



AGENDA ITEM EXECUTIVE SUMMARY

Title:	Recommendation to Approve a Resolution Authorizing the Execution of the First Amendment to the Land Improvement Agreement for The Reserves of St. Charles By and Between the City of St. Charles, Omni-Tech, LLC and The Ryland Group, Inc.
Presenter:	Christopher Tiedt

Please check appropriate box:

	Government Operations		Government Services
X	Planning & Development (11/12/2012)		City Council

Estimated Cost:	N/A	Budgeted:	YES		NO	
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If NO, please explain how item will be funded:

Executive Summary:

In 2009, The Ryland Group sold the remaining lots and the responsibility to complete remaining public improvements required per the annexation agreement for The Reserves of St. Charles to Omni-Tech, LLC. The City entered into a Land Improvement Agreement with Omni-Tech, LLC to insure that all remaining public land improvements were completed. The original agreement stipulated that all remaining public land improvements were to be completed within two years of the execution of the agreement.

Given the current economic conditions, Omni-Tech, LLC has had difficulties in selling the vacant lots and completing the remaining improvements in the subdivision; and therefore is requesting an amendment to the land improvement agreement. As of today, eleven lots in Phase I and all lots in Phase II remain vacant.

The amendment to the land improvement agreement will require Omni-Tech, LLC to complete the public streets and storm sewer punchlists in Phase I by August 30, 2013 and grant them a time extension to October 31, 2016 to complete all other remaining land improvements within the subdivision.

The City Attorney has reviewed the first amendment to the land improvement agreement.

Attachments: *(please list)*

Resolution, First Amendment to Land Improvement Agreement

Recommendation / Suggested Action *(briefly explain):*

Staff recommends approval of the Resolution Authorizing the Execution of the First Amendment to the Land Improvement Agreement for The Reserves of St. Charles By and Between City of St. Charles, Omni-Tech, LLC and The Ryland Group, Inc.

<i>For office use only:</i>	<i>Agenda Item Number: 3c</i>
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City of St Charles
Resolution No. _____

**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 _____**

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 ____ day of _____, 2012.

PASSED by the City Council of the City of St. Charles, Illinois this ____ day of _____ 2012.

APPROVED by the Mayor of the City of St. Charles, Illinois this ____ day of _____, 2012.

Mayor Donald P. DeWitte

ATTEST:

City Clerk

COUNCIL VOTE:

Ayes: _____
Nays: _____
Abstain: _____
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**").

W I T N E S S E T H:

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: _____

Its: Mayor

ATTEST:

Its: City Clerk

DEVELOPER:

OMNI-TECH, LLC

By: _____

Its: Gary R. Janko, Manager

ACKNOWLEDGEMENT

STATE OF ILLINOIS)
)
COUNTY OF _____)

The undersigned, a Notary Public in and for the State aforesaid, CERTIFIES THAT _____, as Mayor and _____, 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 ____ day of _____, 2012.

Notary Public

{SEAL}

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 ____ day of _____, 2012.

Notary Public

{SEAL}