

DECLARATION, COVENANTS, CONDITIONS AND RESTRICTIONS
OF WISHING WELL

THIS DECLARATION OF BUILDING AND USE RESTRICTIONS AND ARCHITECTURAL CONTROL, made this 24th day of June, 1994, by ReMarkable Properties, Inc., an Oregon corporation, hereinafter referred to as "Declarant."

WHEREAS, Declarant is the owner of the real property described in Exhibit "A", attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within Wishing Well and hereby subjects the Property to this Declaration and amendments thereto by the recording of this Declaration.

NOW, THEREFORE, Declarant hereby declares that all the Properties described in Exhibit "A" and any additional property as may by subsequent amendment be added to and subjected to this Declaration shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property subject to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
USE

Except as may be otherwise expressly provided in this Declaration, each Residential Unit shall be used for residential purposes only; no trade or business of any kind may be conducted, except for Declarant's Model Homes. Declarant's Model Homes will be used for display and as sales offices until the last Residential Unit is sold by Declarant. Lease or rental of a Residential Unit for residential purposes shall not be considered to be a violation of this covenant. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration, and the restrictions hereinafter set forth.

ARTICLE II
WISHING WELL PROPERTY OWNERS ASSOCIATION

Wishing Well Property Owners Association, hereinafter referred to as "Association", shall consist of every owner subject by covenants of record to assessment by the Association. Membership shall terminate upon the transfer of a fee simple title to a lot or the contract purchaser's interest by a contract purchase.

There shall be an Association Directorship, consisting of three (3) Directors, for the purpose of exercising the power and functions conferred upon said Directorship by this section. The initial Directorship shall be appointed by Declarant, each of said persons so appointed being subject to removal at Declarant's sole and absolute discretion. All vacancies of said Directorship shall be filled by appointment by Declarant. Upon the sale of all 107 Residential Units, a new Directorship shall be elected by a majority of 51% of the residential unit owners.

Declaration and CC&R's
of Wishing Well

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Hickman, William & Assoc.
20360 Anderson Rd STE C-4
Bend, OR 97701

Said Directorship shall have the right and power to interpret and enforce all restrictions in its sole discretion and exercised in good faith. Decisions by the Directorship are final and legally binding pertaining to judgements rendered regarding claims of covenant breach.

Any decision of the Directorship shall be in writing and shall be signed by at least two (2) Directors. The Directorship shall adopt rules and regulations for the conduct of these proceedings and may fix the time and place for its regular meetings and for such extraordinary meetings as may be necessary.

Unless otherwise specified, enforcement of the restrictions set forth herein shall be by proceedings at law or equity brought by any Director of the Association's Directorship, pursuant to the authorization of the Directorship, against any person or persons violating or attempting to violate any provision or covenant, either to restrain violation or to recover damages. Neither Declarant nor the Directorship, nor any Director or successor Director thereof, shall ever be liable because of any action they take, or fail to take, or for any defect in any building erected pursuant to this section, or at all, as a result of these restrictions, and the Owners of the Residential Units, and each of them, agree jointly and severally to hold Declarant and Directors of the Directorship (as the Directors of that body may be changed from time to time) free and harmless and to indemnify them accordingly from any claims and liabilities whatsoever arising from the operation of this section.

ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. Creation of the Lien and Personal Obligation of Assessments:

For each Residential Unit owned, each Owner covenants by acceptance of a deed or contract of purchase therefore, whether or not it shall be so expressed in such deed or contract, is deemed to covenant and agree to pay the Association:

- (a) Annual assessments or charges,
- (b) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Property which each such easement is made until paid or foreclosed. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the successor in title unless expressly assumed by the successor. The Directors of the Association's Directorship may file liens against delinquent properties by recording a notice of delinquency in the appropriate county records.

Section 2. Purpose and Amount of Annual Assessments:

Assessments may be levied by the Directors of the Association's Directorship for the following purposes:

- (a) Street and/or road.
- (b) Snow removal.
- (c) Insurance and fire protection.
- (d) Taxes.

