Phase 2**

**Presented & Passed by the  
City Council on \_\_\_\_\_**

WHEREAS, the Community Development Department is seeking Construction Service to complete and anticipated subdivision developer obligation; and

WHEREAS, Geneva Construction has successfully provided this service to the City and was the low bidder for the City's 2023 Street Rehabilitation Program and is familiar with the City's requirements; and

WHEREAS, Geneva Construction provided the lowest of 5 quotes for this work and is able to complete the work during this current construction season; and

WHEREAS a request has been made to waive the Bid Procedure and proceed with entering a contract with Geneva Construction for these services.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, to Waive the Formal Bid Procedure and Authorize a Construction Contract with Geneva Construction for Street Paving Work in the Reserve of St. Charles Phase 2, the amount of \$385, 318.

PRESENTED to the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, this 18th day of September 2023.

PASSED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, this 18th day of September 2023.

APPROVED by the Mayor of the City of St. Charles, Kane and DuPage Counties, Illinois, this 18th day of September 2023.

\_\_\_\_\_  
Lora A. Vitek, Mayor

Attest:

\_\_\_\_\_  
City Clerk/Recording Secretary



Resolution No. \_\_\_\_\_

Page 2

Voice Vote:

Ayes:

Nays:

Absent:

Abstain:



# Bid Waiver ■ One Time ■ Today through \_\_\_\_\_

Description: Reserve Subdivision Phase 2 Street Completion

Requested Vendor: Geneva Construction

Requested By: Bruce Sylvester Date: 9/11/2023

Approval: Russell Colby  
Department Head Signature

Bid Waivers are required when there are unique circumstances related to a proposed procurement that has not been competitively solicited.

1. This procurement is valued at \$ 385,818 for this one-time order, and/or \$ \_\_\_\_\_ for a 12-month period.
2. This good/service has been competitively solicited within the past 24 months. ■ YES NO  
If Yes, Was the solicitation published on the city website? ■ YES NO

### 3. Justification for Bid Waiver:

**Emergency** i.e. declared by the Mayor and applicable to EOC/FEMA procedures.

**Urgent** i.e. required to resolve an unanticipated problem that, if not resolved within 48 hours, may cause undue risk to individuals and/or extensive damage to property.

- Need for these goods/services were **not anticipated and procurement through normal channels would take too long.**

A responsible **contractor was on site** performing a related repair, and based on professional judgement; it was prudent to request this service/repair from said contractor.

These goods are replacement parts for a **warrantied item, and the warranty is still in place**, and purchase of a non-brand item will jeopardize warranty.

- These goods/services are **inherently related to, and an ongoing part of**, other goods/services previously provided by the Provider.

These goods utilize a **proprietary, patent, trademark, or customized programming** resulting in lack of competition.

These goods are **standardized** for operational safety and efficiency.

These goods are only available through the provider's **local distribution** channels.

These goods/services were purchased through a **Cooperative Purchasing Agreement**. \_\_\_\_\_

- **Other:** Provider was selected through competitive bid process to provide MFT street paving services in the the City this year, and this project will be contracted under the same terms and at comparable unit prices. Provider was also lowest quote of 5 local paving contractors.  
Project had not been anticipated and is resulting from City taking over an incomplete developer obligation.



# GENEVA CONSTRUCTION COMPANY

INDIAN TRAIL and Route 25 \* P.O. Box 998 - AURORA, ILLINOIS 60507

Phone: (630) 892-4357 - Fax: (630) 892-7738

- \* City Of St Charles
- \* Bruce Sylvester
- \* 2 E Main St
- \* St Charles , IL 60174

DATE 8/15/2023

## The Reserve of St. Charles

We propose to furnish the following described construction, including all labor, materials and equipment according to standard construction practices.

QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
587	LF	Remove and Replace Curb & Gutter, includes Backfill with Topsoil	\$65.00	\$38,155.00
25	SF	Remeove and Replace Sidewalk	\$20.00	\$500.00
10	SF	Detecable Warning	\$37.00	\$370.00
312	SY	Remove and Replace Asphalt Drive Aprons (ones where curb is being removed)	\$39.00	\$12,168.00
16648	SY	Mill off 2.25" existing asphalt binder	\$2.15	\$35,793.20
16648	SY	Sweep and Tack Milled Surface	\$0.50	\$8,324.00
16648	SY	2.25 HMA Binder Course IL 19.0 N50	\$10.00	\$166,480.00
16648	SY	1.5" HMA Surface Course IL 9.5 N50	\$7.45	\$124,027.60

**TOTAL \$385,817.80**

**NOTES:** If accepted, this work will not be scheduled for construction until one signed copy of the proposal has been received at our office.

\* For information regarding scheduling of construction, please contact our Paving Department at (630) 892-4357.

**TERMS:** Final settlement will be based upon actual units of work completed at the bid price per unit.

\* This proposal is subject to the terms, specifications and conditions of sale printed on the second page of this proposal hereof, which are made a part of this proposal.

\* This proposal is made in DUPLICATE and will constitute a binding agreement providing it is accepted within 60 days from date hereof.

The above proposal is accepted:

GENEVA CONSTRUCTION COMI  
Cass W. Price, Vice President

Name, Title, Date



Builders Paving, LLC  
 4401 Roosevelt Road  
 Hillside, IL 60162  
 Phone: 847.419.9000 Fax: 847.419.9050

<b>To:</b>	City Of St. Charles	<b>Contact:</b>	Bruce Sylvester
<b>Address:</b>	2 East Main Street St. Charles, IL 60174	<b>Phone:</b>	(630) 377-4420
<b>Project Name:</b>	St Charles - The Reserve Paving Rehabilitation	<b>Fax:</b>	(630) 513-7442
<b>Project Location:</b>	Reserve Dr & Rte 31, St. Charles, IL	<b>Bid Number:</b>	10627
		<b>Bid Date:</b>	8/9/2023

The following is a recap of our quantities and pricing for this project.

Line #	Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
1		MOBILIZATION	1.00	LS	\$20,000.00	\$20,000.00
2		TRAFFIC CONTROL	1.00	LS	\$3,108.09	\$3,108.09
3		HMA SURFACE REMOVAL, 2-1/4"	16,648.00	SY	\$2.50	\$41,620.00
4		HMA BINDER COURSE, IL-19.0, N50	2,097.65	TON	\$72.00	\$151,030.80
5		HMA SURFACE COURSE, MIX D, N50	1,398.43	TON	\$80.00	\$111,874.40
6		BITUMINOUS MATERIALS (TACK COAT)	11,320.64	LB	\$0.01	\$113.21
7		CURB REMOVAL & REPLACEMENT	587.00	LF	\$70.00	\$41,090.00
8		PCC SIDEWALK, 5"	25.00	SF	\$20.00	\$500.00
9		SIDEWALK REMOVAL	25.00	SF	\$20.00	\$500.00
10		DETECTABLE WARNINGS	10.00	SF	\$40.00	\$400.00
11		HMA DRIVEWAY PAVEMENT, 3"	312.00	SY	\$35.00	\$10,920.00
12		HMA DRIVEWAY PAVEMENT REMOVAL	312.00	SY	\$20.00	\$6,240.00
13		TOPSOIL FURNISH & PLACE, 4"	196.80	SY	\$3.50	\$688.80
14		SEEDING, CLASS 1	0.04	ACRE	\$3,500.00	\$143.50
15		EROSION CONTROL BLANKET	196.80	SY	\$9.00	\$1,771.20
<b>Total Price for above Items:</b>						<b>\$390,000.00</b>

**Total Bid Price: \$390,000.00**

**Notes:**

- Our pricing is based upon completing all work in the 2023 construction season.
- We have included (1) Mobilization to complete our work.
- We have not included any allowance for winter conditions, poor weather conditions and associated costs in our pricing.
- NIC- Engineering and layout work to establish lines and grades, as-builts.
- NIC- Payment of permit fees.
- NIC - Patching of Unsuitable Areas.
- NIC - Adjustment or reconstruction of new or existing structures.
- NIC - Labor overtime required or directed by others.
- The above items and our standard terms of payment and insurance coverages strictly define this proposal. Should conflict with the plans, specifications or other project documents arise, this proposal shall take precedence.
- The subcontractor has a right to an equitable price adjustment in case of delays, accelerations, out-of-sequence work and schedule changes beyond its reasonable control, and can terminate the subcontract in case such events delay work by more than 90 days.
- It is expected that all finished concrete work that abuts flexible pavement will be installed, cured and backfilled before we mobilize to the project.
- Our proposal is based upon all project ingress and egress points indicated on the plans being available and accessible at the time of our installation.
- It is expected that all underground structures, piping, conduits and foundations will be installed, cured and backfilled before we mobilize to the project.
- NIC - Additional testing costs associated with Clean Construction and Demolition Debris (CCDD) Regulations, which require uncontaminated soil certification of construction spoils before they can be hauled to and accepted at a legal dump.
- All roadway and pavement construction to be installed per IDOT Standard Specifications for Road & Bridge Construction, latest edition.

Quantity	Unit	Item Name	Unit Cost	Total Cost
1	LS	MOBILIZATION	\$8,000.00	\$8,000.00
1	LS	TRAFFIC CONTROL	\$5,000.00	\$5,000.00
16648	SY	HOT-MIX ASPHALT SURFACE REMOVAL, 2-1/4"	\$ 2.00	\$33,296.00
2097.65	TN	HOT-MIX ASPHALT BINDER COURSE, IL-19.0, N50	\$88.00	\$184,593.20
1398.43	TN	HOT-MIX ASPHALT SURFACE COURSE, MIX "D" N50	\$ 90.00	\$125,858.70
11320.64	POUND	BITUMINOUS MATERIALS (TACK COAT)	\$ 0.01	\$113.21
587	LF	CURB REMOVAL AND REPLACEMENT	\$ 65.00	\$38,155.00
25	SF	PORTLAND CEMENT CONCRETE SIDEWALK 5 INCH	\$ 40.00	\$1,000.00
25	SF	SIDEWALK REMOVAL	\$ 30.00	\$750.00
10	SF	DETECTABLE WARNINGS	\$ 40.00	\$400.00
312	SY	HOT-MIX ASPHALT DRIVEWAY PAVEMENT, 3"	\$ 27.00	\$8,424.00
312	SY	HOT-MIX ASPHALT DRIVEWAY PAVEMENT REMOVAL	\$ 15.00	\$4,680.00
196.8	SY	TOPSOIL FURNISH AND PLACE, 4"	\$ 8.00	\$1,574.22
0.041	AC	SEEDING, CLASS 1	\$20,000.00	\$813.13
196.8	SY	EROSION CONTROL BLANKET	\$ 4.00	\$787.11
			Total:	\$413,444.57

Schroeder

Quantity	Unit	Item Name	Unit Cost	Total Cost
1	LS	MOBILIZATION		
1	LS	TRAFFIC CONTROL	\$15,000.00	\$15,000.00
16648	SY	HOT-MIX ASPHALT SURFACE REMOVAL, 2-1/4"	\$6,874.34	\$6,874.34
2097.65	TN	HOT-MIX ASPHALT BINDER COURSE, IL-19.0, N50	\$ 2.50	\$41,620.00
1398.43	TN	HOT-MIX ASPHALT SURFACE COURSE, MIX "D" N50	\$78.00	\$163,616.70
11320.64	POUND	BITUMINOUS MATERIALS (TACK COAT)	\$ 85.00	\$118,866.55
587	LF	CURB REMOVAL AND REPLACEMENT	\$ 0.01	\$113.21
25	SF	PORTLAND CEMENT CONCRETE SIDEWALK 5 INCH	\$ 100.00	\$58,700.00
25	SF	SIDEWALK REMOVAL	\$ 25.00	\$625.00
10	SF	DETECTABLE WARNINGS	\$ 10.00	\$250.00
312	SY	HOT-MIX ASPHALT DRIVEWAY PAVEMENT, 3"	\$ 50.00	\$500.00
312	SY	HOT-MIX ASPHALT DRIVEWAY PAVEMENT REMOVAL	\$ 36.00	\$11,232.00
196.8	SY	TOPSOIL FURNISH AND PLACE, 4"	\$ 11.00	\$3,432.00
0.041	AC	SEEDING, CLASS 1	\$ 6.00	\$1,180.80
196.8	SY	EROSION CONTROL BLANKET	\$15,000.00	\$615.00
			\$ 8.00	\$1,574.40
		<b>Total</b>		<b>\$424,200.00</b>

**Notes / Qualifications:**

- The proposal is based on completing all work in one (1) mobilization and is valid for work to be completed in the 2023 construction season.
- HMA and PCC materials furnished shall be IDOT approved mixtures. Pricing includes QC/QA plant and field testing of HMA & PCC materials.
- Pricing does not include sales tax on materials.
- This is a unit price proposal. If awarded a contract, J.A. Johnson Paving Company shall be paid for the actual quantities completed as measured in the field and/or as verified by material delivery tickets.

