

AGENDA
Village of Antioch, Lake County, Illinois
Municipal Building: 874 Main Street, Antioch, Illinois
VILLAGE BOARD OF TRUSTEES; SPECIAL MEETING – 6:00 PM
Monday, July 25, 2011

- I. Call to Order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Mayoral Report

- V. Executive Session –Pending litigation.

- VI. Returned Open Session – possible action on Pending Litigation/Settlement Agreement.
 - 1. Consideration of a Resolution approving the Settlement of a Lawsuit Brought Against Fidelity and Deposit Company of Maryland – *Resolution 11-67*
 - 2. Consideration of a Resolution Approving an Agreement Tolling the Period of Time in Which to Bring Claims Against Fidelity & Deposit Company of Maryland – *Resolution 11-68*

VII. Adjournment

ALL ORDINANCES SCHEDULED ON THIS AGENDA FOR FIRST OR SECOND READING MAY BE PASSED AT THIS MEETING IF THE VILLAGE BOARD OF TRUSTEES, BY MOTION DULY MADE AND SECONDED, BY MAJORITY VOTE OF THE TRUSTEES IN ATTENDANCE, VOTES TO WAIVE ALL READINGS THEREOF AND THEN MOVES TO PASS SUCH ORDINANCES ACCORDING TO RULE 11 OF SECTION 1-4-6 OF THE VILLAGE CODE AND ACCORDING TO LAW.

No vote may be taken on any item, which has not been listed on the Agenda for the meeting. Any matter not specifically listed on this Agenda, or brought up under "Other Business" may be discussed by Board members at this meeting, but a vote on the matter shall be postponed until the next Board meeting.

**STATE OF ILLINOIS
COUNTY OF LAKE**

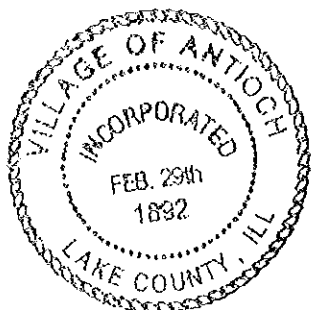
CERTIFICATE

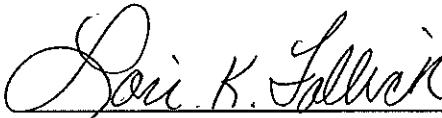
I, Lori K. Folbrick certify that I am the duly appointed Deputy Clerk of the Village of Antioch, Lake County, Illinois.

I certify that the attached document is the Village of Antioch Board of Trustees Meeting Agenda for the July 25, 2011 Special Village Board meeting.

I further certify that this agenda has been prepared by me and to the best of my knowledge and belief is identical to the agenda posted on the Village of Antioch web site at www.antioch.il.gov.

DATED at Antioch, Illinois this 22nd day of July, 2011.




Lori K. Folbrick, Deputy Clerk

RESOLUTION 2011 - _____

**A RESOLUTION APPROVING THE SETTLEMENT
OF A LAWSUIT BROUGHT AGAINST
FIDELITY & DEPOSIT COMPANY OF MARYLAND**

WHEREAS, the financial collapse and eventual bankruptcy of Neumann Homes resulted in a number of incomplete public improvements that were required to be built on the Neumann subdivisions known as Neuhaven and Clublands, and

WHEREAS, the Village has been diligently working to protect the interests of the taxpayers of the Village and the residents of those subdivisions, and

WHEREAS, the Village has previously enforced its rights against various surety bonds that were in place to guarantee completion of a number of those public improvement projects and has successfully completed many of those projects, and

WHEREAS, the Village made a claim against a bond issued by Fidelity & Deposit Company of Maryland ("F&D") for certain public improvements (primarily the WRT radon removal system which treats potable water from the deep wells serving the Clublands subdivision and grading of a platted park) which was not honored and ultimately, the Village filed suit (Lake County case 10 L 275) to obtain a judicial determination of the liability of F&D under the said bond, and

WHEREAS, F&D asserted a number of defenses to the claim, requiring substantial effort by the Village's attorneys and the setting of a trial date as well as the filing of substantive motions, and

WHEREAS, shortly before the substantive motions were scheduled to be heard, and also shortly before the trial date, the attorneys, with the approval of the Board, met with representatives of the Village and F&D before a mediator particularly skilled in the issues involving in claims of this nature and reached a tentative settlement of all matters involved in this particular bond claim and lawsuit, and

WHEREAS, the Village Board finds that the settlement negotiated in this manner, in the gross amount of \$700,000.00, is an adequate, reasonable and just resolution of this dispute, and that the receipt of these funds will help replenish depleted reserves in the water and sewer fund and provide other benefits to the residents and taxpayers of the Village, and

NOW THEREFORE, BE IT RESOLVED by the Village of Antioch, Lake County, Illinois, as follows:

SECTION ONE: The settlement of this lawsuit and bond claim against F&D is hereby approved in all particulars, and the Mayor and Clerk are authorized to execute a binding release in a form acceptable to the Village Attorney the same in evidence of the intent of the Village to be bound by the terms of the settlement and to receive the funds generated thereby.

