

1202-481 Fowers Fruit Farms
Right-of-way (WRF)

Resolution 11-03-2012

A RESOLUTION OF THE SANTAQUIN CITY COUNCIL TO APPROVE AN EASEMENT AGREEMENT WITH FOWERS FRUIT FARM, INC. FOR THE ACQUISITION OF AN EASEMENT TO INSTALL A NEW 18" SEWER MAIN.

WHEREAS Santaquin owns and operates a municipal wastewater treatment system, which includes treatment lagoons, storage ponds, transmission lines and other related facilities; and

WHEREAS Fowers Fruit Farm, Inc. (Fowers) is the owner of certain property located in Utah County, Utah; more particularly described the attached Agreement; and

WHEREAS Santaquin previously constructed a utility line on a portion of the Fowers Property to transport wastewater to Santaquin's present wastewater treatment lagoons located along Highway 6; and

WHEREAS Santaquin is now constructing a new micro bio-reactor wastewater treatment facility near the north boundary of the city and desires to install an additional eighteen (18) inch utility line and related facilities across a portion of the Fowers Property (the "New Line"), which will run between the present wastewater treatment lagoons and storage ponds; and

WHEREAS Santaquin desires to obtain an easement from Fowers for the purpose of constructing, operating and maintaining the New Line, the location and description of which are more particularly described in the attached Agreement; and

WHEREAS Fowers is willing to grant Santaquin the desired Easement, subject to the terms and conditions described in the attached Agreement.

NOW THEREFORE, be it resolved by the Santaquin Council to approve the attached Agreement, in consideration of the promises and covenants contained in this Agreement and for other good and valuable consideration.

ADOPTED AND PASSED by the Santaquin City Council, this 7th day of Nov, 2012.

SANTAQUIN CITY


James E. DeGraffenried, Mayor

Attest


Susan B. Farnsworth, City Recorder

EASEMENT AGREEMENT

This Easement Agreement (the "Agreement") is made to be effective as of the 21 day of November, 2012, by and between Fowers Fruit Ranch, LLC, a Utah Limited Liability Corporation ("Fowers") and the City of Santaquin, Utah, a municipality and political subdivision of the state of Utah ("Santaquin" or "City").

RECITALS

A. Santaquin is the owner of an easement in certain property located in Utah County, Utah, more particularly described in Exhibit "A" attached hereto (the "Santaquin Easement").

B. Fowers is the owner of the real property that includes, but is not limited to, the Santaquin Easement, which property is more particularly described in Exhibit "B" attached hereto (the "Fowers Parcels").

C. Santaquin previously constructed a utility line (the "Existing Line") within the Santaquin Easement to transport wastewater to Santaquin's present wastewater treatment facility located along Highway 6 (the "Present Facility").

D. Santaquin is now constructing a new membrane bio-reactor wastewater treatment facility near the north boundary of the City (the "New Facility"). Santaquin City desires to convert the Existing Line into a type-1 wastewater effluent force main to the Present Facility for storage and future reuse. Furthermore, Santaquin desires to install an additional eighteen (18) inch gravity fed sewer line and related facilities within the Santaquin Easement (the "New Line"), which will run between the Present Facility and the New Facility.

E. While to parties acknowledge the City's right to construct the New Line within the Existing Easement, the parties believe that the scope of construction and maintenance of the New Line will require expansion of the Santaquin Easement by 8.5 feet to a total easement width of 25 feet from the existing railroad right of way.

F. Fowers is willing to grant Santaquin an expansion of the Santaquin Easement as described in Exhibit "C" ("the 2012 Easement") under certain conditions and certain circumstances.

NOW, THEREFORE, in consideration of the promises and covenants contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The foregoing Recitals are incorporated in this Agreement by reference.