\*Rounded long fractional quantity cells on highlighted items to balance extension amounts based on the actual quantities shown on City's "Pay Item List".

J. A. Johnson Paving Co.  
1025 E. Addison Court  
Arlington Heights, IL 60005



# SUPERIOR PAVING Inc.

PO Box 98, Fox Lake, IL 60020  
Phone: 847-587-1292 Fax: 847-587-1380

## PROPOSAL

No: 230409

DATE  
5/1/2023

CONTACT NAME  
Jay Dulla

PHONE  
(708) 899-6263

PHONE

FAX

TO:  
Meritus Homes  
2610 Lake Cook Rd., Suite 100  
Riverwoods, IL 60015

JOB NAME & LOCATION  
Reserve Of St. Charles - Road Resurfacing  
Reserve Dr / Greywood Dr / Hilldale Ln / Foley Dr  
St. Charles, IL

EMAIL  
jmdulla@gmail.com

### Roadway Resurfacing: 18,300 SY

- Mill roadway, 2" below existing pavement elevation, totaling 18,300 SY.
- Clean and sweep milled surface, and apply bituminous tack coat (SS-1) for proper bond.
- Install 2" compacted thickness HMA binder course, N50.
- Install 1.5" Compacted thickness HMA surface course, N50.

### ADDITIONAL NOTES:

- Any extra gravel will be charged @ \$40.00 per ton installed.
- Client/Homeowner is responsible for obtaining permits, security deposits and fees if required.

In the event of any legal action to collect outstanding debts due Superior Paving Inc., customer agrees to assume the full amount, with interest of 1 1/2% per month on accounts over 30 days, plus the cost of all legal fees.

We propose to complete the above work in accordance with above specifications, for the sum of:

FOUR HUNDRED THIRTY-FIVE THOUSAND DOLLARS (\$ 435,000.00 )

Payment to be made as follows: PAYMENT DUE UPON COMPLETION

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Authorized Signature

Mike Madsen - Project Manager

**Acceptance of Proposal** - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. **Note: This proposal may be withdrawn by us if not accepted within 30 days.**

Date of Acceptance: \_\_\_\_\_

Signature: \_\_\_\_\_

# OMNI-TECH LLC

July 12, 2023

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

Re: Omni-Tech, LLC

To Whom It May Concern,

Please use this letter as authorization for Jay Dulla to discuss and propose resolutions with the City of St. Charles to resolve the remaining issues needed to complete the subdivision improvements required by the City.

Any and all resolutions are to be agreed upon by both Omni-Tech, LLC and the City of St. Charles.

Sincerely,

  
Gary Janko, Manager  
Omni-Tech, LLC





Two East Main Street  
St. Charles, IL 60174  
630.377.4400

July 14, 2023

Mr. Jay Dulla  
Appointed Agent/Representative for Meritus Homes, Inc. and Omni-Tech, LLC  
2610 Lake Cook Road, Suite 100  
Riverwoods, Illinois 60015

Emailed to: [jdulla@meritushome.com](mailto:jdulla@meritushome.com)

Re: Follow-up from our July 12, 2023 meeting about remaining developer obligations at The Reserve.

Dear Mr. Dulla:

Thank-you for meeting with City staff here at City Hall on July 12<sup>th</sup>. Thanks also for sending the letter, dated July 12, indicating that you are authorized to represent the developer in our discussions.

At our meeting on July 12<sup>th</sup> we discussed the remaining Land Improvements at The Reserve; namely, the requirement to A) remove and replace curb and gutter, which has failed, as marked in the field by city staff; B) remove and replace any damaged driveway aprons as a result of A above; C) remove the existing binder-course, which has failed; D) provide new binder-course; and E) provide new surface-course for all streets within the development. As I stated at our meeting, the City expects the developer (Omni-Tech, LLC) to complete construction of all required Land Improvements in “The Reserve” development. The requirement to provide the remaining Land Improvements is clearly stated in Section 1 of the “Land Improvement Agreement – The Reserves of St. Charles” -- approved by City of St. Charles Resolution No. 2009-27.

As you know, the City of St. Charles granted an extension of the deadline to complete these required Land Improvements via the “First Amendment” to this Land Improvement Agreement - - approved by City of St. Charles Resolution No. 2012-138. While the deadline granted by this “First Amendment” was extended to October 31, 2016, the requirement to provide the Land Improvements was not changed, and the developer’s requirement to construct these Land Improvements remains.

Currently, the required Land Improvements have not been completed. *Please send me a letter indicating the timeline for the commencement and completion of all remaining Land Improvements.* Completion of all required improvements should be before the end of this construction season. Please send this letter and timeline to me no later than August 4<sup>th</sup>, 2023.

During our discussion on July 12<sup>th</sup>, you asked if some of the requirements provided in the “Land Improvement Agreement” might be waived—such as the requirement provided in Section 9 for a Maintenance Surety. If you wish to request any specific waivers or exemptions from the provision of the Land Improvement Agreement, please specify any/all requests in your letter to me and I will discuss them with city staff.

If you need further information, please feel free to contact me at (630) 443-3676, or at [Bsylvester@stcharlesil.gov](mailto:Bsylvester@stcharlesil.gov)

Sincerely,

*Bruce Sylvester*

Bruce Sylvester  
Assistant Director of Community Development -  
Planning and Engineering

RECEIVED  
CITY OF ST. CHARLES  
JUL 20 2009  
CITY CLERK

**City of St. Charles, Illinois**  
**Resolution No. 2009-27**

**A Resolution Approving the Execution of a Land Improvement  
Agreement – The Reserves of St. Charles**

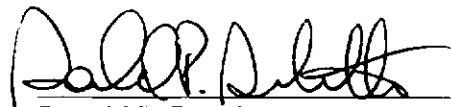
**Presented & Passed by the  
City Council on 20 July 2009**

BE IT RESOLVED by the Mayor and City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, that the Mayor and City Clerk be and the same are hereby authorized to execute that certain Land Improvement Agreement, in substantially the form attached hereto and incorporated herein as Exhibit "A," by and behalf of the City of St. Charles.


PRESENTED to the City Council of the City of St. Charles, Illinois, this 20th day of July 2009.

PASSED by the City Council of the City of St. Charles, Illinois, this 20th day of July 2009.

APPROVED by the Mayor of the City of St. Charles, Illinois, this 20th day of July 2009.

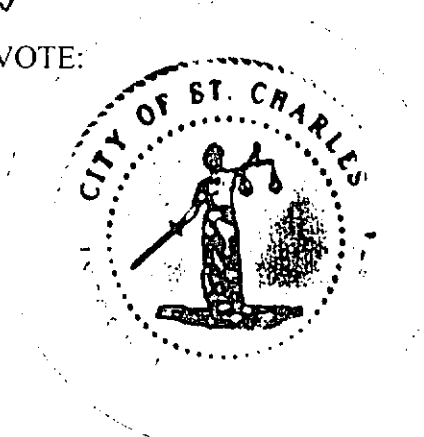
  
\_\_\_\_\_  
Donald P. DeWitte, Mayor

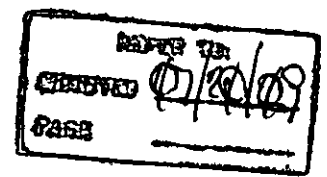
ATTEST:

  
\_\_\_\_\_  
City Clerk

COUNCIL VOTE:

Ayes: 8  
Nays:  
Absent: 2  
Abstain:





LAND IMPROVEMENT AGREEMENT

THIS AGREEMENT made and entered into this 20th day of July, 2009, by and among the City of St. Charles, Kane and DuPage Counties, Illinois, a municipal corporation of the State of Illinois, having its principal offices at 2 E. Main Street, St. Charles, Illinois (hereinafter called the "City"), Omni-Tech LLC, an Illinois limited liability company (hereinafter called "Developer") and The Ryland Group, Inc., a Maryland corporation (hereinafter called "Original Developer:").

WITNESSETH:

WHEREAS, on or about February 9, 2006, the City granted final subdivision approval to that certain Plat of Subdivision prepared by Cemcon, Ltd. recorded with the Kane County Recorder's Office on February 9, 2006 as Document No. 2006K015402, Certificate of Correction thereto recorded on February 14, 2006 as Document No. 2006K016494 and Certificate of Correction thereto recorded on May 30, 2006 as Document No. 2006K058157 (as so corrected, the "Final Plat"), with respect to the property legally described (and described by phases) on Exhibit "A" attached hereto which is, by this reference, incorporated herein ("Project Realty") so as to permit the construction of a residential development named The Reserve of St. Charles ("Project") by the Original Developer; and,

WHEREAS, pursuant to that certain Partial Assignment of Annexation Agreement and Prepaid Impact Fees executed by the Original Developer, a copy of which attached hereto as Exhibit "C", the Developer has acquired a portion of the Project Realty legally described on Exhibit "A-1" attached hereto which is, by this reference, incorporated herein (the "Subject Realty") from the Original Developer, who completed some, but not all, of the Land Improvements required by the St. Charles Municipal Code (the "City Code"); and,

WHEREAS, this Agreement is entered into as provided by Section 16.12.220 of the City Code.

NOW, THEREFORE, it is mutually agreed as follows:

1. Developer shall furnish, or cause to be furnished, at its own cost and expense, all the necessary materials, labor and equipment to complete the Land Improvements for the Project which have not yet been completed and accepted by the City, including but not limited to the following: storm sewer systems, including all appurtenances thereto, curbs, final lift paving for streets, street lighting in phase 2, sidewalks, seeding, bike path and parkway tree plantings, as described in Exhibit "B" (the "Developer Obligations"). The Developer Obligations shall not include any obligations with respect to the off site sanitary sewer and the off site sanitary sewer lift station previously completed by the Original Developer, accepted by the City and covered by the \$322,976.71 maintenance security previously posted by the Original Developer with the City. Any repairs or renewals to such off site sanitary sewer and off site sanitary sewer lift station during the warranty period therefore and determined by the Development Engineering Division Manager to be necessary following final inspection thereof by the City shall remain the obligation of the Original Developer (the "Original Developer's Obligations"). All Land Improvements shall be constructed in accordance with the standards, specifications, and requirements of the City of St. Charles and that certain Annexation Agreement recorded with the Kane County Recorder's Office on May 10, 2005 as Document No. 2005K052734 (the "Annexation Agreement") and Annexation Ordinance No. 2005-M-9 recorded with the Kane County Recorder's Office on May 10, 2005 as Document No. 2005K052735 (the "Annexation Ordinance"). Such Land Improvements are identified on the Final Engineering Plans (the "Final Engineering Plans") prepared by Cemcon, Ltd., dated April 20, 2005, and bearing the latest revision date of April 7, 2006, together with any amendments thereto approved by the City, and shall be constructed in a good and workmanlike manner and in accordance with all pertinent ordinances and regulations of the City and/or other agreements between the City and Developer.

2. Attached hereto and incorporated herein as Exhibit "B" is a complete cost estimate for the construction of the required Land Improvements (the "Engineer's Estimate"). The City Code and/or any applicable ordinance or agreement provides that the Developer shall collateralize its obligation to construct all required Land Improvements. The Developer shall submit either a performance bond or letter of credit (the "Surety"). Whichever form of surety Developer provides shall be issued by a sound financial institution authorized to transact business and maintaining an authorized agent for service in the State of Illinois. Such Surety shall contain such terms and provisions

required by the City Code, shall be subject to approval by the City Attorney of the City and shall be deposited with the City simultaneously with the execution of this Agreement. At such time as the Surety is so deposited by the Developer, and simultaneous with its receipt thereof, the City shall return Surety Bond No. 929378893 to the Original Developer.

Said Surety shall be in a principal amount of not less than one hundred fifteen percent (115%) of the approved Engineer's Estimate.

