

WHEN RECORDED RETURN TO:

Colleen M. Broaddus  
Winnar Company, Inc.  
700 Fifth Avenue, Suite 2600  
Seattle, WA 98104-5026

M-9700909-1  
Document Title: Public Access Open Space Agreement  
Grantor: Walls, Butler, Madden & Teel, L.P.  
Grantee: City of Redmond  
Legal Description: Parcels 7, 8, 9 and portions of Parcels 14 and 15 of Redmond Town Center. Additional legal description is attached as Exhibit A to this document, <sup>16<sup>th</sup></sup> PAGE 9  
Assessor's Tax Parcel #'s: 720241-0160-0, 720241-0170-0, 720241-0180-0, and portions of 720241-0230-04, 720241-0240-02.  
Reference Nos. of Documents Released or Assigned: None.

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FILED FOR RECORD AT THE REQUEST OF  
TRANSACTION TITLE INSURANCE CO.

970603-1221 12:12:00 PM KING COUNTY RECORDS 009 SH

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RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

TOWN CENTER ASSOCIATES  
700 Fifth Avenue, Suite 2600  
Seattle, Washington 98104  
Attn: Colleen M. Broaddus

PUBLIC ACCESS OPEN SPACE AGREEMENT

THIS AGREEMENT is made this 24 day of Sept, 1996 by WALLS, BUTLER, MADDEN & TEEL, L.P., a Washington limited partnership ("Grantor"), and the City OF REDMOND, a Washington municipal corporation (the "City"). Grantor is the owner of real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property"). The Property is part of a larger parcel of real property commonly known as the Redmond Town Center site. The Redmond City Council adopted Ordinance No. 1841 which amended the Redmond Community Development Guide to allow development of a mixed used project on the Property. Ordinance No. 1841 required that certain portions of the Property be subjected to an easement for the purpose of preserving open space on the Property. The area to be subjected to this easement is Parcel 9 described on Exhibit A (the "Easement Area").

In order to satisfy the requirements of Ordinance No. 1841, the parties hereby agree:

1. Conveyance. Grantor conveys and quit claims to the City a perpetual, nonexclusive easement (the "Easement") over the Easement Area for the purposes of open space, passive recreation as described in paragraph 4 below, maintaining slopes along the south side of Bear Creek Parkway, and maintaining storm drainage swales along the south side of Bear Creek Parkway.

2. No Other Purposes. The Easement Area shall not be used by the City for any purpose other than as stated in paragraph 1 above, and the City shall not conduct any grading or construction activities within the Easement Area without the prior written consent of Grantor.

3. Grantor's Reserved Rights. Grantor reserves the right to construct, maintain, and repair storm drainage facilities/wet ponds within the Easement Area which were approved by the City pursuant to the site plan review process. Grantor also reserves

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the right to construct, repair, and maintain within the Easement Area amenities that are consistent with the open space character of the Easement Area, including, but not limited to, picnic tables, art installations and displays, children's play areas, screening, and signage, and to engage in any other use of the Easement Area compatible with the full enjoyment of the rights granted to the City in this Agreement.

4. Public Rights. The public shall have the right to utilize the Easement Area for walking, running, bicycling, and other passive recreation purposes, provided, however, that such activities are conducted in accordance with any mutually acceptable rules or regulations established by Grantor and the City for the use of the Easement Area as set forth below. Either party shall have the power to propose such rules and regulations for use of the Easement Area by the public as such party may deem fit and proper to promote its safe and equitable use, and the other party shall promptly review such proposed rules and regulations and not unreasonably withhold its approval thereof; provided that nothing herein shall enlarge the rights of the City with respect to the use of the Easement Area beyond the limitations specified in paragraph 1 above. The City and Grantor shall each have the power to enforce such mutually acceptable rules and regulations for use of the Easement Area. Use by motorized vehicles, camping, camp fires, and any other activities that would be inconsistent with Grantor's retained use or the safe use of the Easement Area by the public are prohibited.

5. Taxes. Grantor shall pay all real property taxes assessed by King County on the land comprising the Easement Area, and the City shall pay all taxes assessed on any improvements owned or installed by or at the direction of the City in the Easement Area.

