

ORDINANCE NO. 559

VILLAGE OF BELLEVUE, ILLINOIS

AN ORDINANCE AUTHORIZING THE
EXECUTION OF AN ANNEXATION AGREEMENT

WHEREAS, the Village Board of Trustees has determined that it is in the best interests of the Village to enter into an Annexation Agreement with Heuermann Enterprises Land Trust (the "Owner") pertaining to property owned by the Owner; and

WHEREAS, an Annexation Agreement for such purpose has been drafted, a copy of which is attached hereto and made a part hereof; and

WHEREAS, the Agreement calls for rezoning of the property involved, once annexed, and the Village Zoning Commission has recommended in favor of such rezoning; and

WHEREAS, the legal owner of record of the territory which is the subject of said Agreement, the Owner, is ready, willing and able to enter into said Agreement and to perform the obligations as required thereunder; and

WHEREAS, the statutory procedures provided in Division 15.1 of Article 11 of the Illinois Municipal Code, as amended, for the execution of said Annexation Agreement have been fully complied with;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF BELLEVUE, PEORIA COUNTY, ILLINOIS, AS FOLLOWS:

Section 1: It is hereby determined that it is advisable, necessary and in the public interest that the Village enter into an Annexation Agreement with the Owner covering the property more particularly described in Exhibit A to the form of Agreement attached hereto.

Section 2: Said Agreement shall be substantially in the form of the Agreement attached hereto and made a part hereof.

Section 3: From and after the effective date of this Ordinance, the President and Clerk of the Village are hereby authorized and directed to execute said Agreement herein provided for, and to do all things necessary and essential, including the execution of any documents and certificates, necessary to carry out the provisions of said Agreement.

PASSED AND APPROVED THIS 28th DAY OF February, 2005.

6 AYES

0 NAYS

0 ABSENT

VILLAGE OF BELLEVUE, ILLINOIS

By: Ralph E. Wilson
Ralph E. Wilson, President

Attest: Carol S. Howard
Carol S. Howard, Clerk

305-0261

ANNEXATION AGREEMENT

This Annexation Agreement (hereafter "Agreement") is made and entered into this ___ day of _____, 2005, by and between HEUERMANN ENTERPRISES LAND TRUST, (hereafter "Owner"), the VILLAGE OF BELLEVUE, an Illinois municipal corporation organized and existing under and by virtue of the laws of the State of Illinois (hereafter "the Village") by and through its President and Village Trustees (hereafter collectively referred to as "the Corporate Authorities"), and DEVELOPMENT COORDINATION CORPORATION, an Illinois corporation (hereafter "DCC" or "Contract Purchaser").

RECITALS

WHEREAS, owner is the owner of record of certain real property, commonly known and described as the Heuermann Farm, 5015 W. Farmington Road, Peoria, Peoria County, Illinois, which real property is more particularly described as Tracts 1, 2, 4 and 5 on Exhibit A attached to and made a part of this Agreement (hereafter "the Subject Property"); and

WHEREAS, Owner and DCC have entered into an Option to Purchase Real Estate wherein Owner has given to DCC an option to purchase the Subject Property; and

WHEREAS, the Subject Property has not been annexed to any municipality; and

WHEREAS, the Subject Property constitutes territory which is contiguous to and may be annexed to the Village as provided under Article 7 of the Illinois Municipal Code, 65 ILCS 5/7-1-1, *et seq.*; and

WHEREAS, Owner and Contract Purchaser desire to have the Subject Property annexed to the Village upon the terms and conditions provided in this Agreement; and WHEREAS, the Corporate Authorities have concluded that the annexation of the Subject Property to the Village on the terms and conditions as set forth in this Agreement would further the orderly growth of the

Village, enable the Village to control the development of the Subject Property and serve the best interests of the Village; and

WHEREAS, pursuant to the provisions of 65 ILCS 5/11-15.1-1, *et seq.*, a proposed Annexation Agreement in substance and form the same as this Agreement was submitted to the Corporate Authorities and a public hearing held on said proposed Agreement pursuant to notice, all as provided by statute and ordinances of the Village; and

