 <p>CITY OF ST. CHARLES ILLINOIS • 1834</p>	AGENDA ITEM EXECUTIVE SUMMARY		Agenda Item number: IID
	Title:	A Resolution Authorizing the Mayor and City Clerk to Execute a Settlement Agreement and General Mutual Release Agreement between the City of St. Charles and Omni-Tech, LLC regarding the Reserve of St. Charles Phase 2 – Unit 3	
	Presenter:	Russell Colby, Community Development Director	
Meeting: City Council		Date: December 18, 2023	
Proposed Cost:		Budgeted Amount:	Not Budgeted: <input type="checkbox"/>
TIF District: None			
Executive Summary (if not budgeted, please explain): <p>Attached is a Settlement and General Mutual Release Agreement between the City and Omni-Tech, LLC, the developer of the Reserve of St. Charles Phase 2 – Unit 3.</p> <p>The City has obtained the developer Financial Guarantee to complete the remaining street improvements within the subdivision. There is an anticipated shortfall of \$19,721.</p> <p>Per the agreement:</p> <ul style="list-style-type: none"> • Omni-Tech, LLC will provide an additional payment of \$25,000. This amount would cover the City's anticipated construction costs, plus an amount for contingency and construction oversight. • Omni-Tech will provide a Bill-of-Sale and the City will accept the existing street improvements and assume maintenance responsibility going forward. Omni-Tech, LLC will have no further obligations with respect to the Reserve development. <p>The City has a contract in place with a paving contractor to complete the street improvements in Spring 2024.</p> <p>The agreement has been reviewed by the City Attorney. Staff recommends approval of the agreement as presented.</p>			
Attachments (please list): Resolution			
Recommendation/Suggested Action (briefly explain): Motion to Approve			

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

A Resolution Authorizing the Mayor and City Clerk to Execute a Settlement Agreement and General Mutual Release Agreement between the City of St. Charles and Omni-Tech, LLC regarding the Reserve of St. Charles Phase 2 – Unit 3

**Presented & Passed by the
City Council on _____**

BE IT RESOLVED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, that the Mayor and City Clerk are hereby authorized to execute that certain Settlement Agreement and General Mutual Release Agreement, insubstantially the form attached hereto and incorporated herein as Exhibit “A” by and on behalf of the City of St. Charles.

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

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

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

Lora A. Vitek, Mayor

Attest:

City Clerk/Recording Secretary

Voice Vote:

Ayes:

Nays:

Absent:

Abstain:

Resolution No. _____

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EXHIBIT "A"

Settlement Agreement and General Mutual Release Agreement

SETTLEMENT AGREEMENT AND GENERAL MUTUAL RELEASE

This Settlement Agreement and General Mutual Release (the “Agreement”) is entered into by and between the City of St. Charles, Illinois, (the “City”), and Omni-Tech LLC, an Illinois limited liability company (“Omni-Tech”), as of this 19th day of December, 2023.

RECITALS:

A. Omni-Tech purchased a partially-developed residential subdivision known as the Reserve of St. Charles Phase 2 – Unit 3 (the “Reserve”) located in the City, and then entered into a Land Improvement Agreement with the City dated July 20, 2009 regarding the remaining improvements to be completed at the Reserve (the “Land Improvement Agreement”).

B. Pursuant to the terms of the Land Improvement Agreement, Omni-Tech established Irrevocable Letter of Credit No. 70505 with Morton Community Bank in the amount of \$343,248.86 for the purpose of securing and paying for the installation of, among other things, the streets (pavements and curbs) (the “Street Improvements”) in the Reserve (the “Letter of Credit”).

C. The City has asserted that: (i) the binder on the streets in the Reserve needs to be removed and replaced in its entirety before a final lift of asphalt is placed on the streets; (ii) such binder removal and replacement is included in Omni-Tech’s responsibility to complete the Street Improvements; (iii) Omni-Tech’s failure to pay all costs associated with the binder removal and replacement is a breach of the Land Improvement Agreement; and (iv) the Letter of Credit is not the full and complete extent of Omni-Tech’s financial obligations with respect to the Street Improvements and all other public improvements described in the Land Improvement Agreement.