6. Maintenance. The City shall maintain the improvements in the Easement Area which consist of the trails and other structures or improvements built by the City or at the direction of the City. Grantor shall maintain the rest of the Easement Area, including the storm drainage wet ponds.

7. Repairs and Restoration. The City shall repair any damage to any property of Grantor or any improvements thereon resulting from the exercise of the City's or the public's rights hereunder. If the City fails to make such repairs, Grantor may (but is not obligated to) make such repairs, and the City shall, upon demand, reimburse Grantor for all expenses incurred by Grantor in connection therewith.

8. Indemnity.

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(a) The City hereby releases and agrees to indemnify, defend, and save Grantor harmless from and against any and all claims for damages suffered, and any and all losses, liabilities, costs and other expenses incurred, by Grantor (including, without limitation, attorneys' fees) and any and all claims, demands or actions asserted against Grantor arising out of the exercise of the City's or the public's rights hereunder or the enforcement of the City's obligations hereunder.

(b) The City's obligation to indemnify, hold harmless and defend pursuant to paragraph 8(a) above shall not extend to injuries, sickness, death or damage caused by, or arising out of, the sole negligence of Grantor's officers, agents or employees; and in the event that injury, sickness, death or damage is caused by or arises out of the concurrent negligence of Grantor, or its officers, agents or employees, and the City, or its officers, agents or employees, the City's obligation to indemnify, defend and hold harmless shall apply only to the extent of the negligence of the City, its officers, agents or employees. After mutual negotiation with Grantor, the City specifically and expressly agrees that by agreeing to indemnify Grantor as set forth above, the City waives any immunity it may have under industrial insurance RCW 51, but only as to claims made by the City's employees against Grantor based upon the actions of the City or its officers, agents or employees.

(c) Grantor hereby releases and agrees to indemnify, defend, and save the City harmless from and against any and all claims for damages suffered, and any and all losses, liabilities, costs and other expenses incurred, by the City (including, without limitation, attorneys' fees) and any and all claims, demands or actions asserted against the City arising out of the exercise of the Grantor's reserved rights under paragraph 3 above or the enforcement of Grantor's obligations hereunder.

(d) Grantor's obligation to indemnify, hold harmless and defend pursuant to paragraph 8(c) above shall not extend to injuries, sickness, death or damage caused by, or arising out of, the sole negligence of the City's officers, agents or employees; and in the event that injury, sickness, death or damage is caused by or arises out of the concurrent negligence of the City, or its officers, agents or employees, and Grantor, or its officers, agents or employees, Grantor's obligation to indemnify, defend and hold harmless shall apply only to the extent of the negligence of Grantor, its officers, agents or employees. After mutual negotiation with the City, Grantor specifically and expressly agrees that by agreeing to indemnify the City as set forth above, Grantor waives any immunity it may have under industrial insurance RCW 51, but only as to claims made by

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Grantor's employees against the City based upon the actions of Grantor or its officers, agents or employees.

9. Termination. The Easement shall terminate upon:

(a) The demolition or destruction of the improvements built by or at the direction of the City on the Property and the passage of one year without reconstruction of the improvements; or

(b) The mutual agreement of Grantor and the City.

10. No Release of Obligations on Termination. No termination of this Agreement shall release the City from any liability or obligation with respect to any matter occurring prior to such termination.

11. Compliance with Laws and Rules. The City shall at all times exercise the City's rights hereunder in accordance with the requirements of all applicable statutes, orders, rules and regulations of any public authority having jurisdiction.

12. Notices. All notices given hereunder shall be in writing and shall be given as follows:

If to Grantor: Walls, Butler, Madden & Teel, L.P.  
427 NE 72nd  
Seattle, Washington 98115  
Attn: Daryl L. Vander Pol

with a copy to: Town Center Associates  
c/o Winmar Company, Inc.  
700 Fifth Avenue, Suite 2600  
Seattle, Washington 98104-5026  
Attn: President

If to the City: City of Redmond  
15965 N.E. 85th  
Redmond, Washington 98052  
Attn: Parks Director

Notices shall be deemed effective, if mailed, upon the second day following deposit thereof in the United States mail, postage prepaid, certified or registered mail, return receipt requested, or upon delivery thereof if otherwise given. Either party may change the address to which notices may be given by giving notice as above provided.