2. **Grant of Non-Exclusive Easement to Santaquin.** Fowers hereby grants, transfers, and conveys to Santaquin, its agents, successors and permitted assigns ("Santaquin"), a non-exclusive easement and right-of-way ("the 2012 Easement") over and across a part of the

Fowers Parcel for the purpose of constructing, installing, maintaining, servicing, and repairing utility improvements and facilities related to utility services, specifically including at this time, an eighteen (18) inch gravity fed sewer pipeline, together with maintenance boxes and related facilities as reasonably necessary to transport wastewater within the Santaquin wastewater collection and treatment system, which shall operate separate and apart from and not as a replacement of the Existing Line. All future facilities and improvements shall be constructed, installed, serviced, and repaired in full conformity with all applicable specifications and requirements of Santaquin City.

3. **Construction, Maintenance, and Repairs.** The costs to install, maintain, service and repair the utility improvements shall be borne, solely, by Santaquin, which shall also be responsible, at its cost, for the removal of any blockage or clogging of the New Line, as well as the costs incurred to restore the Fowers Parcel to the condition it was in before any excavations, repairs, service, or maintenance are undertaken by Santaquin, with respect to the Santaquin Easement, and all utility service improvements constructed in the future, including, but not limited to, the replacement of improvements, and the like.

4. **Pre-Construction Meeting and Notice of Entry.** Santaquin shall notify Fowers no less than seven (7) days before entry upon the Fowers Parcel for all future commencement of construction of the utility facilities and improvements and shall meet with a representative of Fowers prior to commencement of construction to discuss the construction and schedules.

5. **Consideration for 2012 Easement.** In consideration of Fowers grant to Santaquin of the 2012 Easement, the Santaquin City: (a) pay to Fowers the sum of One Thousand Two Hundred Dollars (\$1,200.00) within five (5) days of the execution of this Agreement; (b) upon an appropriate application for annexation of the Fowers Parcels and performance of required statutory steps, adopt an ordinance to accomplish such annexation; and (c) pay Santaquin City annexation fees in the amount of Five Hundred Thirty Dollars (\$530.00), arrange and pay for such surveying of the Fowers Parcels as may be necessary for annexation, and arrange and pay for the approved final local entity plat as required by Utah Code Ann. §10-2-425 (1953 as amended).

6. **Indemnification.** Santaquin shall indemnify, defend, and hold Fowers harmless from and against all claims, demands, losses, damages, liabilities and expenses and all suits, actions, and judgments, including costs and reasonable attorney's fees, from third parties arising out of or in any way related to Santaquin's negligent or willful misconduct related to its use of the 2012 Easement.

7. **Running of Benefits and Burdens.** The 2012 Easement and the covenants of this Agreement shall run with the land, shall be binding on, and shall inure to the benefit of the Parties. Santaquin agrees that its use of the 2012 Easement shall be with due regard to the rights of Fowers and will not prevent or unreasonably interfere with the proper and reasonable use by Fowers of the Fowers Parcel.

8. **Non-Public Grant.** Nothing contained in this Agreement shall be construed or interpreted to constitute a grant of any use, easement, or right-of-way to the public in general, or to any other public agency or governmental authority.

9. **Notice.** Each party shall give written notice to the other party relating to this Agreement or the use of the 2012 Easement, by either personal service, certified mail, return receipt requested, or next day delivery by a nationally recognized overnight courier such as UPS, addressed as follows or to such other address as a party may hereafter specify in writing. The party receiving notice shall have ten (10) days following the receipt of notice to respond to the notice.

If to Fowers: Fowers Fruit Ranch, LLC.
 215 South 800 East
 Genola, Utah 84655

If to Santaquin: Santaquin City
 275 West Main
 Santaquin, Utah 84655

10. **Default.** If either party defaults in the performance of any of its obligations required under this Agreement, and if at the end of ten (10) days, after written notice from the non-defaulting party stating the nature and extent of the default, the defaulting party has not cured the default, or if a diligent effort is not being made to cure it, then the non-defaulting party, in addition to all other remedies it may have at law or in equity shall have the right to perform such obligation on behalf of the defaulting party and be reimbursed by the defaulting party for the cost thereof with interest at the rate of 18% per annum. Notwithstanding the foregoing provisions, it shall be deemed to be a default by Santaquin if it fails to act promptly to avert to the extent reasonably possible any conditions relating to the New Line that pose a hazard to the Fowers Parcel or to persons using or occupying it.

