

When recorded mail to:

Turtle Rock III Homeowners Association

1850 North 12th Street

Phoenix, Arizona 85022

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
TURTLE ROCK III HOMEOWNERS ASSOCIATION

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AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
TURTLE ROCK III HOMEOWNERS ASSOCIATION

RECITALS:

WHEREAS, Lawyers Title Of Arizona, an Arizona Corporation, (“Declarant”), recorded a Declaration of Covenants, Conditions and Restrictions of Turtle Rock III Homeowners Association on January 19, 1983, at recording number 83-021161, official records of Maricopa County, Arizona (collectively, the “Declaration”), and governs the following property:

Lots One (1) through Seventy-Six (76); and tracts A, B, C, D, E, F, and G of Turtle Rock III according to the plat of record in the Office of the County recorder of Maricopa County, Arizona, in Book 247 of maps on page 43 thereof.

WHEREAS, the Turtle Rock III Homeowners Association (the “Association”), by and through its members, wishes to amend and restate the Declaration in its entirety as set forth herein;

NOW THEREFORE, the Association declares that all the properties described above shall hereafter be held, sold, conveyed and occupied subject to the following easements, restrictions, covenants and conditions; the purpose of which is to protect the value and desirability of all these properties, and which shall run with the real property. This declaration shall be binding on all parties having any right, title, or interest in the described properties, or any part thereof, and also unto their heirs, successors and assigns; and shall inure to the benefit of each owner thereof.

ARTICLE I: DEFINITIONS

Section 1. “**Articles**” shall mean the Articles of Incorporation of Turtle Rock III which are, or shall be, filed with the Corporation Commission of the State of Arizona, as said Articles are amended from time-to-time.

Section 2. “**Association**” shall mean and refer to Turtle Rock III Homeowners Association, its successors and assigns.

Section 3. “**Board**” shall mean the Board of Directors of the Association.

Section 4. “**Building**” means any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals, or chattels and located on a lot forming part of such lot.

Section 5. “**By-Laws**” shall mean the By-Laws of the Association that may be amended from time-to-time.

Section 6. “**Capital Improvement**” shall mean any improvement to the Common Areas exceeding a designated amount, as determined in the Rules & Regulations.

Section 7. “**Common Area**” shall mean all real property, including improvements thereon, owned by the Association for the common use and enjoyment of the owners; such use to be defined in the Rules and Regulations as issued by the Board of Directors. The common area is described as follows:

Tracts A (which includes the streets and sidewalks), B, C, D, E, F, and G of Turtle Rock III according to the plat of record thereof recorded in the Office of the County Recorder of Maricopa County, Arizona, in Book 247 of Maps, on page 43 thereof.

Section 8. “**Declaration**” shall mean and refer to the Declaration of Covenants, Conditions and Restrictions of Turtle Rock III Homeowners Association, applicable to the properties recorded in the Office of the County Recorder of Maricopa County, Arizona, as from time to time supplemented or amended.

Section 9. “**Front Landscape**” shall mean that portion of each lot between the back of the sidewalk and the front wall of the dwelling structure, including the garden wall returns between dwellings exclusive of structure, appurtenances thereto, and also the driveway and walkways.

Section 10. “**Improvements**” shall mean buildings, garages, carports, private driveways, walkways, parking areas, fences, walls, porches, planters, swimming pools, spas, and all other structures of every kind, nature or discipline.

Section 11. “**Lot**” shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties, with the exception of the common area.

Section 12. “**Mortgage, Mortgagor and Mortgage**” shall mean and refer to all instruments establishing a security interest, including deeds of trust and shall include trustors, trustees, and beneficiaries under such deeds of trust.

Section 13. “**Multiuse Easement**” shall mean an easement over, under, upon and through an area for the purpose of maintaining public utilities including water, sewer, electric, telephone, cable television, refuse collection and emergency vehicle access.

Section 14. “**Owner**” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the properties, including contract sellers, but excluding those having such interest merely as security, for the performance of an obligation.

Section 15. “**Properties**” shall mean and refer to the certain real property herein above described.

Section 16. “**Quorum**” shall mean the number of people needed to be present in order to conduct business.

Section 17. “**Rules and Regulations**” shall mean the rules that are made by the Board and may be amended from time-to-time, without a vote from the Association.

Section 18. “**Visible from Neighboring Property**” shall mean, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing on any part of such neighboring property at the elevation no greater than the elevation of the base of the object being viewed.

ARTICLE II: POWERS AND AUTHORITIES OF THE ASSOCIATION

The Association shall have all the powers of a nonprofit corporation organized under the Nonprofit Corporation Laws of the State of Arizona, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, By-Laws, or this Declaration and the statutes of the State of Arizona, as they are revised or interpreted from year to year. Said power shall include the power to adopt additional use restrictions, as set forth in the Bylaws.

