



# DEVELOPMENT AGREEMENT

THIS AGREEMENT (the Agreement), made on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (“Effective Date”) between the City of Dickinson, a political subdivision, hereinafter called the CITY, and the OWNER as identified herein.

**OWNER Name and Address:**

Lot 1, Block 1                      Neal Messer & Bonnie Messer, and Steven L. Schwab & Charlotte M. Schwab  
PO Box 1121  
Dickinson, ND 58602

Lot 2, Block 1                      K-Winn Holdings, LLC  
325 W. 600 S.  
Smithfield, UT 84335

**Legal Description:**        Lots 1 and 2, Block 1, Fisher’s 3<sup>rd</sup> City East Addition in the City of Dickinson, ND

Also referred to herein as “Fisher’s 3<sup>rd</sup> City East Addition”.

Also referred to herein as the “Subject Property”.

### RECITALS

WHEREAS, the OWNER is the fee OWNER of the Subject Property, located in the City of Dickinson, Stark County, North Dakota, legally-described as provided above; and

WHEREAS, the OWNER intends on re-platting the Subject Property; and

WHEREAS, the OWNER and CITY agree that the Subject Property will be improved and developed pursuant to the terms of this Agreement, the “Fisher’s 3<sup>rd</sup> City East Addition” plat, and all applicable City ordinances and regulations;

NOW THEREFORE, in mutual consideration of the promises, covenants and agreements of the parties contained herein, the parties hereby agree as follows:

**1. Regulation of Development.** This Agreement is executed in conformance with Article 34 of the City of Dickinson Municipal Code and shall satisfy the requirements contained therein for a Subdivision Agreement to be completed prior to the filing and recordation of any **issuance of a Certificate of Occupancy on Subject Property**. This Agreement shall control the development of the Property and the construction of Municipal Improvements necessary to serve the Subdivision or Subject Property with municipal services. Remedies contained in this Agreement shall be in addition to those otherwise provided by law to the City for other violations of the City of Dickinson Municipal Code.

**2. Infrastructure Improvements – Special Conditions.** The OWNER and CITY hereby agree that the following are the only public infrastructure improvements or improvements within public right-of-way required to be constructed by the OWNER of the Subject Property and accepted by the City prior to a Certificate of Occupancy being issued in the Subject Property as indicated in Part 1 of this Agreement.

- a) A public water system shall be constructed through the remaining ±120-foot long, 60' foot wide right-of-way for 21<sup>st</sup> Ave E located immediately west of Lot 12, Block 1 of Fisher's City East Addition. This water system shall connect to the existing water main within E Villard Street and shall extend through said right-of-way. The water system shall consist of 8-inch diameter water mains and fire hydrants as needed to serve the Subject Property. After construction of said water system and approval by the City of said water system, the City of Dickinson shall take over ownership and maintenance of the entirety of this public water system that is to be located within the public right-of-way.
- b) The Owner shall generally grade the street within 21<sup>st</sup> Ave E to the north edge of Lot 1, Block 1 of the Subject Property and shall have gravel surfacing placed over said graded area.
- c) The Owner agrees to construct, pave, and maintain a private access road within the existing right-of-way of 21<sup>st</sup> Ave E on the south side of Lot 2, Block 1 of the Subject Property. This infrastructure shall not be required to meet current City Standards for public infrastructure.

The OWNER understands that at some point in the future the CITY or future developers may decide to construct additional public infrastructure improvements within the Subject Property or the right-of-way adjacent thereto to serve surrounding properties through special assessment, with City funds, or by some other means. The Owner has provided the necessary easements for installation of this future infrastructure on the Plat of the Subject Property but shall not be required to install or maintain this infrastructure as part of this development except as otherwise noted above. The Owner agrees to the following terms within the "30' Drainage and Sanitary Sewer Easement" and the "20' Water Easement" depicted by the Plat.

- a) Owner shall allow for the installation and maintenance of public drainage, water, and/or sanitary sewer infrastructure within said easements.
- b) The Owner will not construct any improvements within these easements that would restrict them from being used for their indicated purpose. This includes buildings, structures, pavement, and other similar features. This easement shall not restrict the owner from placing gravel surfacing or installing fences within these easements as long as they are in accordance with City Codes.
- c) After the installation of said infrastructure, Owner agrees not to change the established grade within said easements without the prior consent of the City.

**3. City Engineer Approval Required.** No improvements within the Subject Property shall be made unless and until necessary plans and specifications therefore have been submitted to and approved by the City Engineer in accordance with the City of Dickinson Municipal Code for the Subject property covered by such plans and specifications.

4. **Subdivision of Land.** The OWNER shall otherwise conform to all requirements regarding the subdivision of land enacted by the City of Dickinson, as set forth in Chapter 34 of the City of Dickinson Municipal Code, as may be amended from time to time. The provision of remedies in this Agreement shall be in addition to those otherwise provided by law to the CITY for other violations of the City of Dickinson Municipal Code.

5. **Building Permits.** The CITY's approval of this Agreement does not include approval of permits for construction within the Subject Property. The OWNER shall separately apply to the CITY for any building permits, certificates of occupancy, right-of-way permits, or similar approvals for any and all construction within the Subject Property. The OWNER shall notify all prospective lot OWNERS within the Subject Property that the CITY will not accept any building permit or development applications until the CITY has approved the final storm water management plan.