D. Omni-Tech has: (i) denied that the binder needs to be removed and replaced in its entirety; (ii) denied that it is in breach of the Land Improvement Agreement; (iii) asserted that the City is in breach of the Land Improvement Agreement due to its refusal to allow Omni-Tech to put the final lift of asphalt on the streets as may be required under the Land Improvement Agreement; and (iv) asserted that the Letter of Credit is the full and complete extent of Omni-Tech’s financial obligations with respect to the Street Improvements and all other public improvements described in the Land Improvement Agreement.

E. On October 10, 2023, the City drew on the Letter of Credit, but has continued to insist that Omni-Tech remains responsible for any additional expenses incurred by the City in relation to the Land Improvement Agreement, including but not limited to the Street Improvements.

F. Omni-Tech has continued to insist that the City is responsible for any damage to the binder and that the City’s draw on the Letter of Credit has fully satisfied Omni-Tech’s obligations to the City.

G. To avoid the costs, expense and risk of the litigation, the City and Omni-Tech, after communicating with their own freely-chosen counsel, wish to resolve and settle all claims or potential claims, allegations, assertions or causes of action, known or unknown, that the City may have against Omni-Tech or that Omni-Tech may have against the City, in accordance with the terms set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference and the mutual promises, covenants and obligations hereinafter set forth, the parties hereto agree as follows:

1. Payment. Omni-Tech agree to pay the City the total sum of Twenty Five Thousand and no/100 Dollars (\$25,000.00) upon the execution and delivery of this Agreement.

2. Bill of Sale. Omni-Tech shall execute and deliver to the City a Bill of Sale, in the form attached hereto as Exhibit "A" and made a part hereof ("Bill of Sale"), upon execution and delivery of this Agreement.

3. Assumption of Street Maintenance. Upon the execution and delivery of this Agreement and delivery of the Bill of Sale, the City shall assume all obligations and expenses with respect to both the Street Improvements and the maintenance of the streets, including snow plowing.

4. Termination. With the execution of this Agreement and delivery of the Bill of Sale, the parties agree that any obligations they may have to each other with respect to the Land Improvement Agreement, the Letter of Credit, the Street Improvements and any other public improvements described in the Land Improvement Agreement, are hereby terminated, and that the City hereby accepts all public improvements on the Reserve.

5. Release. Upon the execution and delivery of this Agreement:

a. Omni-Tech on behalf of itself, its parents, subsidiaries, and affiliates and their respective officers, directors, members, agents, employees, attorneys, servants, insurers, representatives, successors, heirs and assigns, including but not limited to Meritus Homes, Inc., Janko Group LLC, and Gary Janko (the "Omni-Tech Releasing Parties"), does hereby remise, release and forever discharge the City and its parents, subsidiaries, and affiliates and their respective officers, directors, members, agents, employees, attorneys, servants, insurers, representatives, successors and assigns (the "the City Released Parties"), from all claims, demands, rights and causes of action (inchoate or otherwise), which the Omni-Tech Releasing Parties now have or may have against the City Released Parties, whether known or unknown, as of the date of this Agreement, which were or could have been asserted with respect to the Reserve, the Land Improvement Agreement, the Letter of Credit or the Street Improvements.

b. the City on behalf of itself and its parents, subsidiaries, and affiliates and their respective officers, directors, members, agents, employees, attorneys, servants, insurers, representatives, successors and assigns (the "the City Releasing Parties"), does hereby remise, release and forever discharge Omni-Tech and its parents, subsidiaries, and affiliates and their respective officers, directors, members, agents, employees, attorneys, servants, insurers, representatives, successors, heirs and assigns, including but not limited to Meritus Homes, Inc., Janko Group LLC, and Gary Janko (the "Omni-Tech Released Parties") from all claims, demands, rights and causes of action (inchoate or otherwise), which the City Releasing Parties now have or may have against the Omni-Tech Released Parties, whether known or unknown, as of the date of this Agreement, which were or could have been asserted with respect to the Reserve, the Land Improvement Agreement, the Letter of Credit or the Street Improvements.