Section 1. Assessments: The Association, acting through its Board, has the power to levy assessments against a lot or to enforce payments of such assessments, as further set forth and in accordance with Article V of this Declaration, hereof entitled “Covenant of Assessments.”

Section 2. Right of Entry and Enforcement: Board members are authorized to enter upon any lot (excluding the interior of any dwelling thereon) for the purpose of ascertaining whether the provisions of the Declaration and Association Rules have been, or are being, complied with, for the purpose of enforcing by peaceful means the aforementioned provisions and if necessary, bringing Owner’s lot into compliance. All costs incurred by the Association in bringing Owner’s lot into compliance shall be the responsibility of the Owner. Such entrance shall be after a twenty-four (24) hour prior written notice is provided to the Owner. However such entrance shall be permitted without prior notice in the event of an emergency, or for front yard landscape easement. In addition, or as an alternative method of enforcing afore said provisions, the Board may impose monetary penalties, temporarily suspend an Owner’s voting rights, or other appropriate sanction for failure to comply with said provisions, provided that the notice and hearing requirements as set forth in the Article VI, Section 3 are complied with before a decision to impose a sanction is reached.

Section 3. Suspension of Voting Rights: The Board of Directors, acting on behalf of the Association, shall suspend the voting rights of an Owner in the event the Owner is in arrears in the payment of assessments or fines, or is in default in the performance of any provision of this Declaration, which may include any act of noncompliance, for a period of thirty (30) days. Until such time as their obligation is fulfilled, these rights will remain suspended.

Section 4. Easements and Access Areas: The Board is authorized to grant and convey to any third party, easements and access ways in, on, over or under any Common Area, Private Drives, or Front Landscape Easements for the construction, erecting, operating and maintaining thereon, there over, or thereunder of the following:

- (i) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power security systems, telephone, cable television, transformers and other purposes;
- (ii) public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes;
- (iii) emergency vehicle access ways; and
- (iv) any similar public or quasi-public improvements or facilities.

Section 5. Employment of Services The Board may employ the services of any person or corporation as managers, or other employees to manage, conduct, and perform the business, obligations and duties of the Association as may be directed by the Board, and will enter into written contracts for such purpose. Such agents shall have the right to ingress and egress, as outlined in Article VI, Section 3 (p. 9) over such portions of the property as is necessary for the performance of such business, duties and obligations, as authorized in Article II, Section 2.

Bids: Before entering into a written contract, a minimum of 3 bids must be obtained.

Section 6. Employment of Agents: The Board may employ professional counsel and obtain advice from such persons, firms or corporations as it deems necessary, such as, but not limited to: landscape architects, engineers, planners, lawyers and accountants.

Section 7. Resale Disclosure Statement: Pursuant to Arizona law, the Association shall provide purchasers with the following statement (including a signature line):

I hereby acknowledge that the Declaration, By-Laws and rules of the Association constitute a contract between the Association and me (purchaser). By signing this statement, I acknowledge that I have read and understand the Association's contract with me (the purchaser). I also understand that, as a matter of Arizona law, if I fail to pay my Association Assessments, the Association may foreclose on my property.

Signature: _____

This statement must be signed by the purchaser and returned to the Association within fourteen calendar days (14) of the purchaser's receipt of the resale disclosure statement.

ARTICLE III: MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership: Every Owner of a lot which is subject to an assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any lot which is subject to an assessment.

Section 2. Voting Rights. Each lot is entitled to one vote. When more than one person holds an interest in any lot, all such persons shall be members and the vote for such lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to one lot.

Voting: Pursuant to the 2005 State of Arizona Legislative Update, proxy voting is prohibited. Voters may cast any ballot in person, or by mail-in ballot.

Section 3. Default: In the event any Owner is in arrears in the payment of any amount, or shall be in default in the performance of any provision of this Declaration for a period of thirty (30) days, said Owner's right to vote as a member of the Association shall be suspended and shall remain suspended until all payments, and fines, are brought current, and all defaults remedied.

ARTICLE IV: PROPERTY RIGHTS

Section 1. Rules and Regulations: The Association shall have the right to establish Rules and Regulations pertaining to the use of Common Areas, Lots or any property located within the community. The Common Areas shall remain undivided and shall, at all times, be owned by the Association or its successors. It is being agreed that this restriction is necessary in order to preserve the right of Owners with respect to the operation and management of the Common Areas.

Section 2. Walls:

Straight Perimeter Walls: The straight perimeter wall is jointly owned by the Association and the Lot Owner. The ½ of the wall closest to the Common Area is owned by the Association; and the ½ of the wall closest to the Owner's Lot is owned by the Owner. Individual Owners will share equal responsibility for walls adjoining other Lots.

Curved Perimeter Wall: The curved perimeter wall is owned solely by the Association.