11. **Interpretation.** The rule of strict construction and interpretation does not apply to this Agreement. The language creating the 2012 Easement and the covenants, undertakings, and provisions of this Agreement shall be given a reasonable construction so that the intentions of the Parties to convey reasonable rights, use and enjoyment of the 2012 Easement are carried out.

12. **Entire Agreement.** This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement and may not be amended or modified except by an agreement in writing signed by each of the Parties.

13. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties, their successors, assigns and legal representatives.

14. **Construction and Interpretation.** Each party has been afforded the opportunity to participate in the drafting of this Agreement and conferring with the party's own attorney.

Accordingly, the rule of construction/and interpretation that any ambiguities are to be resolved against the drafting party shall not be followed.

15. **Representation and Comprehension of Documents**. In entering into this Agreement the Parties represent and acknowledge that they have read and fully understand and voluntarily accept its terms.

16. **Governing Law**. This Agreement shall be interpreted, performed and enforced according to the laws of the State of Utah and Utah County shall be the venue of any action to arbitrate or otherwise enforce or interpret the provisions of this agreement.

17. **Attorney's Fees**. If either party brings an action to interpret or enforce the terms and conditions of this Agreement, the non-prevailing party shall pay all costs and expenses, including reasonable attorney's fees, incurred by the other party in enforcing or interpreting the terms of this Agreement, whether through legal action or otherwise, and shall include such costs and fees incurred in any appeal.

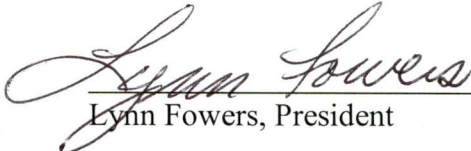
18. **Severability**. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions of this Agreement and it shall be construed in all respects as if such invalid portion were omitted.

19. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be one and the same agreement. The execution of any counterpart may be communicated by e-mail or by facsimile transmission.

