

COOPERATION AGREEMENT BETWEEN THE CITY OF COLUMBIA, ILLINOIS, AS THE FIRST PARTY, THE BRELLINGER LAND TRUST, BY DENNIS R. BRAND, TRUSTEE, AS THE SECOND PARTY, AND JOSEPH AND HILDA PFEFFER, AS THE THIRD PARTIES WITH REGARD TO THE EXTENSION OF RUECK PARKWAY, A PUBLIC STREET IN THE CITY OF COLUMBIA, ILLINOIS, AND CONSTRUCTION OF TEMPORARY CUL-DE-SACS AT THE EASTERN AND WESTERN TERMINI OF BRELLINGER STREET IN THE BRELLINGER SUBDIVISION PENDING THE EXTENSION OF SAID STREET ONTO ADJOINING PROPERTY

THIS COOPERATION AGREEMENT is made and entered into this 5th day of January, 2004, by and between the City of Columbia, Illinois, a Municipal corporation and body both corporate and politic created and existing under and by virtue of the laws of the State of Illinois, with City Hall located at 208 South Rapp Avenue, Columbia, Illinois, 62236 (the "City" or "Columbia") as the Party of the First Part; the Brellinger Land Trust, by its undersigned Trustee, Dennis R. Brand, of 1187 Moore Street, Waterloo, Illinois, 62298 (the "Brellinger Trust" or the "Trust") as the Party of the Second Part; and Joseph Pfeffer and Hilda Pfeffer, his wife, of 3147 Forest Hills School Road, Millstadt, Illinois, 62260 (the "Pfeffers") as the Parties of the Third Part, WITNESSETH:

WHEREAS, Columbia is a municipality of the State of Illinois which is located in the Counties of Monroe and St. Clair, in the State of Illinois;

WHEREAS, Rueck Road in the City provides the primary access to the Briar Lake Estates Subdivision in the City (130 acres, more or less), and the Brellinger Subdivision in the City (contemplated to comprise 143 acres, more or less), and is expected to also provide access to the Columbia Golf Club, Inc.-Louis I. Mund-H. J. Friedrich and Sons, Inc. contemplated mixed use and multiple zoned development located north of the Brellinger Subdivision property at some future time when the City's annexation and zoning of that property has been completed (contemplated to comprise 541 acres, more or less);

WHEREAS, Rueck Road (formerly a Monroe County Road District No. 5 road, now a city street by virtue of city annexations), the City Council has found and determined is required to be relocated and reconstructed for the safety and welfare of the motor vehicle traffic expected to be created by the aforementioned real estate developments which will rely upon Rueck Road for access to said subdivision developments and that improvement is required to be made and provided for by the developers of the properties involved;

WHEREAS, by an Annexation Agreement between the City and the American Heritage Land Development, L.L.C. (as the developer of the Briar Lake Estates Subdivision) dated June 16, 2002, said developer is required to, among other things, provide to the City fee title to a right-of-way, sixty five (65) feet wide, for widening, relocating, and reconstructing Rueck Road from the Quarry Road intersection north to the Rueck Parkway at the entrance of the Brellinger Subdivision and to reconstruct the travel-way in said right-of-way to have a rural design (twenty-two [22] foot wide Portland cement concrete pavement, eight (8) inches thick, constructed on four (4) inch thick aggregate sub-base or twelve (12) inch thick lime modified earthen sub-grade, six (6) foot wide bituminous shoulders on each side of the pavement, with five (5) foot wide Portland cement concrete

sidewalk, four (4) inches thick, on the east side of the pavement to be located one (1) foot behind top slope of the drainage ditch);