The Surety may provide for its reduction from time to time, based upon the Development Engineering Division Manager's determination of the value of any of the Land Improvements installed. The Development Engineering Division Manager's recommendation shall not be subject to question by the Developer. In no event shall the Surety be reduced to an amount less than one hundred fifteen percent (115%) of the Development Engineering Division Manager's estimate of the cost of completion of all remaining Land Improvements. So long as any portion of the Land Improvements remain uncompleted or unaccepted, the Developer shall not permit the Surety to expire, but shall, at least ninety (90) days prior to its expiration date, cause said Surety to be renewed. Failure of the Developer to renew said Surety shall be a breach of this Agreement. Any language in the Surety with respect to its reduction shall be subject to the approval of the City Attorney. In no event shall the Development Engineering Division Manager's authorization for a reduction to the Surety constitute final acceptance of any of the Land Improvements.

3. Developer shall furnish qualified field supervision for the installation of all Land Improvements in the person of a professional engineer licensed in the State of Illinois.

4. Developer will pay to the City all plan review, inspection and other fees as required by the City's form of Reimbursement of Fees Agreement or otherwise required by the City Code.

5. The Developer shall furnish the City with evidence of liability insurance in the amount of at least \$1,000,000/\$2,000,000 covering the construction activities of the Developer contemplated by this Agreement. Such insurance shall be written by a company rated by Best Reporting Service A VI or better or the carrier certificate attached hereto. Such certificate of insurance shall be deposited before the commencement of any work by the Developer. The policy shall provide a thirty (30) day "prior notice of termination" provision in favor of the City. Should the Developer allow such liability insurance to terminate prior to the final acceptance of all of the Land Improvements, the City may have recourse against the Surety for funds sufficient to cause the liability insurance to remain in effect until the final acceptance of all of the Land Improvements.

6. The Developer, by its execution of this Agreement, agrees to indemnify, hold harmless, defend, pay costs of defense, and pay any and all claims or judgments which may hereafter accrue against the City, or its agents, servants and employees, arising out of any of the Developer's construction activities contemplated by this Agreement.

7. Developer shall cause the Land Improvements to be completed, and as-built drawing tendered to the Development Engineering Division Manager, within two (2) years of the date of this Agreement, unless such time period is extended in writing by the City pursuant to the City Code.

If work relating to the Land Improvements is not completed within the time prescribed herein, the City shall have the right, but not the obligation, to provide for completion by drawing on the Surety in addition to any other available remedies.

8. Upon completion of any Land Improvement and, further, upon the submission to the City of a certificate from the engineering firm employed by Developer stating that the said Land Improvement has been completed in conformance with this Agreement, the Annexation Agreement, the City Code, the final engineering Plans and Specifications relative thereto, any applicable agreements and all State and Federal laws and standards, the Development Engineering Division Manager shall, within twenty (20) days after the City receives the aforesaid

certification from the Developer's engineer, either (i) recommend to the City's corporate authorities final acceptance of said Land Improvement, or (ii) designate in writing to Developer all corrections or alterations which shall be required to obtain a recommendation of final acceptance of said Land Improvement, specifically citing sections of the final engineering Plans and Specifications, the City Code or this Agreement, any applicable agreement or State or Federal law or standard, relied upon by said Development Engineering Division Manager. Should the Development Engineering Division Manager reject any Land Improvement, or any portion or segment thereof, for a recommendation of final acceptance, the Developer shall cause to be made to such Land Improvement such corrections or modifications as may be required by the Development Engineering Division Manager. The Developer shall cause the Land Improvement to be submitted and resubmitted as herein provided until the Development Engineering Division Manager shall recommend final acceptance of same to the corporate authorities of the City and the corporate authorities shall finally accept same. No Land Improvement shall be deemed to be finally accepted until the corporate authorities shall, by appropriate resolution, finally accept same.

Upon completion and as a condition of final acceptance by the City, Developer agrees to convey and transfer those Land Improvements which are deemed to be public improvements to the City by appropriate Bill(s) of Sale.

9. The Developer guarantees that the workmanship and materials furnished under the final Plans and Specifications and used in said Land Improvements will be furnished and performed in accordance with well-known established practices and standards recognized by engineers in the trade. All Land Improvements shall be new and of the best grade of their respective kinds for the purpose.

All materials and workmanship shall be warranted by the Developer for a period of twelve (12) months from the date of final acceptance by the City.

To partially secure the Developer's warranty, at the time or times of final acceptance by the City of the installation of any Land Improvement in accordance with this Agreement, Developer shall deposit with the City a Maintenance Surety in the amount of fifteen percent (15%) of the Engineer's Estimate of the Land Improvement finally accepted by the City. This Surety shall be deposited with the City and shall be held by the City.

The Developer shall make or cause to be made at its own expense, any and all repairs which may become necessary under and by virtue of this maintenance warranty and shall leave the Land Improvements in good and sound condition, satisfactory to the City and the Development Engineering Division Manager, at the expiration of the warranty period. In said event and at the expiration of such period, said Maintenance Surety(s) shall be returned to the Developer.

If during said warranty period, any Land Improvement shall require any repairs or renewals, in the opinion of the Development Engineering Division Manager, necessitated by reason of settlement of foundation, structure or backfill, or other defective workmanship or materials, the Developer shall, upon notification by the Development Engineering Division Manager of necessity for such repairs or renewals, make such repairs or renewals, at its own cost and expense. Should the Developer fail to make such repairs or renewals within thirty (30) days of such notification, or such additional time due to weather delays which shall extend the repair period for like number of days, as approved by the City, the City may cause such work to be done, either by contract or otherwise, and the City may draw upon said Maintenance Surety to pay the entire cost or expense thereof, including attorneys' fees and consultants' costs. Should such cost or expense exceed the amount set forth in said Maintenance Surety, the Developer will remain liable for any additional cost or expense incurred in the correction process.

The Developer's warranty and maintenance obligations under this Agreement are applicable to all of the Land Improvements for the Project, whether originally constructed by the Developer or the Original Developer, except for the off site sanitary sewer and lift station described in paragraph 1.

10. The Developer shall furnish the City with copies of lien waivers showing that all persons who have done work, or have furnished materials under this Agreement and are entitled to a lien therefore under any laws of the State of Illinois, have been fully paid or are no longer entitled to such lien.

11. The Developer shall be responsible for the maintenance of the Land Improvements until such time as they are finally accepted by the City. This maintenance shall include routine maintenance, as well as emergency maintenance such as sewer blockages and water main breaks. Such maintenance shall be sufficient to render the Land Improvements compliant with the Plans and Specifications at the time of their final acceptance by the City.

12. Developer shall be responsible for any and all damage to the Land Improvements which may occur during the construction of the Subject Realty irrespective of whether the Land Improvements damaged have or have not been finally accepted hereunder. Developer shall replace and repair damage to the Land Improvements installed within, under or upon the Subject Realty resulting from construction activities by Developer, its successors or assigns and its employees, agents, contractors or subcontractors during the term of this Agreement, but shall not be deemed hereby to have released any other party from liability or obligation in this regard.

13. The rights and remedies of the City as provided herein, in the ordinances of the City and/or in any agreements between the City and Developer regarding the Subject Realty, shall be cumulative and concurrent, and may be pursued singularly, successively, or together, at the sole discretion of the City, and may be exercised as often as occasion therefor shall arise. Failure of the City, for any period of time or on more than one occasion, to exercise such rights and remedies shall not constitute a waiver of the right to exercise the same at any time thereafter or in the event of any subsequent default. No act of omission or commission of the City, including specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of the same; any such waiver or release to be effected only through a written document executed by the City and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as a waiver or release of any subsequent event or as a bar to any subsequent exercise of the City's rights or remedies hereunder. Except as otherwise specifically required, notice of the exercise of any right or remedy granted to the City is not required to be given.

14. From and after the date on which the Development Engineering Division Manager notifies the Developer, in writing, that the Developer is in default of any of its obligations under this Agreement, the Developer shall pay to the City, upon demand, all of the City's fees, costs and expenses incurred in enforcing the provisions of this Agreement against Developer, including, without limitation, engineers' and attorneys' fees, costs and expenses, and, if any litigation is filed as part of such enforcement, any court costs and filing fees.

15. This Agreement shall be binding upon and inure to the successors and assigns of the parties to this Agreement. The Developer shall provide written notice to the City not less than fourteen (14) days prior to any assignment of this Agreement.

16. The invalidity of any provision of this Agreement shall not impair the validity of any other provision. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, that provision will be deemed severable and this Agreement may be enforced with that provision severed or as modified by the court.

17. This Agreement sets forth an agreement of the parties insofar as it specifically contradicts, modifies or amplifies any provision of the City Code. To the extent that this Agreement does not address an applicable provision of the City Code, the City Code shall continue to control the parties' activities contemplated by this Agreement regardless of the fact that the City Code has not been addressed within the specific terms of this Agreement.

18. This Agreement shall be in full force and effect from the date set forth above until the maintenance and warranty period for each any every Land Improvement terminates.

19. This Agreement shall be interpreted and construed in accordance with the laws of the State of Illinois.

20. All notices hereunder shall be in writing and must be served either personally or by registered or certified mail to:

A. City at:

City St. Charles  
Attention: Development Engineering Division Manager  
2 E. Main Street  
St. Charles, Illinois 60174  
Telefax No: 630-762-6922

B. Developer at:

Omni-Tech LLC  
Attn: Gary R Janko  
1650 Lake Cook Road  
Suite 130  
Deerfield, IL 60015  
Telefax: 847-940-8815

With Copy to:  
Evon Solms  
Legal Counsel  
1650 Lake Cook Road  
Suite 130  
Deerfield, IL 60015  
Direct Fax: 650-360-6670

C. Original Developer at:

The Ryland Group, Inc.  
1141 East Main Street, Suite 108  
East Dundee, IL 60118  
Attn: Matt Pagoria  
Telefax: 224-293-3101

With a copy to:


Peter G. Skelly  
Senior Vice President  
The Ryland Group, Inc.  
21925 Field Parkway, Suite 230  
Deer Park, IL 60010  
Telefax: 847-726-2628

21. This Agreement is executed in multiple counterparts, each of which shall be deemed to be and shall constitute one and the same instrument.




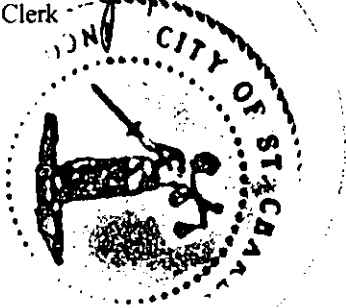
IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first above written.

CITY OF ST. CHARLES

By:   
Mayor

ATTEST:

  
City Clerk



DEVELOPER  
Omni-Tech LLC

By:   
Its Manager, Gary R Janko

ORIGINAL DEVELOPER  
The Ryland Group, Inc.

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

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF ~~LAKE~~ COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Gary R. Janko, Manager of Omni-Tech, LLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16 day of July, 2009.

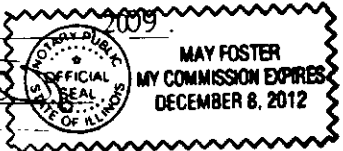
Charla Pierce  
Notary Public

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF KANE )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Donald Dewitte, Mayor of the City of St. Charles, and Nancy Garrison, City Clerk of said City, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth; and the said City Clerk then and there acknowledged that she, as custodian of the corporate seal of said City, did affix the corporate seal of said City to said instrument, as her own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20th day of July, 2009.

Mary Foster  
Notary Public



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_ of The Ryland Group, Inc., personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_ appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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

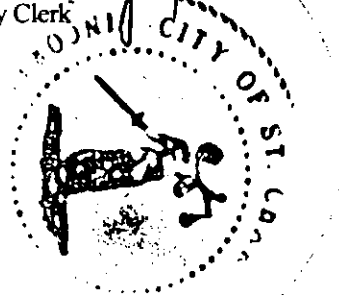
IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first above written.

CITY OF ST. CHARLES

By: *David P. Phillips*  
Mayor

ATTEST:

*Nancy Garrison*  
City Clerk



DEVELOPER  
Omni-Tech LLC

By: \_\_\_\_\_  
Its Manager, Gary R Janko

ORIGINAL DEVELOPER  
The Ryland Group, Inc.

By: *Matthew J. Pajoria*  
MATTHEW J. PAJORIA  
ENT: COU RELATIONS COOR

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF LAKE )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Gary R. Janko, Manager of Omni-Tech, LLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF KANE )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Donald DeWitte, Mayor of the City of St. Charles, and Nancy Garrison, City Clerk of said City, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth; and the said City Clerk then and there acknowledged that she, as custodian of the corporate seal of said City, did affix the corporate seal of said City to said instrument, as her own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20th day of July, 2009.

Mary Foster  
Notary Public



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF KANE )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that MATTHEW J. PALORIA of The Ryland Group, Inc., personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Matthew J. Paloria appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 14th day of JULY, 2009.