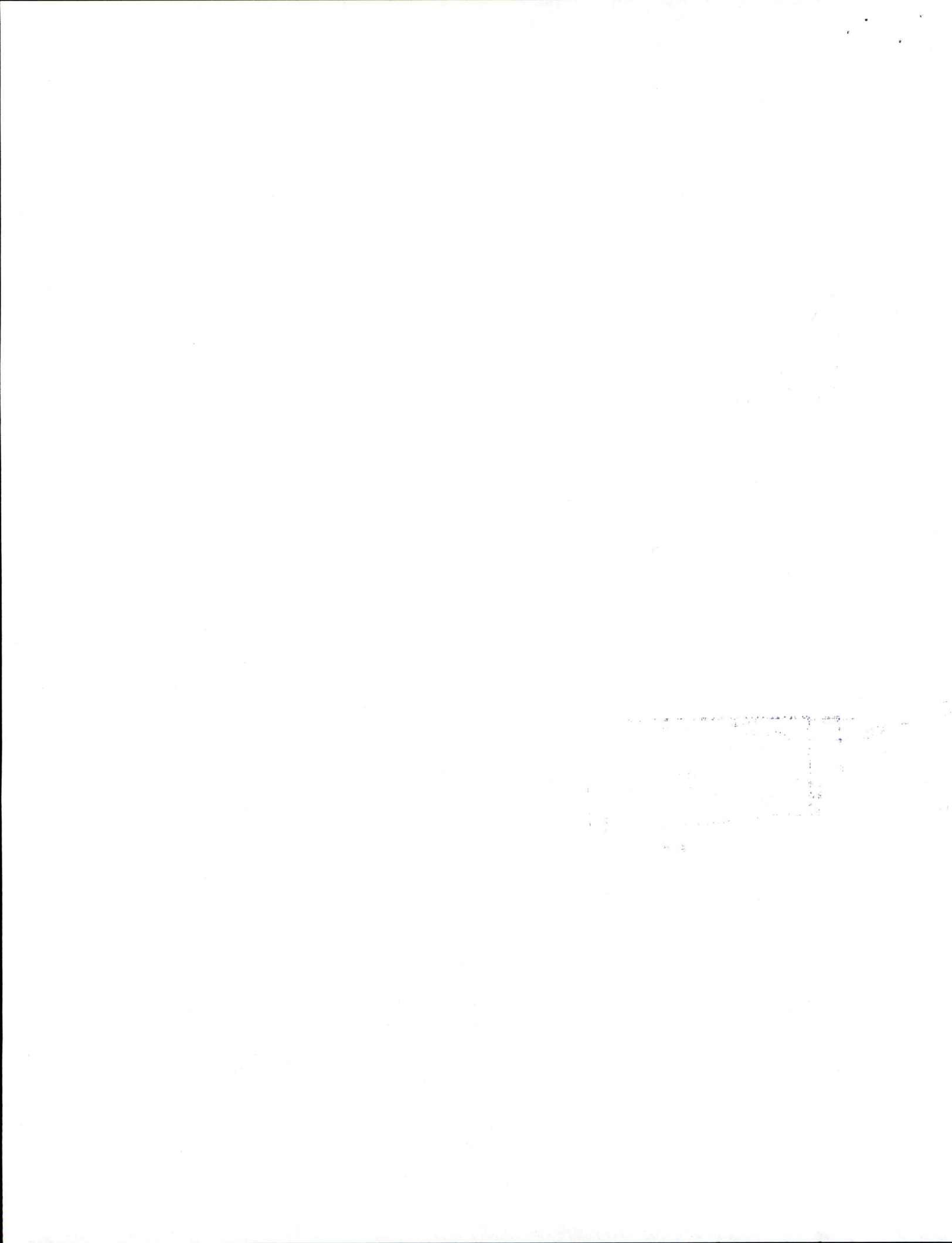
20. **Authority**. Each person executing this Agreement warrants that he or she has sole and legal authority to execute it on behalf of the party for which it is signed, and that no further approval or consent of any other person is necessary. Further, each person covenants and represents that the execution of this Agreement is not in contravention of and will not result in a breach of any other agreement, contract, instrument, order, judgment, or decree.

21. **Modification**. This Agreement may not be modified or amended in whole or in part, unless by the written agreement of all Parties, executed and delivered with the necessary formalities of a deed, duly recorded in the appropriate public records where the parcels are located. No waiver of any term, provision or condition of this Agreement, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, provision, or condition or as a waiver of any other term, provision, or condition of this Agreement.

FOWERS FRUIT RANCH, LLC.



Lynn Fowers, President





SANTAQUIN CITY

James E. DeGraffenried
James E. DeGraffenried, Mayor

Attest:

Susan B. Farnsworth
Susan B. Farnsworth, City Recorder

STATE OF UTAH)
 :ss
COUNTY OF UTAH)

On this 21 day of November, 2012, personally appeared before me Lynn Fowers, who duly acknowledged to me that he executed the foregoing instrument on behalf of and with the authority of Fowers Fruit Ranch, LLC. and swore or affirmed to me that his signature is voluntary and the document is truthful.



Shannon Hoffman
Notary Public

EXHIBIT A

(NO. 66) RIGHT-OF-WAY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That in consideration of One Dollar (\$1.00) and other good and valuable consideration paid to LYNN JOSEPH & SHERRYL L. FOWERS hereinafter referred to as GRANTOR, by SANTAQUIN CITY CORPORATION, hereinafter referred to as GRANTEE, the receipt of which is hereby acknowledged, the GRANTOR does hereby grant, bargain, sell, transfer, and convey unto the GRANTEE, its successor and assigns, a construction easement and a perpetual easement as hereinafter described over, across, under and through land of the GRANTOR situated in Utah County, State of Utah, and more particularly described as follows (the Premises):

Beginning at a point on the grantor's northerly property line, said point being located North 2174.48 feet and West 245.36 feet from the South quarter corner of Section 35, Township 9 South, Range 1 East, Salt Lake Base and Meridian; thence South 41°18'40" West 150.39 feet, more or less, to a point on the easterly side of a county road.