WHEREAS, the American Heritage Land Development, L.L.C., as owner of the property comprising the Briar Lake Estates Subdivision, is also required by said annexation agreement to dedicate right-of-way (contemplated to be thirty two and one-half (32.5) lineal feet, more or less, in width) along the north boundary of the Briar Lake Estates Subdivision and the owner of the property comprising the Brellinger Subdivision (the Brellinger Trust) is required to dedicate to the City by final subdivision plat fee title to a like amount of right-of-way for said Rueck Road widening and reconstruction (contemplated to be thirty two and one-half (32.5) lineal feet, more or less, in width) along the south boundary of the Brellinger Subdivision, for said use and purpose;

WHEREAS, the American Heritage Land Development, L.L.C., is also required to reconstruct Rueck Road to rural design standard from the intersection of the Quarry Road north to connect to Rueck Parkway in the Brellinger Subdivision and to dedicate the right-of-way of said Rueck Road at said location in and adjoining said Briar Lake Estates Subdivision, located along the western boundary of the Briar Lake Estates Subdivision, (sixty-five [65] feet in width), which improvement is not required to be made until the improvement plans for the realignment and reconstruction of said road at the subject location have been approved by the City;

WHEREAS, the developer of the Brellinger Subdivision, to-wit: D & A Builders has completed the construction and installation of the capital infrastructure improvements in the subdivision and is seeking final subdivision plat approval for that subdivision from the City;

WHEREAS, as a condition for final subdivision plat approval, the owner of the Brellinger Subdivision property, to-wit: The Brellinger Trust and the owner of the remainder of the property the Trust is expected to acquire in order to construct the contemplated additions required to complete that residential subdivision development (Joseph and Hilda Pfeffer) are required to make and to enter this agreement and to provide to the City the performance guarantees required by the City to provide for the eventual and ultimate extension of Rueck Parkway in the City to adjoining property at the desired location and to provide for temporary dead ending of Brellinger Street and Rueck Parkway by temporary cul-de-sacs pending completion of the extension of those public traffic ways onto adjoining property.

NOW, THEREFORE, in consideration of the premises, the parties to this agreement stipulate and agree as follows:

SECTION 1. Reconstruction of Rueck Road. In the event American Heritage Land Development, L.L.C., as owner and developer of the Briar Lake Estates Subdivision property ("American Heritage") would default in the performance of its obligation to acquire right-of-way for and reconstruct Rueck Road under and pursuant to the First Amended Annexation Agreement between American Heritage and the City (a copy of which Annexation Agreement was recorded in the Monroe County, Illinois Recorder's Office on June 25, 2003 as Document No. 276083) which Annexation Agreement is incorporated herein by reference and by reference made part of this agreement, then and in that event, the Brellinger Trust shall have the right, but not the obligation to perform Sections 4, 5 and 6 of that Annexation Agreement regarding providing right-of-way for and reconstruction of said Rueck Road (according to rural design standards as described in the preamble of this

Agreement) in and adjoining the property comprising the Briar Lake Estates Subdivision in the City (from the intersection of the Quarry Road and Rueck Road in the City, north to the southern terminus of the Rueck Parkway in the Brellinger Subdivision in the City).

In the event the Brellinger Trust would elect to do and perform all or part of the obligations of American Heritage under said Annexation Agreement, then in that event, the City shall assign to the Brellinger Trust all of its rights of enforcement and the claims or causes of action the City would have and possess against American Heritage under and pursuant to said Annexation Agreement for the Trust to have a subrogation claim for indemnity for the costs the Trust incurred in performing the obligations incumbent upon American Heritage under the Annexation Agreement.

