

Return address:

City of Othello
500 East Main Street
Othello WA. 99344

Please print neatly or type information

Document Title(s)

Extra Territorial Utility Extension Agreement, Covenant Running
With The Land, Power of Attorney and Easement in Gross
Reference Number(s) of related documents

Additional Reference Numbers on page _____

Grantor(s) (Last, First and Middle Initial)

City of Othello
500 E. Main Street
Othello WA 99344

Additional Grantees on page _____

Grantee(s) (Last, First and Middle Initial)

Somes, David and
Somes, Colleen

Additional Grantees on page _____

Legal Description (abbreviated form: i.e. lot, block, plat or section, township, range, quarter/quarter)

located about 185 feet north of the SW corner NE 1/4, NE 1/4
Section 5, T15N, R29E W.M. (continued)

Additional Legal Description on page 2

Assessor's Property Tax Parcel/Account Number

?

Additional Parcel Numbers on page _____

The Auditor/Recorded will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

Page 2

continued:

Legal Description:

thence N 2°32'32"E 85; thence N89.° 51' 46" E 125' to the True Point of Beginning;
thence N 2° 32' 32" E 175'; S89.° 51' 46" W 125'; thence S2° 32' 32" W 175'; N 89.°
51' 46" E 125' to the True Point of Beginning.

**EXTRA TERRITORIAL UTILITY EXTENSION AGREEMENT,
COVENANT RUNNING WITH THE LAND,
POWER OF ATTORNEY AND EASEMENT**

1. **Parties:** The parties to this Agreement are: The City of Othello, Washington (herein City), a municipal corporation of the State of Washington, located entirely within Adams County, Washington, and David Somes and Colleen Somes (herein Owner).
2. **Recitals:**
 - 2.1. The City is the owner of a municipal sewer system and municipal water system, which operates adjacent to David Somes and Colleen Somes (Owners) real property near Othello, Washington.
 - 2.2. Owner desires to receive sewer utility service and water utility services from the City for use upon its real property located about 185 feet north of the SW corner NE ¼ NE ¼ Sec. 5 T15N, R29E. W.M.
 - 2.3. The City, pursuant to its Resolution No. 96-06 requires that all non-contiguous real property which receives water and/or sewer utility services from the City be subject to an agreement which affects the use of the real property served by the City utilities, restricts expansion of City utility services beyond those contracted for, and creates a covenant running with the land.
 - 2.4. Owner is fully aware of the restrictions imposed upon itself and its successors heirs, and assigns by City Resolution No. 96-06 and enters into this Agreement freely and voluntarily.

3. **Agreement:** It is agreed by and between the parties as follows:
- 3.1. The City will provide water and sewer utility services listed below to Owner at the Premises stated pursuant to the terms of this Agreement.
 - 3.2. The real property to be serviced is described as: commencing at the SW corner NE ¼ NE ¼ Sec. 5 T15N, R29E. W.M.; thence N2°32'32"E 185'; thence N89.°51'46"E 125' to the True Point of Beginning; thence N2°32'32"E 175'; S89.°51'46"W 125'; thence S2°32'32"W 175'; N89.°51'46"E 125' to the True Point of Beginning.
 - 3.3. This Agreement shall be filed for record in the Office of the Adams County Auditor and shall be in the nature of a covenant running with the Premises. It is the intent of Owner to have this Agreement, so long as it is in force, to be considered, interpreted, and regarded as a covenant running with the land as to the Premises.
 - 3.4. The sewer utility service the City is to provide the Premises of the owner will receive a constituent stream of no different or greater density or concentration salts and other identified effluents than that allowed by the discharge permit approved by the City at a rate to be established from time to time by the Othello City Council and subject to the capacity of the city's sewer system.
 - 3.5. Owner agrees and covenants that all water and sewer utility system components to be built and attached to the City's utility system shall be built to City standards.
 - 3.6. Owner agrees and covenants that the Premises will not be used in any manner or for any purpose inconsistent with or contrary to the City's comprehensive land use plan as that plan now exists or as it may be from time to time altered, amended, or readopted.
 - 3.7. This Agreement is personal to David Somes and Colleen Somes and may not assign, transfer, convey, give or devise its rights and duties under this Agreement to any successor except as provided herein. Owner or the successor holder of the fee title to the Premises shall be the entity or individual personally bound by the Agreement and responsible to perform under this Agreement. No subsequent leasehold, joint venture, or other tenancy or use agreement shall be deemed to relieve Owner from performing under this Agreement. The City shall only be required to deal with the designated representative of Owner in the administration of the Agreement. The City shall not approve any assignment, conveyance, gift or devise of this Agreement to any successor owner of the Premises except upon condition that the successor in interest shall execute an acknowledgment, waiver, easement and power of attorney in substantially the same form as this Agreement, easement, and power of attorney executed by Owner and then the City shall determine, in its sole discretion, whether or not this Agreement shall be amended to allow such assignment, conveyance, gift or devise.

