



ENT 113409:2019 PG 1 of 11  
 JEFFERY SMITH  
 UTAH COUNTY RECORDER  
 2019 Nov 01 9:20 am FEE 40.00 BY MA  
 RECORDED FOR WILDFLOWER

WHEN RECORDED RETURN TO:

Wildflower Developer, LLC  
 Exchange Place Building B  
 14034 South 145 East, Suite 204  
 Draper, Utah 84020

**SEWER SYSTEM DEVELOPMENT AND COST SHARING AGREEMENT**

THIS SEWER SYSTEM DEVELOPMENT AND COST SHARING AGREEMENT (“*Agreement*”) is made and entered into as of the 13th day of August, 2019, by and between WILDFLOWER DEVELOPER, LLC, a Utah limited liability company (“*WD*”), and Boyd Brown/ BBLAND OPPTS LLC (“*Benefitted Owner*”).

RECITALS

A. WD is the designated agent for certain entities owning all or portions of a master development project located in Saratoga Springs City, Utah (the “*City*”), commonly known as “Wildflower” (the “*Wildflower Project*”).

B. Benefitted Owner is the owner of certain property (“*Benefitted Owner Property*”) neighboring the Wildflower Project, which property is more particularly described on Exhibit A attached hereto and depicted on the map attached hereto Exhibit B (the “*Map*”).

C. WD is in the process of designing and constructing a sewer line and related improvements (the “*Sewer System Improvements*”) to be constructed in the approximate location identified on the Map. The Sewer System Improvements are more particularly identified on the plans previously provided to and approved by Benefitted Owner (the “*Plans*”). A portion of the Sewer System Improvements, more particularly identified on the Map as Nodes C-D (the “*Beneficial Sewer System Improvements*”) will have a direct and material benefit to, among potentially other properties, both the Wildflower Project and the Benefitted Owner Property.

D. In connection with this Agreement, WD and Benefitted Owner desire to agree upon the manner in which such Sewer System Improvements are to be constructed by WD, and the manner in which Benefitted Owner shall reimburse WD for a portion of the costs to design and construct the Beneficial Sewer System Improvements.

AGREEMENT

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

1. Incorporation of Recitals and Exhibits. The foregoing recitals and attached exhibits are hereby agreed to and approved by the parties and are incorporated herein by this reference.

2. Completion of Sewer System Improvements. WD shall use commercially reasonable efforts to cause to be constructed the Sewer System Improvements in accordance with the Plans, as such Plans may be modified in WD's discretion so long as such modifications will not negatively affect the Benefitted Owner Property (in which case written consent from Benefitted Owner to such modifications shall be required). Upon completion of the Sewer System Improvements, WD shall cause the Sewer System Improvements to be dedicated to the City, and Benefitted Owner shall cooperate in connection with such dedication by granting easements or other similar rights as may be reasonably requested by WD or the City.

3. Easement. Benefitted Owner hereby grants to WD, and its contractors, subcontractors, and agents, a temporary construction easement over, under and across the Benefitted Owner Property, to the extent reasonably necessary to construct any and all of the Sewer System Improvements upon the Benefitted Owner Property, as may be identified in the Plans. WD shall use reasonable efforts following completion of the construction of the Sewer System Improvements upon the Benefitted Owner Property to repair any damage caused to such Benefitted Owner Property as a result of the Sewer System Improvements.

4. Sewer System Improvement Costs.

(a) Subject to the reimbursement and cost sharing obligations of Benefitted Owner under this Agreement relating to the Beneficial Sewer System Improvements, and except as provided in the following sentence, WD shall be responsible to engage the contractor and incur the initial payment of all costs and expenses relating to the Sewer System Improvements. Notwithstanding the foregoing, in the event that the City approves the formation of a special assessment area ("**SAA**") covering the areas benefitted by the Sewer System Improvements, the City may issue bonds that will finance the cost of such Sewer System Improvements. The parties agree to cooperate with and consent to any formation of such SAA for said purpose.