Section 3. Sidewalks and Curbs: The sidewalks and curbs are owned solely by the Association, and will be the responsibility of the Board to maintain. Curbside painting will not be allowed by any homeowner, as set forth in Division XIV, Item 14 of the By-Laws.

ARTICLE V: COVENANT FOR ASSESSMENTS

Section 1. Assessments: Each Owner of any Lot, by acceptance of such deed thereof, whether or not it shall be so expressed in such deed, does covenant and agree to pay the Association:

A. annual assessments (dues): Annual dues must be fixed at a uniform rate for all Lots, and may be collected on a, quarterly, biannually, or annual basis.

B. special assessments: As established and collected and as hereinafter provided in this Declaration and the By-Laws. Special assessments, including the Road Fund, must be fixed at a uniform rate for all Lots, and may be collected on a quarterly, biannually or annual basis.

Section 2. Use of Assessments: The assessments levied by the Association shall be used exclusively for the improvements and maintenance of the Common Areas.

Section 3. Maximum Annual Assessment: The Board may change the annual assessment (HOA dues) not more than 10% above the previous year without a vote of the membership, but must be in accordance with Arizona State law. The maximum annual assessment may be changed only by a vote of two-thirds (2/3) of the eligible voting members who are voting in person or by mail-in ballot, at a meeting called for this express purpose, or at the annual meeting. The annual assessment shall include an amount for a replacement fund, which the Board shall determine to be adequate for the maintenance, repair and replacement of the Common Areas (excluding the streets), if any, and such amount shall be set aside as a pro rata portion of each installment of the maintenance assessments.

Section 4. Special Assessments: In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable for that year only, (but payable over such period of time as specified by the Board, which may exceed one year) for any purpose that the Board deems necessary, including but not limited to defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a Capitol Improvement on the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by mail-in ballot at a meeting duly called for that purpose, or at the annual meeting.

Section 5. Road Assessment: In addition to any other assessments, whether annual or special, each Owner shall pay an annual road assessment for the purpose of creating an account to ensure payment when due of the cost of road repair and replacement. The amount of such contribution will be as outlined in the By-Laws, and will be due and payable on such dates as are established by the Board. This fund is to be used solely, and exclusively, for the aforesaid purpose. The road assessment shall be collectible in the same manner as annual and special assessments.

Section 6. Reserve Fund: For the purpose of creating reserves to ensure payment when due for the cost of capital expenditures upon the Common Areas, a portion of the annual assessment may constitute a contribution to the Reserve Fund of the Association. The amount of such contribution shall be determined by the Board at the time it adopts the annual budget.

Section 7. Notice and Quorum for any Action Authorized under Sections 3 and 4: Written notice shall be sent to all members not less than twenty-one (21) days or more than forty-five (45) days in advance of the meeting. At the first such meeting called, the presence of members and or mail-in ballots entitled to cast sixty percent (60%) of all the votes of all the eligible voting membership shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same requirements, and the quorum at the subsequent meeting shall be one half (1/2) of the quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the initial meeting.

Section 8. Nonpayment of Assessments: Any assessment not paid within the grace period of the due date shall be assessed a fine, as determined by the Board, not to exceed the maximum fine amount set forth under Arizona State Statutes. The Owner will be personally obligated to pay the same or risk foreclosure of the lien against the Property. No Owner may waive or otherwise escape liability for the assessments.

Section 9. Enforcement by Suit: The Board may commence and maintain, in the name of the Association, a suit at law or equity against an Owner or prior Owner to enforce said assessment obligation, such suit to be maintained in the name of the Association. Any judgment rendered in such action shall include the amount of the delinquency with penalties and all court costs and reasonable attorney's fees, in such amount as the court may adjudge against the delinquent Owner.

Section 10. Claim of Lien: There is hereby created a claim of lien, with power of sale, on each Lot to secure payment to the Association of any and all assessments, charges for late payment of those assessments, reasonable collection fees and reasonable attorney fees and costs incurred with respect to those assessments. Upon the occurrence of any default in payment of assessments or fees, the Association may make a written demand for payment, to the delinquent Owner. If payment is not made with-in thirty (30) days, the Association may file and record a notice of Assessment or fine and claim of lien on behalf of the Association against the Lot of the defaulting owner, in the Office of the County Recorder of Maricopa County, Arizona. A copy of such lien shall be mailed to said Owner. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Such a notice of assessment and claim of lien shall be executed and acknowledged by an office of the Association and shall contain substantially the following information:

- (i) The name of the delinquent Owner;
- (ii) The legal description of the Lot against which the claim of lien is made;

- (iii) The total amount of the delinquency, penalties, collection costs and reasonable attorney's fees (with any proper offset allowed);
- (iv) That the notice of assessment and claim of lien is made by the Association pursuant to this Declaration;
- (v) That a lien is claimed against said Lot in an amount equal to the amount stated.

