

City of Waukesha
Public Works Development Agreement
Olde Farm Subdivision

Parcel ID Number: WAKC 1317 108

After recording return to:
City of Waukesha
Dept of Public Works
201 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; and **Bielinski Homes, Inc.**, a Wisconsin domestic corporation, referred to herein as the Developer. The land subject to this Agreement is legally described below, and is referred to herein as the Real Property.

Legal Description

Parcel Two (2) of Certified Survey Map No. 9902, being a part of the Northeast One-quarter (1/4) and Southeast One-quarter (1/4) of the Northwest One-quarter (1/4) and the Northwest One-quarter(1/4), Southwest One-quarter (1/4) and Southeast One-quarter (1/4) of the Northeast One-quarter (1/4) of Section Six (6), in Township Six (6) North, Range Nineteen (19) East, in the City of Waukesha, County of Waukesha, State of Wisconsin, recorded in the Office of the register of Deeds for Waukesha County on October 28, 2004 in Volume 92 of Certified Survey Maps at Pages 124 to 132 inclusive, as Document No. 3217944.

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

- 1. The Development.** The term Development, as used herein, refers to the Developer's construction on the Real Property of a residential subdivision to be known as Olde Farm and a public street to be known as Overton Avenue, according to the Development Plans, defined below, as those Development Plans are approved by the City. The Development will be completed in a single phase.
- 2. 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. There shall be no contribution from the City.
- 3. Development Plans.** The Developer shall deliver to the City complete, accurate and sufficiently-detailed plans for the Development, which are referred to herein as the Development Plans. The Development Plans shall include the following:

 - a.** Preliminary and Final Plats showing the locations of all lots, outlots, easements, public rights-of-way, and all other improvements to the Real Property.
 - b.** 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;
 - c.** Storm water management plan and storm water management practice maintenance agreement and all addenda.
 - d.** Development specifications.
 - e.** Landscape and turf restoration plans.
 - f.** Master grading and erosion-control plans.
 - g.** Vehicle and pedestrian traffic-control plans.
 - h.** Street signage and lighting plans.
- 4. Compliance with Development Plans.** The Developer shall construct the Development in substantial compliance with the Development Plans as finally approved by the City Public Works Department, and no substantial deviation from them shall be done without advance, written approval by the City.
- 5. 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 is deferred to building permit issuance for individual units or buildings.
- b. Parks Impact Fee is deferred to building permit issuance for individual units or buildings.
- c. Library Impact Fee is deferred to building permit issuance for individual units or buildings.
- d. Police Impact Fee is deferred to building permit issuance for individual units or buildings.
- e. Pump station assessment deferred from 2005 of \$1,600.00 per acre for a total of \$15,350.00.
- f. No sanitary sewer interceptor assessment shall be paid.

6. 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 9 of this Agreement:

- a. Site landscaping.
- b. Street construction, including the intersection of Overton Avenue with Madison Street.
- 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.
- i. A video of all sanitary sewer mains, sanitary sewer laterals, and storm sewers in the Development.

7. Time for Performance.

- a. Developer shall complete the construction of all improvements listed in section 6 no later than 12 months after the date of execution of this Agreement. 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 12 months after the date of execution of this Agreement, 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 9. 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.

8. 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 Natural 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 improvements requiring repair or replacement, and Developer shall repair or replace 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.

9. 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 6, 7, and 8. The choice of surety bond or letter of credit is at 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 9.d, the amount of the bond or letter of credit shall be \$1,215,058.00. 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 6 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 6, in compliance with the standards in section 8, no later than the dates stated in section 7. 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.
- 10. Building Permits.** Two building permits will be issued by the City to allow for early model or spec home construction upon completion of the first lift of pavement on Overton Drive and the requirements of subsections 10.a, 10.d, 10.e, 10.g, 10.h, 10.i, 10.j, and 10.k, have been met. No certificate of occupancy for homes constructed pursuant to such early permits shall be issued

until completion of all improvements required in subsections 10.a through 10.k. Issuance of all remaining building permits shall occur only after all of the following requirements are completed:

- a.** The storm water maintenance agreement for the Development, with all exhibits and addenda, have been reviewed and approved by the City and 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 has been prepared by Developer and approved by the City. Any deficiencies found by the City shall be corrected to the City's satisfaction.
 - c.** Videos of all sewers have been performed by Developer and approved by the City. Sewer Acceptance forms shall be prepared by Developer as required by the City.
 - d.** All lot grading declarations for the Development have been recorded and provided to the City.
 - e.** The Final Plat of the Development has been 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 have been approved and recorded. Digital recorded copies of easements shall be provided to City.
 - h.** Security as required by section 9 has been received by the City Engineering Division.
 - i.** All impact fees, sewer assessments, and application review fees have been received by the City.
 - 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.
 - k.** All wet ponds have been approved by FAA or Waukesha County Airport Director, if necessary.
- 11. 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 improve-

ments 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.

12. **Parkland Dedication.** Developer shall dedicate and convey to the City free and clear of all liens and encumbrances approximately 2.70 acres of open space as shown on the Final Plat ("Parkland Dedication") for a public park subject to the restrictions set forth in section 13, below upon the City paying Developer Sixteen Thousand and 00/100 Dollars (\$16,000.00) ("Parkland Dedication Payment"). Payment by the City shall be made within 90 days after the receipt of \$16,000.00 of total park impact fees attributable to the Development. Developer shall not convey all or any part of the Parkland Dedication to any third party.
13. **Use Restrictions on Dedicated Parkland.** Subject to and only upon the City paying Developer the Parkland Dedication Payment, the City shall reserve and use the Parkland Dedication for access by the general public to nature and passive recreational activities such as walking, hiking, birdwatching, and other similar activities. The City shall develop and maintain a natural surface trail across the land. The land shall not be used for or in conjunction with sporting events or other active recreation uses, whether organized or not. No buildings, structures, or equipment of any kind shall be placed or erected upon any portion of the land including, but not limited to, pavilions, basketball courts, tennis courts, pickleball courts, baseball or softball diamonds, soccer fields, skate or bike ramps, golf courses, disc golf courses or equipment, and playgrounds or playground equipment, including, but not limited to, swing sets, jungle gyms, slides, rock walls, rope courses, merry-go-rounds, or any and all other playground or recreational equipment. Regardless of the foregoing, the City may install and maintain benches along the natural surface trail.
14. **Driveway Lamp Requirement.** The Final Plat for the Development shall contain a restrictive covenant applicable to all buildable lots requiring that each lot containing a residence have a functional lamp post adjacent to the driveway.
15. **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.
16. **Pavement Warranty.** All asphalt and concrete pavement that will be dedicated to the City pursuant to this Agreement, or installed as part of the Development

shall be warranted by the Developer for materials and workmanship for a period of 2 years from the date of written acceptance pursuant to section 7.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 the Development 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 7.a. Sewer deficiencies identified by the City within the 1-year warranty period shall be corrected to the City Engineer's satisfaction, at Developer's sole expense.
 19. **City May Correct Deficiencies.** If the Developer fails, after written notice by the City and 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 expenses incurred by the City in doing so, 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 the Developer, and the Developer is 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 any remaining balance upon acceptance of public improvements.

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.
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, its officers, agents, and employees 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 6.
 - d. 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 3.c, 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. Stat. §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.
36. **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.
37. **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.
38. **Private Cluster Mailboxes.** Developer shall furnish private cluster mailboxes located on private property at locations and having specifications approved and the US Postal Service.

Signatures on the Following Page