6. **Repairs and Replacements.** The OWNER shall replace, or have replaced, or repair, or have repaired, as the case may be, any and all pipes and monuments within the Subject Property that have been destroyed or damaged by the OWNER or OWNERS agents. The OWNER shall replace, or have replaced, or repair, or have repaired, as the case may be, the entire cost of such replacement or repair, of any and all property damaged or destroyed by reason of any work done pursuant to this Agreement, whether such property is owned by the United States, or any agency or entity thereof, or the State of North Dakota, or any agency or political subdivision thereof, or by the CITY or by any public or private corporation, or any person whomsoever, or by any combination of such OWNERS. Any such repair or replacement shall be to the satisfaction, and subject to the approval of the City Engineer or their designee.

7. **Title to Public Improvements.** Title to, and Ownership of, any and all municipal improvements within the public right-of-way or easement dedicated and granted within the Subject Property or the proposed subdivision, shall vest in the CITY upon completion and acceptance of such improvements with the following exception: sewer service lines are owned and maintained by the property owner from the building structure to the sewer main.

8. **Agreement Runs With the Land.** This Agreement shall be binding on, and shall inure to the benefit of, the parties hereto and their respective heirs, administrators, representatives, successors, and assigns. This Agreement shall run with the land, and shall be recorded with the Office of the Stark County Recorder against the Subject Property. As the OWNER sells individual lots within the Subject Property, the OWNER shall specifically notify the purchaser thereof of this Agreement. All obligations, promises and covenants of the OWNER contained herein shall similarly be binding upon purchasers of lots within the Subject Property.

9. **Severability.** In the event that any provision of this Agreement shall be held invalid, illegal or unenforceable by any court of competent jurisdiction, such holding shall pertain only to such section and shall not invalidate or render unenforceable any other section or provision of this Agreement.

10. **Non-waiver.** Each right, power or remedy conferred upon the CITY or the OWNER by this Agreement is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, or available to the CITY or the OWNER at law or in equity, or under any other agreement. Each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the CITY or the OWNER and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. If either party waives in writing any default or nonperformance by the other party, such waiver shall be deemed to apply only to such event and shall not waive any other prior or subsequent default.

**11. Governing Law – Venue.** This Agreement shall be governed by and construed according to the laws of the State of North Dakota. The parties hereby stipulate and agree that the District Court, Southwest Judicial District, State of North Dakota, shall have personal jurisdiction over the parties hereto, and that such District Court, Southwest Judicial District, State of North Dakota, is the appropriate and proper venue for resolving any dispute under this Agreement.

**12. Entire Agreement.** This Agreement contains the entire agreement between and among the parties hereto, and supersedes all prior and contemporaneous discussions, negotiations, understandings, and agreements, whether oral or written, express or implied, between or among them relating to the subject matter of this Agreement. This Agreement may not be amended orally, nor shall any purported oral amendment (even if accompanied by partial or complete performance in accordance therewith) be of any legal force or effect or constitute an amendment of this Agreement, but rather this Agreement may be amended only by an agreement in writing signed by the parties.

*(Signatures begin on following page)*

DRAFT

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

CITY OF DICKINSON

By: \_\_\_\_\_  
Scott Decker, President  
Board of City Commissioners.

ATTEST:

\_\_\_\_\_  
Dustin Dassinger  
Dickinson City Administrator

STATE OF NORTH DAKOTA )

) ss

COUNTY OF STARK )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared **SCOTT DECKER** and **DUSTIN DASSINGER** known to me to be, respectively, the President of the Board of City Commissioners and the City Administrator of the City of Dickinson, the persons who are described herein and who executed the within and foregoing instrument and acknowledged to me that the City of Dickinson executed the same.

\_\_\_\_\_  
Notary Public  
Stark County, North Dakota

**IN WITNESS WHEREOF**, the parties have hereunto set their hands the day and year first above written.

**OWNER**

By: \_\_\_\_\_  
NEAL MESSER

By: \_\_\_\_\_  
BONNIE MESSER

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

) ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared NEAL MESSER, the **OWNER** described herein, known to me, and who executed the within and foregoing document and acknowledged to me that such entity executed the same.

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

) ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared BONNIE MESSER, the **OWNER** described herein, known to me, and who executed the within and foregoing document and acknowledged to me that such entity executed the same.

\_\_\_\_\_  
Notary Public

**IN WITNESS WHEREOF**, the parties have hereunto set their hands the day and year first above written.

**OWNER**

By: \_\_\_\_\_  
STEVEN L. SCHWAB

By: \_\_\_\_\_  
CHARLOTTE M. SCHWAB

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

) ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared STEVEN L. SCHWAB, the **OWNER** described herein, known to me, and who executed the within and foregoing document and acknowledged to me that such entity executed the same.

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

) ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared CHARLOTTE M. SCHWAB, the **OWNER** described herein, known to me, and who executed the within and foregoing document and acknowledged to me that such entity executed the same.

\_\_\_\_\_  
Notary Public