

Public Works Development Agreement
Skyline Subdivision Phase I

Parcel ID Numbers: WAKC 0986 998 001
WAKC 0986 998 002
WAKC 0987 997

After recording return to:
City of Waukesha
Dept. of Public Works
130 Delafield St.
Waukesha WI 53188

This Development Agreement, referred to herein as the Agreement, is entered into by and between the **City of Waukesha**, a Wisconsin municipal corporation, referred to herein as the City; **Bielinski Homes, Inc.**, referred to herein as the Developer. The lands subject to this Agreement are legally described on attached Exhibit "A," and is referred to herein as the Real Property.

In consideration of the mutual covenants contained herein, the City and the Developer agree and contract as follows:

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- 1. Developer.** The Developer is Bielinski Homes, Inc.
 - 2. The Development.** The term Development, as used herein, refers to the Developer's construction of a residential subdivision known as Skyline Subdivision and public streets known as White Oak Way, Panorama Drive, Viewpoint Avenue, and Vista Avenue and all associated improvements. The construction of White Oak Way includes an intersection with Summit Avenue (USH 18). Off-site sanitary sewer improvements will also be completed in Red Maple Way, and within an off-site sanitary sewer easement. The Development will be completed in multiple phases with additional Development Agreements.
 - 3. Expenses of Development.** All expenses of the Development and compliance with the terms and conditions of this Agreement shall be paid solely by the Developer.
 - 4. Development Plans.** The Developer shall deliver to the City complete, accurate and sufficiently-detailed plans of the Development, which are referred to herein as the Development Plans. The Development Plans shall include the following:
 - a.** Sanitary sewer easement showing the locations of all lots, out lots, easements, public rights-of-way, and all other improvements to the Real Property.
 - b.** Preliminary Plat and Final Plat showing the locations of all lots, outlots, easements, public rights-of-way, and all other improvements to the Real Property.
 - c.** Construction drawings of all improvements to the Real Property, showing the locations of all streets, sidewalks, utilities, storm water facilities, storm sewers, sanitary sewers, signs, pavement markings, elevations, grading, and all other plans and drawings for the Development;
 - d.** Storm water management plan and storm water management practice maintenance agreement and all addendums.
 - e.** Project specifications.
 - f.** Landscape and turf restoration plans.
 - g.** Master grading and erosion-control plans.
 - h.** Vehicle and pedestrian traffic-control plans.
 - i.** Street signage, and street lighting plans.
 - 5. Compliance with Development Plans.** The Developer shall construct the Development in substantial compliance with the Development Plans as modified, conditioned and approved by the City Public Works Department, and any substantial deviation from them must be approved in writing by the City, in advance.
 - 6. Impact Fees and Other Charges.** Developer shall pay to the City the following Impact Fees and charges. Impact Fees shall be paid in full upon execution of this Agreement, unless payment is specifically deferred to the time of issuance of individual building permits. All Impact Fees and charges shall be paid in full before building permits are issued.

- a. Sanitary Sewer Impact Fee: Deferred to building permit issuance for individual units or buildings.
- b. Parks Impact Fee: Deferred to building permit issuance for individual units or buildings.
- c. Library Impact Fee: Deferred to building permit issuance for individual units or buildings.
- d. Police Impact Fee: Deferred to building permit issuance for individual units or buildings.
- e. Deferred pump station assessment of \$860.00 per acre for a total of \$24,062.80.
- f. Deferred sanitary sewer interceptor assessment of \$0.00 per acre for a total of \$0.00.
- g. Developer responsible for all costs and charges incurred by City of Waukesha from Wisconsin Department of Transportation (WDOT), including those responsibilities listed in but not limited to Engineering Services Request Form DT2195, or other applicable forms or permits. Final amount to be determined. It is the responsibility of the Developer to coordinate with WDOT and pay all material costs to DOT for construction of intersection of White Oak Way and USH 18, inspection costs, and pay the WDOT's processing fees. All invoices from WDOT to City shall be paid directly from Developer to WDOT. The City will hold the initial ESA estimate amount from Developer if or when provided to City.