Christine D Gach  
Notary Public



## EXHIBIT "A"

### LEGAL DESCRIPTION OF THE PROJECT REALTY

All Lots and Outlots in The Reserve of St. Charles, being a subdivision of Part of the South Half of Section 9, Part of the Southwest Quarter of Section 10, Part of the Northwest Quarter of Section 15, and Part of the Northeast Quarter of Section 16, Township 40 North, Range 8 East of the Third Principal Meridian, in Kane County, Illinois, pursuant to the plat thereof recorded in Kane County, Illinois, on February 9, 2006, as Document No. 2006K015402, Certificate of Correction thereto recorded on February 14, 2006 as Document No. 2006K016494 and Certificate of Correction thereto recorded on May 30, 2006 as Document No. 2006K058157.

#### Phase 1:

Lots 1 through 22, both inclusive, 82 through 104, both inclusive, in The Reserve of St. Charles, being a subdivision of part of the South Half of Section 9, part of the Southwest Quarter of Section 10, part of the Northwest Quarter of Section 15, and part of the Northwest Quarter of Section 16, Township 40 North, Range 8 East of the Third Principal Meridian, according to the plat thereof recorded February 9, 2006 as document 2006K015402, certificate of correction recorded February 14, 2006 as document 2006K016494, and certificate of correction recorded May 30, 2006 as document 2006K058157, in Kane County, Illinois.

#### Phase 2:

Lots 23-81, both inclusive, 105 through 133, both inclusive, in The Reserve of St. Charles, being a subdivision of part of the South Half of Section 9, part of the Southwest Quarter of Section 10, part of the Northwest Quarter of Section 15, and part of the Northwest Quarter of Section 16, Township 40 North, Range 8 East of the Third Principal Meridian, according to the plat thereof recorded February 9, 2006 as document 2006K015402, certificate of correction recorded February 14, 2006 as document 2006K016494, and certificate of correction recorded May 30, 2006 as document 2006K058157, in Kane County, Illinois.

## EXHIBIT "A-1"

### LEGAL DESCRIPTION OF SUBJECT REALTY

Lots 4 through 10, both inclusive, 12, 13, 17 through 81, both inclusive, 85, 87 through 91, both inclusive, 93 through 95, both inclusive, 97, and Lots 104 through 133, both inclusive, in The Reserve of St. Charles, being a subdivision of part of the South Half of Section 9, part of the Southwest Quarter of Section 10, part of the Northwest Quarter of Section 15, and part of the Northwest Quarter of Section 16, Township 40 North, Range 8 East of the Third Principal Meridian, according to the plat thereof recorded February 9, 2006 as document 2006K015402, certificate of correction recorded February 14, 2006 as document 2006K016494, and certificate of correction recorded May 30, 2006 as document 2006K058157, in Kane County, Illinois.

EXHIBIT "B"  
CEMCOM ESTIMATES

**CEMCON, Ltd.**  
**ENGINEER'S OPINION**  
**OF PROBABLE CONSTRUCTION COST**

PROJECT: RESERVE OF ST. CHARLES - UNITS 1 & 2  
ON-SITE ONLY BOND REDUCTION  
JOB NO.: 608.068

DATE: APRIL 20, 2005  
REVISED: OCTOBER 27, 2008  
LAST REVISED: DECEMBER 16, 2008

NO.	ITEM	APPROX. QUANTITY	UNIT	PRICE	AMOUNT	PERCENT COMPLETE	NEW BOND AMOUNT
<b>I. SANITARY SEWER IMPROVEMENTS - ON-SITE</b>							
1	Sanitary Sewer, 8" PVC SDR 26, 4 - 8' Deep	2,623	L.F.	\$ 18.75	\$ 49,181.25	100%	\$ -
2	Sanitary Sewer, 8" PVC SDR 26, 8 - 12' Deep	1,584	L.F.	18.95	30,016.80	100%	-
3	Sanitary M.H. 4', Ty. A w/ Ty. 1 Fr & SS Lid, 4-8' Deep	5	E.A.	1,419.30	7,096.50	100%	-
4	Sanitary M.H. 4', Ty. A w/ Ty. 1 Fr & SS Lid, 8 - 12' Deep	7	E.A.	1,620.20	11,341.40	100%	-
5	Sanitary M.H. 4', Ty. A w/ Ty. 1 Fr & SS Lid, 12-16' Deep	3	E.A.	2,211.40	6,634.20	100%	-
6	Sanitary M.H. 4', Ty. A w/ Ty. 1 Fr & SS Lid, 12-16' Deep w/ Drop Connection	1	E.A.	4,865.70	4,865.70	100%	-
7	Sanitary Service, 6" PVC SDR 26 (Long) w/ 8x6" Tee	20	E.A.	1,751.40	35,028.00	100%	-
8	Sanitary Service, 6" PVC SDR 26 (Short) w/ 8x6" Tee	25	E.A.	309.00	7,725.00	100%	-
9	PVC Service Riser	3	E.A.	225.00	675.00	100%	-
10	Connect to Existing Sanitary Sewer	1	E.A.	500.00	500.00	100%	-
11	Trench Backfill	2,600	C.Y.	24.20	62,920.00	100%	-
<b>Sub-Total Sanitary Sewer Improvements - On-Site</b>					<b>\$ 215,983.85</b>		<b>\$ -</b>
<b>II. WATERMAIN IMPROVEMENTS</b>							
1	DIWM 8", Cl. 52 w/Polyethylene Wrap	3,775	L.F.	\$ 18.95	\$ 71,536.25	100%	\$ -
2	DIWM 8", Cl. 55 w/Polyethylene Wrap	14	L.F.	24.30	340.20	100%	-
3	DIWM 10", Cl. 52 w/Polyethylene Wrap	2,793	L.F.	24.62	68,763.66	100%	-
4	8" Valve in 4' Dia. Vault	9	E.A.	1,564.60	14,081.40	100%	-
5	10" Valve in 5' Dia. Vault	4	E.A.	2,499.80	9,999.20	100%	-
6	Hydrant w/Aux. Valve	18	E.A.	1,869.50	33,651.00	100%	-
7	Water Service 1 1/4", Ty. K w/ Box (Long)	28	E.A.	579.90	16,237.20	100%	-
8	Water Service 1 1/4", Ty. K w/ Box (Short)	18	E.A.	1,271.70	22,890.60	100%	-
9	Connect to Existing Watermain	2	E.A.	1,800.00	3,600.00	100%	-
10	Trench Backfill	100	C.Y.	24.20	2,420.00	100%	-
11	Water Tight Plug and Blocking	1	E.A.	350.00	350.00	100%	-
12	Watermain Protection	1	L.S.	6,500.00	6,500.00	100%	-
<b>Sub-Total Watermain Improvements</b>					<b>\$ 250,369.51</b>		<b>\$ -</b>

**CEMCON, Ltd.**  
**ENGINEER'S OPINION**  
**OF PROBABLE CONSTRUCTION COST**

PROJECT: RESERVE OF ST. CHARLES - UNITS 1 & 2  
ON-SITE ONLY BOND REDUCTION  
JOB NO.: 608.068

DATE: APRIL 20, 2005  
REVISED: OCTOBER 27, 2008  
LAST REVISED: DECEMBER 16, 2008

NO.	ITEM	APPROX. QUANTITY	UNIT	PRICE	AMOUNT	PERCENT COMPLETE	NEW BOND AMOUNT
<b>III. STORM SEWER IMPROVEMENTS</b>							
1	Storm Sewer, 6" PVC SDR 26	1,420	L.F.	\$ 12.00	\$ 17,040.00	100%	\$ 1,704.00
2	Storm Sewer, 12" RCP, Ty. 1	2,451	L.F.	14.70	36,029.70	100%	\$ 3,602.97
3	Storm Sewer, 12" RCP, Ty. 1 w/C-361 Joints	591	L.F.	16.00	9,456.00	100%	\$ 945.60
4	Storm Sewer, 15" RCP, Ty. 1	685	L.F.	16.60	11,371.00	100%	\$ 1,137.10
5	Storm Sewer, 15" RCP, Ty. 1 w/C-361 Joints	184	L.F.	17.25	3,174.00	100%	\$ 317.40
6	Storm Sewer, 18" RCP, Ty. 1	702	L.F.	19.80	13,899.60	100%	\$ 1,389.96
7	Storm Sewer, 21" RCP, Ty. 1	165	L.F.	23.20	3,828.00	100%	\$ 382.80
8	Storm Sewer, 21" RCP, Ty. 1 w/C-361 Joints	233	L.F.	25.50	5,941.50	100%	\$ 594.15
9	Storm Sewer, 24" RCP, Ty. 1	307	L.F.	27.20	8,350.40	100%	\$ 835.04
10	Storm Sewer, 27" RCP, Ty. 1	308	L.F.	32.20	9,917.60	100%	\$ 991.76
11	Inlet Ty. A w/ Ty. 8 Gr.	9	E.A.	475.20	4,276.80	100%	\$ 427.68
12	Inlet Ty. A w/ R-3015-R FR. & Gr.	12	E.A.	675.20	8,102.40	100%	\$ 810.24
13	Inlet Ty. B w/ Ty. 8 Gr.	3	E.A.	1,055.00	3,165.00	100%	\$ 316.50
14	Inlet Ty. B w/ R-3015-R FR. & Gr.	2	E.A.	1,055.00	2,110.00	100%	\$ 211.00
15	Catch Basin Ty. C w/ R-3015-R FR. & Gr., 2' Dia.	5	E.A.	805.00	4,025.00	100%	\$ 402.50
16	Catch Basin Ty. A w/ R-3015-R FR. & Gr., 3' Dia.	9	E.A.	1,305.00	11,745.00	100%	\$ 1,174.50
17	Storm M.H. Ty A w/TY. 1 FR. & C.L., 4' Dia.	7	E.A.	1,230.00	8,610.00	100%	\$ 861.00
18	Storm M.H. Ty A w/TY. 1 FR. & O.L., 4' Dia.	6	E.A.	1,230.00	7,380.00	100%	\$ 738.00
19	Storm M.H. Ty A w/TY. 1 FR. & C.L., 5' Dia.	2	E.A.	1,708.00	3,416.00	100%	\$ 341.60
20	Storm M.H. Ty A w/TY. 1 FR. & O.L., 5' Dia.	3	E.A.	1,708.00	5,124.00	100%	\$ 512.40
21	Storm M.H. Ty A w/TY. 1 FR. & C.L., 6' Dia.	1	E.A.	2,595.80	2,595.80	100%	\$ 259.58
22	Clean out Structure, w/ R-1706-1 Fr. & C.L.	7	E.A.	350.00	2,450.00	100%	\$ 245.00
23	Flared End Section, 12" RCP w/ Grate	3	E.A.	473.80	1,421.40	100%	\$ 142.14
24	Flared End Section, 15" RCP w/ Grate	2	E.A.	601.50	1,203.00	100%	\$ 120.30
25	Flared End Section, 18" RCP w/ Grate	4	E.A.	659.20	2,636.80	100%	\$ 263.68
26	Flared End Section, 21" RCP w/ Grate	1	E.A.	720.00	720.00	100%	\$ 72.00
27	Flared End Section, 27" RCP w/ Grate	1	E.A.	937.30	937.30	100%	\$ 93.73
28	Rip Rap w/ Maintenance	40	C.Y.	30.00	1,200.00	100%	\$ 120.00
29	Trench Backfill	300	C.Y.	24.20	7,260.00	100%	\$ 726.00
<b>Sub-Total Storm Sewer Improvements</b>					<b>\$ 197,386.30</b>		<b>\$ 19,738.63</b>