6. Additional Terms.

a. This Agreement constitutes the entire agreement between the parties hereto and supersedes all agreements, representations, warranties, statements, promises and understandings, whether oral or written, with respect to the subject matter of this

Agreement. No party hereto has in any way relied, nor shall in any way rely, upon any oral or written agreements, representations, warranties, statements, promises or understandings made by any other party, any agent or attorney of any other party or any other person unless such agreement, representation, warranty, statement, promise or understanding is specifically set forth in this Agreement. No party hereto nor any of its attorneys shall be bound by or charged with any statements, promises, or understandings not specifically set forth in this Agreement.

b. Each party has relied upon the advice and representation of counsel of its own selection and has been fully advised as to the legal effect of this Agreement and has executed this Agreement as its own free and voluntary act.

c. The provisions contained in this Agreement shall bind and inure to the benefit of the parties, and their respective employees, partners, agents, representatives, successors, assigns, affiliates and legal representatives.

d. This Agreement is executed by the parties for the sole purpose of compromising and settling matters described in this Agreement. It is expressly understood and agreed, as a condition of this Agreement, that this Agreement shall not constitute nor be construed to be an admission of any liability, nor shall this Agreement indicate in any degree an admission of the truth or correctness of any of the allegations referenced in this Agreement.

e. The parties hereby agree to cooperate and to take further action as may be necessary to effectuate the terms and purposes of this Agreement.

f. This Agreement may be executed in counterparts, and any number of counterparts signed in the aggregate by the parties will constitute a single, original instrument, and signatures of the parties by facsimile and e-mail shall be binding.

g. This Agreement is governed by and to be construed in accordance with internal laws of Illinois.

h. This Agreement may not be modified or amended except by a writing signed by the party against whom the enforcement of such modification or amendment is sought.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and caused this Agreement to be executed in their respective corporate names by a proper officer or representative duly authorized to do so as of the date indicated.

CITY OF ST. CHARLES, ILLINOIS

OMNI-TECH, LLC

By: _____
Its: _____

By: _____
Gary R. Janko, Manager

EXHIBIT "A"

BILL OF SALE

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that Omni-Tech, LLC ("Seller"), in consideration of One (\$1.00) Dollar and other good and valuable consideration, does hereby grant, sell, transfer and deliver unto the CITY OF ST. CHARLES, an Illinois municipal corporation in Kane County, Illinois, ("City") all of Seller's right, title and interest in and to the following goods, chattels or other items of personal property, to wit:

ONE: Each and every part of Reserve Drive west of Rosebud Drive, Greywood Drive, Hilldale Lane, and Foley Lane, all located with the Reserve of St. Charles Subdivision- Phase 2 / Unit 3, including Sidewalks, Curb and Gutter, Binder Pavement Course, Parkway Trees, and Public Storm Sewer and appurtenances located within right-of-way, as fully described in a certain set of plans and specifications attached hereto and incorporated herein as Exhibit "A" as Final Site Development Plans for Reserve of St. Charles, prepared by Cemcon Ltd. dated August 3, 2006.

TWO: The object of this Bill of Sale is to grant, sell, transfer and deliver to the CITY the ownership in all items of personalty, which comprise Reserve Drive west of Rosebud Drive, Greywood Drive, Hilldale Lane, and Foley Lane, all located with the Reserve of St. Charles Subdivision (Phase 2 / Unit 3), including Sidewalks, Curb and Gutter, Binder Pavement Course, Parkway Trees, and Public Storm Sewer and appurtenances located within right-of-way by SELLER to date within the CITY.