WHEREAS, any trustee of a fire protection district, library district, and other person or entity entitled to notice prior to annexation of the Subject Property to the Village has been given notice by the Village as required by law.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained in this Agreement and in reliance on the ordinances, codes and regulations of the Village in effect as of the date of this Agreement, the parties agree as follows:

1. Statutory Authority. The parties enter into this Agreement pursuant to and in accordance with the provisions of 65 ILCS 5/11-15.1-1, *et seq.*
2. Annexation.
 - (a) Owner has filed with the Village Clerk a Petition for Annexation and Zoning (hereafter "the Petition") of the Subject Property to the Village conditioned upon the terms and provisions of this Agreement, the Petition having been prepared, executed and filed in accordance with the Illinois Municipal Code and the ordinances and other requirements of the Village. The Village shall waive all fees and deposits required for annexation and zoning.

(b) Owner has filed with the Village Clerk an accurate map of the Subject Property, a copy of said map being attached to and made a part of this Agreement as Exhibit B.

(c) Promptly upon request by Contract Purchaser, the Corporate Authorities shall annex the Subject Property to the Village by enacting an ordinance (hereafter the "Annexation Ordinance") which ordinance shall have attached thereto an accurate map of the Subject Property. The Annexation Ordinance shall be effective immediately upon its passage and approval as required by law.

3. Zoning. Immediately upon passage of the Annexation Ordinance, the Village shall do the following:

(a) The Village shall adopt an ordinance zoning and classifying the Subject Property as described in the attached Exhibit A as R-1, General Residential, all under the provisions of the Village's Zoning Ordinance. Prior to the adoption of the Annexation Ordinance, such public hearings as are necessary to enable the Village lawfully to grant such zoning classifications for the Subject Property have been conducted upon proper notice, and once the Subject Property is annexed to the Village, no further action need be taken to cause the Subject Property to be zoned as set forth above.

(b) Contract Purchaser and Owner (with the consent of Contract Purchaser) retain the right to petition to amend the zoning classification of the Subject Property to be reasonably consistent with future developments in areas adjacent to the Subject Property in accordance with the Village's Zoning Ordinance (and any amendments thereto) and without amendment of this Agreement. The Village shall, in due and normal course, process each request of Contract Purchaser or Owner (with the consent of Contract Purchaser) for

rezoning of the Subject Property in accordance with procedures of the Village's Zoning Code.

4. Sanitary Sewer and Water System. Owner and Contract Purchaser acknowledge that at the present time the sanitary sewer system for the project will be provided by the Greater Peoria Sanitary District and the water system for the project will be provided by the Pleasant Valley Public Water District.

5. Dedication of Improvements.

(a) Contract Purchaser shall dedicate any public streets that are now situated in or that are hereafter constructed on the Subject Property by grant or dedication in form reasonably requested by the Village, the same to be recorded in the Recorder's Office of Peoria County, Illinois. Provided the improvements as constructed comply with the Village Code, the Village shall accept the dedication of said improvements in accordance with its customary procedure. The dedication and acceptance by the Village shall be evidenced by a letter of acceptance duly filed with the County Recorder. After acceptance, the Village shall thereafter maintain these improvements in all respects. As to the public streets and public roadways, the Village shall be responsible for street cleaning, snow removal and general maintenance. **The Contract Purchaser agrees to reimburse the Village for any costs the Village incurs for street cleaning and snow removal to the extent that funds available to the Village in the Special Tax Allocation Fund are not sufficient to pay such costs. The Contract Purchaser will continue such reimbursement so long as Special Tax Allocation Funds are not available to pay the expense of such street cleaning and snow removal. The funds paid by the Contract Purchaser to the Village as reimbursement for**

such expense shall be considered to be TIF eligible expenses for purposes of reimbursement to the Developer of its payment of such costs to the Village.

(b) Contract Purchaser or its General Contractor shall warrant all public improvements for one (1) year from the date such improvements are accepted by the Village.

6. Interim Uses and Taxes. All or any portion of the Subject Property may be used for farming and ancillary uses prior to commencement of construction of improvements on that portion of the Subject Property. As to any portion of the Subject Property which is not developed, the Village shall not oppose a request by Owner, Contract Purchaser or their designee that said portion continue to be assessed and taxed as farmland.

