

Return address:

CITY OF OTHELLO
500 E. MAIN
OTHELLO, WA 99344

Please print neatly or type information

Document Title(s)

Extra Territorial Utility Extension Agreement, Covenant Running
With the land, and Power of Attorney
Reference Number(s) of related documents

Additional Reference Numbers on page _____

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

City of Othello
500 E. Main St.
Othello WA 99344

Additional Grantees on page _____

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

Daniel E Ninfia Wilmes
2263 W. Cunningham Rd.
Othello WA 99344

Additional Grantees on page _____

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

Tract 20, Meadow Lane

Additional Legal Description on page _____

Assessor's Property Tax Parcel/Account Number

1-529-030-780-020

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.

RECORD AND RETURN TO

City of Othello
500 E Main St
Othello, WA 99344

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

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 Daniel Hilmes and Ninfa Hilmes (herein Developer).

2 **Recitals:**

2.1 The City is the owner of a sewer system which operates within the City's limits and adjacent to real property near Othello, Washington.

2.2 Developer desires to receive sewer utility service from the City for use upon Developer's real property located more than one half mile from the corporate limits of the City.

2.3 The City, pursuant to Resolution #96-06 requires that all non-contiguous real property which receives 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 Developer is fully aware of the restrictions imposed upon Developer and Developer's successor(s), heir(s), and assign(s) by City Resolution #96-06 and enters into this Agreement freely and voluntarily.

3 **Agreement:** It is agreed by and between the parties as follows:

3.1 *NA* The City will provide the ~~water and~~ sewer utility services listed below to Developer at the premises stated, pursuant to the terms of this Agreement.

3.2 The real property to be serviced is described as:
Tract # 20 of the Meadow Lane Plat located in the north half of Section 5, T15N, R29E as recorded with the Adams County Auditor in Volume 3, Page 61 dated October 20, 1966 and referred to herein as the premises.

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 Developer 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 All connections to the City sewer system shall comply with the ordinances and rules of the City with respect to the appropriate utility. Any connection to the City's sewer system is subject to

payment for the utility service of a rate established by the City which shall be subject to adjustment from time to time by the Othello City Council. The availability of the utility authorized by this Agreement is subject to the capacity of the City's system.

- 3.5 The sewer utility service provided is permission to discharge domestic wastewater from one single family home with a constituent stream of no different or greater density or concentration of salts and other identified effluents than that allowed by the discharge permit approved by the City.
- 3.6 Developer agrees and covenants that all sewer utility system components to be built and attached to the City's utility system shall be built to City standards. The standards applied by the City may include requiring construction in excess of that minimally required to connect the premises to City utilities where such additional construction is consistent with a City plan of service within the area of the premises.
- 3.7 Developer 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. The Developer acknowledges the premises are subject to development pursuant to regulations administered by Adams County. The Developer agrees the City may impose development conditions greater than those imposed by Adams County, but in no event greater than those imposed for similar development within the City's limits, as a condition of receiving utility services under this Agreement. The premises currently are used in a manner consistent with the City's comprehensive land use plan.
- 3.8 Developer agrees and covenants that when the property is annexed, the Developer shall, when required by the City, construct the following improvements fronting this property: upgrade the south half of Cunningham Road, to meet City of Othello public works standards; and extend the municipal water system piping and connect to the municipal water system.
- 3.9 This Agreement is entered into by the City based on the utility uses identified above and the land uses identified by the Developer for the premises. Developer or the successor holder of the fee title to the premises shall be bound by this Agreement and be responsible to perform under this Agreement. No subsequent leasehold, joint venture, or other tenancy or use agreement shall relieve the Developer or the Developer's successor in interest from performing under this Agreement.

To continue this Agreement in effect and to continue a delivery of the identified utilities any successor in interest shall execute an acknowledgment of this Agreement, Covenant, and Power of Attorney in substantially the same form as this Agreement, Covenant, and Power of Attorney.

- 3.10 Developer shall execute contemporaneously with this Agreement the subjoined Power of Attorney and subjoined Covenant respecting the annexation of the premises by the City. This Power of Attorney is executed, as is this Agreement, by Developer with a full understanding that Developer may be waiving and transferring to the City a valuable right as a land owner as respects annexation by the City. Developer waives any objection to annexation by the City. Developer acknowledges Developer has relied solely upon Developer's own legal counsel and fully understands the legal rights Developer is or may be surrendering to the City by the execution of this Agreement and the subjoined Covenant and Power of Attorney.

