

LAND DRAIN CROSSINGS WARRANTY AGREEMENT

This *Land Drain Crossings Warranty Agreement* (“**Agreement**”) is entered into this 29 day of January, 2024, by and between Weber County, a political subdivision of the State of Utah, hereinafter referred to as “**County**,” and JDC Community, LLC, hereinafter referred to as “**Developer**.” Sometimes the County and the Developer are collectively referred to herein as the “**Parties**.”

RECITALS:

WHEREAS, the Parties have entered into a Master Development Agreement (MDA) to develop a master-planned community known as JDC Ranch (“**Subdivision**”); and

WHEREAS, the Developer is required by the County to install certain public improvements within the Subdivision including, but not being limited to, roads, sidewalks, trails, sewer and storm drain infrastructure, and parks and being collectively referred to as the “**Improvements**” (see Exhibit “A” attached hereto); and

WHEREAS, the Improvements will cross certain easements containing drain lines which are owned or operated by The United States Bureau of Reclamation (“**BOR**”); and

WHEREAS, the Developer is required to obtain the necessary permits for the Improvements to cross the BOR easements; and

WHEREAS, following installation of the Improvements, Developer will dedicate them to the County, which will then be responsible to operate and maintain them to the extent required by law or by contract; and

WHEREAS, the BOR requires the County to be financially responsible for any damage to the BOR drain lines after the Improvements are installed; and

WHEREAS, the BOR drain lines are made of non-reinforced concrete pipe that, in the experience of the County Engineer, is prone to breaking when disturbed; and

WHEREAS, in addition to any subdivision improvement warranty agreement which the County may require consistent with Utah Code § 17-27a-604.5 to ensure that the Improvements are properly installed and functional, the County is also requiring Developer to obtain and keep on file with the County a Letter of Credit (“**LOC**”), substantially in the form shown in Exhibit “B,” which shall not expire prior to end of the Warranty Period defined below, to comply with the County’s excavation ordinance (Title 18 of the Weber County Code) and to ensure that Developer will be financially responsible for any damage that is caused to the BOR drain lines by the Improvements and that is not repaired by Developer;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1) **Developer's Obligation.**

- a) If the BOR's drain line is damaged as a result of Developer's installation of the Improvements, and that damage is discovered at any time during the Warranty Period, Developer will repair the damage within 90 days after written notice from the County or from an entity responsible for the BOR drain lines. This deadline shall be extended if Developer is unable to make the repairs within 90 days due to circumstances beyond Developer's control.
- b) The Developer hereby agrees to provide a Letter of Credit ("LOC") from a financial institution approved by the County, in the amount of \$30,000.00, which may be used by the County, at the County's discretion, in the case that damages to the BOR's drain line caused by Developer's construction of the Improvements necessitate the repair of such drain line, and the necessary repairs are not performed by Developer as required in this Agreement.
- c) In the event that the LOC is diminished by being drawn upon for Eligible Repairs, defined below, during the term of this agreement, Developer shall replenish the LOC to \$30,000.00 within 60 days after the funds are disbursed to the County.
- d) In addition, Developer agrees to perform a camera inspection of each portion of the BOR's drain line which is crossed by any Improvements at the time that installation of the portion of such Improvements crossing the drain line is complete, and again at the end of the Warranty Period for each crossing. Developer shall provide a copy of each camera inspection video and report to the County.

2) **County's Obligation.** If the BOR's drain line is damaged as a result of Developer's installation of the Improvements, and the necessary repairs are not performed by Developer as required in this Agreement, the County shall have the right, during the Warranty Period, to draw against the Letter of Credit to fund completion of Eligible Repairs by presenting a draft at sight. Each draft must be accompanied by (i) a certification from the Weber County Engineer that Eligible Repairs to the BOR's drain line are necessary due to damage directly attributable to Developer's installation of the Improvements; (ii) the original LOC along with originals of all amendments; and (iii) a sight draft signed by the Weber County Engineer.

3) **Ownership and Improvement.** The County shall own the public Improvements, unless otherwise stated in any applicable law or contract. Nothing in this Agreement shall be construed to alter or affect in any way Developer's rights and obligations under any other agreement with the County relating to the installation of the Improvements or other public infrastructure or reimbursements for the construction thereof.

