



Return address:

City of Othello  
500 E. Main  
Othello, WA 99344

Please print neatly or type information  
Document Title(s)

Extra Territorial Water Agreement for Eagle Estates

Reference Number(s) of related documents

\_\_\_\_\_

Additional Reference Numbers on page \_\_\_\_\_

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

City of Othello  
500 E. Main  
Othello, WA 99344

Additional Grantees on page \_\_\_\_\_

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

Eagle Estates Subdivision  
2128 N. Pines Road, Suite 17-11  
Spokane, WA 99208

Additional Grantees on page \_\_\_\_\_

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

"See attached" - PTN<sup>FV</sup> 34B1K49

Additional Legal Description on page \_\_\_\_\_

Assessor's Property Tax Parcel/Account Number

1529031300001-0035

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.



**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 EAGLE PROPERTIES, INC. (herein Developer).
  
- 2 **Recitals:**
  - 2.1 The City is the owner of a municipal water system which operates within the City's limits and adjacent to real property near Othello, Washington.
  - 2.2 Developer desires to receive water 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 and located within the City's Urban Services Area (USA).
  - 2.3 The City, pursuant to Resolution #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 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 The City will provide the water 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 located within the City's USA and is described as:



That portion of Farm Unit 34, Irrigation Block 49, Columbia Basin Project according to the Seventh Revision of the Farm Unit Plat thereof filed for the record on September 1, 1959 in the office of the Auditor of Adams County, Washington, and lying in the East Half of Section 5, Township 15 North, Range 29 East, W.M., Adams County, Washington, described as follows:

Beginning at the Eastern Quarter corner of said Section 5; thence South 02°39'33" West following the East boundary of said Section 5 and said Farm Unit 34, 339.01 feet, to the True Point of Beginning; thence continuing South 02°39'33" West 713.42 feet, thence North 88°23'58" West, 238.59 feet; thence Westerly following a tangential curve to the right, having a central angle of 24°56'36" and a radius of 116.89 feet, 50.89 feet; thence North 02°39'33" East, parallel with the East boundary of said Section and said Farm Unit, 296.20 feet, to an intersection with the South boundary of the Akkerman Road Survey, as recorded in Volume S of Surveys at Pages 306, 307, and 308, records of Adams County, Washington; thence North 87° 20'27" West 33.19 feet to a ½ inch rebar with surveyor's cap; thence North 02°39'33" East 12.93 feet to a ½ inch rebar with surveyor's cap; thence North 87°20'27" West 108.05 feet to a ½ inch rebar with surveyor's cap; thence South 02°39'33" West 170.24 feet to an intersection with the North boundary of that certain parcel of land as described in the Akkerman Record Survey as recorded in Volume S of Surveys, at Page 202, Records of Adams County; thence North 39°35'32" West 335.33 feet to the centerline of the U.S.B.R. Canal Right of Way, which is also the Northwestern boundary of Farm Unit 34; thence North 47°21'50" East following said centerline and boundary 536.26 feet; thence South 86°25'53" East 140.48 feet; thence South 43°57'09" East 84.43 feet to a ½ inch rebar with surveyor's cap; thence South 87°20'27" East 73.74 feet, to the True Point of Beginning as recorded with the Adams County Auditor and referred to herein as the premises together with and subject to easements, reservations and restrictions of record.

- 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 water system shall comply with the ordinances and rules of the City with respect to the appropriate utility. Any connection to the City's water 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 water system.
- 3.5 The water delivered pursuant to this Agreement shall be the same as other water delivered within the City's system. The City makes no warranty as to such water quantity or quality other than it shall be delivered in accordance with the regulations applicable to city water systems.



- 3.6 The water service provided by the City is not to exceed the quantity of thirty-five structures; consisting of single-family homes and one minor retail business.
- 3.7 Developer agrees and covenants that all water 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.
- 3.8 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.
- 3.9 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.
- 3.10 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.
- 3.11 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.
- 3.12 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.

- 3.13 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.
- 3.14 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.
- 3.15 Developer agrees that in the event of a sale, gift, transfer, segregation, assignment, or device of Developer's fee interest in the premises it will disclose the existence of this Agreement.
- 3.16 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.
- 3.17 In the event the premises is delivered City utilities pursuant to this Agreement and the premises become located outside the City's USA, this Agreement shall be deemed to have been terminated as provided for in the provisions dealing with the term of this Agreement. The period of termination shall begin upon the date the premises become located outside the City's USA unless the parties agree otherwise in writing.
- 3.18 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.

By *Ehman J. Sheldon*

Dated: 8.16.02

CITY OF OTHELLO  
*Eagle Properties, Inc.*  
By *Jonathan A. Tutt, President*  
EAGLE ESTATES

Dated: 8.16.02

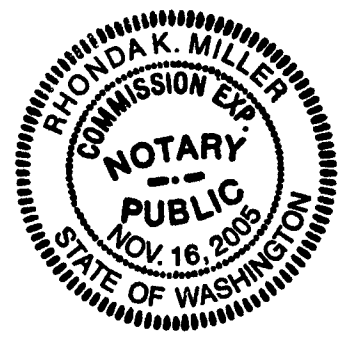
State of Washington  
County of Adams

I certify that I know or have satisfactory evidence that Jonathan A Tutt signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of Eagle Properties to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated 8-16-02

*Rhonda K Miller*  
Notary Public

Rhonda K Miller  
[Type or Print Name]  
My appointment expires 11/16/05



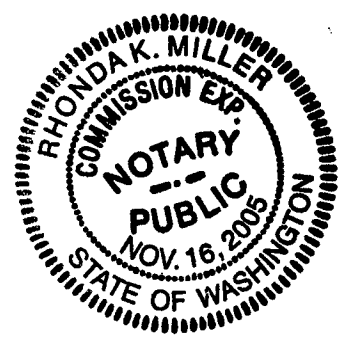
State of Washington  
County of Adams

I certify that I know or have satisfactory evidence that Ehman J. Sheldon 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 8-16-02

*Rhonda K Miller*  
Notary Public

Rhonda K Miller  
[Type or Print Name]  
My appointment expires 11/16/05



**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: 8-16-02 By Eagle Properties, Inc. by Jonathan A Tut, President

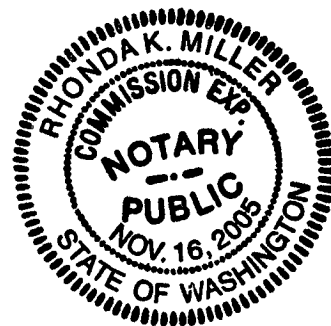
State of Washington  
County of Adams

I certify that I know or have satisfactory evidence that Jonathan A Tut signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of Eagle Properties to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated 8/16/02

Rhonda K Miller  
Notary Public

Rhonda K Miller  
[Type or Print Name]  
My appointment expires 11/16/05





**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.

By Eagle Properties, Inc.  
Jonathan A. Tutt, President Dated: 8-16-02

State of Washington  
County of Adams

I certify that I know or have satisfactory evidence that Jonathan A Tutt signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of Eagle Properties to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated 8/16/02  
Rhonda K Miller  
Notary Public  
Rhonda K Miller  
[Type or Print Name]  
My appointment expires 11/16/05

