

81-3093821

## IRREVOCABLE LETTER OF CREDIT

**Borrower:** E & A DeYoung, LLC  
3007 Van Buren Street  
Hudsonville, MI 49426-1524

**Lender:** Macatawa Bank  
Hudsonville Branch  
10753 Macatawa Drive  
Holland, MI 49424

**Beneficiary:**  
Ottawa County Road Commission  
14110 Lakeshore Drive  
Grand Haven, MI 49417

Ottawa County Water Resources Commissioner's Office  
12220 Fillmore Street, Room 141  
West Olive, MI 49460

Georgetown Charter Township  
1515 Baldwin Street  
Jenison, MI 49429

*the* NO.: 998

**EXPIRATION DATE.** This Letter of Credit initially expires upon the close of business on February 2, 2022 ("Expiration Date"). It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for one year period(s) from the Expiration Date hereof, or any future Expiration Date, unless agreed upon by Ottawa County Road Commission and Macatawa Bank not to consider this Letter of Credit renewed for any such additional period.

**AMOUNT OF CREDIT.** Lender hereby establishes at the request and for the account of Borrower, an Irrevocable Letter of Credit in favor of Beneficiary for a sum of Five Hundred Sixty Thousand & 00/100 Dollars (\$560,000.00) (the "Letter of Credit"). These funds shall be made available to Beneficiary upon Lender's receipt from Beneficiary of sight drafts drawn on Lender at Lender's address indicated above (or other such address that Lender may provide Beneficiary in writing) during regular business hours and accompanied by the signed written statements or documents indicated below.

**WARNING TO BENEFICIARY: PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT BORROWER IMMEDIATELY TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.**

**DRAFT TERMS AND CONDITIONS.** Lender shall honor drafts submitted by Beneficiary under the following terms and conditions: Each draft must be accompanied by an original Beneficiary statement, purportedly signed by an authorized representative of the Beneficiary, and including the following statement:  
"E & A DeYoung, LLC has failed to satisfactorily complete their obligations on Teton Farms Development according to County and/or Township specifications."

**Insert this statement if more than one Beneficiary:** Any Beneficiary or combination of Beneficiaries, acting individually or collectively, may draw on this Letter of Credit in full or part, and any action taken by any or all Beneficiaries hereunder shall bind each of them.

Upon Lender's honor of such drafts, Lender shall be fully discharged of Lender's obligations under this Letter of Credit and shall not be obligated to make any further payments under this Letter of Credit once the full amount of credit available under this Letter of Credit has been drawn.

Beneficiary shall have no recourse against Lender for any amount paid under this Letter of Credit once Lender has honored any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by a party or under the name of a party purporting to act for Beneficiary, purporting to claim through Beneficiary, or posing as Beneficiary without Beneficiary's authorization. By paying an amount demanded in accordance with this Letter of Credit, Lender makes no representation as to the correctness of the amount demanded and Lender shall not be liable to Beneficiary, or any other person, for any amount paid or disbursed for any reason whatsoever, including, without limitation, any nonapplication or misapplication by Beneficiary of the proceeds of such payment. By presenting upon Lender or a confirming bank, Beneficiary certifies that Beneficiary has not and will not present upon the other, unless and until Beneficiary meets with dishonor. Beneficiary promises to return to Lender any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

**USE RESTRICTIONS.** All drafts must be marked "DRAWN UNDER MACATAWA BANK IRREVOCABLE LETTER OF CREDIT NO. 998 DATED February 2, 2021," and the amount of each draft shall be marked on the draft. Only Beneficiary may complete a draft and accompanying statements or documents required by this Letter of Credit and make a draw under this Letter of Credit. This original Letter of Credit must accompany any draft drawn hereunder.

Partial draws are permitted under this Letter of Credit. Lender's honor of a partial draw shall correspondingly reduce the amount of credit available under this Letter of Credit. Following a partial draw, Lender shall return this original Letter of Credit to Beneficiary with the partial draw noted hereon; in the alternative, and in its sole discretion, Lender may issue a substitute Letter of Credit to Beneficiary in the amount shown above, less any partial draw(s).

**PERMITTED TRANSFEREES.** The right to draw under this Letter of Credit shall be nontransferable, except for:

- A. A transfer (in its entirety, but not in part) by direct operation of law to the administrator, executor, bankruptcy trustee, receiver, liquidator, successor, or other representative at law of the original Beneficiary; and
- B. The first immediate transfer (in its entirety, but not in part) by such legal representative to a third party after express approval of a governmental body (judicial, administrative, or executive).

**TRANSFEREES REQUIRED DOCUMENTS.** When the presenter is a permitted transferee (i) by operation of law or (ii) a third party receiving transfer from a legal representative, as described above, the documents required for a draw shall include a certified copy of the one or more documents which show the presenter's authority to claim through or to act with authority for the original Beneficiary.

**COMPLIANCE BURDEN.** Lender is not responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of this Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Lender's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary, and (ii) that Lender is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording.

**NON-SEVERABILITY.** If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Lender's entire engagement under this Letter of Credit shall be deemed null and void ab initio, and both Lender and Beneficiary shall be restored to the position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, no matter where such provision appears within this Letter of Credit.

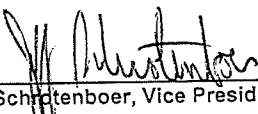
**GOVERNING LAW.** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Michigan without regard to its conflicts of law provisions, and except to the extent such laws are inconsistent with the 1998 Revision of the International Standby Practices of the International Chamber of Commerce, ICC Publication No. 590 (the "ISP"). This Agreement has been accepted by Lender in the State of Michigan.

**EXPIRATION.** Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to Lender on or before the Expiration Date unless otherwise provided for above.

Dated: February 2, 2021

LENDER:

MACATAWA BANK

By:  \_\_\_\_\_  
Jeff Schoutenboer, Vice President



**MACATAWA BANK**

10753 Macatawa Drive  
Attn: Credit – Patty Riemersma  
Holland, MI 49424  
616.820.1445

**BENEFICIARY ACKNOWLEDGEMENT OF RECEIPT OF LETTER OF CREDIT**

LETTER OF CREDIT FOR ACCOUNT OF: E & A DEYOUNG, LLC

LETTER OF CREDIT FOR BENEFIT OF: OTTAWA COUNTY ROAD COMMISSION, OTTAWA COUNTY WATER RESOURCES COMMISSIONER'S OFFICE AND GEORGETOWN CHARTER TOWNSHIP

LETTER OF CREDIT NO.: 998

LETTER OF CREDIT DATE: 2/2/2021

COMMENTS: TETON FARMS

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Please complete the following section and fax this whole form to Patty Riemersma at 616-820-1439 or email to LettersOfCredit@macatawabank.com.

Thank you.

*Acknowledgement of receipt of original Letter of Credit*

Date: February 2, 2021

John Gutierrez, Special Services Engineer  
Recipient name & title - please print legibly

[Handwritten Signature]  
Recipient signature

(616) 842-5400  
Recipient phone number

jgutierrez@ottawacorc.com  
Recipient email address