**CEMCON, Ltd.**  
**ENGINEER'S OPINION**  
**OF PROBABLE CONSTRUCTION COST**

PROJECT: RESERVE OF ST. CHARLES - UNITS 1 & 2  
ON-SITE ONLY BOND REDUCTION  
JOB NO.: 608.068

DATE: APRIL 20, 2005  
REVISED: OCTOBER 27, 2008  
LAST REVISED: DECEMBER 16, 2008

NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	AMOUNT	PERCENT COMPLETE	NEW BOND AMOUNT
<b>IV. PAVEMENT IMPROVEMENTS</b>							
1	Fine Grading	17,848	S.Y.	\$ 0.90	\$ 16,063.20	100%	1,606.32
2	Agg. Base Cse. Ty. B (CA-6) 4"	16,866	S.Y.	3.00	49,998.00	100%	4,999.80
3	Bit. Base Course, 6"	15,386	S.Y.	12.00	184,632.00	100%	18,463.20
4	Bit. Binder Cse., 1 1/2" Cl. I	15,386	S.Y.	3.30	50,773.80	100%	5,077.38
5	Bit. Surface Cse., 1 1/2" Cl. I	15,386	S.Y.	3.65	56,158.90	0%	56,158.90
6	Bit Material Prime Coat @ 0.3 Gal./SY	4,516	GAL.	1.10	5,077.60	0%	5,077.60
7	Bit Material Tack Coat @ 0.1 Gal./SY	1,539	GAL.	1.10	1,692.90	0%	1,692.90
8	PCC Sidewalk 4' Wide, 5" Thick w/3" CA-6 Subbase	44,312	S.F.	2.75	121,858.00	50%	60,929.00
9	PCC Curb & Gutter Ty. B-6.12	11,078	L.F.	8.00	88,624.00	100%	8,862.40
10	Backfill Curb	11,078	L.F.	0.50	5,539.00	100%	553.90
	<b>Sub-Total Pavement Improvements</b>				<b>\$ 580,417.40</b>		<b>\$ 163,421.40</b>
<b>V. MISCELLANEOUS IMPROVEMENTS</b>							
1	10' Wide Bike Path (2" Surface Course, 8" Agg. Base Course TY B)	1,725	L.F.	\$ 12.00	\$ 20,700.00	0%	\$ 20,700.00
	<b>Sub-Total Miscellaneous Improvements</b>				<b>\$ 20,700.00</b>		<b>\$ 20,700.00</b>
<b>VI. SOIL EROSION IMPROVEMENTS</b>							
1	Soil Erosion Repair		L.S.		\$ 10,000.00	0%	\$ 10,000.00
	<b>Sub-Total Miscellaneous Improvements</b>				<b>\$ 10,000.00</b>		<b>\$ 10,000.00</b>

**CEMCON, Ltd.  
ENGINEER'S OPINION  
OF PROBABLE CONSTRUCTION COST**

PROJECT: RESERVE OF ST. CHARLES - UNITS 1 & 2  
ON-SITE ONLY BOND REDUCTION  
JOB NO.: 608.068

DATE: APRIL 20, 2005  
REVISED: OCTOBER 27, 2008  
LAST REVISED: DECEMBER 16, 2008

NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	AMOUNT	PERCENT COMPLETE	NEW BOND AMOUNT
<b>SUMMARY</b>							
I.	SANITARY SEWER IMPROVEMENTS - ON-SITE				\$ 215,983.85		\$ -
II.	WATERMAIN IMPROVEMENTS				\$ 250,369.51		\$ -
III.	STORM SEWER IMPROVEMENTS				\$ 197,386.30		\$ 19,738.63
IV.	PAVEMENT IMPROVEMENTS				\$ 580,417.40		\$ 163,421.40
V.	MISCELLANEOUS IMPROVEMENTS				\$ 20,700.00		\$ 20,700.00
VI.	SOIL EROSION IMPROVEMENTS				\$ 10,000.00		\$ 10,000.00
	TOTAL IMPROVEMENTS				\$ 1,274,857.06		\$ 213,860.03
	LETTER OF CREDIT AMOUNT (115%)				\$ 1,466,085.62		\$ 245,939.03

PROFESSIONAL ENGINEER'S CERTIFICATION

STATE OF ILLINOIS )  
COUNTY OF DUPAGE )

I, CHRISTOPHER R. MORGART, A LICENSED PROFESSIONAL ENGINEER OF ILLINOIS, HEREBY STATE THAT THIS TECHNICAL SUBMISSION WAS PREPARED ON BEHALF OF THE RYLAND HOMES, INC. UNDER MY PERSONAL DIRECTION.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, AD, 2008

ILLINOIS LICENSED PROFESSIONAL ENGINEER NO. 062-055768  
MY LICENSE EXPIRES ON NOVEMBER 30, 2009

PROFESSIONAL DESIGN FIRM LICENSE NO. 184-002937, EXPIRES APRIL 30, 2009

NOTE:

UNLESS THIS DOCUMENT BEARS THE ORIGINAL SIGNATURE AND IMPRESSED SEAL OF THE DESIGN PROFESSIONAL ENGINEER, IT IS NOT A VALID TECHNICAL SUBMISSION.

**CEMCON, Ltd.**  
**ENGINEER'S OPINION**  
**OF PROBABLE CONSTRUCTION COST**

PROJECT: RESERVE OF ST. CHARLES - UNIT 3  
ON-SITE ONLY BOND REDUCTION  
JOB NO.: 608.068

DATE: APRIL 20, 2005  
REVISED: OCTOBER 27, 2008  
LAST REVISED: DECEMBER 16, 2008

NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	AMOUNT	PERCENT COMPLETE	NEW BOND AMOUNT
<b>I. SANITARY SEWER IMPROVEMENTS - ON-SITE</b>							
1	Sanitary Sewer, 8" PVC SDR 26, 4 - 8' Deep	1,223	L.F.	\$ 18.75	\$ 22,931.25	100%	\$ -
2	Sanitary Sewer, 8" PVC SDR 26, 8 - 12' Deep	3,859	L.F.	18.95	73,128.05	100%	\$ -
3	Sanitary Sewer, 8" PVC SDR 21, 12 - 16' Deep	583	L.F.	26.27	15,315.41	100%	\$ -
4	Sanitary M.H. 4', Ty. A w/ Ty. 1 Fr & SS Lid, 4-8' Deep	12	E.A.	1,419.30	17,031.60	100%	\$ -
5	Sanitary M.H. 4', Ty. A w/ Ty. 1 Fr & SS Lid, 8 - 12' Deep	10	E.A.	1,620.20	16,202.00	100%	\$ -
6	Sanitary M.H. 4', Ty. A w/ Ty. 1 Fr & SS Lid, 16-20' Deep w/ Drop Connection	1	E.A.	5,263.30	5,263.30	100%	\$ -
7	Sanitary Service, 6" PVC SDR 26 (Long) w/ 8x6" Tee	45	E.A.	1,751.40	78,813.00	100%	\$ -
8	Sanitary Service, 6" PVC SDR 26 (Short) w/ 8x6" Tee	43	E.A.	309.00	13,287.00	100%	\$ -
9	PVC Service Riser	4	E.A.	225.00	900.00	100%	\$ -
10	Trench Backfill	3,400	C.Y.	24.20	82,280.00	100%	\$ -
<b>Sub-Total Sanitary Sewer Improvements - On-site</b>					<b>\$ 325,151.61</b>		<b>\$ -</b>
<b>II. WATERMAIN IMPROVEMENTS</b>							
1	DIWM 8", Cl. 52 w/Polyethylene Wrap	5,823	L.F.	\$ 18.95	\$ 110,345.85	100%	\$ -
2	DIWM 8", Cl. 55 w/Polyethylene Wrap	652	L.F.	24.30	15,843.60	100%	\$ -
3	8" Valve in 4' Dia. Vault	9	E.A.	1,564.60	14,081.40	100%	\$ -
4	Hydrant w/Aux. Valve	17	E.A.	1,869.50	31,781.50	100%	\$ -
5	Water Service 1 1/4", Ty. K w/ Box (Long)	40	E.A.	579.90	23,196.00	100%	\$ -
6	Water Service 1 1/4", Ty. K w/ Box (Short)	47	E.A.	1,271.70	59,769.90	100%	\$ -
7	Trench Backfill	100	C.Y.	24.20	2,420.00	100%	\$ -
8	Watermain Protection	1	L.S.	8,500.00	8,500.00	100%	\$ -
<b>Sub-Total Watermain Improvements</b>					<b>\$ 265,938.25</b>		<b>\$ -</b>

**CEMCON, Ltd.**  
**ENGINEER'S OPINION**  
**OF PROBABLE CONSTRUCTION COST**

PROJECT: RESERVE OF ST. CHARLES - UNIT 3  
ON-SITE ONLY BOND REDUCTION  
JOB NO.: 608.068

DATE: APRIL 20, 2005  
REVISED: OCTOBER 27, 2008  
LAST REVISED: DECEMBER 16, 2008

NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	AMOUNT	PERCENT COMPLETE	NEW BOND AMOUNT
<b>III. STORM SEWER IMPROVEMENTS</b>							
1	Storm Sewer, 6" PVC SDR 26	617	L.F.	\$ 12.00	\$ 7,404.00	100%	\$ 740.40
2	Storm Sewer, 12" RCP, Ty. 1	2,069	L.F.	14.70	30,414.30	100%	\$ 3,041.43
3	Storm Sewer, 12" RCP, Ty. 1 w/C-361 Joints	1,236	L.F.	16.00	19,776.00	100%	\$ 1,977.60
4	Storm Sewer, 15" RCP, Ty. 1	1,002	L.F.	16.60	16,633.20	100%	\$ 1,663.32
5	Storm Sewer, 15" RCP, Ty. 1 w/C-361 Joints	929	L.F.	17.25	16,025.25	100%	\$ 1,602.53
6	Storm Sewer, 18" RCP, Ty. 1	919	L.F.	19.80	18,196.20	100%	\$ 1,819.62
7	Storm Sewer, 18" RCP, Ty. 1 w/C-361 Joints	179	L.F.	21.00	3,759.00	100%	\$ 375.90
8	Storm Sewer, 21" RCP, Ty. 1	1,800	L.F.	23.20	41,760.00	100%	\$ 4,176.00
9	Storm Sewer, 24" RCP, Ty. 1	1,463	L.F.	27.20	39,793.60	100%	\$ 3,979.36
10	Storm Sewer, 27" RCP, Ty. 1	1,171	L.F.	32.20	37,706.20	100%	\$ 3,770.62
11	Storm Sewer, 30" RCP, Ty. 1	233	L.F.	33.90	7,898.70	100%	\$ 789.87
12	Storm Sewer, 36" RCP, Ty. 1	75	L.F.	45.50	3,412.50	100%	\$ 341.25
13	Storm Sewer, 36" RCP, Ty. 1 w/C-361 Joints	185	L.F.	51.00	9,435.00	100%	\$ 943.50
14	Inlet Ty. A w/ Ty. 8 Gr.	9	E.A.	475.20	4,276.80	100%	\$ 427.68
15	Inlet Ty. A w/ R-3015-R FR. & Gr.	16	E.A.	675.20	10,803.20	100%	\$ 1,080.32
16	Inlet Ty. B w/ Ty. 8 Gr.	12	E.A.	1,055.00	12,660.00	100%	\$ 1,266.00
17	Inlet Ty. B w/ R-3015-R FR. & Gr.	1	E.A.	1,055.00	1,055.00	100%	\$ 105.50
18	Catch Basin Ty. C w/ R-3015-R Fr. & Gr., 2' Dia.	9	E.A.	805.00	7,245.00	100%	\$ 724.50
19	Catch Basin Ty. A w/ R-3015-R Fr. & Gr., 3' Dia.	8	E.A.	1,305.00	10,440.00	100%	\$ 1,044.00
20	Storm M.H. Ty A w/TY. 1 FR. & O.L., 4' Dia.	27	E.A.	1,230.00	33,210.00	100%	\$ 3,321.00
21	Storm M.H. Ty A w/TY. 1 FR. & C.L., 5' Dia.	4	E.A.	1,708.00	6,832.00	100%	\$ 683.20
22	Storm M.H. Ty A w/TY. 1 FR. & O.L., 5' Dia.	7	E.A.	1,708.00	11,956.00	100%	\$ 1,195.60
23	Clean out Structure, w/ R-1706-1 Fr. & C.L.	3	E.A.	350.00	1,050.00	100%	\$ 105.00
24	Flared End Section, 18" RCP w/ Grate	1	E.A.	659.20	659.20	100%	\$ 65.92
25	Flared End Section, 36" RCP w/ Grate	1	E.A.	1,287.50	1,287.50	100%	\$ 128.75
26	Rip Rap w/ Maintenance	20	C.Y.	30.00	600.00	100%	\$ 60.00
27	Trench Backfill	500	C.Y.	24.20	12,100.00	100%	\$ 1,210.00
<b>Sub-Total Storm Sewer Improvements</b>					<b>\$ 366,388.85</b>		<b>\$ 36,638.87</b>