- 4) **Term of Agreement.** It is agreed by the Parties that this Agreement will be in effect from the day the first plat for any portion of JDC Ranch which contains a BOR crossing is recorded, until three (3) years after the last portion of the Improvements which cross the BOR's drain line have been completed.
- 5) **Warranty Period.** With respect to each portion of the Improvements which crosses the BOR's drain line, the Warranty is limited to three (3) years following the completion of that portion of the Improvements.
- 6) **Eligible Repairs.** As used in this Agreement, the term "**Eligible Repairs**" means those repairs necessary to repair damages to a BOR's drain line and which are necessitated as a direct result of Developer's installation of any portion of the Improvements.
- 7) **Modifications.** This Agreement shall not be modified or amended except in writing signed by the Parties hereto.
- 8) **Binding effect.** This Agreement shall be binding upon the Parties hereto and their respective heirs, representatives, officers, employees, agents, successors in interest, and assigns.
- 9) **Validity and Severability.** If any section, clause or portion of this Agreement is declared invalid by a court of competent jurisdiction for any reason, the remainder shall not be affected thereby and shall remain in full force and effect.

[End of Agreement. Signature Page Follows.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first above written.

"COUNTY"

ATTEST:

BY: _____

"DEVELOPER"

BY:  _____

Exhibit A

Anticipated BOR Crossing Locations

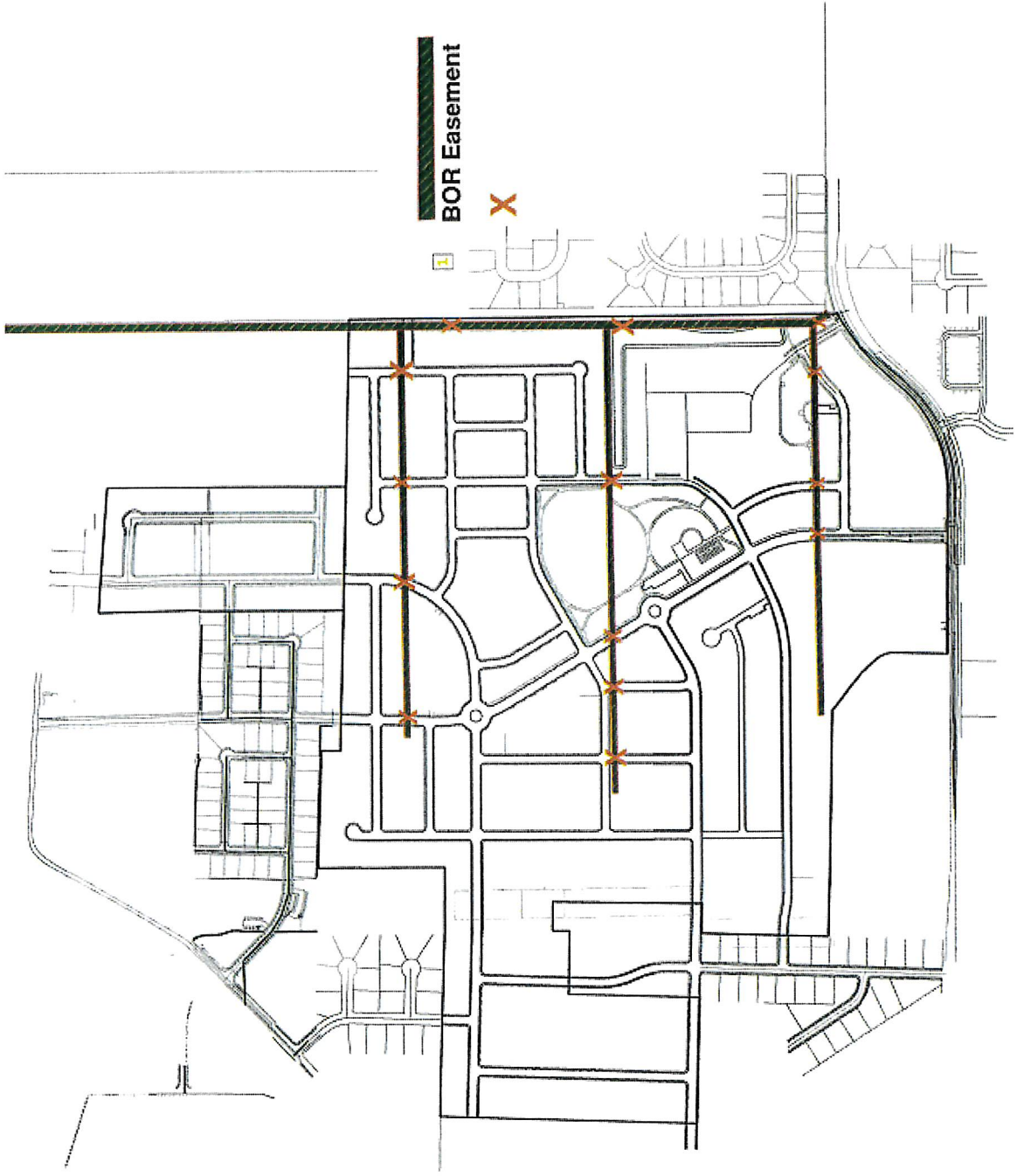


Exhibit B

Sample Letter of Credit

January 1, 2024

Beneficiary:

Weber County

2380 Washington Blvd.

Ogden, UT 84401

Applicant:

JDC Community, LLC

1740 Combe Rd., Ste. 2

Ogden, UT 84403

LOC Number:

Project Name: JDC Ranch Bureau of Reclamation Land Drain Crossings

Amount (USD): \$30,000

Expiration Date: Three (3) years after the completion of all Improvements contemplated by the Agreement.

WEBER COUNTY:

We hereby establish the Irrevocable Standby Letter of Credit No. _____ (the LOC), in favor of Weber County (the County), for the Account of JDC Community, LLC up to an aggregate amount of Thirty Thousand U.S. Dollars (\$30,000) available by your draft at sight drawn on us. This LOC is issued to secure the repair of the Bureau of Reclamation Land Drain (“Eligible Repairs”) required under that certain Land Drain Crossings Warranty Agreement (the “Agreement”) made between JDC Community, LLC and the County dated _____.