IN WITNESS WHEREOF, SELLER has signed and sealed this Bill of Sale at

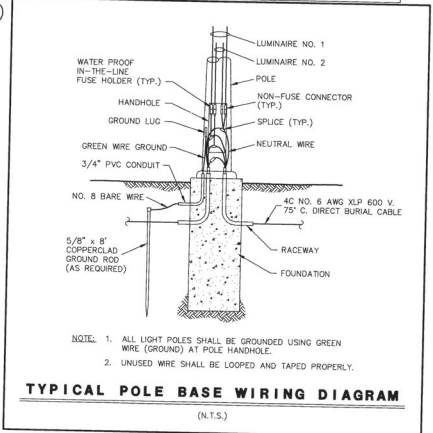
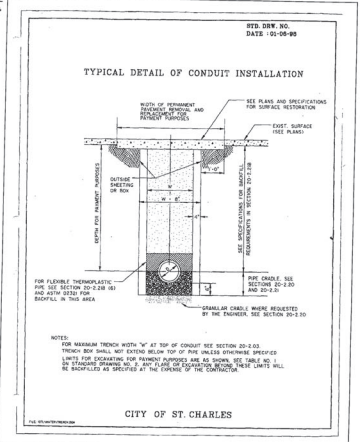
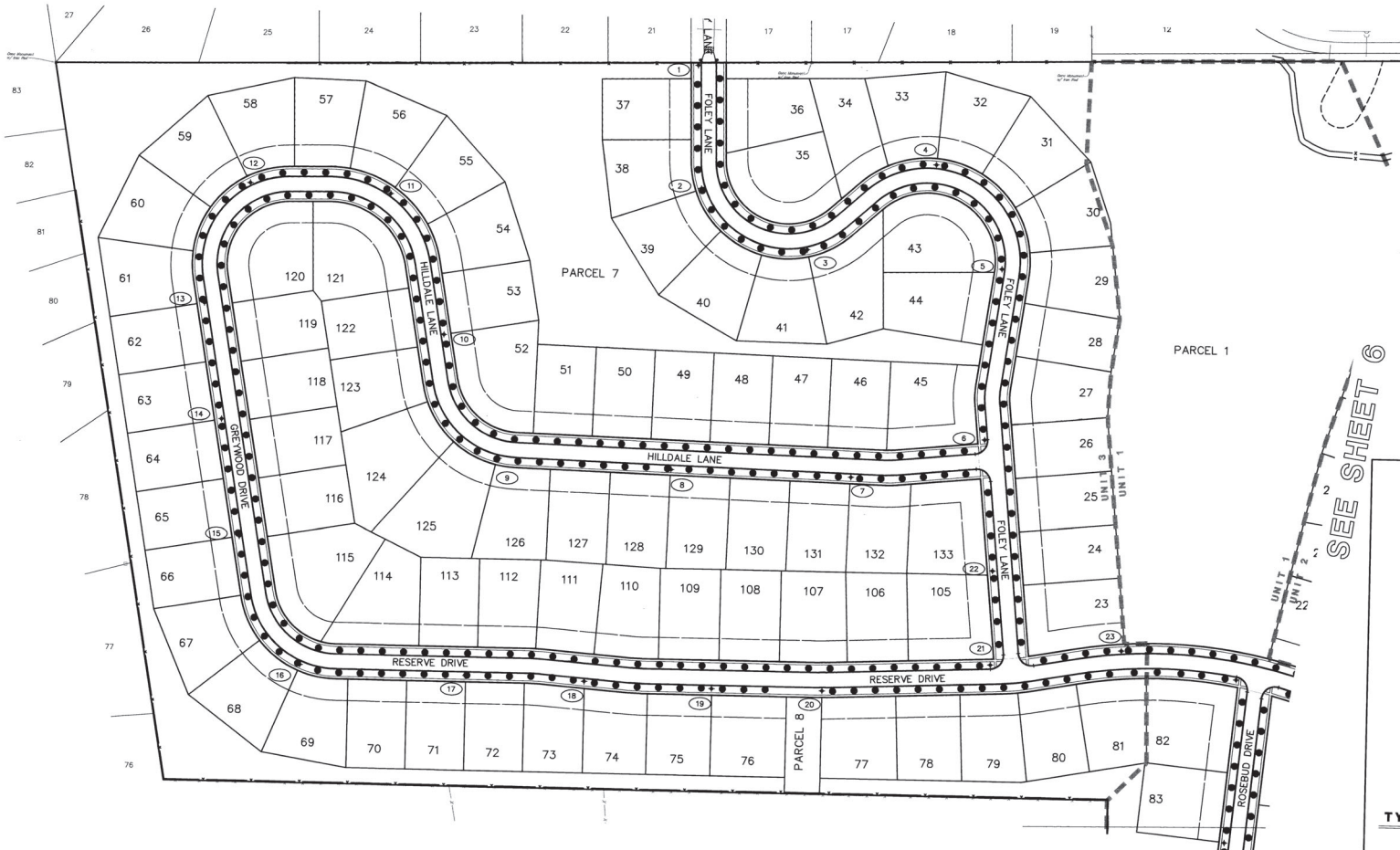
_____, this _____ day of _____, 2023.

