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RESTATED
DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR
MONTE DEL ORO
LOTS 14 THROUGH 61 AND 67 THROUGH 156

10190 2198

TABLE OF CONTENTS

<u>Article</u>		<u>Page</u>
	Recitals	
1	Definitions	
2	Legal Description	
3	Membership and Voting Rights	
4	Architectural and Landscape Controls	
	4.1 Architectural Controls	
	4.2 Landscape Controls	
5	Use and Occupancy Restrictions	
6	Assessments	
	6.1 Regular Assessments	
	6.2 Special Assessments	
7	General Provisions	

RECITALS

WHEREAS, a Declaration of Covenants, Conditions and Restrictions for Monte del Oro was recorded in Docket 6252 at pages 570 through 581 in April, 1980; and

WHEREAS, the Owners of Lots in Monte del Oro desire to amend and restate the Declaration of Covenants, Conditions and Restrictions; and

WHEREAS, Article V, 2, of the Declaration provides that LAWYERS TITLE OF ARIZONA, an Arizona Corporation, as Trustee under Trust No. 7376-T, as the "Grantor", is entitled to execute any amendments to the Declaration, from time to time, provided that such amendments are deemed by Grantor to be beneficial to the owners of a majority of the Lots in the Subdivision; and

WHEREAS, LAWYERS TITLE OF ARIZONA, an Arizona Corporation, as Trustee under Trust No. 7376-T has been dissolved and the beneficiary of such trust, Monte del Oro Associates, was comprised of James Jarvis and Decker Land Developers; and

WHEREAS, Wendell Decker, Randall Decker and Ronald Decker were general partners in Decker Land Developers, an Arizona Limited Partnership; and

WHEREAS, Wendell Decker, Randall Decker and Ronald Decker filed Chapter 7 Bankruptcy and John B. Barkley was appointed as trustee of the Chapter 7 Bankruptcy Estate, which includes their interest in Decker Land Developers, and executes this Amended and Restated Declaration, having determined that such amendment and restatement is beneficial to the owners of a majority of the Lots in the Subdivision.

NOW, THEREFORE, the Declaration of Covenants, Conditions and Restrictions recorded in Docket 6252 at pages 570 through 581 and any subsequent amendments thereto, shall be null and void and this Restated Declaration shall amend and supersede such previously recorded Declaration. The real property as described herein shall be held, sold and conveyed subject to the following assessments, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the property. These easements, covenants, restrictions and conditions shall run with the property and shall be binding upon all parties having or acquiring any right, title or interest in the described properties or any part thereof and shall inure to the benefit of each such party.

ARTICLE 1
DEFINITIONS

The following terms are used in this Declaration:

1.1. "Architectural Committee" refers to the Committee established by the Board of Directors pursuant to this Declaration.

1.2. "Architectural Committee Rules" refers to those guidelines, standards, rules and regulations as promulgated and amended by the Architectural Review Committee from time to time.

1.3. "Articles" means the Articles of Incorporation of Monte Del Oro Homeowners Association, as amended from time to time.

1.4. "Association" means the Monte Del Oro Homeowners Association, an Arizona non-profit corporation, its successors and assigns.

1.5. "Board" means the Board of Directors of Monte Del Oro Homeowners Association.

1.6. "Bylaws" means the Bylaws of Monte Del Oro Homeowners Association, as amended from time to time by a vote of the Members of the Association.

1.7. "Declaration" means this Declaration of Covenants, Conditions, and Restrictions of Monte Del Oro, as amended from time to time.

1.8. "Lot" means any numbered plot of land shown upon the recorded subdivision plat, and including any structures or improvements constructed on the lot.

1.9. "Member" means any person entitled to membership in the Association as provided in this Declaration.

1.10. "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is part of the Subdivision. Owner includes a buyer under a contract for the sale of real estate, but excludes persons holding an interest merely as security for the performance of an obligation.

1.11. "Person" means an individual, corporation, company, partnership, trustee, or other entity; and their respective heirs, successors, and assigns.