7. Less Restrictive Requirements. If, during the term of this Agreement, any existing, amended, modified, or new ordinances, codes or regulations affecting the zoning, subdivision, development, construction of improvements, buildings, or appurtenances, or any other development of any kind or character on the Subject Property are amended or modified in a manner to impose less restrictive requirements, such requirements shall inure to the benefit of Owner and Contract Purchaser and to their successors in interest, and anything to the contrary contained herein notwithstanding, Contract Purchaser may elect to proceed with respect to the development of or construction on the Subject Property on the less restrictive amendment or modification, applicable generally to all properties within the Village.

8. Redevelopment Agreement. Contract Purchaser's obligations hereunder are subject to the Village first entering into a Redevelopment Agreement (hereafter "RDA") with Contract Purchaser, on terms acceptable to Contract Purchaser and the Village, pursuant to the terms of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11 -74.4-1, *et seq.* (hereafter "the TIF Act"). Said RDA shall include the following actions on the part of the Village:

(a) The Subject Property shall be designated as a part of a Redevelopment Project Area (as such term is defined in the TIF Act) and the Village shall establish a Special Tax Allocation Fund for payment of Redevelopment Project Costs (as such terms are defined in the TIF Act);

(b) Upon execution of the RDA, the Village shall provide for the issuance of tax exempt **Tax Increment Financing Revenue Bonds** or Obligations in amounts and under terms as directed by the Contract Purchaser, and, as set forth in the RDA for payment or reimbursement to the Contract Purchaser of eligible project costs as allowed under the TIF Act, or, when bonds are not to be issued, an agreement to execute the financing instrument or pledge the revenue the municipality has committed to the project and that is authorized under the TIF Act.

(c) The RDA shall contain a grant of exclusivity from the Village to the Contract Purchaser wherein the Village agrees neither to create nor authorize the creation of any tax increment financing district in addition to the TIF District provided for herein for the benefit of any developer other than Contract Purchaser for a period of five (5) years from the date of this Agreement, nor provide the TIF benefits contemplated herein to any other developer of a residential development within or adjacent to the Village for said five (5) year period.

Notwithstanding anything to the contrary contained in this Agreement, if Contract Purchaser does not enter into a Redevelopment Agreement with the Village within 360 days of the date of this Agreement, or 120 days of the completion of the TIF District, whichever first occurs, or if the parties enter into a RDA and the activities called for in paragraphs (a) or (b) above do not occur in a timely manner, then the Village shall disconnect the Subject Property from the Village within 90 days from the receipt by the Village of written direction by the Contract Purchaser to disconnect the Subject Property. However, the

Village shall not be obligated to disconnect the Subject Property if no such direction is received by the Village from the Contract Purchaser on or before December 31, 2006.

9. Performance Schedule. The Contract Purchaser agrees that it will submit a Preliminary Site Plan to the Village within 120 days of the last to occur of the final creation of the Tax Increment Financing District by the Village and the complete execution of a Redevelopment Agreement by the Village and the Contract Purchaser in a form satisfactory to both. Contract Purchaser further agrees that it will submit a final plan for Phase 1 of said development within 120 days of the approval by all necessary parties of the Preliminary Site Plan. Further, Contract Purchaser agrees that within one year of the later to occur of the approval of the final site plan for Phase 1 by all parties and the receipt of all necessary EPA and other permits that may be required, the Contract Purchaser shall commence construction of the Phase I infrastructure improvements, said improvements to be completed within one year after the commencement thereof.

10. Payment of TIF Benefits. As a condition of the *RDA* and of this Agreement, the Village shall do the following:

(a) the Village shall reimburse Contract Purchaser for all of its eligible Redevelopment Project Costs incurred in the development of the Subject Property to the extent of Contract Purchaser's share of the increment described in subsection (b) below;

(b) each year, the Village shall allocate 75% of the incremental real estate taxes (as defined in 65 ILCS 5/11-74.4-8(b)) generated by the Subject Property toward payment of principal and interest due on the Revenue Bonds and toward the payment or reimbursement of Contract Purchaser's Redevelopment Project Costs.