- 3.8. Owner shall execute contemporaneously with this Agreement the subjoined power of attorney and subjoined covenant respecting the annexation of the Premises of the City. This power of attorney is executed, as is this Agreement, by Owner with a full understanding the Owner may be waiving and transferring to the City a valuable right as a land owner as respects annexation by the City. Owner waives any objection to annexation by the City. Owner acknowledges it has relied solely upon its own legal counsel and fully understands the legal rights it is or may be surrendering to the City by the execution of this Agreement and the subjoined easement and power of attorney.
- 3.9. Owner understands the delivery of utility services to these Premises so long as they remain outside the corporate limits of the City, is a discretionary act of the City and execution of this Agreement and performance hereunder are not intended and shall not be considered as an indication by the City of the intention to become a general provider of utility service beyond the terms of this contract, to these Premises or any other lands located outside the corporate limits of Othello.
- 3.10. Owner acknowledges its understanding that any or all utility service provided under this Agreement by the City are or may become subject to surcharges and/or increased charges in addition to those charged to similar customers located within the corporate limits and waives any objection to such practice by the City as it now or may exist.
- 3.11. Owner agrees that payment of service charges, surcharge assessments and/or additional charges required by City ordinances to be paid for the utility services mentioned above will in no way relieve the Premises of its share of any future local improvement district or Utility Local Improvement District payments which may be assessed to pay all or a portion of the expenses of installing main or mains, together with necessary valves, fire hydrants, pipe fittings and all other appurtenances which may be installed to serve a district which includes the Premises.
- 3.12. Owner agrees that in the event of a sale, gift, transfer, segregation, assignment, or device of its fee interest in the premises it will disclose the existence of this Agreement and will further in no way warrant to any successor in interest or potential successor in interest in the City's intention, understanding, or willingness to extend, renew, or abrogate this Agreement or to continue to deliver utilities pursuant hereto.

4. Term:

- 4.1. This Agreement shall be in effect so long as the Owner abides, observes, and performs this Agreement and the Premises remains outside the corporate limits of the City of Othello. This Agreement may be terminated by either party giving at least eighteen (18) months written notice of termination to the other, unless a shorter notice is agreed to in writing; or by annexation of these entire Premises into the City of Othello.
- 4.2. This Agreement shall terminate on August 14, 2002 which is twenty-four (24) months from the date of the City Council's approval of the utility extension unless Owner has tapped into and extended utilities and completed substantial progress toward the development of the Premises as authorized by the City Council of the City of Othello.
- 4.3. This Agreement and subjoined documents may only be modified by a writing signed by both parties. This Agreement may be executed in duplicate, of which either duplicate copy shall be deemed as an original.

DATED: 10/3/00

By: David Some
Owner

City of Othello

By: Colleen L. Some
Owner

By: E. Kelly
Mayor

STATE OF WASHINGTON
COUNTY OF ADAMS

I certify that I know or have satisfactory evidence that David Some + Colleen Some are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: October 3, 2000

Debra Travis

Debra Travis
(Type or Print Name)

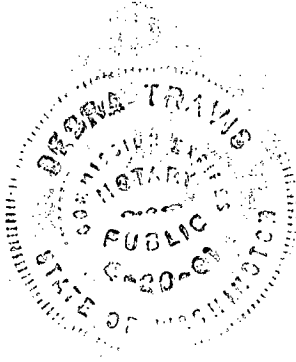


Notary Public for Washington State
My Commission Expires: 4-29-01

STATE OF WASHINGTON
COUNTY OF ADAMS

I certify that I know or have satisfactory evidence that ER Kelley
signed this instrument, on oath stated that ER Kelley was authorized to execute the
instrument and acknowledged it as the Mayor of Othello to be the free and voluntary act of such
party for the uses and purposes mentioned in this instrument.

DATED: October 3, 2000



Debra Travis

Debra Travis
(Type or Print Name)

Notary Public for Washington State
My Commission Expires: 4-29-01

COVENANT RUNNING WITH THE LAND

1. **Basis:** The foregoing Extra Territorial Utility Extension Agreement shall be deemed to be a covenant running with the land affecting the entire Premises described above. Such covenant shall be recorded with the Adams County Auditor and become a covenant of record. Such covenant shall remain in full force and effect for the life of the Extra Territorial Utility Extension Agreement. An attempt to cancel, restrict, or modify this covenant independent of the Extra Territorial Utility Extension Agreement shall terminate said agreement immediately unless such cancellation, modification, or restriction is agreed to by the Othello City Council.

2. **Creation:** David Somes and Colleen Somes as the owner in fee simple of the above described Premises hereby creates a covenant running with the land to affect and include the entire described Premises. That covenant shall include all the terms, conditions, limitations, and obligations of the Extra Territorial Utility Extension Agreement above.