1.12. "Rules" mean any rules or regulations adopted by the Board which govern the conduct of the owners, their families, tenants and lessees in the common recreational areas and the conduct of such persons when such conduct affects the other owners or the value, desirability and aesthetics of the Properties.

1.13. "Subdivision" means lots 14 through 61 and lots 67 through 156 of Monte Del Oro according to the recorded plat on file with the Pima County Recorder in Book 27 of Maps at Page 99.

ARTICLE 2

LEGAL DESCRIPTION OF REAL PROPERTY

The real property subject to this Declaration is located in the County of Pima, State of Arizona, and is described as follows:

Lots 14 through 61, inclusive, and Lots 67 through 156, inclusive, in Monte Del Oro, a Subdivision of Pima County, Arizona, according to the map or plat thereof of record in the office of the County Recorder of Pima County, Arizona, in Book 27 of Maps and Plats at Page 99 thereof.

ARTICLE 3

MEMBERSHIP AND VOTING RIGHTS

3.1. Membership. Every Person who is an Owner of a Lot in the Subdivision shall be a member of the Association. Only Persons who own Lots shall be members of the Association.

3.2. Voting Rights. Each Owner shall be entitled to one (1) vote for each Lot owned. The vote shall be exercised as the Owners agree, but in no event may more than one vote be cast for any one lot.

3.2.1. The Association may suspend the voting rights of any Member for any period during which any assessment against a Lot remains unpaid and delinquent. The Association may also suspend the voting rights of any Member when such member remains, after receiving written notice from the Board, in violation of this Declaration, the Rules, or the Bylaws of the Association.

3.2.2. Unless otherwise specified, any provision which requires the

approval of the Members shall be construed to mean the approval of a Majority of the Members. The term "Majority of the Members" means the approval of at least 51 percent of the Members who are eligible to vote.

3.2.3. Each Member may provide the Association with written notice of that Member's authorized representative who is entitled to vote on behalf of that Member on all matters pertaining to the Association. This written notice shall be considered as a proxy, as provided for in the By-laws and shall be effective until the Association receives notice of its revocation.

ARTICLE 4

ARCHITECTURAL AND LANDSCAPE CONTROL

4.1 Architectural Control

4.1.1. The Board shall appoint members of the Association to serve on an Architectural Committee. This Committee may include an architect appointed by the Board, as a consultant to that Committee. The functions of this committee shall include, but not be limited to the following:

a. Preparation of "Design Guidelines" which shall contain summaries of architectural information contained in this Declaration, as well as Rules, Regulations and Architectural Standards adopted by the Committee. The Committee shall attempt to provide a copy of the Design Guidelines to all current or prospective homeowners.

b. Review all plans submitted by an Owner for the construction of improvements or modifications to existing Lots to insure conformance with the aesthetics and harmony of the subdivision and with this Declaration.

c. Periodically inspect Lots or construction occurring within the Association to insure conformance with approved plans or the Declaration. Any officer, director, member of the Architectural Committee, or agent of the Association may, at any reasonable time enter, without being guilty of trespass, any property on which construction has been commenced, provided reasonable notice is given to the owner or occupant, to ascertain that such construction or modification is in conformance with the approved plans.

d. Maintain, or cause to be maintained, a file of all plans submitted to the Association for construction or improvement of a Lot and of all requests for waivers of any architectural or landscape rules or policies. This file will also contain the approvals or disapprovals of all submitted plans and requests for waivers.

4.1.2. The Board has the right to impose additional architectural and landscaping requirements which are consistent with this Declaration. Any requests for a variance from the guidelines established by the Board must be approved by the Board, through the Architectural Committee. The decision of the Board shall be final and binding. The Board may consult with adjacent property Owners prior to rendering its decision.