**CEMCON, Ltd.**  
**ENGINEER'S OPINION**  
**OF PROBABLE CONSTRUCTION COST**

PROJECT: RESERVE OF ST. CHARLES - UNIT 3  
ON-SITE ONLY BOND REDUCTION  
JOB NO.: 608.068

DATE: APRIL 20, 2005  
REVISED: OCTOBER 27, 2008  
LAST REVISED: DECEMBER 16, 2008

NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	AMOUNT	PERCENT COMPLETE	NEW BOND AMOUNT
<b>IV. PAVEMENT IMPROVEMENTS</b>							
1	Fine Grading	19,272	S.Y.	\$ 0.90	\$ 17,344.80	100%	1,734.48
2	Agg. Base Cse. Ty. B (CA-6) 4"	16,614	S.Y.	3.00	49,842.00	100%	4,984.20
3	Bit. Base Course, 6"	16,614	S.Y.	12.00	199,368.00	100%	19,936.80
4	Bit. Binder Cse., 1 1/2" Cl. I	16,614	S.Y.	3.30	54,826.20	100%	5,482.62
5	Bit. Surface Cse., 1 1/2" Cl. I	16,614	S.Y.	3.65	60,641.10	0%	60,641.10
6	Bit Material Prime Coat @ 0.3 Gal./SY	4,984	GAL.	1.10	5,482.40	0%	5,482.40
7	Bit Material Tack Coat @ 0.1 Gal./SY	1,661	GAL.	1.10	1,827.10	0%	1,827.10
8	PCC Sidewalk 4' Wide, 5" Thick w/3" CA-6 Subbase	47,848	S.F.	2.75	131,582.00	0%	131,582.00
9	PCC Curb & Gutter Ty. B-6.12	11,962	L.F.	8.00	95,696.00	100%	9,569.60
10	Backfill Curb	11,962	L.F.	0.50	5,981.00	100%	598.10
<b>Sub-Total Pavement Improvements</b>					<b>\$ 622,590.60</b>		<b>\$ 241,838.40</b>
<b>V. SOIL EROSION IMPROVEMENTS</b>							
1	Soil Erosion Repair		L.S.		<u>\$ 20,000.00</u>	0%	<u>\$ 20,000.00</u>
<b>Sub-Total Miscellaneous Improvements</b>					<b>\$ 20,000.00</b>		<b>\$ 20,000.00</b>

**CEMCON, Ltd.**  
**ENGINEER'S OPINION**  
**OF PROBABLE CONSTRUCTION COST**

PROJECT: RESERVE OF ST. CHARLES - UNIT 3  
ON-SITE ONLY BOND REDUCTION  
JOB NO.: 608.088

DATE: APRIL 20, 2005  
REVISED: OCTOBER 27, 2008  
LAST REVISED: DECEMBER 16, 2008

NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	AMOUNT	PERCENT COMPLETE	NEW BOND AMOUNT
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**SUMMARY**

I.	SANITARY SEWER IMPROVEMENTS - ON-SITE				\$ 325,151.61		\$ -
II.	WATERMAIN IMPROVEMENTS				\$ 285,938.25		\$ -
III.	STORM SEWER IMPROVEMENTS				\$ 366,388.65		\$ 36,638.87
IV.	PAVEMENT IMPROVEMENTS				\$ 822,590.60		\$ 241,838.40
V.	SOIL EROSION IMPROVEMENTS				\$ 20,000.00		\$ 20,000.00
	<b>TOTAL IMPROVEMENTS</b>				\$ 1,600,069.11		\$ 298,477.27
	<b>LETTER OF CREDIT AMOUNT (115%)</b>				\$ 1,840,079.48		\$ 343,248.85

PROFESSIONAL ENGINEER'S CERTIFICATION

STATE OF ILLINOIS )  
COUNTY OF DUPAGE )

I, CHRISTOPHER R. MORGART, A LICENSED PROFESSIONAL ENGINEER OF ILLINOIS, HEREBY STATE  
THAT THIS TECHNICAL SUBMISSION WAS PREPARED ON BEHALF OF THE RYLAND HOMES, INC.  
UNDER MY PERSONAL DIRECTION.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, AD., 2008

ILLINOIS LICENSED PROFESSIONAL ENGINEER NO. 062-055788  
MY LICENSE EXPIRES ON NOVEMBER 30, 2009

PROFESSIONAL DESIGN FIRM LICENSE NO. 184-002937, EXPIRES APRIL 30, 2009

NOTE:

UNLESS THIS DOCUMENT BEARS THE ORIGINAL SIGNATURE AND IMPRESSED SEAL OF THE  
DESIGN PROFESSIONAL ENGINEER, IT IS NOT A VALID TECHNICAL SUBMISSION.

"EXHIBIT C"  
PARTIAL ASSIGNMENT  
OF ANNEXATION AGREEMENT AND PREPAID IMPACT FEES

*THIS INSTRUMENT PREPARED  
BY AND SHOULD BE RETURNED  
TO:*

*Scott Gudmundson  
MELTZER, PURTILL & STELLE LLC  
1515 East Woodfield Road  
Second Floor  
Schaumburg, Illinois 60173-5431*

**PARTIAL ASSIGNMENT OF ANNEXATION  
AGREEMENT AND PREPAID IMPACT FEES**

THIS PARTIAL ASSIGNMENT OF ANNEXATION AGREEMENT AND PREPAID IMPACT FEES (this "**Assignment**") is made and entered into this 23rd day of December, 2008 by and between The Ryland Group, Inc., a Maryland corporation ("**Assignor**"), as assignor, and Omni-Tech, LLC, an Illinois limited liability company ("**Assignee**"), as assignee.

RECITALS

A. Assignor was the owner of a parcel of real estate legally described on Exhibit A attached hereto and commonly known as The Reserve of St. Charles, together with any and all improvements, structures and fixtures presently located thereon (the "**Development**"), all which is located in St. Charles (the "**City**"), Kane County, Illinois;

B. The Development has been annexed to the City pursuant to that certain Annexation Agreement recorded with the Kane County Recorder's Office on May 10, 2005 as Document No. 2005K052734 (the "**Annexation Agreement**") and Annexation Ordinance No. 2005-M-9 recorded with the Kane County Recorder's Office on May 10, 2005 as Document No. 2005K052735 (the "**Annexation Ordinance**").

C. The City has also approved (i) that certain Plat of Subdivision prepared by Cemcon, Ltd. recorded with the Kane County Recorder's Office on February 9, 2006 as Document No. 2006K015402, Certificate of Correction thereto recorded on February 14, 2006 as Document No. 2006K016494 and Certificate of Correction thereto recorded on May 30, 2006 as Document No. 2006K058157 (as so corrected, the "**Final Plat**"); and (iii) those certain Final Site Improvement Plans prepared by Cemcon, Ltd. dated April 20, 2005, and last revised April 7, 2006, for public improvements installed and to be installed on the Development (the "**Final Engineering**").

D. Assignor and Assignee have entered into that certain Lot Sale Agreement dated December 23, 2008 (as amended, the "**Purchase Agreement**") with respect to the sale of that portion of the Development legally described on Exhibit B attached hereto and made a part hereof (the "**Sale Parcel**") by Assignor to Assignee.

E. Pursuant to the terms of the Purchase Agreement, Assignor has agreed to assign to Assignee all of its: (i) rights and obligations under the Annexation Agreement, the Annexation Ordinance, the Final Engineering and the Final Plat, but only to the extent of Seller's interest in the Sale Parcel; and (ii) right, title, interest and benefit, in and to the prepaid impact fees paid by Assignor to the City in the amount of \$23,974.38 per Lot of the Sale Parcel, but only with respect to the 113 Lots within the Sale Parcel and not for any of the other Lots within the Development.

NOW, THEREFORE, in consideration of Recitals set forth above, which are incorporated by reference herein, and the mutual covenants and agreements of the parties hereinafter set forth, the parties hereto mutually covenant and agree as follows:

1. Assignment. Assignor does hereby sell, assign, transfer, set over, grant, bargain and convey unto Assignee, its successors and assigns, all of Assignor's right, title and interest in and to the following (collectively the "**Development Documents**") but only with respect to Assignor's interest in and to the Sale Parcel:

- (i) the Annexation Agreement;

- (ii) the Annexation Ordinance;
- (iii) the Final Engineering;
- (iv) the Final Plat; and
- (v) all of Assignor's right, title, interest and benefit, in and to the prepaid impact fees paid by Assignor to the City in the amount of \$23,974.38 per Lot of the Sale Parcel, but only with respect to the 113 Lots within the Sale Parcel and not for any of the other Lots within the Development.

Assignee acknowledges and agrees that Assignor retains all rights and obligations under the Development Documents with respect to portions of the Development not included in the Sale Parcel, except to the extent otherwise provided for in the Purchase Agreement. Further, with respect to the prepaid impact fees described in clause (v) above, the impact fees assigned by Assignor to Assignee hereunder are only for the 113 Lots comprising the Sale Parcel, and not for any of the other Lots within the Development, and Assignor expressly retains all right, title, interest and benefit of the impact fees previously paid by Assignor with respect to the balance of the Lots within the Development.

2. Authority. Each party represents and warrants to the other party that it has full power and authority to enter into this Assignment.

3. Acceptance/Assumption and Indemnity. Assignee hereby accepts the assignment from Assignor; provided that Assignee shall assume obligations under the Development Documents only to the extent that the Final Plat, the Final Engineering and any permits included in the Development Documents impose obligations with respect to work to be performed by Assignee with respect to the Sale Parcel and the balance of the Development pursuant to the terms and conditions of the Purchase Agreement. Assignee agrees to assume all obligations of a builder of homes to be constructed on the Lots comprising the Sale Parcel under the Annexation Agreement. Assignee shall pay all building permit and tap-on fees when required by the terms of the Annexation Agreement. Assignor will retain the obligations under the Annexation Agreement specifically relating to Seller's Retained Lots (as defined in the Purchase Agreement) and not assumed by Assignee thereunder. Each of Assignor and Assignee shall promptly perform their respective obligations under the Development Documents, as assigned or reserved herein, in such a manner and within such a timeframe as shall be necessary for the other to fully avail themselves of their respective rights under the Development Documents without delay or interruption and shall defend, indemnify and hold harmless the other party and its successors and assigns from and against any claims, damages or claims of action whatsoever, which may be asserted against that party arising out of the failure to perform such obligations. Each of the parties shall also provide full and reasonable cooperation to the other in enabling or assisting the other party to avail itself of its rights and performing its obligations under the Development Documents. Nothing contained herein is intended to or shall modify the respective rights, obligations and agreements between the Parties as are set forth in the Purchase Agreement.

4. Governing Law. This Assignment shall be construed and enforced in accordance with and governed by the laws of the State of Illinois.

5. Binding Effect. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, personal representatives, successors and assigns.

6. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(signature page follows)



IN WITNESS WHEREOF Assignee and Assignor have executed this Assignment as of the date first above written.

Omni-Tech, LLC, an Illinois  
limited liability company

By: \_\_\_\_\_  
Name: Gary R. Janko  
Title: Manager

THE RYLAND GROUP, INC.  
a Maryland corporation

By: \_\_\_\_\_  
Name: John K. Adams  
Title: Operational Vice President

STATE OF ILLINOIS )

) SS.

COUNTY OF Kane )

I, \_\_\_\_\_, a notary public in and for said County, in the State aforesaid, do hereby certify that John K. Adams, the Operational Vice President of The Ryland Group, Inc., a Maryland corporation (the "Corporation"), personally known to me to be the same person whose name is subscribed to the foregoing Assignment and Acknowledgement, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument, on behalf of the Corporation and as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 23rd day of December, 2008.

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

STATE OF ILLINOIS )

) SS.

COUNTY OF \_\_\_\_\_)

I, \_\_\_\_\_, a notary public in and for said County, in the State aforesaid, do hereby certify that Gary R. Janko, the sole Manager of Omni-Tech, LLC, an Illinois limited liability company ("Company"), personally known to me to be the same person whose name is subscribed to the foregoing Assignment and Acknowledgement, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument, on behalf of the Company and as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 23rd day of December, 2008.

\_\_\_\_\_  
Notary

**EXHIBIT A**

**Legal Description of the Development**

All Lots and Outlots in The Reserve of St. Charles, being a subdivision of Part of the South Half of Section 9, Part of the Southwest Quarter of Section 10, Part of the Northwest Quarter of Section 15, and Part of the Northeast Quarter of Section 16, Township 40 North, Range 8 East of the Third Principal Meridian, in Kane County, Illinois, pursuant to the plat thereof recorded in Kane County, Illinois, on February 9, 2006, as Document No. 2006K015402, Certificate of Correction thereto recorded on February 14, 2006 as Document No. 2006K016494 and Certificate of Correction thereto recorded on May 30, 2006 as Document No. 2006K058157.

