

## GRADING AND STOCKPILING OF FILL MATERIAL AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Bielinski Homes, Inc. hereinafter collectively and individually called the “Developer,” and the CITY OF PEWAUKEE, a Wisconsin municipal corporation of the State of Wisconsin, hereinafter called the “City.”

### WITNESSETH:

WHEREAS, the Developer proposes to develop certain lands located in the City of Pewaukee, Waukesha County, Wisconsin, being particularly described on Exhibit “A” attached hereto and incorporated herein by this reference (the “Property”), commonly referred to as \_\_\_\_\_, Greenland Subdivision Pewaukee, Wisconsin; and

WHEREAS, the City previously approved the Developer’s preliminary plat for the development of single-family lots (the “Subdivision”) on the Property; and

WHEREAS, the City has reviewed the Developer’s conceptual Grading Plan; and

WHEREAS, one of the requisites for development of the Subdivision is the installation of various private, as well as public, improvements to be implemented pursuant to a development agreement; and

WHEREAS, said development agreement has not yet been prepared and executed; and

WHEREAS, the Developer has requested the City to authorize and permit grading and stockpiling of fill material on the Property at this time; and

WHEREAS, the City recognizes that timing is a factor to be considered and is willing to allow Developer, at its risk, to perform grading and stockpiling as requested upon the condition, however, that the Developer agrees to those certain terms and conditions as more fully hereinafter set forth.

NOW THEREFORE, in consideration of the sum of one dollar (\$1.00) to each in hand paid, the receipt and sufficiency whereof is hereby acknowledged, and in further consideration of the mutual premises and covenants hereinafter set forth, it is hereby agreed by and between the parties hereto as follows:

### I. THE CITY AGREES:

1. To permit the Developer to perform all rough grading work on the Property, including, but not limited to, the installation of silt fencing, general grading of the site and the construction of storm water management ponds (collectively the “Grading”), upon the terms and conditions set forth below.

2. To permit the Developer to stockpile appropriate fill materials on the Property, not to exceed the total amount 50,000 cubic yards, in anticipation of using said fill materials in the development of the Property (collectively the "Stockpiling"), upon the terms and conditions set forth below.

## II. THE DEVELOPER AGREES:

1. All Grading and Stockpiling shall be done at the Developer's risk.

2. All Grading and Stockpiling shall comply with site grading, drainage and soil erosion plan and related specifications as approved by the City Engineer. All plans for such Grading and Stockpiling have been or will be prepared on behalf of the Developer by a professional engineer licensed by the State of Wisconsin.

3. The City shall be reimbursed by the Developer for all costs incurred by the City in relation to the Grading and Stockpiling. These costs shall include, but not be limited to, plan review, inspection and related overhead costs. Said reimbursement shall be guaranteed by the Developer as set forth and required in Paragraph 9 below.

4. In the event the preparation and/or final review of the Master Grading Plans by the City dictate revisions to the proposed grades, either at the Developer's request or at the direction of the Engineer, such re-grading shall be performed by the Developer without any recourse to the City whatsoever, prior to the commencement of any underground installations in the Subdivision development.

5. The Grading and Stockpiling shall be performed with proper control of soil erosion and with minimum siltation of existing drainage facilities. Any damage to the existing drainage facilities, including siltation removal, shall be immediately repaired by the Developer. As appropriate, by virtue of delay in the development process, vegetative cover shall be re-established by the Developer and/or effective erosion control measures shall be installed and continually maintained by the Developer where vegetation has been removed, covered or destroyed.

6. In the event installation of improvements and/or buildings on the lots does not begin as of 8/31/2021, for any reason whatsoever, all of the graded or disturbed area shall have vegetative cover re-established by the Developer to an extent as to be determined by the City. In the event vegetative cover is not established by 10/1/2021 the City shall arrange for such work to be done, which shall be paid by the Developer.

7. In the event installation of improvements and/or buildings on the lots does not begin as of 8/31/2021, for any reason whatsoever, all of the stockpiled fill material shall be removed and all disturbed area shall have vegetative cover re-established by the Developer to an extent as to be determined by the City. In the event the Stockpiled material is not removed or vegetative cover is not established by 10/1/2021, the City shall arrange for such work to be done, which shall be paid by the Developer.

8. All truck traffic to and from the Property, as part of the operation permitted herein, shall be conducted by the Developer as governed by the applicable codes and regulations of Waukesha County and of the City and as directed by the City Engineer, with respect to method, time and operations and routing, etc. Any public street used for access to the Property shall be kept free of mud, dirt and debris on a daily basis. In the event a clean-up order from the City is not complied with, such work shall be arranged and accomplished by the City and paid for out of the deposit referred to in Paragraph 9 below.

9. To assure compliance with the conditions set forth in this agreement, including, but not limited to, the establishment of positive soil erosion control measures, performance hereunder shall be guaranteed with a deposit by the Developer with the City in the amount of \$40,000 cash which shall be paid prior to the commencement of any activity on the Property by the Developer with respect to the Grading and Stockpiling. In the event Developer does not comply with or fully perform this agreement, the City is authorized to stabilize the site or to take other action to correct the Developer's violations hereof by using the cash deposit for such purposes. Upon completion of the performance of this agreement, the deposit, or remaining balance of the deposit, if any, shall be returned to the Developer. In the event said deposit is insufficient in amount to pay all costs related to performance of and compliance with this agreement, the Developer shall remit payment of all owed amounts to the City within ten (10) days of receipt of the City's invoice to the Developer.

10. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

11. Developer is responsible for DNR approval for required culverts in the Subdivision. Further, it is the Developer's responsibility to comply with any and all provisions of DNR approval/denial conditions.

12. Upon execution of a Development Agreement between the City and Developer for the Property, this Agreement shall terminate and any remaining balance of the deposit shall be returned to Developer upon Developer's posting of cash or letter of credit to guaranty the improvements, including the grading of the Property, required under said Development Agreement.

IN WITNESS WHEREOF, the Developer and the City have caused this agreement to be signed individually by the Developer and by the appropriate officers of the City, with its seal to be hereunto affixed the day and year inserted above.

BIELINSKI HOMES, INC.  
BIELINSKI HOMES, INC., by Frank Bielinski, President,  
DEVELOPER, DEVELOPER

STATE OF WISCONSIN )

Waukesha County ) ss.  
 WAUKESHA COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the above-named Frank Bielinski, as President of Bielinski Homes, Inc., to me known to be the persons who executed the foregoing instrument and who acknowledged the same.

\_\_\_\_\_  
 Notary Public, State of Wisconsin.

My Commission expires: \_\_\_\_\_

CITY OF PEWAUKEE  
 WAUKESHA COUNTY, WISCONSIN

\_\_\_\_\_  
 Steve Bierce, Mayor

\_\_\_\_\_  
 Kelly Tarczewski, Municipal Clerk

STATE OF WISCONSIN )  
 ) ss.  
 WAUKESHA COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the above named Steve Bierce, Mayor, and Kelly Tarczewski, Municipal Clerk, of the above named municipal corporation, to me known to be the persons who executed the foregoing instrument and to me known to be such individual and Municipal Clerk of said municipal corporation and acknowledged that they executed the foregoing instrument as such officers as the deed of said municipal corporation by its authority and pursuant to the authorization by the Governing Body of the City of Pewaukee from their meeting on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
 Notary Public, State of Wisconsin.

My Commission expires: \_\_\_\_\_