

When Recorded, Mail To:  
Carl W. Barton, Esq.  
175 East 400 South  
Suite 900  
Salt Lake City, Utah 84111

E 106589 B 0490 P 0027  
DATE 5-FEB-1998 12:22PM  
FEE: 211.00 CHECK  
DONNA S. MCKENDRICK, RECORDER  
FILED BY CBP  
FOR MERRILL TITLE COMPANY  
TOOELE COUNTY CORPORATION

**SANITARY SEWER  
CONNECTION AND MAINTENANCE AGREEMENT**

THIS SANITARY SEWER CONNECTION AND MAINTENANCE AGREEMENT (the "Agreement") is made and entered into as of the 4<sup>th</sup> day of February, 1998, by Bowler Realty, Inc., a Utah corporation (the "Bowler"), and to later be executed by each owner of lots covered hereby ("Owner"), and this Agreement is executed in connection with the following facts:

**RECITALS:**

A. Bowler Realty has caused a sanitary sewer lift station to be constructed on and to service certain residential property located in Tooele County, Utah (the "Lift Station").

B. To defray Bowler's the initial construction costs for the Lift Station and to provide for the ongoing maintenance of the Lift Station, and to permit Owner to benefit from the use of the Lift Station, Bowler and Owner desire to enter into this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Bowler hereby agree as follows:

1. Connection. Upon payment of the connection fee at closing of Owner's purchase of a lot(s) covered by this Agreement, Bowler hereby grants Owner the right to connect to the sanitary sewer system connected to the Lift Station and to benefit from the operation of the Lift Station. Bowler's grant of this right is not in any way intended to replace or circumvent the applicable permit and other ordinance and legal requirements with which Owner and others must comply in connection with connecting to such sewer system.

2. Maintenance Fees.

(a) In addition to the connection fees referred to above, Owner shall pay such reasonable maintenance fees as Bowler, in its sole and absolute discretion, shall from time to time impose on all of the users of the Lift Station. Bowler shall only impose such fees on a pro rata basis on all of the users of the Lift Station, subject to Section 2(e) hereof. If Owner shall fail to pay any such maintenance fees within one (1) month after the date when the same becomes due, Owner shall pay interest thereon at the rate of fifteen percent (15%) per annum from the date when such maintenance fees shall become due to the date of full payment

thereof. Such maintenance fees may include any liabilities or items of expense which accrue or become payable and any reasonable sums which Bowler may deem necessary or prudent to provide a reasonable reserve against liabilities or expenses then accrued or thereafter to accrue although not payable on a given date. If Bowler determines at some future date that the Lift Station shall permanent cease to function, and if Bowler, after paying any outstanding costs and expenses related to the ownership, operation, cessation of the Lift Station, still holds unused reserves, Bowler shall refund such unused reserves on a pro rata basis to each Owner using the Lift Station at the time of such refund. Each assessment of maintenance fees shall be separate, distinct, and personal obligations of the owner of a parcel or lot or residential property that has the right to benefit from the existence and operation of the Lift Station. Suit to recover a money judgment for unpaid maintenance fees may be maintained without foreclosure or waiving the lien described hereafter securing the same.

(b) If not paid when due, the amount of any assessment of maintenance fees, whether regular or special, assessed to any party benefitting from the existence and operation of the Lift Station, plus interest at fifteen percent (15%) per annum, costs of action and reasonable attorney's fees, shall become a lien upon such real property upon recordation of a notice thereof. The said lien for non-payment of maintenance fees shall have priority over all other liens and encumbrances, recorded or unrecorded, except only: (i) tax and special assessment liens on such real property in favor of any assessing agency; and (ii) encumbrances against such real property recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

(c) In any conveyance, except to a purchase money lender, the grantee of any real property with the right to benefit from the Lift Station shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the maintenance fees up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. A certificate executed and acknowledged by Bowler stating that the unpaid maintenance fees then outstanding shall be conclusive evidence of the amount due and shall be binding upon Bowler. Upon payment or other satisfaction of delinquent maintenance fee assessments concerning which a notice of assessment has been recorded, Bowler shall cause to be recorded in the same manner as the notice of assessment a further notice stating the satisfaction and release of the lien thereof. Such lien for non-payment of maintenance fee assessment may be enforced by sale by Bowler, to be conducted in accordance with the provisions of the law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the owner of such real property shall be required to pay the costs and expenses of such proceedings including reasonable attorney's fees.