7. Construction Requirements. The following improvements as shown in the Development Plans are specifically required by the City, and the construction of them shall be secured by the performance bond or letter of credit required by section 10 of this Agreement:

- a. Site landscaping.
- b. Street construction.
- c. Concrete sidewalks and cross walks including handicap ramps.
- d. Permanent pavement markings and signage.
- e. Public Sanitary sewer.
- f. Public Storm sewer.
- g. Storm water facilities.
- h. A digital as-built of all sanitary sewer, storm sewer, and storm water facilities in the Development. A televising video of all sanitary sewer main, sanitary sewer laterals, and storm sewer in the Development.

8. Time for Performance.

a. Developer shall complete the construction of all improvements listed in section 7 no later than as listed in Section 8(c). Construction of improvements shall be deemed complete when the improvements are substantially constructed according to the terms of this Agreement, and City delivers a written acceptance of these improvements to Developer, which shall not be unreasonably withheld, conditioned or delayed by City.

b. Developer shall complete the construction of streets no later than the completion dates listed in Section 8(c), unless at that time fewer than half of the lots in the development have improvements constructed on them, in which case the Department of Public Works shall determine a new completion deadline and any additional security to be posted for completion of the streets pursuant to section 10. Construction shall be deemed complete when binder course asphalt replacements, utility structure adjustments, concrete curb and gutter and sidewalk removals and replacements, surface course asphalt pavement installation and all incidentals are complete, and City delivers a written acceptance of street construction to Developer.

c. White Oak Way, Panorama Drive, Viewpoint Avenue, Vista Avenue and the off-site sanitary sewer shall be constructed in the first phase and shall be completed within 12 months from the execution of this document. The remaining phases are to be completed at the Developer's discretion.

9. Construction Standards.

a. **Contractor Qualification.** For work in the public right of way, Developer shall identify all contractors that will provide materials or labor to the Development to the City Engineering Department, and all contractors must be approved by the City Engineering Department or they shall not be allowed to perform any work.

b. **Work Standards.** Developer shall construct all improvements in the Development in a good and workmanlike manner, according to accepted practices within the trades and in compliance with all applicable laws and codes. Developer shall obtain all required permits from the Wisconsin Department of Resources. All streets, curbs, sidewalks, sanitary and storm sewers constructed by Developer in connection with the Development shall be constructed according to the City Department of Public Work's published street, sidewalk and utility construction standards, City Standard Specifications and Development Handbook; the approved storm water management plan; and the Development

Plans. City staff will mark any areas requiring repair and replacement, and Developer shall repair or replace, as indicated, all marked areas. All construction work shall be subject to inspection by City staff for compliance with the terms of this Agreement, and Developer shall perform all corrective work required by the City after inspection. Work in DOT right of way shall be installed according to latest WisDOT standards and plans.

10. Security for Performance. The Developer shall, at Developer's sole expense, obtain and deliver to the City either a surety bond or irrevocable letter of credit, naming the City as beneficiary, to secure full performance of Developer's obligations under sections 7, 8, and 9. The letter of credit or surety bond must be delivered to the City before any construction takes place, or at such other time as the City agrees in writing. If the letter of credit or bond is not delivered to the City on time, then all construction must cease until the letter of credit or bond is delivered and accepted by the City. The choice of surety bond or letter of credit is the Developer's option. The bond or letter of credit shall meet the following requirements:

- a. Surety Bond Requirements.** The bond shall be issued by a surety listed on the U.S. Department of the Treasury's Department Circular 570-Listing of Approved Sureties in a form satisfactory to the City Attorney.
- b. Letter of Credit Requirements.** The letter of credit shall be irrevocable, shall be issued by a commercial bank licensed to conduct business in Wisconsin in a form satisfactory to the City Attorney.
- c. Security Amount.** Subject to adjustment pursuant to subsection 10.d, the amount of the bond or letter of credit shall be \$2,923,916.40.00. Developer shall take whatever actions are necessary, at Developer's sole expense, to ensure that after any partial draws are made, there shall remain 120% of the remaining estimated costs of completion of the improvements listed in section 7 available for the City to draw upon.
- d. Reduction of Security Amount.** Pursuant to Wis. Stats. §236.13(2)(a)(1), on the date 14 months after the binder coat is installed on all roads to be dedicated to the City, or, if no roads are to be dedicated to the City, on the date 14 months after 90% by cost of the public improvements to be installed by Developer are completed, the security amount required by this section shall be reduced to the amount equal to the cost to complete any unfinished public improvements plus 10% of the total cost of the finished public improvements.
- e. Condition of Payment.** The condition of payment under the bond or letter of credit shall be

the completion by Developer of the required improvements listed in section 7, in compliance with the standards in section 9, no later than the date stated in section 8. This shall be established by an affidavit by the City. Time is of the essence. Upon Developer's failure to do so, the City shall provide notice to Developer of such default and provide Developer with a reasonable opportunity to cure the same prior to making any demand for payment.