**EXHIBIT B**

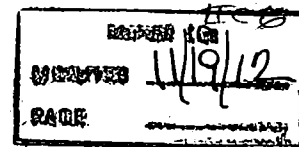
**Legal Description of the Sale Parcel**

Lots 4 through 9, both inclusive, 12, 13, 17 through 81, both inclusive, 85, 87 through 91, both inclusive, 93 through 95, both inclusive, 97, and Lots 104 through 133, both inclusive, in The Reserve of St. Charles, being a subdivision of part of the South Half of Section 9, part of the Southwest Quarter of Section 10, part of the Northwest Quarter of Section 15, and part of the Northwest Quarter of Section 16, Township 40 North, Range 8 East of the Third Principal Meridian, according to the plat thereof recorded February 9, 2006 as document 2006K015402, certificate of correction recorded February 14, 2006 as document 2006K016494, and certificate of correction recorded May 30, 2006 as document 2006K058157, in Kane County, Illinois.

<u>Lot</u>	<u>Address</u>	<u>PIN</u>
4	440 Reserve Drive	09 - 09 - 480 - 008
5	480 Reserve Drive	09 - 09 - 480 - 007
6	4520 Foxgrove Drive	09 - 09 - 480 - 006
7	4550 Foxgrove Drive	09 - 09 - 480 - 004
8	4620 Foxgrove Drive	09 - 09 - 480 - 003
9	4640 Foxgrove Drive	09 - 09 - 480 - 002
12	4765 Grandfield Drive	09 - 09 - 427 - 012
13	4745 Grandfield Drive	09 - 09 - 427 - 011
17	4665 Grandfield Drive	09 - 09 - 476 - 008
18	4645 Grandfield Drive	09 - 09 - 476 - 009
19	4625 Grandfield Drive	09 - 09 - 476 - 010
20	4585 Grandfield Drive	09 - 09 - 476 - 011
21	4565 Grandfield Drive	09 - 09 - 476 - 012
22	4535 Grandfield Drive	09 - 09 - 476 - 013
23	4540 Foley Lane	09 - 09 - 476 - 006
24	4560 Foley Lane	09 - 09 - 476 - 005
25	4580 Foley Lane	09 - 09 - 476 - 004
26	4630 Foley Lane	09 - 09 - 476 - 003
27	4650 Foley Lane	09 - 09 - 476 - 002
28	4670 Foley Lane	09 - 09 - 476 - 001
29	4720 Foley Lane	09 - 09 - 427 - 007
30	4740 Foley Lane	09 - 09 - 427 - 006
31	4760 Foley Lane	09 - 09 - 402 - 011
32	4780 Foley Lane	09 - 09 - 402 - 010
33	4830 Foley Lane	09 - 09 - 402 - 009
34	4850 Foley Lane	09 - 09 - 402 - 008
35	4870 Foley Lane	09 - 09 - 402 - 007
36	4960 Foley Lane	09 - 09 - 402 - 006
37	4965 Foley Lane	09 - 09 - 404 - 009
38	4945 Foley Lane	09 - 09 - 404 - 010
39	4925 Foley Lane	09 - 09 - 404 - 011
40	4885 Foley Lane	09 - 09 - 404 - 012
41	4875 Foley Lane	09 - 09 - 404 - 013
42	4865 Foley Lane	09 - 09 - 404 - 014
43	4745 Foley Lane	09 - 09 - 404 - 015
44	4685 Foley Lane	09 - 09 - 404 - 016
45	840 Hilldale Lane	09 - 09 - 452 - 009

46	860 Hilldale Lane	09	-	09	-	452	-	008
47	880 Hilldale Lane	09	-	09	-	452	-	007
48	940 Hilldale Lane	09	-	09	-	452	-	006
49	970 Hilldale Lane	09	-	09	-	452	-	005
50	990 Hilldale Lane	09	-	09	-	452	-	004
51	1030 Hilldale Lane	09	-	09	-	452	-	003
52	1120 Hilldale Lane	09	-	09	-	452	-	002
53	1130 Hilldale Lane	09	-	09	-	452	-	001
54	1140 Hilldale Lane	09	-	09	-	404	-	008
55	1150 Hilldale Lane	09	-	09	-	404	-	007
56	1160 Hilldale Lane	09	-	09	-	404	-	006
57	1170 Hilldale Lane	09	-	09	-	326	-	022
58	1180 Hilldale Lane	09	-	09	-	326	-	021
59	4695 Greywood Drive	09	-	09	-	326	-	018
60	4685 Greywood Drive	09	-	09	-	326	-	019
61	4665 Greywood Drive	09	-	09	-	326	-	020
62	4645 Greywood Drive	09	-	09	-	378	-	005
63	4625 Greywood Drive	09	-	09	-	378	-	006
64	4585 Greywood Drive	09	-	09	-	378	-	007
65	4565 Greywood Drive	09	-	09	-	378	-	008
66	4545 Greywood Drive	09	-	09	-	378	-	009
67	4525 Greywood Drive	09	-	09	-	378	-	010
68	1195 Reserve Drive	09	-	09	-	378	-	011
69	1175 Reserve Drive	09	-	09	-	454	-	001
70	1155 Reserve Drive	09	-	09	-	454	-	002
71	1125 Reserve Drive	09	-	09	-	454	-	003
72	1075 Reserve Drive	09	-	09	-	454	-	004
73	1045 Reserve Drive	09	-	09	-	454	-	005
74	1025 Reserve Drive	09	-	09	-	454	-	006
75	965 Reserve Drive	09	-	09	-	454	-	007
76	935 Reserve Drive	09	-	09	-	454	-	008
77	875 Reserve Drive	09	-	09	-	454	-	010
78	845 Reserve Drive	09	-	09	-	454	-	011
79	825 Reserve Drive	09	-	09	-	454	-	012
80	775 Reserve Drive	09	-	09	-	478	-	001
81	745 Reserve Drive	09	-	09	-	478	-	002
85	4440 Rosebud Drive	09	-	09	-	479	-	002
87	545 Reserve Drive	09	-	09	-	479	-	004
88	535 Reserve Drive	09	-	09	-	479	-	005
89	520 Reserve Drive	09	-	09	-	477	-	016
90	4545 Foxgrove Drive	09	-	09	-	477	-	015
91	4565 Foxgrove Drive	09	-	09	-	477	-	014
93	4635 Foxgrove Drive	09	-	09	-	477	-	012
94	4655 Foxgrove Drive	09	-	09	-	477	-	011
95	4675 Foxgrove Drive	09	-	09	-	477	-	010
97	4720 Grandfield Drive	09	-	09	-	477	-	001
104	540 Reserve Drive	09	-	09	-	477	-	008
105	840 Reserve Drive	09	-	09	-	453	-	023
106	860 Reserve Drive	09	-	09	-	453	-	022
107	880 Reserve Drive	09	-	09	-	453	-	021

108	940 Reserve Drive	09	-	09	-	453	-	020
109	980 Reserve Drive	09	-	09	-	453	-	019
110	1030 Reserve Drive	09	-	09	-	453	-	018
111	1050 Reserve Drive	09	-	09	-	453	-	017
112	1080 Reserve Drive	09	-	09	-	453	-	016
113	1120 Reserve Drive	09	-	09	-	453	-	015
114	1160 Reserve Drive	09	-	09	-	453	-	014
115	4540 Greywood Drive	09	-	09	-	380	-	006
116	4560 Greywood Drive	09	-	09	-	380	-	005
117	4580 Greywood Drive	09	-	09	-	380	-	004
118	4630 Greywood Drive	09	-	09	-	380	-	003
119	4650 Greywood Drive	09	-	09	-	380	-	002
120	4680 Greywood Drive	09	-	09	-	380	-	001
121	1145 Hilldale Lane	09	-	09	-	453	-	001
122	1135 Hilldale Lane	09	-	09	-	453	-	002
123	1125 Hilldale Lane	09	-	09	-	453	-	003
124	1095 Hilldale Lane	09	-	09	-	453	-	004
125	1065 Hilldale Lane	09	-	09	-	453	-	005
126	1045 Hilldale Lane	09	-	09	-	453	-	006
127	1025 Hilldale Lane	09	-	09	-	453	-	007
128	995 Hilldale Lane	09	-	09	-	453	-	008
129	965 Hilldale Lane	09	-	09	-	453	-	009
130	935 Hilldale Lane	09	-	09	-	453	-	010
131	875 Hilldale Lane	09	-	09	-	453	-	011
132	845 Hilldale Lane	09	-	09	-	453	-	012
133	825 Hilldale Lane	09	-	09	-	453	-	013



**City of St Charles**  
**Resolution No. 2012-138**

**A Resolution Approving the Execution of the First Amendment to the Land Improvement Agreement – The Reserves of St. Charles**

**Presented & Passed by the  
City Council on 19 November 2012**

WHEREAS, in 2009, the City, The Ryland Group, Inc. and Omni Tech, LLC (the “Developer”) entered into a land improvement agreement (“Agreement”) for the completion of certain public improvements of the property commonly known as The Reserves of St Charles (“Property”); and

WHEREAS, the Agreement was approved and authorized by the City pursuant to Resolution No. 2009-27 on July 20, 2009; and

WHEREAS, the Developer of the Property desires to amend certain provisions of the Agreement as to those matters Developer is obligated to complete pursuant to the Agreement and has requested the City to approve the amendments thereto; and

WHEREAS, after reviewing and considering the Developer’s request, the Mayor and City Council finds that amending the Agreement is in the best interests of the City and its residents.

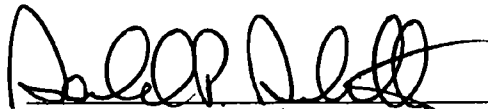
NOW THEREFORE, be it resolved by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, that the Mayor and City Clerk be and the same are hereby authorized to execute that certain First Amendment to Land Improvement Agreement, in substantially the form attached hereto and incorporated herein as Exhibit A, by and behalf of the City of St Charles, with such changes as may be approved by the City Attorney.

This Resolution shall be in full force and effect following its passage and approval as required by law.

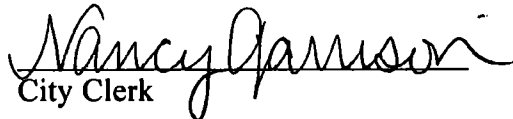
PRESENTED to the City Council of the City of St. Charles, Illinois this 19th day of November, 2012.

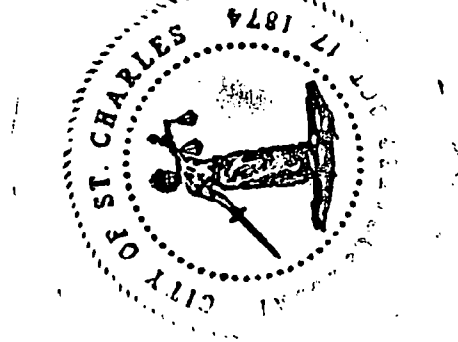
PASSED by the City Council of the City of St. Charles, Illinois this 19th day of November 2012.

APPROVED by the Mayor of the City of St. Charles, Illinois this 19th day of November, 2012.

  
\_\_\_\_\_  
Mayor Donald P. DeWitte

ATTEST:

  
City Clerk



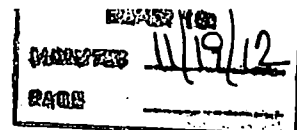
COUNCIL VOTE:

Ayes: 9  
Nays: 0  
Abstain: 1  
Absent: \_\_\_\_\_



**EXHIBIT A**

**First Amendment to the  
Land Improvement Agreement**



*This space reserved for Recorder's use only.*

**Prepared by:**

Evon S. Solms  
Janko Group, LLC  
1650 Lake Cook Rd., Suite 130  
Deerfield, IL 60015

**Return After Recording to:**

Tina Nilles  
City of St. Charles  
2 E. Main Street  
St. Charles, IL 60174

**FIRST AMENDMENT**  
**TO**  
**LAND IMPROVEMENT AGREEMENT**

This First Amendment to Land Improvement Agreement for The Reserves of St Charles (the "First Amendment") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2012 between the City of St Charles, Illinois, a municipal corporation (the "City") and Omni-Tech, LLC, an Illinois limited liability company (the "Developer"; the Developer and the City are herein collectively called the "Parties").