(b) In the event that WD incurs the initial cost for such Sewer System Improvements, WD shall send Benefitted Owner one or more requests for payment (each, a "**Request for Payment**") identifying Benefitted Owner's "Allocated Share" of the "Beneficial Sewer System Improvement Costs" (defined below) incurred by WD. Within thirty (30) days after receiving a Request for Payment, Benefitted Owner shall pay WD in full the amount set forth in each Request for Payment. For purposes of this Agreement:

- (i) "Allocated Share" means 8.24% of Nodes C-D which is 2.11% of Total of the Beneficial Sewer System Improvement Costs; and
- (ii) "Beneficial Sewer System Improvement Costs" means all hard and soft costs incurred by WD in connection with the design, permitting, and construction of the Beneficial Sewer System Improvements. WD

shall use its commercially reasonable judgment to determine what portion of costs generally allocable to all Sewer System Improvements are fairly allocable to the Beneficial Sewer System Improvements.

(c) In the event that the City agrees to reimburse to WD any portion of the Sewer System Improvement Costs, whether through impact fee reimbursements or otherwise, the Benefitted Owner shall have the right to receive a portion of such reimbursements equal to the Benefitted Owner's Allocated Share, not to exceed Benefitted Owner's actual out of pocket costs associated with such Beneficial Sewer System Improvements.

(d) Any past due reimbursement obligation of the Benefitted Owner owing in accordance with the terms and provisions of this Agreement shall be secured by, and Benefitted Owner hereby grants and conveys to WD, a lien on the Benefitted Owner Property and all improvements thereto owned by said Benefitted Owner. Such lien shall secure payment of the amount of any unpaid obligation of that Benefitted Owner, together with all interest at the rate of 12% per annum and with all collection and enforcement charges thereon or related thereto, including reasonable attorneys' fees and costs. To evidence a lien for sums due pursuant to this Agreement, WD shall prepare a written notice of lien, setting forth: the original amount of the obligation; the due date thereof; the amount of the obligation remaining unpaid; the name of the Benefitted Owner; and the legal description of the Benefitted Owner Property. Such a notice shall be signed and acknowledged by WD and may be recorded in the office of the Utah County Recorder, State of Utah. No notice of lien shall be recorded until there is a default in payment of the obligation as set forth in this Section 4. Such lien may be enforced by foreclosure and sale conducted in accordance with the provisions of law applicable to judicial foreclosure of deeds of trust or mortgages. In any such foreclosure, the Benefitted Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees) and such costs and expenses shall also be secured by the lien being foreclosed. The Benefitted Owner shall have the right to bid at any foreclosure sale.

5. Insurance. Prior to commencing any work within or otherwise exercising any rights with respect to the temporary construction easement granted herein in connection with the Sewer System Improvements, WD or its contractor shall first provide public liability insurance in an amount of not less than \$1,000,000 per incident and \$2,000,000 in the aggregate, which policy shall also name Benefitted Owner as an additional insured.

6. Entire Agreement; Amendments. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes any prior understandings or agreements by or among the parties, whether written or oral, which may have related to the subject matter hereof in any way. This Agreement may be amended, or any provision of this Agreement may be waived, so long as such amendment or waiver is set forth in a writing executed by each of the parties. No course of dealing between or among the parties shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any party under or by reason of this Agreement.

7. No Third Party Beneficiaries. Nothing herein expressed or implied is intended or shall be construed to confer upon or to give any person or entity, other than the parties and their

permitted successors or assigns any rights or remedies under or by reason of this Agreement.

8. Interpretation. The headings in this Agreement are inserted for convenience of reference only and shall not be a part of or control or affect the meaning hereof.

9. No Waiver. No failure or delay by a party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, and no single or partial exercise thereof shall preclude any right of further exercise or the exercise of any other right, power or privilege.

10. Severability. The parties agree that (a) the provisions of this Agreement shall be severable in the event that for any reason whatsoever the provisions hereof are invalid, void or otherwise unenforceable, (b) such invalid, void or otherwise unenforceable provisions shall be automatically replaced by other provisions which are as similar as possible in terms to such invalid, void or otherwise unenforceable provisions, but are valid and enforceable and (c) the remaining provisions shall remain enforceable to the fullest extent permitted by law.

11. No Strict Construction. The language used in this Agreement shall be deemed to be the language chosen by the parties to express their collective mutual intent, and no rule of strict construction shall be applied against any party. The term "including" as used herein shall be by way of example, and shall not be deemed to constitute a limitation of any term or provision contained herein. Each defined term used in this Agreement has a comparable meaning when used in its plural or singular form.