A. Notice of Lien: A copy of the lien shall be mailed to said Owner upon such recordation of a duly executed original or copy of such a notice of assessment or fine and claim of lien, the lien claimed therein shall immediately attach and become effective.

B. Foreclosure of Lien: Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment as the laws of the State of Arizona may from time to time be changed or amended. Reasonable attorney's fees, court costs, title search fees (for lien purposes only), interest and all other costs and expenses shall be allowed to the extent permitted by law and the Owner shall be deemed to have contractually agreed to payment of such costs and expenses upon recordation of this Declaration.

C. Subordination of the Lien to Mortgage: The lien of the assessments provided for herein shall be subordinate to the lien of the first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

ARTICLE VI: MAINTENANCE BY OWNERS

Section 1. Maintenance by Owner: Except as otherwise provided herein, the Owner of each Lot shall maintain all improvements on said Lot in a clean and attractive condition, and without limiting the generality of the foregoing, the Owner of each Lot shall keep said lot free from all rubbish, litter, and noxious weeds; install, maintain, cultivate and keep in good condition and repair: shrubs, trees, grass, lawns, plantings, and other landscaping located, or from time to time placed, upon the side and rear yards of said Lot, including front yard landscaping; trim and restrain all trees, shrubs or plantings of any kind so that they shall not be allowed to overhang or otherwise encroach upon, above or below any walkway, or adjoining Lot, unless prior approval of the Architectural Committee and adjoining lot Owner is obtained; maintain in good condition and repair and adequately paint or otherwise finish all improvements and structures located, or from time to time placed, upon such Lot; and maintain all walkway surfaces and keep them clean, reasonably dry and free of oil and other extraneous matter.

Section 2. Duty to Other Owners: An Owner shall do no act, nor any work, that will impair any easement or Common Area, nor do any act, nor allow any condition to exist

which will adversely affect the other dwellings or their Owners. An Owner shall report promptly to the Association, or its manager, any condition which may affect adversely any other Lot.

Section 3. Owner's Noncompliance with Landscaping and Maintenance Requirements:

In the event any Owner of any Lot shall fail to maintain any portion of their Lot, or the improvements thereon, including landscape that is visible from neighboring property, in a manner satisfactory to the Board, the Board will notify the Owner in writing of the unsatisfactory condition, which notice shall specify the nature of such lack of compliance. If such Owner fails to remedy such lack of compliance within thirty (30) days from receipt of such notice (or within such greater time period as may be specified in such notice), or in the alternative, fails to deliver written notice to the Board with regard to the matters of noncompliance set forth in such notice, the Association or its authorized agents shall have the right to fine the Owner for the violation, to enter upon such Owner's Lot for the purpose of remedying the matters set forth in the notice and shall not be liable for trespass in connection with such entry, to restore and maintain the Lot and any improvements thereon including landscape, and to collect all costs incurred in such maintenance or repair from the Owner. If the Owner timely requests a hearing before the board, the Board shall schedule a hearing and provide said Owner with at least seven (7) days written notice as to the date, time and place thereof. At the hearing the Owner will have an opportunity to discuss with the Board the merits of the claims set forth in the Association's original notice of noncompliance and the Board will determine what action, if any, need be taken by the Owner and the time within which it must be accomplished. The decision of a majority of the Board present at the hearing will be binding upon the Association and the Owner subject to legal remedies instituted within twenty (20) days of the Board's decision. In the event it is determined that the Owner has not complied with the Declaration or other governing documents, the Board shall establish a reasonable time within which the Owner shall so comply. The authority of the Board to require the painting or other maintenance of the dwelling shall be limited to those portions of the dwelling visible from neighboring streets. Except under emergency circumstances, the Association shall not perform interior maintenance within the Unit, pursuant to this section.

Section 4. Window Coverings: No reflective material, including but not limited to: aluminum foil, mirrors or similar type items, newspapers, bed sheets, or cardboard shall be permitted to be installed or placed on the outside or inside of any windows or any other part of a Lot which can be seen from other Lots, Common Areas, or outside the development.

ARTICLE VII: MAINTENANCE BY THE ASSOCIATION

The Association shall maintain all the Common Areas and perimeter landscaping, including the half portions of the walls closest to the Common Areas.

ARTICLE VIII: DAMAGE OR DESTRUCTION OF COMMON AREAS IMPROVEMENTS

Section 1. Liability: The Owner of each Lot shall be liable to the Association for all acts or negligence resulting in damages to the Common Area or improvements thereon, caused by such Owner or any occupant, guest, or invitee of their Lot, to the extent allowable under the laws of the State of Arizona.