The Premises may partially or completely lie within GRANTOR's property. The construction easement shall be one-half (1/2) chain in width granted for the time of original installation of the facilities hereinafter described, one (1) rod on each side of the center line of said Premises. The perpetual easement shall be one (1) rod in width, one-half (1/2) rod on each side of the center line of said Premises. In the event the facilities to be constructed in the Premises cannot be located on or near the center line, the legal description shall be modified and an amendment to this easement shall be executed by the parties.

TO HAVE AND TO HOLD the same unto the GRANTEE, the easements as follows:

A construction easement with the right to install and inspect pipelines, valves, valve boxes, manholes, cleanouts, and other similar structures and appurtenances, over, across, under and through the Premises; and

A perpetual easement with the right to inspect, maintain, operate, repair, protect, remove and replace pipelines, valves, valve boxes, manholes, cleanouts, and other similar structures and appurtenances, over, across, under and through the Premises.

So long a such facilities shall be maintained, with the right of ingress and egress to and from said right-of-way for the purpose described in the construction and perpetual easements. During temporary periods, the GRANTEE may use such portion of the property along and adjacent to said right-of-way as may be reasonably necessary in connection with the construction, maintenances, repair, removal, or replacement of the facilities. The GRANTEE shall notify GRANTOR prior to entering the Premises for purposes of initial construction and shall not construct the facilities during the growing season in such a way as to unreasonably interfere with the ingress and egress of the GRANTOR for farming purposes for which this right-of-way and easement is granted to the GRANTEE provided such use does not interfere with the facilities or any other rights granted to the GRANTEE hereunder.

GRANTEE as a condition to the granting of the easements shall pay damages, restore or replace in kind, at the GRANTEE's discretion and at GRANTEE's expense, fences, crops, underground pipes, and other improvements in the event such are damaged by the construction, maintenance, repair, replacement, or removal of the facilities.

14057

1980 APR 18 AM 9:00

NINA B. FRIED
UTAH COUNTY RECORDER
DEPUTY CLERK
PR. ASS. REC'D

RECORDED AT THE REQUEST OF
NINA B. FRIED

WHEN RECORDED, MAIL TO:
Mr. & Mrs. Lynn Joseph Fowers
RFD I, Box 7D
Genola, UT 84655

14057



National Title, Inc.

Escrow No. 102,293

WARRANTY DEED

For the consideration of Ten Dollars, and other valuable considerations I or we,

J. GORDON HOLMES and JEANNETTE T. HOLMES, his wife

do hereby convey to

LYNN JOSEPH FOWERS and SHERRYL L. FOWERS, his wife, as joint tenants with full right of survivorship

the following real property situated in Utah County, Utah:

Beginning at the Northeast fence and property corner of the property hereinafter described, which point is East along the Section line 145.13 feet and North 2172.75 feet from the South quarter corner of SECTION 35, TOWNSHIP 9 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN, Utah County, Utah; thence North 89°18'30" West 403.22 feet along a fence line; thence South 41°20' West 119.44 feet along a fence line and railroad right-of-way line; thence South 0°01'10" East 236.19 feet along a fence line; thence East 483.0 feet, more or less, to a fence line; thence North 0°10'40" West along a fence line 321 feet to the point of beginning.

SUBJECT TO: Current taxes, assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions and restrictions as may appear of record.

And I or we do warrant the title against all persons whomsoever, subject to the matters above set forth.