12. Governing Law and Enforcement. All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Utah without giving effect to any choice of law or conflict of law rules or provisions of any jurisdiction that would cause the application of the laws of any jurisdiction other than Utah. In the event it becomes necessary for either party to enforce this Agreement against the other party, the party found to be in default by a court of competent jurisdiction shall be liable and shall pay all expenses and fees, including attorneys' fees, incurred by the non-defaulting party in enforcing this Agreement.

13. Counterparts. This Agreement may be executed by the parties hereto individually or in any combination, in one or more counterparts (including by means of telecopied or electronically delivered signature pages), each of which shall be an original and all of which shall together constitute one and the same agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

WD:

WILDFLOWER DEVELOPER, LLC, a Utah limited liability company

By: \_\_\_\_\_  
Name: Nathan Shipp  
Its: Manager

STATE OF UTAH )  
 )ss.  
COUNTY OF SALT LAKE )

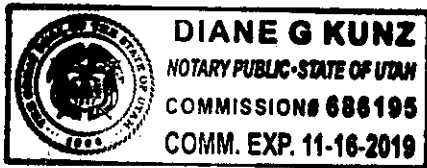
The foregoing instrument was acknowledged before me this 14th day of October, 2019, by Nathan Shipp, as Manager of Wildflower Developer, LLC, a Utah limited liability company, on behalf of such limited liability company.

My commission expires: 11-16-2019

Witness my hand and official seal.

(SEAL)

[Signature]  
Notary Public



[SIGNATURE PAGES CONTINUED.]

**BENEFITTED OWNER:**

By: [Signature]  
Name: BOYD BROWN  
Its: MANAGER

STATE OF UTAH )  
COUNTY OF Salt Lake )ss.

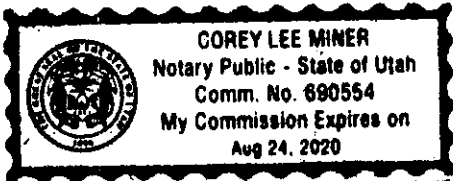
The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of August, 2019, by Boyd Brown, as Manager of BB Land Ops, on behalf of such \_\_\_\_\_.

My commission expires: August 24, 2020

Witness my hand and official seal.

(SEAL)

[Signature]  
Notary Public



**EXHIBIT A**

**Benefitted Owner Property**

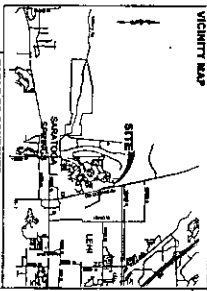
Property Number	Tax I.D.	Owner	Accessed Value	Acres on	Participati on	Participation Amount	Notes
Parcel 1	58:021:0092	10189396-0160 AKA Saratoga LLC	\$1,338,000	17.1	Yes	\$106,893.31	
Parcel 2	36:431:0016	Boyd B Brown	\$431,800	5.0	Yes	\$7,250.43	Septic Tank
Parcel 3	36:431:0011	Heidi Gurney	\$576,100	5.1	No		Septic Tank
Parcel 4	36:431:0009	Ethington Living Trust	\$530,700	5.1	No		Septic Tank
Parcel 5	36:431:0015	Harvest View Properties LLC	\$727,000	5.0	No		Septic Tank
Parcel 6	58:021:0119	BB Land Opps LLC	\$497,500	4.7	Yes	\$6,828.22	
Parcel 7	58:021:0066	Boyd B. Brown	\$270,400	1.0	Yes	\$1,441.35	
Parcel 8	58:021:0070	BB Land Opps LLC	\$18,600	0.32	Yes	\$465.89	
Parcel 9	58:021:0069	BB Land Opps LLC	\$685,700	11.82	Yes	\$17,208.86	
Parcel 10	58:023:0120	Michael W. Locke	\$274,200	1.5	No		Septic Tank
Parcel 11	58:023:0191	JDH Development LLC	\$454,600	2.4	No		John Hadco feels he can access Node D through a different way.
Parcel 12	58:023:0171	JDH Development LLC	\$3,816,800	20.5	No		John Hadco feels he can access Node D through a different way.
Parcel 13	58:021:0005	Easy Peasy LLC	\$294,200	5.1	Yes	\$32,067.99	
Parcel 14	58:021:0024	Easy Peasy LLC	\$261,000	4.5	Yes	\$28,295.29	
Parcel 15	58:021:0349	Sunrise 3		100.6	Yes	\$632,556.88	No county record value available.
Parcel 16	58:021:0250	8820404-0160 Tanuki Investments LLC		117.8	Yes	\$740,707.76	No county record value available. Total acres is 154.2, however, only 117.8 acres benefits from the sewer