Notwithstanding anything contained in this Section 1 of this Agreement, should American Heritage default on its performance to provide right-of-way for and to reconstruct Rueck Road at the location aforesaid, as is made and provided for in its First Amended Annexation Agreement aforesaid, then and in that event, the Brellinger Trust agrees to (and shall be required to) reconstruct the surfacing of the travel way of the existing Rueck Road from the intersection of Quarry Road and Rueck Road in the City, north to the southern terminus of the Rueck Parkway in the Brellinger Subdivision in the City, to have a twenty-two (22) foot wide oil and chip surfacing on aggregate base, in accordance with City specifications, and subject to City inspection and approval. Further, the Trust shall be required to maintain the surfacing of Rueck Road as reconstructed with oil and chip surfacing pending the reconstruction of said section of roadway to rural design standards as is made and provided for in the American Heritage First Amended Annexation Agreement. The oil and chip surfacing shall be required to be completed within six (6)

months of the City giving written notice to the Trust regarding the need for the reconstruction, (absent adverse weather conditions, other Acts of God, labor strikes, material shortages, or other conditions legitimately beyond the control of the Trust). The City Engineer has approved an estimated one hundred twenty-five percent (125%) of the cost to reconstruct the subject section of Rueck Road for oil and chip surfacing on an aggregate base within the time aforesaid will be Thirty Thousand Dollars (\$30,000). In the event of the failure of the Trust to commence the twenty-two (22) foot wide oil and chip resurfacing within sixty (60) days of receiving such notice and/or in the event of the failure of the Trust to complete said resurfacing within the six (6) month time limit aforesaid (absent adverse weather conditions, other acts of God, labor strikes, material shortages or other conditions legitimately beyond the control of the Trust) the City will perform the reconstruction (or hire outside contractors to do and perform the same) and may draw on the stand-by Letter of Credit referred to in Section 5 of this Agreement to pay for the same.

SECTION 2. Extension of Rueck Parkway in the Brellinger Subdivision. Within three (3) years after the City approval of the final subdivision plat for the Brellinger Subdivision, the Brellinger Trust and its developer, D & A Builders, will acquire the remainder of the rights-of-way (sixty five (65) feet in width) from the Pfeffers and complete the construction and installation of the extension of Rueck Parkway to the northeast or east property line of the Pfeffer property along a route and at a terminus location approved by the City. The construction of the subject extension of Rueck Parkway shall be, at a minimum, of the same design and construction standards as the construction of Rueck Parkway in the Brellinger Subdivision (as is provided for by the improvement plans approved by the City for the Brellinger Subdivision).

It is contemplated by the Brellinger Trust and its developer, D & A Builders, that the Rueck Parkway extension will be constructed in connection with the development of a first or second addition to the Brellinger Subdivision and that the land for the subsequent additions subdivisions will hereafter be acquired by the Brellinger Trust from the Pfeffers. To secure the acquisition of the right-of-way and construction and installation of the Rueck Parkway extension aforesaid, within three (3) years of the approval of the final plat for the Brellinger Subdivision, the Brellinger Trust has provided to the City a Performance Guarantee - Letter of Credit issued by First National Bank of Waterloo, Illinois in the sum of One Hundred Ninety-One Thousand Dollars (\$191,000), One Hundred Thousand Dollars (\$100,000) of said Performance Guarantee being the City Engineer approved cost estimate for the right-of-way acquisition (Twenty-Two Thousand Five Hundred Dollars [\$22,500]) and one hundred twenty-five percent (125%) of the estimated costs for engineering and construction of the street extension at the time of reference (Seventy-Seven Thousand Five Hundred Dollars [\$77,500]). A copy of the Letter of Credit Performance Guarantee is attached hereto as an exhibit and is by reference made a part hereof.

The Pfeffers stipulate and agree that they will grant and convey to the City the right-of-way for the extension of Rueck Parkway in the event the Brellinger Trust would fail to make the Rueck Parkway extension as is herein made and provided for (which land acquisition may be paid for by utilizing proceeds from the Letter of Credit Performance Guarantee in a sum of not to exceed Twenty-Two Thousand Five Hundred Dollars (\$22,500) on thirty (30) days prior written notice from the City, utilizing the legal description for the right-of-way provided by the City. Should the Pfeffers fail or refuse to execute the

deed to convey the right-of-way for the Rueck Road extension to the City, then and in that event, a judge of a court of competent jurisdiction is hereby authorized and requested to sign the right-of-way deed for the City, on behalf of the Pfeffers, as their duly authorized agent and representative, and in that event, the funds aforesaid to be used to pay for the acquisition of the right-of-way shall be escrowed at the First National Bank of Waterloo, Illinois, pending resolution of the dispute.