Section 2. Restitution: Each Owner further agrees that these charges for repairs, if not paid within sixty (60) days after completion of the work, shall be delinquent and shall become a lien upon said Owner's lot and shall continue to be such a lien until fully paid. Said lien shall be subordinate to any first mortgage or encumbrance on the subject property. Said charges shall bear interest from the date of delinquency at the rate of six percent (6%) per annum. The amount of principal and interest owed by said Owner to the Association shall be a debt, and shall be collectible by any lawful procedure allowed by the laws of the State of Arizona.

Section 3. Enforcement: Each Owner, by acceptance of a deed to a Lot, hereby expressly vests in the Association or its agent the right and power to bring all actions against such Owner for the collection of such charges and to enforce the aforesaid lien by all methods available for the enforcement of such liens and such Owner hereby expressly grants to the Association power of sale in connection with said lien.

Section 4. Insurance: Nothing contained in this Article shall be construed in any way so as to relieve any insurance company from the payment of any and all amounts which would be payable under any policy or policies, had not this Article been inserted.

Section 5. Disputes: In the event of a dispute between an Owner and the Board of Directors, with respect to the cause of damage or the extent of repairs, or cost thereof, upon written request of the Owner, addressed to the Association, the matter shall be submitted to arbitration, under such rules as may from time to time be adopted by the Association or its Board. If no such rules have been adopted, then the matter shall be submitted to three (3) arbitrators; one chosen by the Board, and one chosen by the Owner. These two arbitrators will select a third arbitrator. If the two arbitrators cannot agree as to the selection of the third arbitrator, then by any judge of the Superior Court of the State of Arizona in Maricopa County, a third will be selected. A determination by any two of the three arbitrators shall be binding upon the Owner and the Association, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing for arbitration from the other party, then said party shall have the right and power to choose both arbitrators.

ARTICLE IX: ARCHITECTURAL CONTROL COMMITTEE

Section 1. Purpose: It is the intention of the Association by imposing the covenants, conditions and restrictions to provide for the orderly and attractive development of Turtle Rock III, and to provide through the Architectural Control Committee (ACC) a means by which the architectural and landscaping standards set forth in this Declaration, in rules

adopted by the committee, and any decisions of the committee, will be enforced for proper development and operation of Turtle Rock III.

Section 2. Duties: It shall be the duty of the ACC to consider and act upon any and all proposals or plans submitted to it pursuant to the terms thereof; to administer rules pertaining to architecture and landscaping; to ensure that any improvements constructed or installed on a Lot by anyone, conform to plans approved by the ACC; to perform other duties delegated to it; and to carry out all duties imposed upon it by this Declaration. The ACC, with the approval of the Board, may exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction of improvements on the Lot, or any portion thereof.

Section 3. Establishment of Committee: The ACC shall consist of a maximum of five (5) individuals, one of whom must be a member of the Board of Directors.

Section 4. Information Required : All submissions for architectural change must:

- (i) show the address of the party submitting the same
- (ii) include two (2) copies of said proposal
- (iii) be deemed made, when actually received in complete form by the Committee and the committee has requested no further information or revisions
- (iv) state in writing the specific matters for which approval is sought, and to include a timeline for completion.

Section 5. Evidence of Approval: One set of submissions to the committee will be retained by it. The second set will be returned to the Owner on which the decision will be indicated.

Section 6. Awnings: No awnings of any nature shall be permitted to be placed or installed on or attached to the outside of any dwelling, or elsewhere on the Lot, except as approved by using the standards of the Architectural Control Committee.

Section 7. Liability: Neither the Association, the Board, the Committee nor any of its members shall be responsible for any defects in any building, improvement or other structure or planting erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications, color scheme, timetable or other material approved by them or any conditions or requirements that they may have imposed with respect thereto, nor shall the Association, the Board, the Committee or any of its members have any liability for the inability of anyone to obtain a building permit for the construction or alteration of any building or structure pursuant to plans and specifications approved by the Committee.

ARTICLE X: VEHICLES AND PARKING

Section 1. Parking Restrictions: No Owner shall do anything which will in any manner prevent the streets from at all times being free and clear of all obstructions, and in a safe condition for vehicular use. It shall be the responsibility of every Owner to observe and reasonably enforce all parking restrictions on behalf of all residents of said Owners property. It shall further be the duty and obligation of the members of the Board to observe and

determine that parking restrictions are followed and enforced. (Specific restrictions will appear in the By-Laws)

Section 2. Inoperative Motor Vehicles: No inoperative motor vehicle of any kind shall be stored or parked in any Common Area or on a Lot in view of any other Lot. Inoperative vehicles shall be defined as any motor vehicle which does not have a current license plate or tags; or unused, stripped, scrapped, junked, discarded, dismantled, on blocks or similar devices, vehicles with deflated tires, or that is not in working order.

