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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
PAR DEVELOPMENT CORP.

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THIS DECLARATION, made on the date hereinafter set forth, by Par Development Corp., an Indiana corporation, hereinafter referred to as "Declarant,"

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Beech Grove, Marion County, Indiana, which is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof.

NOW, THEREFORE, Declarant hereby declares that all of the properties described in Exhibit "A" 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 and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I  
NAME

This subdivision shall be known and designated as Beech Tree Condominiums, a subdivision located in Marion County, Indiana.

ARTICLE II  
DEFINITIONS

Section 1. "Association" shall mean and refer to Beech Tree Homeowners Association, Inc., an Indiana not-for-profit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Parcel which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to the real estate described in Exhibit "A" and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Plat" shall mean and refer to the subdivision plat of the Properties recorded in the office of the Recorder of Marion County, Indiana, as the same may be hereafter amended or supplemented.

Section 5. "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision map of the Properties with the exception of the Common Areas. The Declarant has planned forty-six (46) Lots on the Properties. Each Lot shall contain a single family residential dwelling with a one car attached garage. Each Lot shall contain an area which exceeds the exterior face of the foundation wall dimensions of the structure by one (1) inch; and shall include the Lot's side of one-half (1/2) of any party wall dividing a dwelling structure on a

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Lot from any other dwelling structure or Lot. Additionally, each Lot may include a "patio" area and/or balcony or porch on the Properties contiguous and appurtenant to the aforementioned Lot, together with a private walkway and driveway. Further, the Final Plat may include for each platted Lot, areas specifically reserved for landscape gardening.

Section 6. "Residence" shall mean the single family residential dwelling contained in a Lot.

Section 7. "Declarant" shall mean and refer to Par Development Corp., its successors and assigns as a declarant.

Section 8. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 9. "Common Area" shall mean and refer to any and all real estate and facilities and all personal property leased or owned by the Association for the benefit, use and enjoyment of its members. Common Area includes all Limited Common Areas but does not include any Lots.

Section 10. "Limited Common Area" shall mean and refer to all the real estate (including improvements thereto) owned by the Association but restricted in use to the Unit(s) appurtenant thereto.

Section 11. "Initial Common Area" shall include all of the retention pond area and the real estate (including improvements thereto) contained within the Properties excepting the Lots therein as illustrated on the Conditional Final Plat approved by the Plats Committee of the Department of Metropolitan Development of the City of Indianapolis. The Initial Common Area shall be owned by the Association at the time of the conveyance of the first Lot to an Owner.

Section 12. "Final Common Area" shall include all the real estate (including improvements thereto described in the Plat other than the Initial Common Area, located within the land described in Exhibit "A" and as described on the recorded Final Plat Documents. The Final Common Area shall be available to each Lot Owner as he purchases a Lot and shall be conveyed to the Association at the time of the final platting of all Lots in the development of the Properties.

### ARTICLE III Common Areas

Section 1. Obligations of the Association. The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners, of the Common Area and Limited Common Area conveyed or leased to it and all improvements thereon, and shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management.

Section 2. Owners' Rights and Easements of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to all of the Common Area from the date of Lot purchase, except as otherwise provided herein. These rights and easements may be delegated to family members, lessees and guests of every such Owner (subject to any reasonable and non-discriminatory rules and regulations which may be enacted by the Association) which shall be appurtenant to and shall pass with

membership in the Association, subject to the following provisions:

- (a) The right of the Association to suspend the voting rights of any Owner for any period during which any assessment remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (b) The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Area and Limited Common Areas;
- (c) The rights of Declarant as provided in this Declaration;
- (d) All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented;
- (e) The right of the Association to mortgage any or all of the Common Area with the assent of two-thirds (2/3) of the votes of all members;
- (f) The right of the Association to grant reasonable utility easements across and through the Common Area and Limited Common Areas for the benefit of its members; and

Section 3. Title to All Common Areas. The Declarant shall convey to the Association all Common Area not previously conveyed in fee simple absolute at the time of the final platting of all Lots on the Properties; such conveyance to be subject to taxes for the year of conveyance and to restrictions, conditions, limitations, and easements on record.

Section 4. Property Subject to Declaration. The Properties which are, and shall be, held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration are located in Marion County, State of Indiana, and are more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof.