4.1.3. Plans and specifications for buildings and other structures are reviewed for appearance, location, design, compliance with known governmental ordinances and codes, and conformance with the provisions of this Declaration. The approval of plans and specifications shall not constitute a representation, warranty, or guarantee that such plans and specifications comply with governmental ordinances or restrictions, or with good engineering design.

4.2. Architectural Controls

4.2.1 No structures or improvements except public utility facilities shall be erected, placed, or permitted to remain on any portion of the above described land except for the buildings located upon the building sites.

4.2.3. No structures shall be erected, altered, placed or permitted to remain on any building site subject to this Declaration other than one detached single-family home of a minimum size of 2000 square feet of living area and designed for private use, a private garage, patio walls or other approved walls, swimming pool or spa, guest house, servants' quarters, and other outbuildings and improvements incidental to residential use of the property, including public utility facilities. A minimum of a two car garage must be constructed on every building site, and maintained as a garage. The two car garage shall be constructed prior to the date the residence is occupied. No kitchen facilities shall be installed or maintained in any building on any Lot other than one kitchen in the principal residence.

4.2.4. Each private residence constructed on a Lot shall include a driveway. Driveways must be completed within six months of the effective date of an occupancy certificate issued by the Town of Oro Valley. All driveways and private roads shall be approved by the Board and surfaced with a minimum of two-shot bituminous surface treatment and so maintained.

4.2.5. No white, reflective, or light colored roofs shall be permitted without the approval of the Architectural Committee.

4.2.6. A septic system shall be permitted on each Lot for the purpose of receiving and treating sewage wastes generated by residents of that Lot. The design and placement of the septic system must be approved by the Architectural Committee prior to

construction. All septic systems within the Subdivision must be maintained so as to prevent offensive odors, sewage overflow, or safety or health hazards.

4.2.7. No exterior antennas or other devices for the transmission or reception of television or radio signals, including satellite dishes, shall be erected or maintained on any portion of a Lot, without prior written authorization of the Architectural Committee. All antennas, including satellite dishes, shall be shielded from the view of neighboring Lots and from the streets within the properties. The Architectural Committee may promulgate standards for the installation of antennas.

4.2.8. Upon the failure of any Owner to maintain the Lot and any improvements on the Lot, in a manner satisfactory to the Association, the Association, through its agents and employees, after giving notice to the Owner by certified mail, is granted the right to enter upon such Lot and make necessary repairs, maintenance, rehabilitation or restoration of the improvements on the Lot. The cost of such repairs or maintenance shall be payable by the Owner and may be collected in the same manner as assessments, including placing a lien on the Lot. Nothing contained herein shall require the Association to charge for, or to collect, assessments for damage caused by an Owner, his guests, family, lessees, pets or employees to any other Owner's property or to the Common Areas. The Association shall not be compelled by the damaged party to make such repairs or to charge the offending party or collect such necessary amounts from the Lot Owner.

4.3. Landscape Committee

4.3.1. The Architectural Committee shall also serve as the Landscape Committee.

4.3.2. Landscape guidelines shall be included in the "Design Guidelines" prepared by the Committee.

4.3.3. Landscape Controls

4.3.3.1. Natural and native vegetation shall be maintained wherever possible.

4.3.3.2. Each improved Lot shall be landscaped to a degree consistent with published guidelines and maintenance of an attractive neighborhood.

4.3.3.3. Drainageways shall conform to the requirements of the Town of Oro Valley.

ARTICLE 5

USE AND OCCUPANCY RESTRICTIONS

5.1. Residential Purposes. Property within the Association shall be used for single-family purposes only. Rental of guest houses, servants' quarters, or other outbuildings is prohibited. The renting or leasing of an entire Lot and improvements thereon is permitted. No commercial building may be erected upon any Lot.

5.2. Business Activities.

5.2.1. No trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in any Lot may conduct business activities within the Lot so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve any person conducting such business who does not reside on the Properties or door-to-door solicitation of residents of the Properties; and (d) the business activity does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

5.2.2. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required therefor. Notwithstanding the above, the leasing of a Lot shall not be considered a trade or business within the meaning of this Section.