SECTION 3. Temporary Cul-de-Sacs. Prior to final subdivision plat approval for the Brellinger Subdivision by the City, the subdivision developer, D & A Builders, shall construct, install, and thereafter maintain, all-weather, aggregate base, temporary cul-de-sacs at the northern terminus of Rueck Parkway and at the western and the eastern termini of Brellinger Street in the subdivision. The temporary cul-de-sacs may be gravel surfaced and are not required to be hard surfaced, and they shall have a radius at the outside of the travel-way of not less than thirty five (35) feet and a diameter at the outside of the right-of-way of not less than one hundred (100) feet. The temporary cul-de-sacs shall be used as turnarounds by the City Fire Department, Police Department, and the City Maintenance personnel in the performance of their duties, the residents of the subdivision and the motoring public utilizing the streets in the subdivision. The temporary cul-de-sacs may be designed and configured as so called "bubble" cul-de-sacs if the subdivider so elects. In the event Brellinger Street is not extended into an adjoining subdivision within three (3) years after the City's approval and recording in the Office of the Monroe County, Illinois Recorder of the final plat for the Brellinger Subdivision, the property developer will be required to construct Portland cement concrete cul-de-sacs at the eastern and western termini of Brellinger Street which shall be constructed and installed in accordance with the

construction standards and requirements of the City in effect at the time of reference. If the extension of the Rueck Parkway to the northeast or eastern boundary of the Pfeffer property has not been constructed within three (3) years of the approval of the final plat for the Brellinger Subdivision, the City may acquire the right-of-way from Pfeffers and construct the street extension utilizing the City's exhibit Performance Guarantee as is made and provided for above in Section 2 of this Agreement.

To secure performance of the construction of the cul-de-sacs at the east and west termini of Brellinger Street, the subdivider has provided the City with the attached exhibit stand-by Letter of Credit Performance Guarantee issued by the First National Bank of Waterloo, Illinois, in the sum of One Hundred Ninety-One Thousand Dollars (\$191,000), Fifty Thousand Dollars (\$50,000), (being Five Thousand Dollars [\$5,000] for right-of-way acquisition for each of the two [2] cul-de-sacs and Twenty Thousand Dollars [\$20,000] for engineering and Portland cement construction on aggregate base of the pavement for each of the two [2] cul-de-sacs) is for the land acquisition and construction of the permanent cul-de-sacs. Should the developer fail to extend Brellinger Street or construct the cul-de-sacs within the time aforesaid, then the City may draw on the Performance Guarantee Letter of Credit to construct the same. The right-of-way for the permanent cul-de-sacs shall be deeded and conveyed to the City by the Pfeffers upon payment of a sum of not to exceed Five Thousand Dollars (\$5,000) for each of the two (2) cul-de-sacs (Ten Thousand Dollars [\$10,000] total) and the City may use the Performance Guarantee Letter of Credit to pay for that right-of-way acquisition.

In the event the Pfeffers fail or refuse to convey the right-of-way for the cul-de-sacs to the City, as required by this agreement, the Pfeffers hereby appoint as their agent in the premises, a judge of a court of competent jurisdiction, and authorize that judge to sign and deliver their deed to the City for the cul-de-sacs right-of-way on their behalf.

In addition to the right-of-way required for the extension of Rueck Parkway and the construction of permanent cul-de-sacs for Brellinger Street, the owners of the Brellinger Trust property and the Pfeffer property involved herein hereby and by the deeds required for right-of-way conveyance to the City shall grant and convey to the City, (including the City's engineers, surveyors, contractors, and other agents), construction easements in gross on, over, along and across the property of the Pfeffers adjoining the Brellinger Subdivision for the location, laying out, platting and monumenting, engineering and construction of the permanent Rueck Parkway extension and permanent cul-de-sacs improvements involved herein.