f. Remedy Not Exclusive. Application of the bond or letter of credit proceeds by the City shall not relieve the Developer of its obligations under this Agreement, and demand by the City on the bond or letter of credit shall not be a waiver by the City of any other rights or remedies.

11. Building Permits. Building permits will not be issued for any lots in the Development until:

- a.** The storm water maintenance agreement for the Development, with Exhibits A, B, C, D, E, F, and G and all addendums, have been reviewed and approved by the City and have been recorded by the Waukesha County Register of Deeds.
- b.** A digital record drawing of all sanitary sewer, storm sewer, and storm water facilities in the Development shall be performed by Developer and approved by the City. Any deficiencies found by the City shall be corrected to the City's satisfaction. Televising videos of all sewers shall be performed by Developer and approved by the City. The Sewer Acceptance forms shall be prepared by Developer and approved by City.
- c.** All lot grading declarations for the Development are recorded and provided to the City.
- d.** The lighting declarations for the Development are recorded and provided to the City.
- e.** The Final Plat of the Development is recorded and provided to City.
- f.** All utilities have been accepted by the City and Water Utility.
- g.** All easement documents needed by City for development shall be approved and recorded. Digital recorded copies of easements to be provided to City.
- h.** Security as required by section 10 is received by the City Engineering Division.
- i.** All impact fees, sewer assessments, and application review fees have been received by the City Engineering Division.
- j.** The City Storm Water Permit has been issued, and any permits for grading, wetland disturbance or

floodplain filling have been issued by the Wisconsin Department of Natural Resources and Army Corps, with copies of the permits provided to City Engineering. All wet ponds have been approved by FAA or Waukesha County Airport Director.

k. All Waukesha County and Wisconsin Department of Transportation (WDOT) permit approvals have been received and fees paid by Developer to said entities and copies of permit approvals provided to City.

l. A road is constructed for fire and emergency access to the proposed buildings in accordance with the requirements established by the City of Waukesha Fire Marshal prior to an early start permit being issued.

12. Dedication. All public improvements required by this agreement, including but not limited to the road and right of way, shall upon completion be dedicated and conveyed to the City in fee simple, free and clear of all liens and encumbrances, together with easements in favor of the City for necessary access to such improvements. No dedication shall be effective until all review and inspection fees relating to the improvements have been paid in full, all contractors who performed work on the improvements have been paid in full and have provided construction lien waivers, and the City accepts the dedications in writing.

13. Recorded Lighting Declaration. The Developer shall record with the Register of Deeds for Waukesha County a Declaration of Covenants and Restrictions which shall include a requirement that each lot owner shall be responsible for providing a functioning lamp post on the driveway.

14. Recorded Grading Declaration. The Developer shall record with the Register of Deeds for Waukesha County a Declaration of Covenants and Restrictions which shall include a requirement that each lot owner shall be responsible for grading his or her lot in substantial conformance with the master grading plan approved by the City to ensure positive drainage and not cause drainage issues with adjoining lots.

15. Garbage and Recycling Pickup. Units within this development which are deemed eligible for city solid waste and recycle service may pursue such service. Units not eligible for city solid waste and recycle service must procure services at their own expense.

16. Pavement Warranty. All asphalt and concrete pavement that will be dedicated to the City pursuant to this Agreement, or installed are part of the project shall be warranted by the Developer for materials and workmanship for a period of 2 years from the date of delivery of written acceptance of street construction pursuant to section 8.b. Pavement deficiencies identified by the City within the 2-

year warranty period shall be addressed at Developer's sole expense as follows:

a. All paving joints (longitudinal and transverse) that open shall be routed and crack sealed to the satisfaction of the City Engineer.

b. All premature cracks shall be crack sealed or routed and crack sealed to the satisfaction of the City Engineer.

c. Any other pavement irregularities shall be addressed in a method approved by the City Engineer.

d. If deficiencies are discovered within the 2-year warranty period, the pavement warranty as to the affected area will be extended by one year from the latest date the deficiencies are corrected.