5.3. Nuisances. No obnoxious or offensive activity shall be carried on in any Lot, nor shall anything be placed, or stored on any Lot which may become an annoyance or nuisance to the neighborhood or occasion any noise, or odor which will or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding properties. No horns, whistles, bells, exterior speakers, or other sound devices shall be used in a manner which constitutes a nuisance to any other resident within the properties.

5.4. Vehicles.

5.4.1. No abandoned or inoperable vehicle of any type shall be stored or

kept upon any Lot so as to be visible from any other Lot or from the streets in the subdivision. Lots may not be used for the repair, dismantling, or maintenance of vehicles or their parts.

5.4.2. No motor driven two-wheel or three-wheel vehicle or off-road vehicle shall be operated on any part of the property subject to these restrictions.

5.5. Recreational Vehicles. No recreational vehicles, utility trailers, or other such vehicles may be stored upon Lots within the Subdivision unless they are stored in a manner so as not to be visible from another Lot or from the streets in the Subdivision. A recreational vehicle may be parked on the paved parking area of an Owner's Lot for not more than twenty four (24) hours in any seven (7) day period, for the purpose of loading or unloading or for the purpose of providing temporary parking for a transient guest of an Owner who may be travelling in or towing the recreational vehicle. Upon a showing of good cause, the Board of Directors may extend the time during which an Owner's guest may temporarily park on the properties, provided that the Owner's guests do not use the recreational vehicle as temporary living quarters during the time they are parking the recreational vehicle on the properties.

5.6. Signs. No billboards or advertising signs may be placed upon any Lot or any building erected thereon, with the following exceptions: 1) a name plate, including a professional title, may be placed on the Lot or structure; 2) during construction a signboard containing the contractor's name and the Lot address may be erected on the Lot; and 3) and Owner may place sign structures upon the property to promote the sale, rental, lease, or development of Lots within the Subdivision.

5.7. Animals. No animals or poultry of any kind other than a reasonable number of domesticated pets belonging to the residents of the Lot, shall be kept or maintained on any part of the real property subject to this Declaration. The care and maintenance of all such domesticated pets must conform with the laws and ordinances of the Town of Oro Valley. It shall be the responsibility of all pet Owners to clean up after their pets. No animal shall be allowed to become a nuisance, nor shall any animal cause any detrimental health condition to exist. A "reasonable number" as used in this Section shall ordinarily mean no more than two (2) pets per household; provided, however, the Board may determine that a reasonable number in any instance may be more or less. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal is a generally recognized house or yard pet or a nuisance, or whether the number of animals is reasonable. The Board may adopt Rules limiting the size, number and kinds of pets which may be kept by the Owners.

5.8. Underground Utility Lines. All electrical service, cable television,

telephone, and other utility lines shall be placed underground.

5.9. Easements. A dedicated easement and right of way in perpetuity is reserved for the benefit of all Lots for the erection, construction, maintenance, and operation of communications, power, and water systems.

5.10. Garbage. All garbage and refuse shall be placed in sealed containers or plastic bags and shall be screened from public view and kept in a manner which is the least offensive to the Owner of any other Lot in the Subdivision. All such garbage and refuse containers shall be placed on the streets no earlier than the day prior to scheduled pick-up days. All emptied containers shall be removed from the streets by the end of the day of pick-up.

ARTICLE 6

ASSESSMENTS

Each Owner agrees to pay the Association, as provided for in this document and in the Bylaws, any assessment imposed by the Association. The assessments, together with any interest, late charges, attorneys' fees, and other costs of collection, shall be a continuing lien on the Lot. The obligation to pay assessments shall run with the land so that each successive record Owner of a Lot shall become personally liable to pay all such assessments. Each assessment shall become personally liable to pay all such assessments. Each assessment shall also be the separate, distinct and personal obligation of the owner of the Lot at the time when the assessment was levied and shall bind his/her heirs, devisees, personal representatives and assigns. Any assessment not paid within fifteen (15) days after it becomes due is delinquent and shall be subject to a late fee as described in Section 6.3.3.