- 3.11 Developer 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 the 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.
- 3.12 Developer acknowledges that so long as the premises remain outside the corporate limits of the City, 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 the charges to similar customers, ~~located within the corporate limits.~~
- 3.13 Developer 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 from Developer's 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.
- 3.14 Developer agrees that in the event of a sale, gift, transfer, segregation, assignment, or devise of Developer's fee interest in the premises it will disclose the existence of this Agreement.
- 3.15 In the event of a breach of this Agreement by the Developer or any successor in interest, this Agreement, and all deliveries of utilities hereunder, shall be subject to termination thirty (30) days after notice to the Developer of the breach if the breach has not been cured.
- 3.16 The permission to obtain City utilities contained in this Agreement shall lapse and become null and void if the premises are not connected to the City's utility system within twenty four (24) months of the execution of this Agreement.
- 4 **Term:** This Agreement shall be in effect so long as Developer 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. Upon annexation of these entire premises into the City of Othello, this Agreement and the subjoined Covenant and Power of Attorney shall terminate and be of no further force or effect.

Dated: 7/20/01
 By [Signature]
 W. F. Shaw, City Administrator

Dated: 4-23-01

By [Signature]
 Daniel Hilmes

By [Signature]
 Ninfa Hilmes

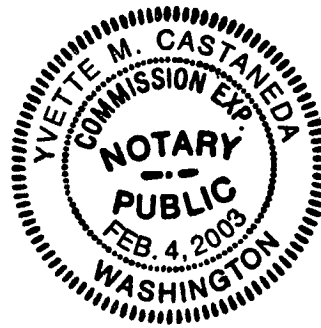
State of Washington
 County of Adams

I certify that I know or have satisfactory evidence that Daniel Hilmes and Ninfa Hilmes signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the owner of tract # 20 to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated 4/23/01

[Signature]
 Notary Public

Yvette M. Castaneda
 [Type or Print Name]
 My appointment expires 2/4/03



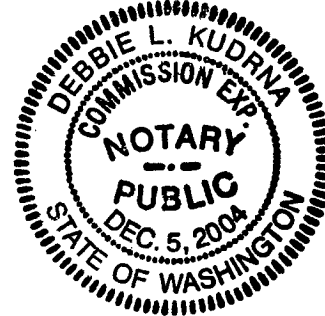
State of Washington
 County of Adams

I certify that I know or have satisfactory evidence that W. F. Shaw signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the City Administrator of the City of Othello to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated 7/19/01

[Signature]
 Notary Public

Debbie Kudrna
 [Type or Print Name]
 My appointment expires 12-5-2004



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. Any 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. This Covenant shall expire and be of no further force or effect upon the annexation of the entire premises described in the foregoing Extra Territorial Utility Extension Agreement into the City of Othello.
- 2. **Creation:** Developer, 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: 4-23-01

By Daniel Hilmes
Daniel Hilmes

By Ninfa Hilmes
Ninfa Hilmes

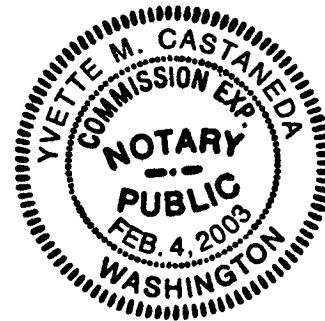
State of Washington
County of Adams

I certify that I know or have satisfactory evidence that Daniel Hilmes and Ninfa Hilmes signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the owner of tract # 20 to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated 4/23/01

Yvette M. Castaneda
Notary Public

Yvette M. Castaneda
[Type or Print Name]
My appointment expires 2/4/03



POWER OF ATTORNEY

1. **Appointment:** Developer hereby makes, constitutes, and appoints the City of Othello, Washington, Developer's true and lawful attorney for Developer and in Developer's name, place, and stead for the purposes stated herein.
2. **Independent Advice:** Developer 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 Developer's 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 Developer's 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 Developer only upon the termination of the forgoing Extra Territorial Utility Extension 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 Developer shall immediately and automatically terminate the Extra Territorial Utility Extension Agreement between Developer and the City of Othello. This Power of Attorney is deemed revoked automatically upon the annexation of the entire premises described in the foregoing Extra Territorial Utility Extension Agreement into the corporate limits of the City of Othello.

Dated: 4-23-01

By Daniel Hilmes
Daniel Hilmes

By Ninfa Hilmes
Ninfa Hilmes

State of Washington
County of Adams

I certify that I know or have satisfactory evidence that Daniel Hilmes and Ninfa Hilmes signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the owner of tract # 20 to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated 4/23/01

Yvette M. Castaneda
Notary Public

Yvette M. Castaneda
[Type or Print Name]
My appointment expires 2/4/03