**EXHIBIT B**

**Map of Property and Sewer System Improvements**

**WILDFLOWER VILLAGE 1 OFFSITE SEWER (NORTH)**  
 LOCATED IN A PORTION OF THE WEST HALF OF  
 SECTION 10, TOWNSHIP 5 SOUTH, RANGE 1 WEST,  
 SALT LAKE BASE AND MERIDIAN  
 CITY OF SARATOGA SPRINGS, UTAH COUNTY, UTAH



VICINITY MAP

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**CITY STANDARD NOTES**

- CONTRACTOR SHALL VERIFY LOCATION AND DEPTH OF EXISTING UTILITIES PRIOR TO ANY EXCAVATION WORK.
- CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY OF SARATOGA SPRINGS, UTAH.
- CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
- CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.
- CONTRACTOR SHALL MAINTAIN ALL EXISTING UTILITIES AND STRUCTURES AT ALL TIMES.

**GENERAL NOTES**

- ALL DIMENSIONS SHALL BE TO CENTER UNLESS OTHERWISE NOTED.
- CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.
- CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
- CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.
- CONTRACTOR SHALL MAINTAIN ALL EXISTING UTILITIES AND STRUCTURES AT ALL TIMES.

**LEGEND**

Symbol	Description
○	Manhole
—	Sewer Line
⊥	Property Boundary
...	Easement
▭	Structure
...	Topography
...	Water

**PLANNERS**

2022 N. STATE STREET  
 SALT LAKE CITY, UT 84143  
 PHONE: (801) 224-2322  
 FAX: (801) 224-2323

**OWNER / DEVELOPER**  
**DAI**  
 1000 WEST 100 SOUTH  
 SALT LAKE CITY, UT 84114

**ENGINEER**  
 [Professional Seal]  
 2022 N. STATE STREET  
 SALT LAKE CITY, UT 84143

**COVER**

7/15/2019

2022 N. STATE STREET  
 SALT LAKE CITY, UT 84143  
 PHONE: (801) 224-2322  
 FAX: (801) 224-2323

**COVER**



ENGINEERS  
SURVEYORS  
PLANNERS

**LEGAL DESCRIPTION  
PREPARED FOR  
DAI  
Job No. 13-0902  
(July 12, 2019)**

**20' Wide Offsite Sewer Easement through AKA Saratoga LLC Property**

A Portion of the Southwest Quarter of Section 2, Township 5 South, Range 1 West, Salt Lake Base and Meridian, described as follows:

Beginning at a point located on the west boundary of Highway 68 (Redwood Road) as described by Deed Entry No. 90310:2008 in the official records of the Utah County Recorder, said point being located N0°05'10"W along the Section Line 11.92 feet and East 1244.26 feet from the Southwest Corner of Section 2, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence West 11.52 feet; thence N88°37'46"W 233.62 feet; thence N9°12'57"W 589.34 feet; thence N8°36'58"W 400.81 feet; thence N5°31'13"W 314.23 feet; thence S89°51'58"W 212.21 feet; thence S78°48'03"W 48.55 feet to the easterly bank of the Welby Jacob Canal; thence N16°33'17"W along said east bank 30.56 feet; thence N89°51'58"E 286.70 feet; thence S5°31'13"E 331.89 feet; thence S8°36'58"E 400.16 feet; thence S9°12'57"E 572.63 feet; thence S88°37'46"E 216.77 feet; thence East 11.41 feet to the west boundary of Highway 68 (Redwood Road) as described by Deed Entry No. 90310:2008 in the official records of the Utah County Recorder; thence S0°22'48"W along said west boundary 20.00 feet to the point of beginning.

Contains: ±0.84 Acres

- Civil Engineering
- Structural Engineering
- Surveying
- Land Planning
- Landscape Architecture

Corporate Office: 3302 N. Main Street • Spanish Fork, UT 84660  
 Salt Lake Office: 14441 South 980 West • Bluffdale, UT 84065  
 Boise Office: 2040 S. Eagle Road • Meridian, ID 83642

☎ 801.798.0555    📠 801.798.9393  
 ☎ 801.495.2844    📠 801.495.2847  
 ☎ 208.846.9600