11. Control of Litigation. In the event a suit is brought by a third party against any or all of the parties hereto seeking to have a court abrogate, void, alter, amend, enforce, or in any manner

change the terms and conditions of this Annexation Agreement, the Redevelopment Agreement between the parties hereto, or any Tax Increment Financing District created or intended to be created by the parties hereto, the parties to this Agreement agree that the Contract Purchaser shall be given the right to engage counsel of its choosing to defend said suit, and further that said Contract Purchaser shall be given the right to control and direct such defense, the payment for such defense and the attorney fees and costs thereof to be paid as a reimbursable cost from TIF bond proceeds or the increment payments to the extent permitted by the TIF Act.

12. Miscellaneous.

(a) All provisions, conditions and regulations as set forth in this Agreement and any documents or plans to which it refers shall supersede all Village ordinances, codes and regulations that are in conflict with this Agreement as they may apply to the Subject Property. However, where this Agreement is silent, the Village ordinances shall apply and control.

(b) Notwithstanding any other provision to the contrary with respect to the Subject Property, this Agreement shall be effective for a term of twenty (20) years from the date of the Agreement or, if longer, the longest term permitted by law.

(c) This Agreement shall bind the heirs, successors and assigns of the Owner, the Contract Purchaser, the Village, the Corporate Authorities, and their successors in office; provided, however, the purchaser or mortgagee of an improved lot or unit on the Subject Property shall not be bound to the obligations of Owner or Contract Purchaser hereunder except with respect to use of or improvements to such lot or unit, and the failure of Owner or Contract Purchaser to comply with this Agreement shall not result in a lien or encumbrance

to such improved lot or unit. This Agreement shall inure to the benefit of the parties to it and to their successors and assigns.

(d) Nothing in this Agreement shall in any way prevent the alienation, encumbrance or sale of the Subject Property or any portion of it, and the new owner or owners shall be both benefited and bound by the conditions and restrictions expressed in this Agreement.

(e) Within thirty (30) days after execution, the text of this Agreement (or a suitable memorandum hereof) shall be recorded at the sole cost and expense of Contract Purchaser in the Office of the County Recorder.

(f) It is further agreed that any party to this Agreement, either in law or in equity, by suit, action, mandamus or other proceeding may enforce or compel the performance of this Agreement or have such other relief for breach of the Agreement as may be authorized by law or which by law or in equity is available to it.

(g) It is understood by the parties that time is of the essence of this Agreement. It is further understood that upon the occurrence of a default of any of the provisions of this Agreement which continues for forty-five (45) days after a notice specifying the default is given the defaulting party, the injured party may in law or in equity, by suit, action, mandamus, or other proceeding including specific performance, enforce or compel the performance of this Agreement by the defaulting party. The prevailing party in such action shall have its attorney's fees and costs of suit awarded to it as a part of any such judgment.

(h) In the event any provision of this Agreement or any part of a provision shall be deemed invalid, the invalidity of that provision or any part shall not affect the validity of any other provision; provided, however, any invalidity of Section 3 or Sections 8 and 9 of

this Agreement shall, at the option of Contract Purchaser, make this entire Agreement void and of no force or effect, whereupon the Subject Property shall be promptly de-annexed from the Village.

(i) In the event the Village fails to abide by or fulfill the obligations required of it under this Agreement, the Village, at the option of Contract Purchaser (with the consent of Owner as necessary), shall disconnect the Subject Property from the Village. Prior to said disconnection, Contract Purchaser shall notify the Village as to such breach on the Village's part, and the Village shall have a reasonable time to cure said breach or default. In the event the Village continues, after reasonable notice, to fail to abide by or fulfill the obligations required of it under this Agreement, the Village, upon request by Contract Purchaser, shall disconnect the Subject Property from the Village.

(j) Unless stated otherwise elsewhere in this Agreement, any notice required or permitted under it shall be in writing and shall be deemed given when mailed by registered or certified mail.