(SELLER)
Omni-Tech, LLC

BY: Gary Janko Manager

ATTEST:

Exhibit "A"



SEE SHEET 6

LEGEND

SYMBOL	DESCRIPTION
✱	DECORATIVE STREET LIGHT LOCATION
⊠	COBRA HEAD STREET LIGHT LOCATION
—	COMM. EDISON CO. ELECTRIC SERVICE
▨	CONDUIT CROSSING, 4\"/>

PREPARED FOR:
THE RYLAND GROUP INC.
 1141 EAST MAIN STREET
 EAST DUNDEE, ILLINOIS
 (224) 293-3100

PREPARED BY:

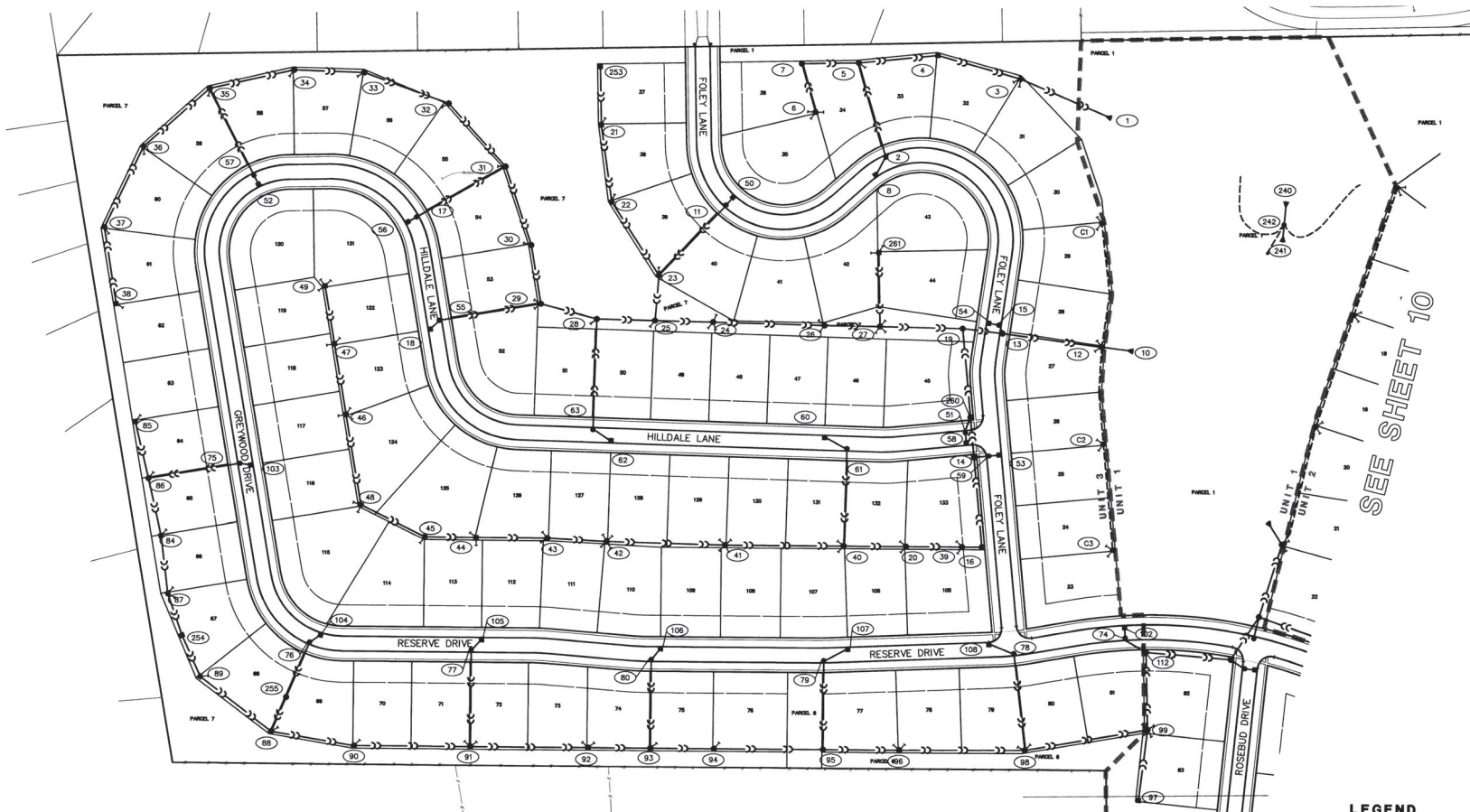
CEMCON, Ltd.
 Consulting Engineers, Land Surveyors & Planners
 2280 White Oak Circle, Suite 100
 Aurora, Illinois 60504-9675
 Ph: 630.862.2100 Fax: 630.862.2199
 E-Mail: cadd@cemcon.com Website: www.cemcon.com