6.1. Regular Assessments

6.1.1. The term "Regular Assessments" means the amount which is to be paid by each member annually. The payment of regular assessments is provided for in the By-Laws.

6.1.2. The obligation to pay regular assessments shall commence for each Owner upon the recordation of a deed to the Lot. The personal obligation of an Owner for delinquent assessments shall not pass to a successive Owner unless the personal obligation is expressly assumed by the successive Owner. Any assumption of personal liability by a successor Owner (including a contract purchaser under an installment land contract) does not relieve the Owner from personal liability for delinquent assessments. After an Owner transfers his/her interest in a Lot, he/she shall not be liable for any charges levied against

the Owner of the Lot.

6.2. Special Assessments

6.2.1. Special assessments may be levied by the Association against any Owner as follows:

a. After notice to the Owner, all costs incurred in bringing an Owner into compliance with the provisions of this Declaration, the Articles of Incorporation, the By-Laws, Rules or Regulation or written Design Guidelines.

b. Any other charge designated as a special assessment by this Declaration or the By-Laws.

c. Fines levied by the Board in accordance with the provisions of this Declaration or the By-Laws.

d. Any costs incurred by the Association in connection with the enforcement of this Declaration, the By-Laws, and the Rules and Regulations promulgated by the Association. These costs shall include court costs, attorneys' fees, interest, or other costs or charges incurred.

e. Any one-time expenditure which is authorized by the vote of two-thirds of the Members who are voting at an annual or special meeting of the Association.

6.2.2. Special assessments shall be due and payable as prescribed by the Board. Any special assessment which is not paid within thirty (30) days of its due date shall be assessed a late payment penalty determined by the Board.

6.3. Enforcement of Assessments.

6.3.1. Establishment of Lien. The Association has a lien against each Lot to secure payment of all assessments levied against the Lot pursuant to this Declaration, all additional charges and all sums which become due and payable in accordance with this Declaration. Except for the transfer of a Lot pursuant to a foreclosure proceeding, the sale or transfer of a Lot shall not affect such lien. Any such lien shall be in favor of the Association. Each Owner empowers the Association to enforce its lien by foreclosure or any other proceeding at law and to collect the amount due from each Owner by selling the Lot of any defaulting Owner to the highest bidder to satisfy such lien. Each Owner waives the benefit of any homestead or exemption laws of this State now or then in effect regarding any lien created pursuant to this Declaration.

6.3.2. Enforcement. In addition to all other remedies provided by law, the Association, or its authorized representative, may enforce the obligations of any Owner to pay each assessment provided for in this Declaration in any manner provided by law or by either or both of the following procedures:

a. By Suit. The Association may commence and maintain a suit at law against any Owner personally obligated to pay a delinquent assessment. The suit shall be maintained in the name of the Association. Any judgment rendered in any action shall include the amount of the delinquency, additional charges and any other amounts as the court may award, including reasonable attorneys' fees. A proceeding to recover a judgment for unpaid assessments may be maintained without the necessity of foreclosing or waiving the lien established herein.

b. By Lien. To perfect its lien, the Association shall record a Notice of Lien in the Office of the Pima County Recorder. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all the Owners. The Association may commence and maintain proceedings to foreclose its lien in the same manner as the foreclosure of mortgages. The lien for assessments shall constitute a lien on each respective Lot prior and superior to all other liens, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first mortgage or deed of trust.