Each draft must be accompanied by (i) a certification from the Weber County Engineer that Eligible Repairs to the BOR drain line are necessary due to damage directly attributable to Developer’s installation of the Improvements; (ii) the original LOC along with originals of all

amendments; and (iii) a sight draft signed by the Weber County Engineer. The original LOC shall be returned to the County if the sight drafts on the LOC have not exhausted the full amount of credit.

Each sight draft drawn under this LOC must state "Drawn Under _____ Irrevocable Standby Letter of Credit No. ____, dated _____, to satisfactorily complete such repairs as are required by the Land Drain Crossing Agreement between JDC Community, LLC and the County, dated _____. _____ (financial institution) is entitled to rely upon certification from the Weber County Engineer and will have no obligation to independently verify the accuracy thereof.

Partial drawings and multiple drawings are permitted. This LOC shall expire three (3) years after the completion of all Improvements contemplated by the Agreement, unless the County shall have released JDC Community, LLC from all further liability hereunder.

The proceeds of said drafts will be retained and used by the County to meet any expenses arising out of the satisfactory completion of the Eligible Repairs identified in the Agreement. Upon the completion of the performance required by this Agreement, there will be refunded to us by the County any balance remaining after application by the County of the sums necessary from the proceeds of the draft(s) to pay costs incurred in satisfactorily completing the Eligible Repairs.

This LOC is issued and shall be subject to the International Standby Practices (ISP98) or any subsequent revision thereto, to the extent that it does not conflict with the Utah Code Annotated Sections 70A-5-101 *et seq.* (1953 as amended). Jurisdiction for resolution of disputes arising under this LOC lies in the courts of Weber County, Utah.

We hereby agree with drawers, endorsers and bona fide holders of drafts that all drafts drawn under and in compliance with the terms of this LOC shall be honored by us and payment made no later than three (3) business days after delivery of documents as specified on or before the expiration date of this LOC.

In the event that _____ (financial institution) is placed into receivership, becomes insolvent, or files for bankruptcy, the County shall be immediately notified. The County may

consider this a default event and require the issuance of a new irrevocable standby letter of credit.

_____ (financial institution)

By: _____

Title: _____