ARTICLE IV  
Lots

Section 1. Number of Lots. This subdivision consists of 46 Lots numbered from 1 to 46, both inclusive, with easements as indicated by the Plat.

Section 2. Land Use. All Lots shall be used exclusively for single-family residential purposes, except that Declarant shall have the right to subdivide, dedicate or otherwise convey or use a portion of any of the Properties which it owns for the benefit of all Owners and other members of the Association. In the event any portion of the Properties is so used, reasonable rules and regulations shall be promulgated and enforced so that the use and enjoyment of adjacent Lots by the Owners thereof shall not be unreasonably disturbed.

Section 3. Conveyance of Lots. Each Lot within the Properties shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein. All Common Area shall be conveyed to the Association as provided herein.

Section 4. Leasing of Lots. Any lease of a Lot by an Owner shall be in writing and shall not be for a period of less than six months. Any lease shall require the Lot to be used for a single-family residential dwelling.

ARTICLE V  
Access Rights of Association

Certain utility lines, sewer, drainage and other facilities and other improvements located on one Lot may serve other Lots. The Association and any member thereof whose enjoyment of the use and occupancy of his Lot is affected thereby, their respective officers, agents, employees and contractors, shall have an easement thereto and shall have the right, at reasonable times and at any time in case of emergency, to go upon any other Lot for the purpose of maintaining or causing to be maintained or repaired any party walls, utility lines, sewer or other facilities which serve more than one Lot.

ARTICLE VI  
Use and Architectural Restrictions

Section 1. Architectural Control. No building, fence, wall or other structure, except original construction of Buildings by or on behalf of Declarant, shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein, other than by the Board of Directors, be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided.

Section 2. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or surrounding Common Area, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose.

Section 3. Prohibited Activities. No noxious or offensive activity shall be carried on upon any Lot or Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Each Lot and all Common Areas and Limited Common Areas, shall be kept and maintained in a sightly and orderly manner and no trash or other rubbish shall be permitted to accumulate thereon. The Board of Directors shall promulgate and enforce such rules and regulations as it deems necessary for the common good in this regard.

Section 4. Drainage. Any field tile or underground drain which is encountered in the construction of any improvements on any Lot shall be perpetuated and all Owners of Lots and their successors shall comply with The Indiana Drainage Code of 1965, and all amendments thereto.

**Section 5. Exterior Antennae.** No exterior television, radio or other type of antenna shall be placed, allowed or maintained upon any portion of the Properties nor upon any structure or improvement situated upon the Properties.

**Section 6. Trash Burning.** No burning of any trash and no accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on any Lot.

**Section 7. Storage of Vehicles.** Except as herein elsewhere provided, no junk vehicle, motorcycles, commercial vehicle, trailer truck, camper, camp truck, house trailer, boat or the like, shall be kept upon the Properties (except in enclosed garages) nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon.

**Section 8. Trash Containers.** Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection.

**Section 9. Signs.** No signs of any nature, kind or description (including incidental signs as regulated in Section 2.18 of the Dwelling District Zoning Ordinance of Marion County, Indiana, 68-AO-2, as amended) shall be erected, placed or maintained on or in front of any Lot which identify, advertise or in any way describe the existence or conduct of a home occupation. No "for sale" signs, whether by realtor or Lot Owner, shall be permitted until such time as Declarant owns four (4) or fewer Lots.

**Section 10. Home Occupations.** No home occupation shall be conducted or maintained in any Lot other than one which is incidental to a business, profession or occupation of the Owner or occupant of any such Lot and which is generally or regularly conducted in another location away from such Lot. Nothing contained herein shall be construed or interpreted to affect the activities of Declarant in the sale of Lots as a part of the development of the Properties, including, specifically, Declarant's right to post such signs and maintain such model residences as it deems necessary until such time as Declarant's last Lot is sold.

**Section 11. Outbuildings.** No structure of a temporary character, trailer, tent, shack, barn or other outbuilding shall be used on any portion of the property at any time.

**Section 12. Rules Violation.** There shall be no violation of any rules for the Common Area which may from time to time be adopted by the Board of Directors or promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in the By-Laws, authorized to adopt such rules.

**Section 13. Plat Restrictions.** In addition to the foregoing restrictions, all restrictions of the Plat as to the use of the Properties are incorporated by reference herein as restrictions of this Declaration.

**Section 14. Easement Obstruction.** No structure, planting or other material other than driveways or sidewalks shall be placed or permitted to remain upon any portion of the Properties which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage

channels.