DATED: 10/3/00

By: David Somes
Owner

By: Colleen L. Somes
Owner

STATE OF WASHINGTON
COUNTY OF ADAMS

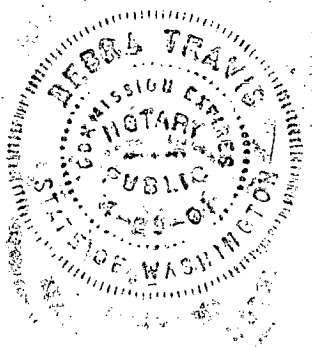
I certify that I know or have satisfactory evidence that David Somes + Colleen Somes are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: October 3, 2000

Debra Travis

Debra Travis
(Type or Print Name)

Notary Public for Washington State
My Commission Expires: 4-29-01



POWER OF ATTORNEY

- 1. **Appointment:** (Owner) hereby makes, constitutes, and appoints the City of Othello, Washington, its true and lawful attorney for it and in its name, place and stead for the purposes stated herein.
- 2. **Independent Advice:** Owner has executed this Power of Attorney for the purposes stated after having a full understanding of the implications of the execution of this instrument. This Power of Attorney is also executed after being fully advised by its own counsel as to the power being conveyed to the City of Othello and with a full appreciation and waiver of any rights being abrogated.
- 3. **Purpose:** Developer appoints the City of Othello as its attorney for the purpose of executing any and all documents, petitions, requests, letters or the like necessary or desirable in the process of the annexation of the Premises described in the foregoing Extra Territorial Utility Extension Agreement into the corporate limits of the City of Othello.
- 4. **Termination:** This Power of Attorney may be revoked by Owner only upon the termination of the foregoing Extra Territorial Utility Agreement, or upon the consent of the City of Othello's City Council. The continued validity, viability, and existence of this Power of Attorney is a prerequisite of continued utility service delivery to the Premises under the terms of the Extra Territorial Utility Extension Agreement by the City of Othello. Termination of this Power of Attorney by Owner shall automatically terminate the Extra Territorial Utility Extension Agreement between Owner and the City of Othello.

DATE: 10/3/00

By: David Somes
Owner

STATE OF WASHINGTON
COUNTY OF ADAMS

I certify that I know or have satisfactory evidence that David Somes is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: October 3, 2000.

Debra Travis

Debra Travis
(Type or Print Name)

Notary Public for Washington State
My Commission Expires: 4-29-01



POWER OF ATTORNEY

- 1. **Appointment:** (Owner) hereby makes, constitutes, and appoints the City of Othello, Washington, its true and lawful attorney for it and in its name, place and stead for the purposes stated herein.
- 2. **Independent Advice:** Owner has executed this Power of Attorney for the purposes stated after having a full understanding of the implications of the execution of this instrument. This Power of Attorney is also executed after being fully advised by its own counsel as to the power being conveyed to the City of Othello and with a full appreciation and waiver of any rights being abrogated.
- 3. **Purpose:** Owner appoints the City of Othello as its attorney for the purpose of executing any and all documents, petitions, requests, letters or the like necessary or desirable in the process of the annexation of the Premises described in the foregoing Extra Territorial Utility Extension Agreement into the corporate limits of the City of Othello.
- 4. **Termination:** This Power of Attorney may be revoked by Owner only upon the termination of the foregoing Extra Territorial Utility Agreement, or upon the consent of the City of Othello's City Council. The continued validity, viability, and existence of this Power of Attorney is a prerequisite of continued utility service delivery to the Premises under the terms of the Extra Territorial Utility Extension Agreement by the City of Othello. Termination of this Power of Attorney by Owner shall automatically terminate the Extra Territorial Utility Extension Agreement between Owner and the City of Othello.

DATE: 10-3-00

By: Colleen E. Some
Owner

STATE OF WASHINGTON
COUNTY OF ADAMS

I certify that I know or have satisfactory evidence that Colleen Some is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: October 3, 2000

Debra Travis
Debra Travis
(Type or Print Name)

Notary Public for Washington State
My Commission Expires: 4-29-01



EASEMENT IN GROSS

1. **Recital:** Recognizing the need for David Somes and Colleen Somes receive City of Othello's utility services described above, is prepared to grant to the City of Othello this easement in gross which shall be personal to the City of Othello and not transferable.

2. **Easement:** David Somes and Colleen Somes, husband and wife, does hereby grant, convey, devise, and give to the City of Othello, a municipal corporation, an easement in gross for the purpose of exercising any and all rights the owner of the above described Premises may have or acquire in connection with any annexation proceedings to annex the above described Premises into the City of Othello commenced by the petition method of annexation, as such method now or may hereafter exist.

DATED: 10-3-00

By: David Somes
Owner

By: Colleen L. Somes
Owner

STATE OF WASHINGTON
COUNTY OF ADAMS

I certify that I know or have satisfactory evidence that David Somes + Colleen Somes are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: October 3, 2000

Debra Travis

Debra Travis
(Type or Print Name)

Notary Public for Washington State
My Commission Expires: 4-29-01