NO.		DATE	DESCRIPTION	REVISIONS	
1	06-01-05/08	REVISED PER CITY REVIEW LETTER DATED 05-17-05			
2	02-27-06/08	PER CLIENT REVIEW			

OVERALL STREET LIGHTING, TREE PLANTING PLAN AND DETAILS
RESERVE OF ST. CHARLES

FILE NAME: OVR UTIL	DCSN. BY: CRM	JOB NO.: 608.068	FLD. BK./PG.: ---	SHEET NO. 5 of 40
DIR: 608068	DRN. BY: S-H	DATE: 04-20-05	SCALE: 1" = 100'	

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 TAB: LIGHT01
 XREF: OVERALL



LEGEND

EXISTING	PROPOSED	DESCRIPTION
○	●	MANHOLE
□	■	CATCH BASIN
	●	INLET
	■	BUMP PUMP JUNCTION
	■	SLOPE INLET BOX
	— —	HEADWALL
	— —	END SECTION
	— —	STORM SEWER
	— —	BUMP DRAIN CONDUIT
	○ NO.	NUMBERING SYSTEM USED ON PLANS FOR DRAINAGE STRUCTURE IDENTIFICATION
	○ C NO.	NUMBERING SYSTEM USED ON PLANS FOR BUMP PUMP JUNCTION IDENTIFICATION

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PREPARED FOR:
THE RYLAND GROUP INC.
 1141 EAST MAIN STREET, SUITE 108
 EAST DUNDEE, ILLINOIS
 (224) 293-3100



PREPARED BY:
CEMCON, Ltd.
 Consulting Engineers, Land Surveyors & Planners
 2280 White Oak Circle, Suite 100
 Aurora, Illinois 60504-9675
 Ph: 630.862.2100 Fax: 630.862.2199
 E-Mail: coud@cemcon.com Website: www.cemcon.com

NO.		DATE	DESCRIPTION	REVISIONS	
▲	06-01-05/AMB		REVISED PER CITY REVIEW LETTER DATED 05-17-05	NO.	DATE
▲	08-04-05/AMS		REVISED PER CITY REVIEW LETTER DATED 08-04-05		
▲	02-27-06/AMS		PER CLIENT REVIEW		

OVERALL STORM SEWER PLAN
RESERVE OF ST. CHARLES

FILE NAME: OVR UTIL	DSGN. BY: CRM	JOB NO.: 608.088	FLD. BK./PG.: ---	SHEET NO.:
DIR: 608068	DRN. BY: SJH	DATE: 04-20-05	SCALE: 1" = 100'	9 of 40

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