ARTICLE VII  
Association, Membership and Voting Rights

Section 1. Membership. Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. Classes of Membership. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the owners of the Lots among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot and planned Lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership exceeds the total votes outstanding in the Class B membership.

Section 3. Board of Directors. The Owners shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association and shall promulgate such rules and regulations as the Board deems advisable for the health, safety, welfare of the Lots' inhabitants and guests and the orderly conduct of the affairs of the Association.

Section 4. Professional Management. No contract or agreement for professional management of the Association nor any other contract with Declarant shall be for a term in excess of two (2) years. Any such agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of ninety (90) days or less.

ARTICLE VIII  
Covenant For Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned or planned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges for maintenance; (2) special assessments for capital improvements and operating deficits; (3) special assessments as provided in Article X and Article XI; and (4) pro-rata assessments for property taxes related to the Common Area. Such assessments shall be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the Parcel of land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' 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 his successors in title unless expressly assumed by them.

**Section 2. Real Estate Taxes.** Each Lot Owner shall pay 1/46th of the real estate taxes assessed against the Common Area in addition to the real estate taxes assessed against his Lot. The real estate taxes on the Lot and the Common Areas shall be pro-rated between Declarant and Lot Owner as of the date of sale.

**Section 3. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, the exterior of the living units situated on the Properties and other purposes as specifically provided herein.

**Section 4. Maximum Monthly Assessment.** Until January 1, 1985, the maximum monthly assessment for Members shall be \$50.00. Because of uncertainties in usual and ordinary Common Area expenses due to the Indiana real property reassessment, rising cost of energy and other unforeseeable operating expenses, the Board of Directors of the Association may increase the assessment by a sum not to exceed Ten Percent (10%) per annum without vote of the Membership. However, any such increases shall be documented by normal accounting procedures and distributed to the Membership to demonstrate that such increases are attributable to actual operating expenses and replacement reserve contingencies and no portion of such increases shall inure to the benefit of the Declarant and the moneys received shall be entirely expended on Association expense.

(a) From and after January 1, 1985, the maximum annual assessment per Lot may be increased each year without a vote of the Membership, as provided below on the basis of "The Revised Consumer Price Index - Cities (1957-1959=100)" (hereinafter called "CPI"), published by the Bureau of Labor Statistics of the United States Department of Labor. The CPI Number indicated in the column for the City of Indianapolis, entitled "All Items", for the month of November of the year preceding the year in which the conveyance of the first Lot to an Owner occurs, shall be the "Base CPI Number"; and the corresponding CPI Number for the month of November of the year in which the conveyance of the first Lot to an Owner shall be "Current CPI Number". The Current CPI Number shall be divided by the Base CPI Number. From the quotient thereof, there shall be subtracted an Integer of One (1); and the resulting positive number shall be deemed to be the maximum percentage that the annual assessment per Lot may be increased above the maximum assessment for the previous year without a vote of the Membership. Each succeeding year thereafter, the maximum percentage increase of assessment over the previous year without a vote of the Membership shall be determined in a like manner; provided, however, the Current CPI Number for each previous year shall be deemed the Base CPI Number for each succeeding year in the computation of the maximum percentage increase. In the event the actual percentage increase of assessment in any year by the Association is less than the maximum allowed without a vote of the Membership, the difference, between the actual percentage increase and the maximum percentage increase, may be added to the percentage increase for the following year in determining the maximum percentage increase of assessment allowed without a vote of the Membership for such year.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maxi-

imum annual assessment per Lot may be increased above the maximum percentage determined in Paragraph (a) of this Section 4 by a vote of two-thirds (2/3) of the Members who are voting in person or by proxy, at a meeting duly called for this purpose.

Section 5. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, 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 proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty-six percent (66%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both monthly and special assessments for Common Area expenses, Common Area capital improvements and operating deficits must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. Other Lot assessments (not including special assessments under Article X hereof) shall be fixed at a uniform rate for all Lots.