If to Owner:

Heuermann Enterprise Land Trust
John Elias, Esq.
Elias, Meginnes, Riffle & Seghetti, P.C.
416 Main St., Suite 1400
Peoria, IL 61602

If to Contract Purchaser:

DCC
c/o Jack Piper
25430 2300 East Street
Ohio, Illinois 61249

also

Robert F. Russell, Esq.
Russell, English, Scoma & Beneke PC
Ten Park Ave. West
Princeton, IE 61356

If to Village:

Village of Bellevue
Village Clerk
320 S. Main St.
Bellevue, IE 61604

also

(k) Except as hereinafter set forth, the amendment of the Village's Zoning Ordinance providing for more restrictive standards than are in effect upon the execution of this Agreement shall not be effective against the Subject Property during the term of this Agreement. In the event that the Village's Zoning Ordinance is amended to provide for less restrictive standards than are in effect upon the execution of this Agreement, Contract Purchaser or its successors in interest may elect not to be bound by the less restrictive standards. Notwithstanding the foregoing, all parking, vehicle and traffic restrictions and provisions, and all utility rates and building construction codes and amendments thereto shall apply to the Subject Property.

(1) Within twenty (20) days after request by Contract Purchaser from time to time, the Village shall deliver to Contract Purchaser, addressed to such parties as Contract Purchaser may specify, an estoppel letter stating that this Agreement is in full force and effect and there are no known violations of the provisions of this Agreement or identifying each known violation and the steps necessary to cure it. Such a letter addressed to any person who, in reliance upon it, thereafter takes an interest for value in the Subject Property, shall be binding upon the Village as to that person.

(m) Pursuant to 65 ILCS 5/1 1-15.1-2(f), this Agreement is intended to allow for any matter not inconsistent with the provisions of the Illinois Municipal Code, or forbidden by law.

13. Assignment of Rights. The parties hereunto agree that if the Contract Purchaser should fail to perform the covenants on its part to be performed under its Contract to Purchase Real Estate with Owner, fail to exercise the option granted to it in said contract, or otherwise abandon its part under this Annexation Agreement, the Contract Purchaser's rights and obligations hereunder

shall be and are assigned at that time to said Owner, if said Owner agrees to accept such assignment, and, if so, said Owner shall receive and have all rights and obligations held by said Contract Purchaser hereunder.

14. Village Legal Expense. Contract Purchaser agrees to reimburse the Village for the reasonable attorney fees incurred by the Village in connection with the creation of the TIF District for the Subject Property, including the preparation and review of this Annexation Agreement, the RDA, and all other related and necessary activities, provided, however, that the maximum amount of such reimbursement made by Contract Purchaser for attorneys fees shall not exceed the sum of \$5,000.00. Such reimbursement shall come from the Contract Purchaser's share of the TIF proceeds, shall not be payable until TIF proceeds have been received, and shall not be paid if the TIF District is not established through no fault of the Contract Purchaser.

15. Owner's Right to Terminate Agreement. If Contract Purchaser fails to acquire the Subject Property from Owner on or before January 1, 2006, and such failure is not directly caused by Owner's actions or failure to act, then Owner may terminate this Agreement by written notice to the other parties as provided in Section 12(j). Upon termination of this Agreement, the zoning ordinance referred to in Section 3(a) and annexation ordinance referred to in Section 2(c) shall be null and void and of no force and effect, and the parties shall have no further rights or obligations hereunder.

16. Indemnification of Owner. The Owner hereunder shall not be obligated in any manner for the obligations of Contract Purchaser or its successors and assigns under this Agreement. Contract Purchaser and the Village do hereby acknowledge that Owner has joined this Agreement at their request solely for purposes of technical compliance with certain requirements for agreements for annexation. Contract Purchaser does hereby agree to indemnify, defend, and hold harmless Owner from and against any and all losses, costs, liabilities, damages, and expenses (including

reasonable legal and other expenses necessarily incident thereto) of every kind, nature, and description arising out of the obligations of Contract Purchaser and its successors and assigns under this Agreement. The Village also agrees not to seek to impose any duties or obligations upon Owner at any time arising out of any part of this Agreement.

IN WITNESS WHEREOF, the parties to this Agreement have caused it to be executed as of the day and year first written above.

Heuermann Enterprise Land Trust, Owner

By _____
Trustee

Village of Bellevue, an Illinois Municipal Corporation, the "Village"

By _____
Its President

ATTEST:

Village Clerk

Development Coordination Corporation,
"Contract Purchaser" and "DCC"

By _____
Its President