SECTION TWO: The Village Attorney is directed to dismiss lawsuit 10 L 275 and assist in drafting the releases and other quittance papers necessary to bring this matter to a complete resolution.

SECTION THREE: This resolution shall take effect immediately upon passage.

PASSED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF ANTIOCH, ILLINOIS,
ON THIS ____ DAY OF _____, 2011.

ATTEST:

LAWRENCE M. HANSON, MAYOR

CANDI L. ROWE, VILLAGE CLERK

RESOLUTION 2011 - _____

**A RESOLUTION APPROVING AN AGREEMENT TOLLING
THE PERIOD OF TIME IN WHICH TO BRING CLAIMS AGAINST
FIDELITY & DEPOSIT COMPANY OF MARYLAND**

WHEREAS, the financial collapse and eventual bankruptcy of Neumann Homes resulted in a number of incomplete public improvements that were required to be built on the Neumann subdivisions known as Neuhaven and Clublands, and

WHEREAS, the Village has been diligently working to protect the interests of the taxpayers of the Village and the residents of those subdivisions, and

WHEREAS, the Village has previously enforced its rights against various surety bonds that were in place to guarantee completion of a number of those public improvement projects and has successfully completed many of those projects, and

WHEREAS, the Village made a claim against a bond issued by Fidelity & Deposit Company of Maryland (“F&D”) for certain public improvements, which claim remains pending and incompletely resolved, and in order to allow the parties additional time in which to resolve the claims, reserving all rights to a judicial determination of the liability of F&D under the said bond, the parties thereto wish to enter into a tolling agreement that will grant them this additional time without prejudicing their rights, and

WHEREAS, the special counsel for the Village and the attorney for F&D have drafted the Tolling Agreement attached as Exhibit A hereto, which has been reviewed by the Village Attorney and is acceptable in form and substance to him, and

WHEREAS, the corporate authorities find that it is appropriate under the circumstances to enter into this agreement with the eventual hope of full resolution of all claims involved therein becoming resolvable without the necessity of court intervention, and

NOW THEREFORE, BE IT RESOLVED by the Village of Antioch, Lake County, Illinois, as follows:

SECTION ONE: The Mayor and Clerk are authorized and directed to execute the Tolling Agreement in the form attached as Exhibit A hereto.

SECTION TWO: This resolution shall take effect immediately upon passage.

PASSED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF ANTIOCH, ILLINOIS,
ON THIS ____ DAY OF _____, 2011.

ATTEST:

LAWRENCE M. HANSON, MAYOR

CANDI L. ROWE, VILLAGE CLERK

CLUBLANDS PHASE 3 COMPLETION AND TOLLING AGREEMENT

This Clublands Phase 3 Completion and Tolling Agreement (“Agreement”) is made this _____ day of April, 2011 by and between, the Village of Antioch, an Illinois municipal corp. (“Antioch”), and Fidelity and Deposit Company of Maryland, a Maryland corporation (“F&D”), (collectively, “Parties”).

RECITALS

- A. Antioch is an Illinois municipal corporation located in Lake County, Illinois;
- B. F&D is a corporation organized and existing under the laws of the state of Maryland with its principal place of business in Schaumburg, Illinois;
- C. Neumann Homes, Inc. (“NHI”) and the Village entered into a certain Infrastructure Agreement (“IA”) dated June 5, 2003 providing for the development of a subdivision in the Village commonly known as “Clublands Phase 3.” (“Subdivision”);
- D. As required by the IA, in order to secure performance of Neumann’s obligation to construct certain public infrastructure improvements in the Subdivision, Neumann procured and delivered to the Village Subdivision/Site Improvement Bond No. 08663983 (the “Phase 3 Bond”) dated September 29, 2004, in the original penal sum of \$8,053,213.00 with the Village as obligee, NHI, as principal, and F&D as surety. As of May 27 2008, the penal sum of the Phase 3 Bond had been reduced to \$3,316,832.20;
- E. Pursuant to that certain Completion Agreement (“Completion Agreement”) dated May 27, 2008, by and between the Parties, F&D installed certain public infrastructure improvements in the Subdivision at a cost of \$1,570,353.63. As a result thereof, F&D has been partially released from its obligations under the Phase 3 Bond and the penal sum of the Phase 3 Bond, as of the date of this agreement, has been further reduced to