SECTION 4. Deferred Construction. Due to circumstances beyond the control of the Trust, the completion of construction improvements involved in this Section of this Agreement cannot be completed prior to final subdivision plat approval. Consequently, the Trust agrees to complete construction of the following improvements in or for the Brellinger Subdivision within eight (8) months (240 days) of the date of this Agreement, in accordance with the specifications and requirements of the City, to wit:

- (1) Clean out the concrete swales in the bottom of surface water detention facility in the subdivision;
- (2) Raise the elevation of one (1) of the fire hydrants in the subdivision;

(3) Complete the electrical wiring for the off-premises sanitary sewer lift station;

(4) Construct and install asphalt pavement on aggregate base for the access road for the sanitary sewer lift station for the subdivision; and,

(5) Construct and install approximately three hundred (300) lineal feet of additional sanitary sewer force main to connect to a sanitary sewer manhole of the City located east of the Columbia Golf Club, Inc. sanitary sewer line in the event the subject golf club sanitary sewer line is not dedicated to and owned by the City: (i) within the time required for the first occupancy permit application for a residence in the Brellinger Subdivision, or (ii) August 14, 2004, whichever is sooner.

The proper performance of the deferred construction items described above in this Section of this Agreement, within the time set forth above, is secured by the First National Bank Letter of Credit Performance Guarantee in the sum of One Hundred Ninety-One Thousand Dollars (\$191,000) attached hereto as an exhibit. One hundred twenty-five percent (125%) of the City Engineer approved estimated cost to construct deferred construction items one (1) through four (4) above in this Section of this Agreement, in the sum of Eight Thousand Dollars (\$8,000) and the City Engineer approved estimated cost to construct deferred construction item five (5) above, in the sum of Three Thousand Dollars (\$3,000), has been included in the said Performance Guarantee Letter of Credit principal amount.

SECTION 5. Performance Guarantee. To secure performance of the obligations and undertakings of the Brellinger Trust set forth in this Cooperation Agreement, even date

herewith, the Trust has provided to the City the stand-by Letter of Credit Performance Guarantee issued by First National Bank of Waterloo in the total sum of One Hundred Ninety-One Thousand Dollars (\$191,000) (a copy of which is attached hereto as an exhibit) to guarantee that the improvements required by and described in Section 4 of this Agreement will be constructed and completed within eight (8) months of the date of this Agreement and to guarantee that the remaining undertakings and obligations of the Trust set forth in this Agreement shall be completed within three (3) years of the date of this Agreement.

SECTION 6. Binding Effect. The terms and provisions of this Cooperation Agreement shall be binding upon and shall inure to the benefit of the three (3) parties hereto, their heirs, executors, administrators, other legal representatives, successors and assigns; and shall attach to and run with the title to the real property involved in this Agreement.

SECTION 7. Attorneys' Fees and Costs. In the event of a default in the performance of this Cooperation Agreement by any of the parties to this agreement, should it become necessary for a party injured or damaged by the default to incur attorneys' fees and court costs in enforcing the agreement, with or without litigation, the party in default shall be responsible for payment and discharge or reimbursement of the injured party's reasonable attorneys' fees and court costs incurred in enforcing the agreement, and the same may be made part of any judgment or order entered by a court of competent jurisdiction in an action instituted to enforce this agreement.

SECTION 8. Enforcement. Notwithstanding anything contained in this agreement to the contrary, should there be a default in the performance of this agreement by a party to the agreement, any other party to the agreement injured by the default may either in law or in equity, by suit, action, mandamus, or other proceedings in a court of competent jurisdiction, enforce and compel performance of this agreement and seek damages for its breach.