Section 3. Restricted Vehicles: No motor homes, trailers of any kind, all terrain vehicle, or other means of transportation, boats, commercial vehicles (except those used during construction or maintenance of improvements), campers (whether attached or detached) shall be kept, placed, maintained, constructed, reconstructed or repaired on the Common Area, or anywhere on a lot that is visible from the street or any other lot. Motor homes and recreational trailers may be parked during the process of loading or unloading for a maximum of six (6) hours, but shall not obstruct traffic in any way. Permission to park for longer periods of time must be pre-approved by the Board. Commercial vehicles shall be defined as any vehicle that meets any one or more of the following criteria: a vehicle classed by manufacturer's rating exceeding 3/4-ton, or work equipment stored on the vehicle that is visible from outside of the vehicle.

Section 4. Offending Vehicles: In accordance with other enforcement provisions contained within this declaration, the Board may have offending vehicles on any property removed to a commercial storage lot after notice to tow is served to the Owner, if reasonably possible, or after posting the vehicle for twenty-four (24) hours with notice that the vehicle will be towed if it is not brought into compliance, if such posting is consistent with safe practice. Recovery and release of such stored vehicle shall be the Owner's responsibility. The recording of this Declaration shall be deemed to put every Owner, guest and invitee, on notice of this provision, as though Common Areas were posted in accordance with applicable statutes of the State of Arizona and ordinances of the City of Phoenix or its successor. Any vehicle parked within a posted fire lane may be removed without notice.

Section 5. Parking Restrictions: All Owners' vehicles must be parked in driveways or garages. No vehicle will be allowed to block any more than 12 inches of the sidewalk. No vehicle with a trailer hitch, exhaust pipe, or any other protrusion shall be allowed to overhang any section of the sidewalk. This provision does not allow vehicles that are otherwise prohibited under this Article. (See Division XIV, Item 8 of the By-Laws)

Section 6. Street Parking: Street parking for guests, including overnight parking, will be allowed for a short term only. If an Owner will have a guest's vehicle parked in the street for more than seven (7) days, the Owner must get permission from the Board.

Section 7. Use of Motorized Vehicles in Common Areas: No Owner, tenant, resident or guest of an Owner may operate any unlicensed, motorized vehicles, including but not limited to "mo-peds", "go-peds", dirt bikes, All Terrain Vehicles ("ATV"), on the Common Areas.

ARTICLE XI: INSURANCE

The Board of Directors, or its duly authorized agent, shall have the right and duty to obtain insurance for all the improvements located in the Common Area against loss or damage in the amount sufficient to cover replacement cost of any repair or reconstruction work; and shall also obtain a broad form public liability policy covering all common Areas. Premiums for such insurance shall be common expenses. Such insurance coverage shall be written in the name of the Board of Directors as trustee for each of the Owners proportionately. Nothing contained herein shall prejudice the right of each Owner to insure his own Lot for his own benefit. It shall be the individual responsibility of each Owner to provide, as he sees fit, homeowner's liability insurance, theft and other insurance covering personal property damage and loss. In the event of damage or destruction to the Common Area by fire or other casualty, the Board of Directors shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the Common Area to as good a condition as formally. The Board of Directors shall contract with any licensed contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed improvements. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same conditions as formerly, the Board shall levy a special assessment against all Owners to make up the deficiency. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid to the established Reserve Fund.

ARTICLE XII: USE RESTRICTIONS

Section 1. Residential Dwellings: Said premises are hereby restricted to residential dwellings for residential use, except for improvements within the Common Areas. All buildings or structures erected upon said premises shall be of new construction. No buildings or structures shall be moved from other locations onto said premises, and no subsequent buildings or structures other than dwellings, shall be built on any parcel where the builder theretofore programmed and constructed a dwelling. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on any portion of the premises as a residence, either temporarily or permanently. All structures and improvements must conform to city building codes.

Section 2. Pets: No livestock or poultry of any kind shall be raised, bred, or kept on any Lot. Dogs, cats or other household pets may be kept, provided they live in the resident's dwelling, and are not bred or maintained for any commercial purposes. No such pet shall endanger the health, or unreasonably disturb, the Owner of any Lot, or any resident, or their guest. Owners will be responsible for the behavior of any guest's pets. All residents and their guests must abide by local leash and refuse removal laws, and guidelines set forth in the By-laws.

Section 3. Advertising: No advertising signs (except one of not more than five square feet "for rent" or "for sale" sign per parcel), billboards, unsightly objects, nor nuisances shall be erected, placed or permitted to remain on the premises or Common Area.

Political Signs: Political Signs will be allowed in accordance with ARS § 33-1808 and as further provided for in the By-Laws.

Section 4. Visible Nuisances: All clotheslines, equipment, woodpiles, stockpiles, or garbage cans shall be kept screened by adequate planting or fencing so as to conceal them from casual view of neighboring dwellings and streets. All rubbish, trash or garbage shall be regularly removed from each Lot, and shall not be allowed to accumulate thereon.