**WITNESSETH:**

**WHEREAS**, the City, the Original Developer and Developer entered into a land improvement agreement dated July 20, 2009 ("Agreement") for the completion of certain public improvements of the property commonly known as The Reserves of St Charles ("Property"); and

**WHEREAS**, the Developer desires to amend certain provisions in the Agreement and the

City desires to consent to such modifications; and

**WHEREAS**, there is no requirement for a Public Hearing to be conducted in order for the Agreement to be amended; and

**WHEREAS**, all other procedures have been followed and notices have been given and resolutions, ordinances and other matters shall be enacted to give lawful effect to the approvals and agreements contained herein.

**NOW, THEREFORE**, in consideration of the mutual covenants, agreements and conditions herein contained and by the authority of and in accordance with the Statutes of the State of Illinois, the parties hereto agree that:

1. The improvements completed by the Original Developer pursuant to the Agreement have been accepted by the City, the warranty period has expired and the maintenance security has been released by the City; therefore, the Original Developer Obligations under the Agreement have been completed.

2. The City hereby grants to Developer an extension of time to complete the repairs to binder, curb and gutter and install final surface to Phase 1 of the Property (as described in Exhibit A of the Agreement) to August 30, 2013 (collectively referred to as the "**Road Work**").

3. Upon completion of the Road Work, the Developer may request acceptance by the City of the completed Land Improvements and submit a Maintenance Letter of Credit per Title 16 of the City Code. Upon receipt of the Maintenance Letter of Credit, the Developer's performance letter of credit shall be reduced by the appropriate amount for the accepted improvements. The twelve month maintenance period referenced in Section 9 of the Agreement shall, for that portion of Reserve Drive located in Phase 1, be extended so as to expire at the same time that the maintenance period for Phase 2. The Developer shall either (i) provide a

separate Maintenance Letter of Credit for Reserve Drive with an expiration date in accordance with this First Amendment, (ii) include language in the Maintenance Letter of Credit for all Phase 1 Improvements that provides for the extension of its expiration date with respect to the extended Reserve Drive maintenance period, or (iii) amend the Phase 2 Letter of Credit to increase it by the amount required to secure the extended maintenance period for Reserve Drive. The form of any Letter of Credit delivered hereunder shall be subject to approval by the City Attorney.

4. The City hereby grants to Developer an extension of time to October 31, 2016 to complete all the remaining Land Improvements in Phase 2 (as described in Exhibit A of the Agreement), as well as any required bike path in Phase 1.

4. Notwithstanding anything contained herein to the contrary, the Developer shall be permitted to construct the sidewalks adjacent to each residential unit being constructed on the Property concurrently with each such unit. No certificate of occupancy for a residential unit shall be issued until the sidewalk adjacent thereto is completed and accepted by the City. The sidewalks shall be secured by a Maintenance Letter(s) of Credit in the same manner as all other Land Improvements.

5. All terms and conditions set forth in the Agreement are in full force and effect unless expressly amended herein by this First Amendment. In the event of any conflict between the terms and conditions in this First Amendment and the terms and conditions of the Agreement, the terms and conditions of this First Amendment shall govern and control. All terms not otherwise defined in this First Amendment shall have the meanings ascribed to them in the original Agreement. In the event of a conflict in such meanings, the definitions set forth in this First Amendment shall control. If any pertinent existing resolutions or ordinances, or

interpretations thereof, of the City are inconsistent or in conflict with any provision hereof, then the provisions of this First Amendment and the ordinances passed in pursuance hereof shall constitute lawful and binding amendments to, and shall supersede the terms of said inconsistent ordinances or resolutions, or interpretations thereof, as they may relate to the Property.

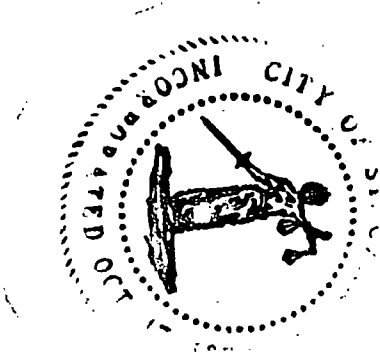
6. This First Amendment and the Agreement shall be deemed as covenants running with the land, and shall bind any person having an interest in the Property and such First Amendment and the Agreement shall inure to the benefit of the Developer, its successors and assigns.

7. The "Effective Date" of this First Amendment shall be the date of its execution by the City.

8. This First Amendment may be executed in counterparts, all of which together shall constitute one and the same instrument.

SIGNATURES ARE ON THE FOLLOWING PAGE.

IN WITNESS WHEREOF, the parties have executed this Second Amendment on the day and year first above written.



**CITY:**

City of St Charles

By: *Joseph A. Bell*

Its: Mayor

**ATTEST:**

*Nancy Garrison*

Its: City Clerk

**DEVELOPER:**

OMNI-TECH, LLC

By: *Gary R. Janko*

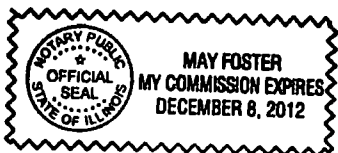
Its: Gary R. Janko, Manager

**ACKNOWLEDGEMENT**

STATE OF ILLINOIS    )  
                                  )  
COUNTY OF \_\_\_\_\_ )

The undersigned, a Notary Public in and for the State aforesaid, CERTIFIES THAT Donald P. DeWitte, as Mayor and Nancy Garrison, as Clerk of the CITY OF ST CHARLES, an Illinois municipal corporation, personally known to me to be the same persons whose names are subscribed to the foregoing First Amendment, appeared before me this day in person and acknowledged that they signed, and delivered the instrument as their free and voluntary act, and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal this 19th day of November, 2012.



{SEAL}

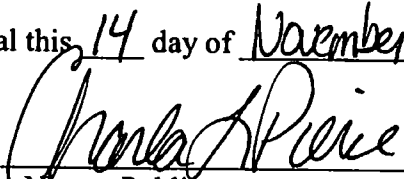
*May Foster*  
\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS )  
                                  )  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the State aforesaid, CERTIFIES THAT GARY R. JANKO, Manager of OMNI-TECH, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing First Amendment, appeared before me this day in person and acknowledged that he signed, and delivered the instrument as his free and voluntary act, and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal this 14 day of November, 2012.



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

{SEAL}





Copy.

# Morton Community Bank

## Performance Letter of Credit

IRREVOCABLE LETTER OF CREDIT NO. 70505

DATE: July 22, 2009

BENEFICIARY: City of St. Charles ("City")  
ATTN: Development Engineering Division Manager  
2 East Main Street  
St. Charles, IL 60174

FOR THE ACCOUNT OF: Omni-Tech, LLC ("Owner/Developer")  
1650 Lake Cook Road, Suite 130  
Deerfield, IL 60015

RE: The Reserve of St Charles Phase 2-Unit 3 (See legal description attached hereto as Exhibit "A")

Morton Community Bank hereby establishes and issues this Irrevocable Letter of Credit No. 70505 in favor of the City of St. Charles ("City") in the amount of \$343,248.86 which is available to be drawn upon by City upon presentation to us of its demand for payment accompanied by this original executed Irrevocable Letter of Credit as further described below.

This Irrevocable Letter of Credit is issued for the purpose of securing and paying for the installation of the following Land Improvements as defined in the St. Charles Municipal Code for the aforesaid project and/or reimbursement to the City of expenses or other costs relating thereto:

DIVISION "A" - STORM SEWER SYSTEMS AND APPURTENANCES

(engineer's estimate = \$36,638.87)

DIVISION "B" - STREETS (PAVEMENT AND CURBS)

(engineer's estimate = \$241,838.40)

DIVISION "C" - SOIL EROSION

(engineer's estimate = \$20,000.00)

TOTAL ENGINEER'S COST ESTIMATE = \$298,477.27

115% OF TOTAL ENGINEERS COST ESTIMATE = \$343,248.86

The above divisions shall not preclude the City of St. Charles from drawing on funds allocated for work of one division from another division regardless of whether the work is completed for the division from which the funds are drawn.

Such Land Improvements shall be constructed by Omni-Tech, LLC (the "Owner/Developer"), our customers, in accordance with plans, specifications and cost estimates prepared by Cemcon, Ltd , Professional Engineer, dated April 20, 2005, and last revised April 7, 2006 and approved by the City.

We hereby agree that this Irrevocable Letter of Credit shall remain in full force and effect and pertain to any and all amendments or modifications which may be made from time to time to the plans, specifications and cost estimates for said Land Improvements regardless of whether we have been given notice of such amendments or modifications.

**This Irrevocable Letter of Credit shall expire at our office as of our close of business on July 21, 2010,** provided, however, that we shall notify the Development Engineering Division Manager, at the above address, by certified or registered mail, return receipt requested, at least ninety (90) days prior to said expiration date that said Irrevocable Letter of Credit is about to expire. It is a condition of this Irrevocable Letter of Credit that it shall be automatically extended, without amendment, for additional periods of one year from the present and each future expiration date, unless we notify you in writing via Certified Mail, Return Receipt Requested, at least ninety (90) days prior to any given expiry date that we have elected not to renew this Letter of Credit for such additional period of time. Upon receipt of such notice, you may make demand on this Irrevocable Letter of Credit as described below.

This Irrevocable Letter of Credit shall remain in effect without regard to any default in payments of sums owed us by the Owner or Developer and without regard to other claims which we may have against the Owner or Developer.

Demands on this Irrevocable Letter of Credit shall be made by presenting Morton Community Bank with this original Irrevocable Letter of Credit, and all amendment(s) thereto (if any), along with a letter from the Mayor of the City demanding payment, accompanied by the certificate of the Director of Public Works for the City, or his designee, or by a copy of a resolution of the City Council of the City, stating:

1. That this Irrevocable Letter of Credit will expire within ninety (90) days and has not been amended to extend the expiration date for one year; or
2. That the aforesaid Land Improvements have not been completed by the completion date required by the City Code or otherwise set forth in the Land Improvement Agreement between the Owner, Developer and the City of St. Charles.

No consent from the Developer or Owner shall be required in order for the City to make demand hereunder.

Morton Community Bank agrees that this Irrevocable Letter of Credit shall not be reduced or discharged except upon receipt of a certificate from the Director of Public Works for the City of St. Charles, or his designee, certifying that this Irrevocable Letter of Credit may be reduced and the amount by which it may be reduced. The outstanding balance of this Irrevocable Letter of Credit shall be the face amount of this Irrevocable Letter of Credit less any amount which is discharged upon certification of the Director of Public Works, or his designee.

In respect to the written certification above, Morton Community Bank and any negotiating bank or bankers are authorized to accept the certification as binding and correct without investigation or responsibility for the accuracy, veracity, correctness or validity of the same or any part thereof.

It is further acknowledged that the consideration for this Irrevocable Letter of Credit is provided by agreements between the undersigned financial institution and the Developer.

We hereby engage with you that all demands for payment made in conformity with the terms of this Irrevocable Letter of Credit will be duly honored on presentation to us prior to expiration of this Irrevocable Letter of Credit. Partial drawings and multiple drawings are allowed. In the event that we do not make payouts in accordance with this Irrevocable Letter of Credit and the City is required to file a lawsuit to compel compliance with this Irrevocable Letter of Credit and shall prevail, we will be obligated to pay to the City its expenses and costs of litigation, including attorneys' fees.

This Irrevocable Letter of Credit sets forth in full terms our undertaking and such an undertaking shall not in any way be modified, amended or amplified by reference to any document, instrument, or agreement except as referred to herein or in which this Irrevocable Letter of Credit relates, and any such reference shall be deemed to be incorporated herein by reference to any document, instrument or agreement, all as previously stated.

The undersigned institution hereby represents and warrants to the City that it has the full power, right and authority to deliver this Irrevocable Letter of Credit, that the Letter of Credit is within all lending limits of such institution, is in full conformity with all state and federal law, and is binding in accordance with its terms on the undersigned institution. All acts, requirements and other preconditions for the issuance of this Irrevocable Letter of Credit have been completed.

This credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500.

MORTON COMMUNITY BANK

BY: Robert H. Hays Sec. LO

ATTEST: Lou Jacek

## EXHIBIT A

Lots 23-81, both inclusive, 105 through 133, both inclusive, in The Reserve of St. Charles, being a subdivision of part of the South Half of Section 9, part of the Southwest Quarter of Section 10, part of the Northwest Quarter of Section 15, and part of the Northwest Quarter of Section 16, Township 40 North, Range 8 East of the Third Principal Meridian, according to the plat thereof recorded February 9, 2006 as document 2006K015402, certificate of correction recorded February 14, 2006 as document 2006K016494, and certificate of correction recorded May 30, 2006 as document 2006K058157, in Kane County, Illinois.