13. Title. The rights granted herein are subject to existing permits, leases, licenses and easements, if any, granted

by Grantor affecting the Property subject to this Agreement, together with any amendments and extensions to such documents as may be executed by Grantor in the future.

14. Application of the Recreational User Statute. Nothing in this Agreement is intended to create liability on the part of Grantor or the City to third persons, or to alter or abrogate Grantor's or the City's rights and immunities under the Washington Recreational User Statute, RCW 4.24.200 and 4.24.210, to the extent applicable. Both Grantor and the City intend any rights and immunities provided by said statute to continue to apply.

15. Run With Land. This Agreement shall run with the land and shall be binding upon the successors and assigns of Grantor.

16. Attorneys' Fees. In the event of any dispute regarding this Agreement, the prevailing party shall be entitled to receipt of its attorneys' fees and costs in any alternative dispute resolution proceeding, at trial, or on appeal.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

18. Enforcement. The parties acknowledge that remedies at law may be inadequate to protect against breach of this Agreement, and in addition to all other remedies available at law or equity, the parties hereby in advance agree to the granting of injunctive relief without proof of actual damages in the event of any breach or threatened breach of any of the provisions of this Agreement.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which shall collectively constitute one agreement.

IN WITNESS WHEREOF this Agreement is executed on the date first set forth above.

[Signatures Follow]

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WALLS, BUTLER, MADDEN & TEEL, L.P.  
a Washington limited partnership

By: *Daryl L. Vander Pol*  
Daryl L. Vander Pol, its Manager

CITY OF REDMOND

By: *Rosmarie Dow*  
Its: MAYOR 4-11-97

APPROVED AS TO FORM:

*[Signature]*  
City Attorney

ATTEST:

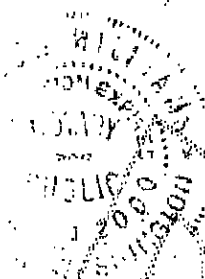
*Sandra D. Marlow*  
City Clerk (Deputy)

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STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Daryl L. Vander Pol is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the individual acting as Manager of WALLS, BUTLER, MADDEN & TEEL, L.P., the partnership that executed the within and foregoing instrument, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument; and on oath stated that he was duly qualified and authorized to execute said instrument on behalf of the limited partnership.

Dated: Sept. 24, 1996



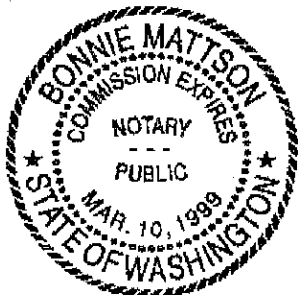
James H. Williams  
Print Name: James H. Williams  
NOTARY PUBLIC in and for the State  
of Washington, residing at Seattle  
My commission expires: Feb 7, 2000

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STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Rosemarie Ties is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Manager, of the City of Redmond to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: April 11, 1997



Bonnie Mattson  
Print Name: Bonnie Mattson  
NOTARY PUBLIC in and for the State  
of Washington, residing at Redmond  
My commission expires: 3-10-99



EXHIBIT A

PARCELS 7, 8, 9 AND THOSE PORTIONS OF PARCELS 14 AND 15 LYING EASTERLY OF THE NORTH-SOUTH CENTERLINE OF THE NORTHWEST 1/4 OF SECTION 12, TOWNSHIP 25 NORTH, RANGE 5 EAST W.M., OF REDMOND TOWN CENTER, A BINDING SITE PLAN, AS PER PLAT RECORDED IN VOLUME 176 OF PLATS, PAGES 56 THROUGH 67, RECORDS OF KING COUNTY;

SITUATE IN THE CITY OF REDMOND, COUNTY OF KING, STATE OF WASHINGTON.

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Unofficial Document