Bulk Trash Collection: The City of Phoenix periodically provides bulk trash collection. Please refer to the By-Laws for specific rules.

Section 5. Noise: No power tool, speaker, horn, whistle, bell, animal noises, or similar sound facility or equipment shall be permitted upon any Lot which is capable of producing a sound that is a reasonable disturbance to any other Owner. No activity shall be undertaken or permitted upon any Lot, which actively causes any sound, whether intermittent, recurrent or continuous, that creates a disturbance beyond the boundary line of said Lot. Any disturbance which is in violation of city ordinances may result in the notification of law officials. The foregoing provisions of this section shall not prohibit the installation or use of devices designed and used solely for security purposes. Independent contractors must abide by all city noise ordinances. Owners shall not construct, reconstruct, repair, or otherwise maintain any portion of their property that would create a possible disturbance, anytime before 8am or after 8pm.

Section 6. Obnoxious and Offensive Activities/Odors: No obnoxious or offensive activity/odors shall be allowed on, in or upon any Lot or any portion of the property, nor shall anything be done thereon which may or may become an eyesore or nuisance to the neighborhood or which in any way interferes with the quiet enjoyment of each of the Owners of his respective Lot, or which shall in any way increase the premium rate of insurance.

Section 7: Power Tools and Other Equipment: No power tool, communications equipment or other device shall be used on any Lot, which causes interference with cable TV reception, telephone, and other electronic devices.

Section 8. Small Business: The Owner may conduct a business activity within the dwelling unit located on the Lot, so long as the existence or operation of the business activity meets the following criteria:

- (i) is in conformance with the zoning laws of the City of Phoenix
- (ii) is approved by the Board and is recorded in the minutes of the Association Board meeting.
- (iii) is not apparent or detectable by sight, sound, or smell from the exterior of the dwelling unit and no signs, banner or placards are visible.
- (iv) is such that it does not generate additional traffic to the area
- (v) is such that it does not increase liability or casualty insurance obligation or premium of the Association
- (vi) is staffed by members of the residence

(vii) is consistent with the residential character of the Association and does not constitute a nuisance, hazard, or offensive use, including parking of vehicles, in the vicinity of Turtle Rock III.

No other trade or business of any kind may be conducted in or from any residence. The terms “business” and “trade” as used in this section shall be construed to have 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 or does generate a profit; or (c) a license is required for such activity. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on any portion of the premises at any time as a residence, either temporarily or permanently.

Section 9. Flags and Flagpoles: No more than one standard twelve (12 foot) flagpole securely anchored in the ground may be installed on any Lot. A standard size flag may be mounted on the dwelling provided it does not encroach upon the sidewalk, street, or neighboring property. No flag other than the United States of America flag, the State of Arizona flag, a flag of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, the POW/MIA flag, or the Arizona Indian Nations flag may be flown without written approval and authorization of the Board. Decorative flags will be allowed, providing they remain in good shape and are non-offensive. No more than one decorative flag will be allowed on any Lot at any given time.

Section 10. Outside Lighting: Except as may initially be installed by the developer, no spotlights, floodlights or similar type high intensity lighting shall be placed or utilized upon any Lot or Common Area, which in any way will allow light to be reflected upon any other Lot or the improvements thereon or upon the Common Areas or any part thereof without the written authorization of the Board. Other types of low intensity lighting, which do not disturb the Owners, shall be allowed.

Section 11. Ownership Restrictions: The Association shall have the authority to impose occupancy restrictions, which shall be set forth in the Association’s By-laws. Such restrictions include, but are not limited to, prohibiting the sale or lease of any Unit or Lot to a registered level 2 and 3 sex offender or otherwise prohibiting a registered level 2 or 3 sex offender from residing in Turtle Rock III.

ARTICLE XIII: GENERAL PROVISIONS

Section 1. Enforcement: The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservation, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of right to do so thereafter.

Section 2. Attorneys' Fees: In the event the Board employs an attorney or attorneys for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, Articles of Incorporation, Bylaws, or any Rules and Regulations of the Association, whether or not a lawsuit is filed, such owner agrees to pay reasonable attorneys' fees and costs thereby incurred, and all other expenses incurred by the Association, in addition to any other amounts due from the owner or any other relief or remedy obtained against said owner. In the event of a default in payment of any such amount when due, in which case the fees shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Board may enforce each such obligation in any manner provided by law or in equity.

Section 3. Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, which will remain in full force and effect.

Section 4. Amendment: The covenants and restriction of this Declaration shall run with, and bind, the land. This Declaration may be amended at any time by the written approval, or the affirmative vote, or any combination thereof, of Owners of not less than seventy-five percent (75) of the eligible votes. Upon receiving the written approval of the required percentage of Owners, the President of the Association shall record a certificate of amendment with the Maricopa County Recorder's office, certifying that the amendments were properly adopted by the Owners. In addition, the Board shall have the right to amend the Declaration, without the approval of the Owners, solely for the purpose of complying with changes in the law.