\$1,746,478.57, which is the current penal sum of the Phase 3 Bond (“Current Penal Sum”);

- F. The Village has requested that F&D complete certain additional items of public infrastructure work in the Subdivision, which F&D has agreed to do in accordance with the terms and conditions of this Agreement;
- G. The Village maintains that F&D’s obligations under the Phase 3 Bond will not be fully performed upon completion of the items or work referred to in paragraph F and F&D maintains that it has fully satisfied its obligations under the Phase 3 Bond;
- H. The Parties have determined that it is in their mutual interest to avoid, at this time, litigation or potential litigation concerning or relating to any claims of the Village against the Phase 3 Bond, which may remain following acceptance by the Village of public infrastructure work as provided hereinafter; therefore, they desire to enter into this Agreement.

AGREEMENT

NOW THEREFORE, for and in consideration of the acts, promises, agreements, mutual covenants and other matters described herein, the sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

1. F&D shall on or before June 30, 2011 or 60 days following the on which the Village executes this agreement, whichever is later, complete the items of work contained on the punchlist, which is attached hereto as Exhibit A. On or before May 30, 2011, F&D shall also televise the storm sewer structures that are identified on Exhibit B, and submit those tapes to the Village engineers for view. F&D shall also repair all defects disclosed on those videotapes within 60 days after the Village engineers submit a list of defects that require repair. The items

listed on Exhibit A and the televising and repair of the items that are subject of Exhibit B shall collectively be referred to as the “2011 Punchlist Work.”

2. The 2011 Punchlist Work shall be performed in accordance with the Improvement Documents (as that term is defined in the Completion Agreement). Time is of the essence. However, F&D may request extension(s) of time to complete the 2011 Punchlist Work, which request shall not be unreasonably denied, provided that F&D has pursued completion of the 2011 Punchlist Work with reasonable promptness. In the event that construction of the 2011 Punchlist Work is interrupted or prevented by acts of God, acts of war or rebellion, labor disturbances (other than those caused by F&D or its contractor), acts of Government or governmental officers or any cause beyond the control of F&D, F&D shall be entitled to an extension of time and F&D shall have no liability caused by any delay resulting therefrom.

3. Without limiting the foregoing, F&D shall require its completion contractor to comply with all insurance requirements contained in the Improvement Documents and shall comply with any applicable prevailing wage law.

4. F&D shall provide to the Village a written warranty from the contractor(s) it retains to perform the 2011 Punchlist Work which guarantees to the Village the workmanship and material furnished by the said contractor(s) for one year commencing on the date of substantial completion of such work. If the contractors do not perform the warranty work pertaining to the 2011 Punchlist Work as set forth herein, F&D shall perform such warranty work as part of its obligations under the Phase 3 Bond. F&D and its contractor(s) shall have no responsibility for warranting any of the work performed by NHI or its contractors.

5. F&D shall be represented at the Project by Allen O Morningstar or another designee of Forcon International – Michigan, Ltd., (the “Authorized Representative”). The Authorized Representative will represent the F&D in dealing with the Village on day-to-day

construction issues with respect to the work. The Authorized Representative shall have, on behalf of the F&D, the authority to negotiate all change orders for extra work requested or required by Village. All change orders shall be executed by F&D. All requests for change orders must be submitted to Mr. Allen O. Morningstar Forcon International – Michigan, Ltd., P. O. Box 404, Zeeland, MI 49464, Tel.: (616) 897-0702; Fax: (616) 677-4628; e-mail: amorningstar@forcon.com.

6. The Village shall accept all of the public infrastructure work performed by F&D in the Subdivision pursuant to the Completion Agreement and this Agreement, upon the Village's receipt from Smith Engineering Group, a written certification that all such work has been installed or completed in accordance with the Improvement Documents ("Accepted Work"). The Village shall not unreasonably withhold acceptance and shall cause Smith Engineering Group to issue the aforesaid certification with reasonable promptness. Within a reasonable time following the Village's acceptance of the Accepted Work, F&D shall prepare and execute an instrument (in a form reasonably acceptable to counsel for the Village) conveying title to the infrastructure improvements installed by F&D in the Subdivision. Effective upon conveyance to the Village of the Accepted Work, the Village fully and completely releases F&D from any and all claims, liabilities and damages, including attorneys' fees, with respect to the Accepted Work, except for indemnity rights arising from claims that might be asserted by third parties.