- (e) Common Area Maintenance, including the maintenance of any recreational facilities located thereon.
- (f) Administrative expenses.
- (g) Collection costs.
- (h) Legal and accounting expenses.
- (i) Any other purpose declared appropriate by the Directors of the Association.

The Association shall establish a reserve account in order to accomplish the above purposes.

The first annual assessment will be levied at close of escrow for the purchase of a Residential Unit and will be \$8.00 per month per Residential Unit. The first annual assessment will remain in effect until January 1995. Thereafter the amount of the annual assessment will be determined by the Directors of the Association.

Section 3. Special Assessments for Capital Improvements:

In addition to the annual assessments specified above, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Areas (defined as all land shown by any recorded subdivision plat of the Property except (a) numbered lots, and (b) any portion of the Property dedicated to the public).

Section 4. Uniform Rate of Assessment:

Both annual and special assessments shall be charged at a uniform rate for all Residential Units and such assessments may be collected on an annual, quarterly or monthly basis at the discretion of the Directors.

Section 5. Effect of Non-Payment of Assessments and Remedies of Association:

Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within 30 days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 12 percent per annum. The Directors of the Association shall file in the office of the Directorship, County Clerk or appropriate recorder of conveyances of Deschutes County, State of Oregon, within 30 days after delinquency, a statement of the amount of any such charges or assessments, together with interest as aforesaid, which have become delinquent with respect to any residential unit on said Property, and upon payment in full thereof, shall execute and file a proper release of the lien securing the same. The aggregate of such assessments, together with interest, costs, and expenses and reasonable attorney's fees for the filing and enforcement thereof, shall constitute a lien on the Residential Unit, with interest to be fixed from the date of delinquency thereof is filed in the office of said Directorship or County Clerk, or other appropriate recording office, until the same has been paid or released as herein provided.

Section 6. Subordination of the Lien to Mortgages:

The lien of the assessments provided for herein shall be inferior, junior, and subordinate to the lien of all mortgages and trust deeds now or hereafter placed upon said property or any part thereof. No sale or transfer shall relieve Residential Unit from liability for any assessments thereafter becoming due or from the lien thereof. Such a lien shall attach to the net proceeds of sale, if any, remaining after such mortgages or prior liens and charges have been satisfied.

ARTICLE IV.
PLANS AND SPECIFICATIONS

No buildings or other structure or improvement, other than the residential units constructed by Declarant, shall be commenced upon any of said lots until the location and the complete plans and specifications, including the color schemes of each building, fence, deck, and/or wall to be erected upon the lots have been approved in writing by the Directorship of the Association.

No building of any kind shall be more than two(2) stories in height without the written approval of the Directorship of the Association. Radio or television antenna and/or satellite dish or similar projection of any kind shall be placed only in the rear yards and shall not exceed five (5) feet in height.

ARTICLE V.
EXTERIOR ALTERATIONS AND PAINTING

No alterations shall be made in the exterior design or color of any structure unless such alteration, including any addition, shall have been first approved in writing by the Directorship of the Association.

ARTICLE VI.
RECREATIONAL VEHICLES, TENTS, SHACKS

No tent, shack, recreational vehicle, camper, camper shell, boat, trailer, vehicle basement, garage or outbuilding shall at any time be used on any lot as a residence or domicile either temporarily or permanently, nor shall any residence of a temporary character be constructed, placed or erected on any lot except for Declarator's construction work trailer.

Recreational vehicles, campers, camper shells, boats, trailers, etc. shall be parked or stored in an enclosed area behind or alongside the Residential Unit, or in the garage. No large commercial truck, recreational vehicle, etc. exceeding 25 feet in length, may be parked at the curb, on the sidewalk or in the open driveway of a Residential Unit except temporarily for the purposes of loading and unloading.