SECTION 9. Severability. In the event any part or portion of this agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of the agreement shall continue in force and effect and the agreement shall be read and enforced with the invalid or unenforceable provisions struck from the agreement. The remainder of the agreement shall be enforced as nearly as practicable to the original intent of the parties to the agreement.

SECTION 10. Waiver of Homestead. The Pfeffers, as the Parties of Third Part, and owners of property adjoining the Brellinger Subdivision, hereby waive all rights under the Homestead Exemption Laws of the State of Illinois with regard to the real property belonging to them which is involved in this Agreement.

IN WITNESS WHEREOF, the parties to this agreement have made, executed and delivered this Cooperation Agreement to take effect on the date first above written, for the uses and purposes set forth above.

CITY OF COLUMBIA, ILLINOIS, a Municipal corporation, the Party of the First Part

BY: 
LESTER SCHNEIDER, Mayor

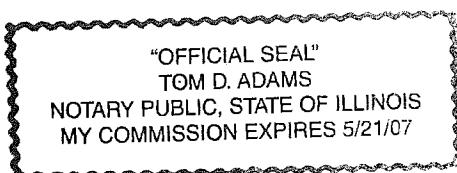
ATTEST:

Wesley J. Hoeffken, City Clerk by
WESLEY J. HOEFFKEN, City Clerk
John K. Metzger, City Clerk
(SEAL)

STATE OF ILLINOIS)
COUNTY OF MONROE)
SS)

The undersigned, a Notary Public in and for the County and State aforesaid, hereby certifies that LESTER SCHNEIDER and WESLEY J. HOEFFKEN, personally known to me and know to me to be the Mayor and the City Clerk, respectively, of the City of Columbia, Illinois, a Municipal Corporation, appeared before me, in person, this date, and acknowledged that they signed and delivered the above and foregoing document as their free and voluntary act and deed and as the free and voluntary act and deed of said City pursuant to enabling ordinance of the City duly enacted, for the uses and purposes therein set forth.

Subscribed and sworn to before me, a Notary Public, this 5th day of
January, 2004.



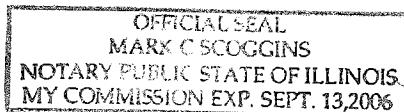
BRELLINGER LAND TRUST, the Party of the
Second Part
BY: 
DENNIS R. BRAND, Trustee

STATE OF ILLINOIS)
) SS
COUNTY OF MONROE)

The undersigned, a Notary Public in and for the County and State aforesaid, hereby certifies that DENNIS R. BRAND, personally known to me and known to me to be the Trustee of the Brellinger Land Trust, and known to me to be the same person whose name is subscribed to the foregoing document, appeared before me in person, this date, and acknowledged that he signed and delivered the above and foregoing document as his free and voluntary act and deed and as the free and voluntary act and deed of the Brellinger Land Trust for the uses and purposes set forth above.

Subscribed and sworn to before me, a Notary Public, this 29th day of
December, 2003.


Notary Public



OWNERS, the Parties of the Third Part

Joseph Pfeffer
JOSEPH PFEFFER

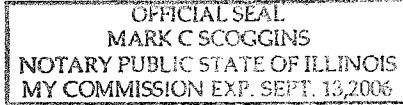
Hilda Pfeffer
HILDA PFEFFER

STATE OF ILLINOIS)
)
COUNTY OF MONROE)

SS

The undersigned, a Notary Public in and for the County and State aforesaid, hereby certifies that JOSEPH PFEFFER and HILDA PFEFFER, personally known to me and known to me to be the same persons whose names are subscribed to the foregoing document, appeared before me in person, this date, and acknowledged that they signed and delivered the above and foregoing document as their free and voluntary act and deed for the uses and purposes set forth above, including the release and waiver of the right of Homestead.

Subscribed and sworn to before me, a Notary Public, this 29th day of
December, 2003.


Notary Public

THIS DOCUMENT PREPARED BY:

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