Dated this 15th day of April, 1980

J. Gordon Holmes
J. Gordon Holmes

Jeanette T. Holmes
Jeanette T. Holmes



April 15, 1980
J. Gordon Holmes and Jeanette T. Holmes

A. D. 1980

David O. Hallock
Notary Public

My commission expires 10-6-1981 Residing in Provo, Utah

248 SOUTH 101 WEST • PROVO, UTAH 84601 (801) 377-3100
204 WEST 200 SOUTH • SUITE 301 • SALT LAKE CITY (801) 461-1111 (M-F 9:00-5:00)

ZNT 10

BOOK 1829 PAGE 13

EXHIBIT B


LEGAL DESCRIPTION:

COMMENCING EAST 145.13 FEET AND NORTH 2127.75 FEET FROM THE SOUTH 1/4 CORNER OF SECTION 35, TOWNSHIP 9 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN; THENCE NORTH 89° 18' 30" WEST 403.22 FEET; THENCE SOUTH 41° 20' 0" WEST 119.44 FEET; THENCE SOUTH 0° 1' 10" EAST 236.19 FEET; THENCE EAST 483 FEET; THENCE NORTH 0° 10' 40" WEST 321 FEET TO THE POINT OF BEGINNING.

AREA 3.506 ACRES ±

EXHIBIT C

When recorded, mail to:
Santaquin City Recorder
275 W MAIN STREET
Santaquin, UT 84655


ENT 105866:2012 PG 1 of 3
JEFFERY SMITH
UTAH COUNTY RECORDER
2012 Dec 03 10:02 am FEE 0.00 BY ED
RECORDED FOR SANTAQUIN CITY CORPORATION

PERPETUAL RIGHT-OF-WAY AND EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That is consideration of One Dollar and other good and valuable consideration paid to **FOWERS FRUIT RANCH, LLC., (GRANTOR)**, by **SANTAQUIN CITY COPORATION (GRANTEE)**, the receipt of which is hereby acknowledged, the **GRANTOR**, does here by grant unto the **GRANTEE**, its successors and assigns, a perpetual easement and a temporary construction easement over, across, under and through land of the **GRANTOR**, Utah County Serial # 29:037:0011, which land is situate in Utah County, State of Utah, which easements thereon are described more particularly as:

A perpetual easement, upon part of an entire tract of property which is described as Parcel 5 in Warranty Deed Entry 20462, in Book 4218, at Pages 774-778 dated 3/19/1997 on the records of the Utah County Recorder, which tract is situation in Northeast Quarter of the Southwest Quarter of Section 35, Township 9 South, Range 1 East, Salt Lake Base and Meridian, which easement is described as follows:

Beginning at a point on a fence line which is on the north boundary of said entire tract, which point is North $00^{\circ}29'57''$ West 2,177.29 feet along the quarter section line and South $89^{\circ}30'03''$ West 213.83 feet from the South Quarter Corner of said Section 35 (*Basis of bearings: The line between the South Quarter Corner of Section 35 and the North Quarter Corner of Section 35, Township 9 South, Range 1 East, Salt Lake Base and Meridian bears North $00^{\circ}29'57''$ West*); thence South $41^{\circ}50'16''$ West 169.34 feet to the west boundary of said entire tract along a line which is parallel with and 25.00 feet perpendicularly distant southeasterly from the fence line which is on the northwesterly boundary of said entire tract and the southeasterly railroad right-of-way; thence North $00^{\circ}15'58''$ West 37.29 feet (*North $00^{\circ}01'10''$ West by record*) along said boundary to a point on the fence line which is on the northwesterly boundary of said entire tract and the southeasterly railroad right-of-way; thence North $41^{\circ}50'16''$ East 119.59 feet (*North $41^{\circ}20'00''$ East by record*) along said fence line and northwesterly boundary of said entire tract to a fence corner which is on the north boundary of said entire tract; thence South $89^{\circ}37'32''$ East 33.36 feet (*South $89^{\circ}18'30''$ East by record*) along a fence line which is on said north boundary to the point of beginning.