ARTICLE VII.
VEHICLES IN DISREPAIR

No owner shall permit any vehicle in a state of disrepair to be abandoned or to remain parked upon any lot or any street for a period in excess of 48 hours. A vehicle shall be deemed in a "state of disrepair" when the Directorship of the Association reasonably determines that its presence offends occupants of the neighborhood. Should any owner fail to remove such vehicle within five (5) days following the date on which notice is mailed to said owner by the Directorship, the Directorship may have the vehicle removed from Wishing Well and assess the expense of such removal to the owner.

ARTICLE VIII
SIGNS

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No signs of any kind for any use or purposes whatsoever other than signs of customary dimensions advertising the property for sale shall be erected, posted, pasted, painted or displayed upon any of said Residential Units or upon the building or other structures thereon, without the prior written approval of the Directorship of the Association.

ARTICLE IX
MAINTENANCE, APPEARANCE AND EXTERIOR LIGHTING

No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadway shall be placed or permitted to remain on any corner lot.

Each owner shall maintain such owner's Residential Unit and improvements thereon in a clean and attractive condition and in good repair. No Residential Unit shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal and out of public view.

No exterior lighting fixtures shall be installed on any Residential Unit without adequate and proper shielding of fixtures to avoid casting an unreasonable amount of light beyond that Owner's lot boundaries. The determination of whether a lighting fixture is in violation of this paragraph shall be within the discretion of the Directorship of the Association.

ARTICLE X
ANIMALS - DOGS AND CATS

No keeping, raising, and/or breeding of animals of any kind on any Residential Unit shall be allowed except a reasonable amount of household pets such as cats and dogs, and no animal of any kind shall be bred or maintained for any commercial purpose.

ARTICLE XI
OFFENSIVE OR UNLAWFUL ACTIVITIES AND FIREARMS

No noxious or offensive activities shall be carried on upon any Residential Unit or Common Area, nor shall anything be done or placed on any Residential Unit which interferes with or jeopardizes the enjoyment of any Residential Units or which is a source of annoyance to residents.

No unlawful use shall be made of a Residential Unit nor any part thereof and all valid laws, zoning ordinances, and regulations of all government bodies having jurisdiction therefore shall be observed.

No firearms shall be discharged within the property known as Wishing Well.

ARTICLE XII.
EASEMENTS FOR UTILITIES

There is hereby reserved to Declarant blanket easements upon, across, above, and under all property within Wishing Well for access, ingress, egress, installation, repair, replacement, and maintenance of all utilities serving the Property or any portion thereof, including but not limited to gas, water, sanitary sewer, telephone, cable television and electricity, as well as storm drainage and any other services such as, but not limited to security system the Declarant might decide to have installed to serve the property.

ARTICLE XIII.
AMENDMENT

This Declaration may be amended unilaterally at any time and from time to time by the Declarant: a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; or b) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, to enable such lender or purchaser to make or purchase mortgage loans on the residential units subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any owner's Residential Unit unless such owner shall consent thereto in writing.

ARTICLE XIV.
SINGULAR AND PLURAL

The singular and plural number and masculine, feminine and neuter gender shall each include the other where the context requires.

ARTICLE XV.
SEVERABILITY

The provisions hereof shall be deemed independent and severable; the invalidity, partial invalidity and unenforceability of any other provision hereof.

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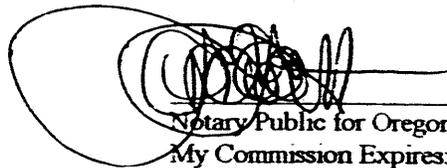
IN WITNESS HEREOF, the undersigned Declarant has executed this Declaration this 24th day of June, 1994.

Mark Cassin President

Mark Cassin, President
ReMarkable Properties, Inc.

STATE OF OREGON)
) ss.
County of Deschutes)

On June 24, 1994, 1994, personally appeared before me the above named Mark Cassin, President of ReMarkable Properties, Inc., and acknowledged the foregoing instrument to be his voluntary act.