Section 5. Notification: Any notice required to be sent to any Owner under the provisions of the Declaration shall be deemed to have been properly sent when mailed postpaid to the last known address of the person who appears as Owner, or member, on the records of the Association, at the time of the mailing.

Section 6. Lease Agreements: Any lease agreement between a Lot Owner and a lessee shall be required to provide that the terms of the lease shall be subject, in all respect, to the provisions of the Declaration, Articles of Incorporation and the By-Laws, and that any failure by the lessee to comply with the terms of such documents shall be default under the lease and is grounds for eviction. All leases shall be required to be in writing and shall be limited to no more than two (2) leases per year, except as pre-approved by the Board. Other than the foregoing, there is no restriction on the right of any Lot Owner to lease his home. Any Owner, who leases their Lot, must notify the Association, or Board, of such lease, in writing on the form provided by the Association. If an Owner fails to provide the form to the Association in a timely manner as determined by the Board, the Association may impose reasonable monetary penalties as determined by the Board, and any other remedies available under the Declaration and Arizona law.

Any violation of these documents shall be a default under the lease. The Owner shall remain liable for compliance with the Declaration, Articles, Bylaws, and any other documents

governing the Association, and shall be responsible for any violations thereof by his/her tenant or his tenant's family and guests. All notices shall be sent to the Owner. Each Owner shall provide a copy of the Declaration, Articles, Bylaws, and any other documents governing the Association to each tenant of his/her Lot. By becoming a tenant, each tenant agrees to be bound by the Declaration, Articles, Bylaws, and any other documents governing the Association, and recognizes that any violation of these documents is grounds for eviction from the Lot. If a tenant violates the provisions of any of the above documents, the Association may provide notice to the Owner of the tenant's violations, and require that the Owner evict the tenant for the violations. If the Owner fails to evict the tenant, the Association may impose reasonable monetary penalties against the Owner as determined by the Board, and may exercise any other remedies available under the Declaration and Arizona law.

Section 7. Mortgage Protection:

A. The Association will give ten (10) days prior written notice to each institutional mortgagee before the Association, or its members, take any of the following actions:

(1) Abandonment or termination of the status of the planned development as it presently exists.

(2) Any amendment to the Articles of Incorporation, the Declaration of Covenants, Conditions and Restrictions, and By-Laws (or equivalent documents).

B. The Association shall give each institutional mortgagee written notice of any condemnation of any part of the Common Area, or damage thereto, exceeding ten thousand dollars (\$10,000.00) in amount.

C. That any institutional mortgagee shall upon request be entitled to:

(1) Inspect the books and record of the Association during normal business hours.

(2) Receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.

(3) Receive written notice of all meetings of the Association and designate a representative to attend such meetings.

D. So long as the Federal National Mortgage Association (FNMA) or Government National Mortgage Association (GNMA) is a mortgagee of a Lot in the planned development, or Owner of a lot therein, the Association shall maintain in effect at least such casualty, flood and liability insurance and a fidelity bond, meeting standards established by FNMA and GNMA for planned developments, as the FNMA and GNMA "Service's Guide" or otherwise, except to the extent such requirements shall have been waived in writing by FNMA or GNMA.

The President of the Association hereby certifies that the provisions contained within this Amended and Restated Declaration have been approved by the required percentage of Owners.

DATED this 19 day of July, 2006.

Turtle Rock III Homeowners Association

James K. Black
Its: President

STATE OF ARIZONA)
)ss
County of Maricopa

On this 19th day of July, 2006, before me, the undersigned Notary Public, personally appeared _____, who acknowledged them self to be the President of the Turtle Rock III Homeowners Association, and that said party, as such officer, and being authorized to do so, executed the within instrument for the purposes therein contained by signing the name of said Association, as such officer.

WITNESS my hand and official seal
[Signature]
Notary Public

12-1-2008
Notary Expiration Date



Exhibits

The following exhibits are attached to the Declaration:

- Exhibit "A" A copy of the recorded plat
- Exhibit "B" Resale Disclosure Statement (to be returned by Homeowner)

Resale Disclosure Statement

"I hereby acknowledge that the **Declaration, By-Laws and Rules of the Association** constitute a contract between the Association and me (purchaser). By signing this statement, I acknowledge that I have read and understand the Association's contract with me (purchaser). I also understand that, as a matter of Arizona law, if I fail to pay my Association Assessments, the Association may foreclose on my property."

Signature _____

Owner (printed) _____

Address _____

Telephone _____

This statement must be signed by the purchaser and returned to the Association within fourteen (14) calendar days of the purchaser's receipt of the resale disclosure statement.