17. Landscaping Warranty. The warranty period for all topsoil, seed, sod, tree, bush or other landscape or restoration work in this contract shall be the earlier of 1 year from the final completion date or full stabilization.

18. Sewer Warranty. All sewer mains and laterals, and all associated equipment, that will be dedicated to the City pursuant to this Agreement shall be warranted by the Developer for materials and workmanship for a period of 1 year from the date of delivery of written acceptance of sewer construction pursuant to section 8.a. Sewer deficiencies identified by the City within the 1-year warranty period shall be corrected to the City Engineer's satisfaction, and any damage caused by deficient materials or workmanship restored, at Developer's sole expense.

19. City May Correct Deficiencies. If the Developer fails, after reasonable written notice from the City, with reasonable opportunity to cure any defaults of the terms of this Agreement, including all warranties, the City may cure the defaults. The Developer shall then reimburse the City for all reasonable expenses incurred by the City, and the City may charge such expenses against the Development as a special charge under Wis. Stats. §66.0627.

20. Construction Compliance Inspections, Deposit. The City of Waukesha contracts with private consultants to perform compliance inspections of public construction projects, who are referred to as Construction Site Representatives, or CSRs. The cost of inspections by CSRs is borne by project developers, who are required to maintain a deposit with the City to cover that cost. Therefore, the Developer shall deposit with the City an amount equal to 120% of the estimated cost of providing a CSR for the Development, as determined by the City. The City shall draw upon this deposit to pay the costs of the CSR's inspections. If the deposit is drawn down to less than 25% of the original deposit amount, then Developer shall deposit additional amounts as necessary to maintain the deposit at no less than 25% of the original amount at all

times. If the deposit amount falls below 25% of the original estimated amount at any time, the City may order that all building and construction permits be suspended and all work on the Development cease until the deposit amount is restored to at least 25% of the original amount. Deposits shall be held by the City in its general funds but shall be accounted for separately. The City shall not pay interest on any deposits. The City shall return the deposit balance upon acceptance of public improvements directly to the developer.

21. Inspection Access. Developer shall allow the City and its CSRs access to the Development as reasonably required to perform inspections of the Development. If Developer fails to give adequate access for inspections, the City may order that all building and construction permits be suspended and all work on the Development cease until adequate access has been given for inspections and the inspections reveal that the Development is in compliance with all codes, permits, and the terms of this Agreement. A preconstruction meeting shall be held with Developer, Contractors, and City representatives prior to commencement of construction.

22. Utility Easements. The Developer shall grant to the City easements for all municipal utility facilities in the Development and deliver to the City an instrument in recordable form showing all such easements. The easement instrument shall be in a form approved by the City and shall contain all usual terms and provisions required by the City.

23. Indemnification. Developer shall indemnify and hold the City harmless from any and all claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind arising out of, or connected in any way with, the Developer's construction of the Development, including court costs and actual attorney fees. Indemnification shall not extend to claims arising out of the negligent or intentional acts or omissions of the City, its officers, agents, employees or independent contractors.

24. Insurance. Developer shall maintain, or require its contractors to maintain, insurance of the following kinds and for not less than the following limits, at Developer's sole expense, at all times during the construction of the Development. Policies shall be occurrence, and not claims-made, policies. Developer shall obtain an endorsement making the City an additional insured, and such insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Prior to commencement of construction, Developer shall deliver a certificate of insurance to City showing that all requirements of this section are met.

a. Commercial general liability, including products-completed operations, \$1,000,000 per occurrence, \$2,000,000 aggregate per project.

b. Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.

c. Builders risk, the value of the improvements required by section 7.

d. Excess liability-Umbrella, \$5,000,000.

e. Worker compensation, statutory requirements.

25. Recording. The City will record this Agreement with the Register of Deeds, and the cost of recording shall be reimbursed to the City by the Developer.

