



*Integrated Resource Management, Inc.*  
*A Privately Owned Public Utility*  
P.O. Box 642  
3444 Saint Andrews Drive  
White Pine, Tennessee 37890  
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20-00038

**AMENDED AND RESTATED UTILITY SERVICES**  
**AGREEMENT**

This Amended and Restated Utility Services Agreement (the "Agreement") is made and entered into effective the 15<sup>th</sup> day of July, 2020, by and between Integrated Resource Management, Inc. d/b/a IRM Utility, Inc., a Tennessee Corporation, with its principal office located at 3444 Saint Andrews Drive, White Pine, Tennessee, 37890 (the "Utility") and September Bloom, Inc., a Tennessee Corporation, with its principal office located at 118 Seva Lane, McMinnville, TN 37110 (the "Developer"), (collectively, the "Parties").

**Recitals:**

1. Developer is the record owner of ISHA Enclave Subdivision (the "Development") recorded in the Registered of Deeds Office in Van Buren County, Tennessee; and

2. The Utility is a privately owned public utility in the business of providing wastewater and sewer treatment systems to residential and commercial consumers.

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

1. Developer shall construct and install a sewage collection, treatment, and disposal system (the "System") in the Development. Upon the completion of the construction and installation of the System and acceptance by the Utility the Developer shall convey title of the treatment system and the underlying real property on which the treatment system is installed to the Utility. Further, the Developer shall deliver a Perpetual Utility Easement for the purpose of allowing access necessary to provide wastewater services to the Development. Developer and Utility enter into this Agreement for the purpose of establishing the terms and conditions for construction, installation, operation, and maintenance of the System. Upon the execution of this Agreement, and prior to consideration by the

Tennessee Public Utilities Commission ("TPUC") of the IRM Petition for a Certificate of Public Convenience and Necessity in docket number 20-00038, the Developer shall deposit into an escrow account ("Escrow Account") an amount sufficient to ensure payment of all costs for the construction of the System, including without limitation all regulatory, licensing, and conveyance fees (the "Costs"), and the payment of any income taxes ("Taxes") which accrue as an obligation of the Utility in accordance with the federal Tax Cuts and Jobs Act of 2017 and any other applicable provision of the Internal Revenue Code; as calculated in accordance with TPUC Tariff No. 1 Section 7. The Escrow Account shall be opened in the name of a third-party chosen by agreement of the Parties and shall be administered in accordance with the terms of a written escrow agreement.

2. The Developer shall construct and install the System to serve the Development in accordance with drawings, plans, and specifications selected and approved by Utility's engineers or representatives. The replacement, repair, maintenance, and operation and non-routine maintenance of the System installed to serve the Development shall be the responsibility of the Utility after the construction of the System is complete and approved for operation by the Utility.

3. The Developer shall provide a cash deposit in the amount of \$691,674.00 ("Cash Deposit"), as surety, to ensure completion of the construction of the system to serve Phase I of the Development, prior to the approval of the plat. The funds shall be deposited into a Reserve Account, under the control of a third-party escrow company. As of the date of this Agreement, the Developer has deposited \$521,810.00 into the Reserve Account. The Developer shall deposit an additional \$169,864.00 into the Reserve Account in order to satisfy the entire Cash Deposit required under this Agreement. The Developer shall pay any and all expenses associated with setting up the third-party escrow company and terms of such will be approved by Utility. The amount is equal to the Utility's estimated cost to construct and install the System plus twenty percent (20%) of such costs. All remaining amounts of the Cash Deposit is refundable back to the Developer, if not needed to complete the construction of the system. Once the system is at 80% capacity, the Parties shall agree to the cost for the construction of the system to serve Phase II and the amount of financial security, consistent with the terms of this Paragraph 3, for the construction of the system to serve Phase II of the Development. All parties shall instruct the third-party escrow company to release the entire Cash Deposit back to the Developer if Utility or construction subcontractor does not receive the required appropriate regulatory authorization.

4. The Cash Deposit shall be used to provide for the payment of all Costs and fees. The Developer shall perform all of the work necessary for the complete and final installation of the System in accordance with the drawings, plans, and specifications approved by Utility's engineers or its representatives. The estimated Costs and Taxes are attached hereto as **Appendix I** to this Amendment



and shall include an "Contingency" amount equal to twenty percent (20%) of the estimated Costs which shall be refunded to Developer to the extent the Contingency is not used for completion of the System. The Developer's deposit to the Escrow Account shall equal the total of the estimated Costs and estimated Taxes.

5. Unless other satisfactory arrangements are agreed upon by the Parties, the Developer shall pay Utility a non-refundable amount equal to ten percent (10%) of the estimated construction cost of the System for the expenses incurred by the Utility during construction as inspection fees.

6. Construction of the System shall be subject to the supervision and approval of Utility. The Utility shall have a right of inspection throughout the progress of the work. The Utility will coordinate with the construction subcontractor not to backfill soils over or cover any pipe, fittings, or connections until first inspected and approved by Utility. Utility will be responsible for documenting the locations of the various components of the System. If any digging or drilling is required of other contractors during or after the construction of the System, then Utility shall stake out, mark and locate the components to avoid accidental damage. If another contractor damages the System because a component was not accurately located by Utility, then Utility shall repair at its own expense. If another subcontractor damages the System due to the negligence of that contractor, then Developer shall advance the funds to repair the System.