Notary Public for Oregon
My Commission Expires: 4/27/95

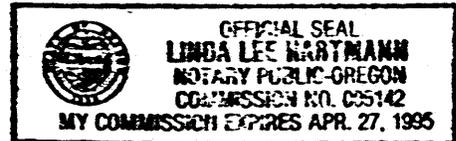


EXHIBIT "A"

344 - 1638

THIS PLAT OF "WISHING WELL, PHASE I", LOCATED IN PARCEL 3 OF PARTITION PLAT NO. 1990-5 IN THE SOUTHEAST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 16, TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, THAT A 5/8" IRON ROD WITH A PLASTIC CAP STAMPED "HWA" EXISTS AT THE INITIAL POINT AND THE PROPERTY PLATTED IS DESCRIBED AS FOLLOWS:

PARCEL 3 OF PARTITION PLAT NO. 1990-5 LOCATED IN A PORTION OF THE SOUTHEAST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 16, TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, BEING MORE PARTICULAR DESCRIBED AS FOLLOWS:

BEGINNING AT A 3" DESCHUTES COUNTY ALUMINUM CAP, THE "INITIAL POINT", SAID POINT ALSO BEING THE SOUTHEAST CORNER OF SAID SECTION 16; THENCE FOLLOWING THE SOUTHERLY SECTION LINE OF SAID SECTION 16 SOUTH 89°59'25" WEST, 1314.24 FEET TO A 5/8" IRON ROD WITH A PLASTIC CAP STAMPED "HWA" ; THENCE LEAVING SAID SOUTHERLY SECTION LINE NORTH 00°01'04" EAST, 684.22 FEET TO A 1/2" IRON ROD, NO CAP; THENCE NORTH 00°02'49" WEST, 378.23 FEET TO A 5/8" IRON ROD WITH A PLASTIC CAP STAMPED LS 1642 ON THE SOUTHERLY RIGHT OF WAY OF MORNINGSTAR DRIVE; THENCE FOLLOWING SAID SOUTHERLY RIGHT-OF-WAY THE FOLLOWING TWO CURVES AND TWO COURSES;

ALONG A 970.00 FOOT RADIUS CURVE RIGHT, 57.49 FEET (CHORD BEARS SOUTH 74°12'46" EAST, 57.48 FEET TO A 5/8" IRON ROD WITH A PLASTIC CAP STAMPED LS 1642);

SOUTH 71°48'32" EAST 398.70 FEET TO A 5/8" IRON ROD WITH A PLASTIC CAP STAMPED LS 1642;

ALONG A 1230.00 FOOT RADIUS CURVE LEFT, 241.50 FEET (CHORD BEARS SOUTH 77°26'51" EAST, 241.12 FEET TO A 5/8" IRON ROD WITH A PLASTIC CAP STAMPED LS 1642);

SOUTH 83°05'22" EAST, 646.92 FEET TO A 5/8" IRON ROD WITH A PLASTIC CAP STAMPED LS 1642 ON THE EAST BOUNDARY OF SAID SECTION 16;

THENCE LEAVING SAID SOUTHERLY RIGHT-OF-WAY AND FOLLOWING THE SAID EAST LINE OF SECTION 16 LINE SOUTH 00°11'40" EAST, 791.88 FEET TO THE POINT OF BEGINNING AND THE TERMINUS OF THIS DESCRIPTION. CONTAINING 26.988 ACRES MORE OR LESS.

SUBJECT TO: ALL EASEMENT, RESTRICTION AND RIGHT-OF-WAYS OF RECORD AND THOSE COMMON AND APPARENT ON THE LAND.

STATE OF OREGON)
COUNTY OF DESCHUTES) SS.

I, MARY SUE PENHOLLOW, COUNTY CLERK AND RECORDER OF CONVEYANCES, IN AND FOR SAID COUNTY, DO HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS RECORDED THIS DAY:

94 JUL 30 PM 3:20

MARY SUE PENHOLLOW
COUNTY CLERK

BY: *Mary Sue Penhollow* DEPUTY
94-26324

NO. FEE 40.00

DESCHUTES COUNTY OFFICIAL RECORDS