26. Agreement Runs with Land. The terms and conditions of this Agreement, specifically including but not limited to the Developer's obligations under the storm water management and maintenance plan referred to in section 4.d, are covenants running with the land; bind the Developer and its successors, assigns, and any other entities claiming legal, equitable or beneficial interests in the Real Property; and inure to the benefit of the City.

27. Governmental Immunities and Notice Requirements Preserved. Nothing in this Agreement shall be construed to be a waiver or modification of the immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.

28. Parties Are Independent Contractors. Nothing in this Agreement shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Agreement, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.

29. Corporate Authorization. The individuals executing this Agreement on behalf of the Developer represent that they are duly authorized to bind the Developer contractually. The Developer represents that the execution of this Agreement is not prohibited by its articles of incorporation, by-laws, operating agreement, partnership agreement, limited-partnership agreement, or other internal operating orders, or by any applicable law, regulation or court order.

30. Assistance of Counsel, Voluntary Contract. The Developer acknowledges that it has either had the assistance of legal counsel in the review and execution of this Agreement, or has voluntarily waived the opportunity to do so; that it has read and understands each of this Agreement's terms, conditions and provisions, and their effects; and that this Agreement is executed freely and not under conditions of duress.

31. Adequacy of Consideration. The Parties acknowledge that the consideration expressed in this Agreement is adequate and sufficient to make the obligations contained in this Agreement binding upon the Parties.

32. Integration. This Agreement and any documents which are executed pursuant to express provisions in this Agreement embody the entire agreement of the Parties with respect to the subject matter expressed herein. All other inconsistent agreements and understandings of the Parties with respect only to the subject matter expressed herein are superseded and are unenforceable.

33. Amendments. No amendments, additions, or changes of any kind to this Agreement will be valid unless in writing and signed by all the Parties to this Agreement.

34. Severability. If any term of this Agreement is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Agreement without affecting the enforceability of the remainder of this Agreement or substantially frustrating its purpose, it will be so severed, and the remainder of this Agreement will remain in effect and enforceable.

35. Governing Law and Jurisdiction. This Agreement shall be construed and enforced according to the laws of Wisconsin. The Parties agree that if a lawsuit is necessary

with respect to this Agreement, it will be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin and waive all jurisdictional defenses.

35. Force Majeure. Neither Party shall be deemed to be in default of this Agreement if the failure to perform is the result of unforeseeable causes beyond the Party's control, including but not limited to civil disorder, war, acts of enemies, strikes, fires, floods, adverse weather conditions, legally-required environmental remedial actions, industry-wide shortages of materials, acts of God, Governmental restrictions, and pandemics, provided the Party has used reasonable diligence in attempting to anticipate and avoid such causes and resumes performance in good faith as soon as reasonably possible. Time for performance shall be extended by the period of delayed performance.

36. Title Evidence. Title evidence satisfactory to the City showing that Developer is the fee titleholder of the Development shall be provided to City prior to any construction taking place on the Development.

37. Private Cluster Mailboxes. Developer shall furnish private cluster mailboxes located on private property at locations and with specifications as approved by City and US Mail Postmaster.

Developer: Bielinski Homes, Inc

Frank Bielinski
Title: _____
Date: _____

State of Wisconsin }
 } ss.
Waukesha County }

Frank Bielinski, known to me to be the _____ of Bielinski Homes, Inc., personally came before me the __ day of __
_____, 2021, signed this Development Agreement in my presence, and acknowledged the same.

Name: _____
Notary Public, Waukesha County, Wisconsin
My commission (is permanent) (expires _____)

City of Waukesha

By Shawn N. Reilly, Mayor
Date: _____

Attest: Gina L. Kozlik, City Clerk-Treasurer
Date: _____

State of Wisconsin }
 } ss.
Waukesha County }

Shawn N. Reilly and Gina L. Kozlik, known to me to be the Mayor and City Clerk, respectively, of the City of Waukesha,
personally came before me the _____ day of _____, 2021, signed this Agreement in my presence, and
acknowledged the same.

Name: _____
Notary Public, Waukesha County, Wisconsin
My commission (is permanent) (expires _____)

This instrument was drafted by City of Waukesha Department of Public Works.

Exhibit A

Parcel ID Number: WAKC 0986 998 001
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Legal description of Real Property:

(Add legal description and exhibit here)