7. The Utility shall petition the Tennessee Public Utilities Commission ("TPUC") for a Certificate of Public Convenience and Necessity ("CCN") authorizing the utility to provide the services to the Development. All cost associated with the petition for a CCN, including reasonable attorney fees, shall be paid by the Developer. The Developer shall apply and provide for the payment of any fees necessary for a state operating permit to be issued in the name of the Utility by the Tennessee Department of Environment and Conservation ("TDEC"). In the event the CCN is not issued by TPUC or the state operating permit is not issued by TDEC, the Developer agrees to release, indemnify, and hold the Utility harmless from any and all obligations associated with the Development.

8. Unless other satisfactory arrangements are agreed upon by the Parties, the contractor the Developer engages to build the system shall have the duty to immediately repair, all breaks, leaks, or defects in the System of any and all description which occur within one (1) year from the date the System is accepted by the Utility. In the event the contractor fails to make such immediate repairs, then the Utility shall be authorized to make such repairs at the sole cost and expense of the Developer.

9. Developer will facilitate and execute Restrictive Covenants and Bylaws of the Development providing that a service agreement or contract between the lot owner and Utility will be required by each lot owner to establish wastewater service. The service agreements or contracts to be entered into



between the lot owner and the Utility shall include, without limitation, a recitation that the Utility will charge a security deposit of \$60.00; and a monthly fee to be determined and established by its tariffs. A monthly charge will be assessed to unimproved lots bi-annually for "Sewer Access". The service agreement or contract shall be in a form substantially similar in all its material terms to **Exhibit A**, attached hereto and incorporated by reference. Unimproved Lot shall be defined as a lot which has been sold to a lot owner or is available for sale to a lot owner and has access to an active sewer tap.

10. Upon the issuance of the CCN to the Utility by TPUC, the Developer will turn over any and all funds collected from third parties for the purpose of operating the System, including but not limited to the security deposits collected from the homeowners.

11. Notwithstanding the Utility taking fee simple title to the land and treatment system, the Utility cannot increase the capacity or extend the System without the consent of the Developer. In addition, the System shall only service the Development and any other projects by the Developer. When the real estate documents are prepared for filing with the Register of Deeds conveying title, those deed documents will reflect these promises made to the Developer.

12. The Developer hereby represents and warrants that at the time the Utility approves the System for operation, all materials and labor attributable to the System shall be paid in full at the time of the completion of construction and installation of the System and that the System shall be free from any and all liens and encumbrances.

13. The Developer hereby represents and warrants that the System will be in conformance to the plans and specifications approved by the Utility.

14. The Developer hereby represents and warrants it has the right, title, and intent to convey and shall convey the treatment system and the underlying real property on which the treatment system is installed to the Utility upon approval of the CCN by the Tennessee Public Utility Commission.

15. Upon the Utility's approval of the proper construction of the System, the Developer shall convey a perpetual utility easement, in favor of the Utility, to the real property surrounding the System for access to inspect, repair, replace and maintain the System.

16. If any part of this Agreement for any reason shall be declared invalid or unenforceable, such decision shall not affect the validity or enforceability of any remaining portion, which shall remain in full force and effect; provided, however, that in the event a part of this Agreement is declared invalid and the invalidity or enforceability of such part has the effect of materially altering the obligations of any Party under this Agreement, the Parties agree, promptly upon such declarations

being made, to negotiate in good faith to amend this Agreement so as to put such Party in a position substantially similar to the position such Party was in prior to such declaration.

17. The Utility shall not have any right to assign this Agreement or any of their respective rights or obligations under this Agreement to any third party. The Utility shall have no right to assign, transfer, convey, pledge, or hypothecate the permits or any interest thereto without any necessary approval of TDEC, and the prior written agreement of the purchaser or assignee to be bound by the terms and conditions of this Agreement. Developer shall have a right to assign this Agreement or any of its respective rights and obligations under this Agreement to (a) an affiliated party of the Developer without the consent of Utility. An affiliated party shall be defined as any of Developer's divisions or business segments, together with its predecessors, successors, assigns, parents, subsidiaries, members, partners, shareholders, owners, officers, directors, employees and agents, and any person acting or purporting to act on their respective behalf; or (b) any third-party after the satisfactory construction of the System.

18. The terms and conditions of this Agreement and the performance thereof shall be interpreted in accordance with and governed by the laws of the State of Tennessee; irrespective of its conflicts of law principles. Any claim, dispute, or other matter in question arising out of or relating to this Agreement or the breach thereof, except for claims which have been waived pursuant to this Agreement, shall be governed by the laws of Tennessee and all actions shall be instituted and litigated in the State of Tennessee in the Davidson County courts, and the Parties hereto submit to the jurisdiction of said courts. In any litigation, the prevailing party shall be entitled to recover its reasonable attorneys' fees from the other party.

19. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements or understandings of the parties with regard to the subject matter hereof. No interpretation, change, termination, or waiver of any provision hereof shall be binding upon a Party unless in writing and executed by both Parties. No modification, waiver, termination, recession, discharge, or cancellation of any right or claim under this Agreement shall affect the right of any Party hereto to enforce any other claim or right hereunder.

20. This agreement may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same agreement.

21. This Agreement shall not be amended or modified except in writing signed by the Parties hereto.

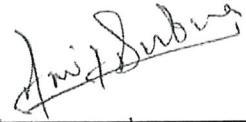


**IN WITNESS** hereto have entered into this Agreement effective as of the day and date first above written.

**INTEGRATED RESOURCE  
MANAGEMENT, INC. D/B/A  
IRM UTILITY, INC.**

By:   
Jeffrey W. Cox, Sr., its President

**ISHA ENCLAVE SUBDIVISION  
SEPTEMBER BLOOM INC.**

By:   
Amit Babra, its Authorized Agent