7. The Current Penal Sum shall be reduced by the amount(s) paid by F&D (i) for completion of the 2011 Punchlist Work, including, without limitation, those amounts paid by F&D for the correction of any defective work installed by Neumann or any of its contractors and (ii) for any engineering or other professional expenses contemplated by the Improvement Documents, such as the preparation of record drawings. The Parties, through their respective counsel, shall execute a letter agreement establishing the reduced penal sum of the Phase 3 Bond

as contemplated by this paragraph (“2011 Penal Sum”). Thereafter, F&D’s liability under the Phase 3 Bond shall (i) not exceed and be limited to the 2011 Penal Sum and (ii) not include any claims or demands arising out of or related to the Accepted Work, except for the warranty obligations stated in Paragraph 3 above. The release does not extend to any other rights of Antioch under the Phase 3 Bond including, but not limited to, obligations pertaining to public improvements in Phase 3 of Clublands that is not part of the Accepted Work.

8. Excluding any and all of the released claims and demands related to or arising out of the Accepted Work as provided herein, Antioch reserves any and all other rights and claims which it may have under the Phase 3 Bond (“Phase 3 Bond Claims”) and agrees that F&D’s liability to the Village is limited to the 2011 Penal Sum. F&D reserves any and all rights and defenses available to it under the Phase 3 Bond, at law or in equity. The Village and F&D do not intend to waive any such rights, claims and/or defenses.

9. Upon completion and acceptance of the Accepted Work, F&D and Antioch will endeavor to resolve all other claims or issues under the Phase 3 Bond.

10. The Parties agree that the running of any statute of limitations, statute of repose, or other legal or equitable time bar, which is or may be applicable to the Phase 3 Bond, shall be extended and tolled to June 30, 2016 (“Initial Tolling Period”). Either of the Parties may, at its sole and exclusive option, extend the Initial Tolling Period for an additional 5 year period (“Extended Tolling Period”), by serving written notice upon the other party no later than thirty (30) days prior to the expiration of the Initial Tolling Period. The Parties, by written mutual consent, may extend the Extended Tolling Period beyond its five year period.

11. This Agreement is not intended by either of the Parties to constitute an admission of any fact or as to the validity of any claim or defense (other than as specifically set forth in paragraphs 9 and 10 to this Agreement) concerning the Phase 3 Bond. Without limiting

the foregoing, the Parties stipulate and agree that this Agreement shall not be used by either of them in any legal or equitable proceeding as an admission or otherwise as evidence of the truth of any of the statements set forth in the above Recitals. Each of the Parties specifically reserves any and all rights, claims and defenses it has against the other, except for the rights and remedies specifically addressed in this Agreement and in the Completion Agreement, which remains in full force and effect.

12. Nothing in this Agreement is intended to amend, modify or limit the Completion Agreement, which remains in full force and effect.

13. Any notice required to be made under the terms of this Agreement shall be deemed made if either party mails such notice by first class mail, postage prepaid, as follows:

As to the Village:

Mr. James Keim
Village Administrator
Village of Antioch
874 Main Street
Antioch, IL 60002
Tel.: (815) 395-1000
Fax: (815) 395-1920
email: jkeim@antioch.il.gov

with a copy to:
Lawrence R. Moelmann
Hinshaw & Culbertson, LLP
222 North La Salle Street
Suite 300
Chicago, IL 60601
Tel.: (312) 704-3229
Fax: (312) 704-3001
email: lmoelmann@hinshawlaw.com

As to F&D:
Allen O. Morningstar
Forcon International – Michigan, Ltd.
P.O. Box 404
Zeeland, MI 49464
Tel.: (616) 879-0702
Fax: (616) 677-4628
email: amorningstar@forcon.com

with a copy to:
Cornelius F. Riordan
Riordan, McKee & Piper, LLC
20 North Wacker Drive
Suite 910
Chicago, IL 60606
Tel: (312) 589-6010
Fax: (312) 663-1028
email: criordan@rmp-llc.com

14. The Recitals are incorporated herein.
15. This Agreement constitutes the entire agreement among the Parties concerning the subject matter hereof.
16. This Agreement shall be governed by the law of the State of Illinois.
17. This Agreement may be signed in counterparts, each of which when taken together shall constitute one and the same document. Signatures transmitted by facsimile or electronic mail shall be deemed original signatures for purposes of creating a valid and binding agreement.
18. The Parties acknowledge and agree that each is represented by counsel and that, as a consequence, ambiguities, if any, shall not be construed for or against either of the Parties as the drafter of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) wet forth below.

VILLAGE OF ANTIOCH

Date: April ____, 2011

By: _____
Its Mayor

ATTEST: _____
Village Clerk

FIDELITY & DEPOSIT COMPANY OF MARYLAND

Date: April ____, 2011

By: _____
Authorized Agent