The above described easement contains 3,162 square feet or 0.83 acre in area, more or less.

Also:

A temporary construction easement, upon part of an entire tract of property which is described as Parcel 5 in Warranty Deed Entry 20462, in Book 4218, at Pages 774-778 dated 3/19/1997 on the records of the Utah County Recorder, which tract is situate in Northeast Quarter of the Southwest Quarter of Section 35, Township 9 South, Range 1 East, Salt Lake Base and Meridian, which easement is described as follows:

Beginning at a point on a fence line which is on the north boundary of said entire tract, which point is North $00^{\circ}29'57''$ West 2,177.29 feet along the quarter section line and South $89^{\circ}30'03''$ West 213.83 feet from the South Quarter Corner of said Section 35 (*Basis of bearings: The line between the South Quarter Corner of Section 35 and the North Quarter Corner of Section 35, Township 9 South, Range 1 East, Salt Lake Base and Meridian bears North $00^{\circ}29'57''$ West*); thence South $89^{\circ}37'32''$ East 20.02 feet (*South $89^{\circ}18'30''$ East by record*) along said fence line and the north boundary of said entire tract; thence South $41^{\circ}50'16''$ West 199.19 feet to the west boundary of said entire tract along a line which is parallel with and 40.00 feet perpendicularly distant southeasterly from the fence line which is on the northwesterly boundary of said entire tract and southeasterly railroad right-of-way; thence North $00^{\circ}15'58''$ West 22.37 feet (*North $00^{\circ}01'10''$ West by record*) along said boundary North $41^{\circ}50'16''$ East 169.34 feet to the point of beginning along a line which is parallel with and 40.00 feet perpendicularly distant southeasterly from the fence line which is on the northwesterly boundary of said entire tract and the southeasterly railroad right-of-way.

The above described easement contains 2,764 square feet of 0.064 acre in area, more or less.

The described parcels together constitute the "premises." The construction easement shall be 40 feet in width granted for the time of original installation of the facilities hereinafter described. The perpetual easement shall be 25 feet in width. In the event that the facilities to be constructed in the Premises cannot be located within the Premises, the legal description shall be modified and an amendment to this easement shall be executed by the parties.

The construction easement also conveys the right to erect, construct, install, lay and inspect pipelines, manholes, valves, valve boxes, cleanouts, and other similar structures and appurtenances, (facilities) over, across, under and through the Premises.

The perpetual easement also conveys the right to use, operate, inspect, repair, maintain, replace, and remove pipelines, manholes, valves, valve boxes, cleanouts, and other similar structures and appurtenances (facilities) over, across, under and through the Premises.

The GRANTEE shall notify GRANTOR prior to enter the Premises for purposes of the initial construction and shall not construct facilities during the growing season in such a way as to unreasonably interfere with the ingress and egress of the GRANTOR for farming purposes.

GRANTEE as a condition of the granting of the easements shall pay damages, restore or replace in kind, at GRANTEE'S expense, fences, crops, underground pipes, and other improvements in the event such are damaged by the construction, maintenance, repair, replacement, or removal of the facilities.

The GRANTOR shall not build or construct, nor permit to be build or constructed, any building or similar improvement over, across, or under said right-of-way, nor change the contour thereof without written consent of the GRANTEE. This right-of-way grant shall be binding upon GRANTOR, its successors and assigns, and shall insure to the benefit of the GRANTEE, its successors and assigns, and may be assigned in whole or in part by the GRANTEE.

IN WITNESS WHEREOF, THE GRANTOR has executed this instrument this 21 day of November, 2012.

Lynn Fowers
Lynn Fowers

Fowers Fruit Ranch, LLC.

STATE OF UTAH)
 :SS.
COUNTY OF UTAH)

Personally appeared before me on the 21 day of November, 2012 the signers of the above instrument, who duly acknowledge to me that they executed the same.

Notary Public *Shannon Hoffman*
My commission expires 10/1/13
Residing in Santaquin, Ut