(c) Bowler shall have discretionary power to prescribe the manner of maintaining and operating the Lift Station to reasonably determine the frequency and amount of such maintenance fees to be paid as aforesaid by such owners. Every such determination by Bowler

shall be final and conclusive as to each and all of such owners, and any expenditures made by Bowler shall as against such owners be deemed necessary and properly made for such purpose.

(d) The parties intend that the terms of this Agreement shall bind and inure to the benefit of Bowler and Owner and their respective successors, assigns, and heirs. In addition, Bowler shall have the right to transfer ownership of the Lift Station and to assign its rights and delegate its obligations under this Agreement at any time to any without consent or to form a special service district or an improvement district without consent. If Bowler, or its successor, forms either a special service district or an improvement district to provide for the operation and maintenance of the Lift Station, Owner hereby consents to such formation, and this consent shall suffice for purposes of all landowner consents required under applicable Utah statutes and ordinances. If any agency with jurisdiction over the formation and approval or such improvement district or special service district determines that this consent is not sufficient for any reason, Owner shall promptly grant and execute such other documents and consents as such agencies may require within five (5) days after a request from Bowler (or its successor) to do so.

(e) Notwithstanding any other provision of this Agreement, Owners of vacant lots located within the real property covered by this Agreement are not obligated to make any payment of maintenance fees due hereunder; only Owners of houses or other dwellings or similar improvements that are substantially complete or ready for occupancy shall be bound by the payment obligations set forth in this Agreement, and such Owners shall be considered and included for purposes of any pro rata calculations referred to herein.

4. Attorney's Fees. Should it become necessary for either party to enforce its rights under this Agreement, whether in suit or otherwise, the party seeking enforcement and/or the prevailing party in litigation shall be entitled to recover from the unsuccessful party reasonable attorney's fees and costs, including appeals and bankruptcy proceeds, in addition to any other relief to which the party attempting to enforce its rights hereunder may be entitled.

5. Modification. Neither party to this Agreement may amend or modify this Agreement, except in a writing executed by the parties hereto.

6. Entire Agreement. The parties expressly agree that this Agreement and the Exhibits attached hereto constitute the full and complete understanding and agreement of the parties, and that this Agreement supersedes all prior understandings, agreements, and conversations between the parties, whether oral or written. Any prior negotiations, correspondence, or understandings related to the subject matter of this Agreement shall be deemed to be merged into this Agreement and the attached Exhibits.

7. Severability. If any term or provision of this Agreement is invalid or unenforceable for any reason whatever, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.

8. Governing Law. This Agreement shall be construed in accordance with the laws of the state of Utah.

9. Assignability. This Agreement shall bind and inure to the benefit of the assignees, heirs, and successors-in-interest of Bowler and Owner. If Owner sells its property, the terms of this Agreement shall automatically bind the owners, users, or tenants of such property by virtue of their ownership and/or use of such property.

10. Time of the Essence. Time is of the essence with respect to the performance of the parties under this Agreement.

11. Waiver. A waiver by either party of any provision of this Agreement shall not operate or be construed as a waiver of any other subsequent breach.

12. Authority. Each of the parties executing this Agreement represents and warrants that he has the authority to sign on behalf of any and all entities that are a party hereto and has the authority to bind each of such entities to perform the terms of this Agreement.

13. Recording/Execution By Owner At Closing. Any party who owns or occupies any portion of the real property covered hereby shall, by its ownership and/or use thereof, agree to be bound by and to perform the obligations described herein, even though they have not executed this Agreement. It is intended that the obligations contained herein shall be obligations and covenants that run with the land covered hereby until Bowler shall terminate this Agreement. **Finally, as a condition to closing on the purchase of its lot, Owner shall execute this Agreement.**

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement as of the day and year first set forth above.