6.3.3. Additional Charges. In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association may incur or levy in the process of collecting monies due and delinquent from the Owner. All additional charges shall be included in any judgment in any suit or action brought to enforce collection of delinquent assessments or may be levied against a Lot as a reimbursement assessment. Additional charges shall include, but not be limited to, the following:

a. Attorneys' Fees. Reasonable attorneys' fees and costs incurred in the event an attorney is employed to collect any assessment or sum due, including the placement of the lien, or the filing of a suit or otherwise;

b. Late Charges. A late charge will be imposed on each owner who is delinquent in the payment of assessments. The late charge shall not exceed ten percent (10%) of the delinquent monthly assessment, or Twenty Dollars (\$20.00) per month, whichever is greater.

c. Cost of Suit. Costs of suit and court costs incurred as are allowed by the Court;

d. Interest. Interest on all sums imposed in accordance with this Article XIII including the delinquent assessment, reasonable costs of collection, reasonable attorneys' fees and late charges, at an annual percentage rate to be established by the Board, commencing thirty (30) days after the assessment becomes due; and

e. Other. Any such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

6.3.4. Application of Payments. All payments received by the Association shall first be applied to collection costs and attorney's fees, then to late charges, then to interest and then to delinquent assessments.

6.3.5. Release of Lien. Upon payment of delinquent assessments or other satisfaction thereof, the Association shall record a release of any recorded lien.

6.4. Subordination of Lien. Notwithstanding any provision to the contrary, the lien for assessments created by this Declaration shall be subject and subordinate to and shall not affect the holder of a first mortgage or deed of trust made in good faith and for value.

6.5. Fines and Penalties. If any Owner, his/her family, or any licensee, invitee, tenant or lessee violates the Declaration or any Rules adopted by the Board, the Board may levy a fine upon the Owner of the Lot of not more than One Hundred and No/100 Dollars (\$100.00) for each violation and/or may suspend the right of such person to use the Common Areas, under such conditions as the Board may specify, for a period not to exceed thirty (30) days for each violation. However, for each day a violation continues after written notice to cease has been mailed, it shall be considered a separate violation and subject to the imposition of the fine for each day the violation continues thereafter. The Board shall establish a schedule of fines and a procedure by which it imposes such fines, including the right to a hearing if requested by the Owner. Any fines imposed hereunder which remain unpaid for a period of ten (10) days or more after being assessed against the Owner shall become a lien upon the Owner's Lot upon the recording of a Claim of Lien prepared pursuant to this Declaration and collected in the same manner as assessments.

6.6. Uniform Rate of Assessment. Assessments shall be assessed at a uniform rate for all Lots.

ARTICLE 7

GENERAL PROVISIONS

7.1. Annual Meeting. The annual meeting of the Association will be held in the month of September, at a time, date, and location to be determined by the Board.

7.2. Amendment. This Declaration may be amended by a vote of 2/3rds of all Owners who are entitled to vote, whether voting in person or by proxy, at any regular or special meeting called for that purpose. Any amendment to this Declaration shall be evidenced by a written document signed by the President and Secretary of the Association, attesting that the Owners consented to such amendment. The Amendment shall be effective when it is recorded in the Pima County Recorder's Office.

7.3. Enforcement. The Association or any Member, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of this Declaration. This shall include enforcement of Rules and Regulations promulgated to the Association to carry out its purposes and this Declaration. The Association shall be reimbursed for all attorney's fees and costs incurred in enforcing this Declaration, whether suit is filed, or not.

7.4. Term. These provisions, conditions, restrictions and covenants, shall run with the land and continue and remain in full force and effect at all times and against all persons.

DATED this 12 day of December, 1995.

JOHN B. BARKLEY, as Trustee of the Chapter 7 Bankruptcy Estate of Randall Decker, Wendell Decker, Jr. and Ronald Decker, general partners in Decker Land Development, an Arizona Limited Partnership, and not otherwise.

By 
Trustee

STATE OF ARIZONA)
) ss:
COUNTY OF PIMA)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 12th day of December, 1995, by Robert Decker, as Trustee of the Chapter 7 Bankruptcy Estate of Randall Decker, Wendell Decker, Jr. and Ronald Decker, general partners in Decker Land Development, an Arizona Limited Partnership, and not otherwise.

Marilyn K. Paul
Notary Public

My Commission Expires:
7/9/07