BOWLER REALTY, INC., A UTAH  
CORPORATION

By   
Randy H. Bowler, President

State of Utah )

SS:

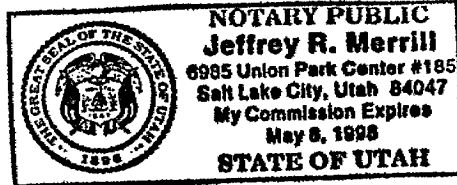
County of SALT LAKE

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of Feb,  
1998, by Randy H. Bowler.

Jeffrey R. Merrill  
Notary Public

My commission expires:  
MAY 6, 1998

Residing at: SALT LAKE CITY UTAH



G:\CV\BOWLER\MAINTAG.001  
February 3, 1998 2:15 pm  
11110-10

EXHIBIT "A"

Parcel 1

A PARCEL OF LAND LYING IN THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, TOOELE COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 15; THENCE NORTH  $00^{\circ}17'13''$  WEST ALONG THE WEST BOUNDARY OF SAID SOUTHEAST QUARTER, A DISTANCE OF 33.00 FEET TO THE REAL POINT OF BEGINNING; THENCE CONTINUING NORTH  $00^{\circ}17'13''$  WEST ALONG THE WEST BOUNDARY, A DISTANCE OF 2615.11 FEET TO THE CENTER QUARTER OF SAID SECTION 15; THENCE NORTH  $89^{\circ}47'28''$  EAST ALONG THE EAST-WEST MID-SECTION LINE 660.86 FEET TO A POINT ON THE EAST BOUNDARY LINE OF THE WEST HALF OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 15; THENCE CONTINUING NORTH  $89^{\circ}47'28''$  EAST ALONG SAID EAST-WEST MID-SECTION LINE, A DISTANCE OF 330.43 FEET; THENCE LEAVING SAID MID-SECTION LINE SOUTH  $00^{\circ}18'47''$  EAST, A DISTANCE OF 1306.98 FEET; THENCE SOUTH  $89^{\circ}45'30''$  WEST, A DISTANCE OF 330.63 FEET TO A POINT ON THE EAST BOUNDARY LINE OF THE WEST HALF OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 15; THENCE SOUTH  $00^{\circ}18'15''$  EAST ALONG SAID EAST BOUNDARY LINE A DISTANCE OF 1307.17 FEET; THENCE SOUTH  $89^{\circ}43'27''$  WEST ALONG A LINE WHICH IS PARALLEL TO AND 33.00 FEET NORTH OF THE SOUTH BOUNDARY OF THE SOUTHEAST QUARTER OF SAID SECTION 15, A DISTANCE OF 661.65 FEET TO THE REAL POINT OF BEGINNING.

PARCEL 2

A PARCEL OF LAND LYING WITHIN THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, TOOELE COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER QUARTER CORNER OF SAID SECTION 15; THENCE SOUTH  $00^{\circ}17'13''$  EAST ALONG THE EAST BOUNDARY OF THE SOUTHWEST QUARTER OF SAID SECTION 15, A DISTANCE OF 2648.11 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION, ALSO BEING THE CENTERLINE OF 1000 NORTH STREET; THENCE SOUTH  $89^{\circ}43'06''$  WEST ALONG THE SOUTH BOUNDARY OF SAID SOUTHWEST QUARTER AND SAID CENTERLINE, FOR A DISTANCE OF 1075.20 FEET; THENCE NORTH  $00^{\circ}19'03''$  WEST FOR A DISTANCE OF 2649.48 FEET TO THE NORTH BOUNDARY OF SAID SOUTHWEST QUARTER; THENCE NORTH  $89^{\circ}47'28''$  EAST ALONG SAID NORTH BOUNDARY 1076.61 FEET TO THE POINT OF BEGINNING.