Section 8. Date of Commencement of Monthly Assessments: Due Dates. The monthly assessment provided for herein and the insurance assessment provided for in Article XI shall commence as to each Lot on the day of conveyance of such Lot by Declarant. If conveyance shall occur at any date other than the first day of a month, the assessment shall be pro rated over the number of days remaining in the month. The Board of Directors shall fix any increase in the amount of the monthly assessment as least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 9. Effect of Nonpayment of Assessments: Remedies Of the Association. If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due (pursuant to Section 8 hereof), then the entire unpaid assessment shall become delinquent and shall become,



together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on such Lot, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of interest allowed by law on judgments, but, in no event, less than 12% per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorneys' fees to be fixed by the court, together with the costs of the action in favor of the prevailing party.

No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

Section 10. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

ARTICLE IX  
Declarant's Rights

Section 1. Use of Property. Declarant reserves the right to use any of the Lots as models and to sell, assign or conduct other businesses in connection with the construction and development of this project or any other project from any of such Lots prior to their being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to maintain a model, erect signs, maintain an office, staff the office with employees, and to show Lots then unsold. Declarant retains the right to be considered an Owner of any Lot that remains unsold. Declarant also reserves the right to make changes in the location or manner of construction of buildings and other improvements.

ARTICLE X  
Maintenance

Section 1. Maintenance by Owners. The Owner of each Lot shall furnish and be responsible for, at his own expense, all the maintenance, repairs, decorating and replacements for his residence, including the heating and air conditioning system, any utility system of which his Lot is the sole beneficiary, and any partitions and interior walls. He further shall be responsible for the maintenance, repair and replacement of the private driveway to his Lot, the private walkway to his Lot, all windows in

his residence and also the doors leading into the residence, and any and all other maintenance, repair, and replacements of the improvements on his residence unless otherwise provided herein. All draperies of residences must be lined in order to provide a uniform exterior appearance of the residences.

To the extent that equipment, facilities and fixtures within any Lot shall be connected to similar equipment, facilities or fixtures affecting or serving other Lots, then the use thereof by the Owner of such Lot shall be subject to the rules and regulations of the Association. The authorized representatives of the Association or Board of Directors or the manager or managing agent for the Association shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to any equipment, facilities or fixtures affecting or serving other Lots.

Section 2. Maintenance of Private Roadway and Sidewalks. The Association shall be responsible for the maintenance, repair and repaving of the private roadway and for the maintenance and repair of any pedestrian walkways or sidewalks constructed within the Properties by Declarant for the benefit of all Owners of the Lots. The private roadway shall be maintained at all times in such a manner as to provide ingress and egress, both pedestrian and vehicular, from each Lot to and from a public street or highway.

Section 3. Maintenance Obligations of Association with Respect to Lots. In addition to maintenance upon the Private Roadway, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, and other exterior improvements, lawns, shrubs, trees, trash removal and snow removal from the paved portions of Private Roadway. Such maintenance shall not include glass surfaces, doors and doorways, windows, window frames and any utility system benefitting only one Lot.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Common Area assessment to which such Lot is subject.

Section 4. Maintenance of the Common Area. The Association shall be responsible for the maintenance, repair and replacement of the Common Area and improvements thereon; however, the Association shall not maintain that portion of the sewers, water, drainage or roadway systems which are dedicated to and accepted by the City of Beech Grove for maintenance and repair.

#### ARTICLE XI Insurance

Section 1. Casualty Insurance. The Association shall purchase a master casualty insurance policy or policies affording fire and extended coverage insurance insuring the Properties, including the Common Area and all Lots, in an amount consonant with the full replacement value of the improvements excluding, as to any Lot and the improvements thereon, all fixtures, betterments and improvements installed by any Owner and excluding any personal property owned by any Owner whether located in or on the Lot or elsewhere. If the Association can obtain such coverage for reasonable amounts, it shall also obtain "all risk" coverage. The Association shall be responsible for reviewing at least

annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Association, it may cause such full replacement value to be determined by a qualified appraiser and the cost of any such appraisal shall be included in the monthly maintenance assessment for each Lot on a pro rata basis. Such insurance coverage shall be for the benefit of the Association, each Owner, and, if applicable, the first Mortgagee of each Lot.

Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Association, its Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms, that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted.

Section 2. Liability Insurance. The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Association, all Owners and all other persons entitled to occupy any Lot.

The Association shall also purchase and obtain a fidelity bond indemnifying the Association, the Board and the Owners from loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or its management agent or of any other person handling the funds of the Association, the Board or the Owners in an amount not less than One hundred Percent (100%) of the total annual assessment for the Properties.

The Association shall also obtain any other insurance required by law to be maintained, including but not limited to worker's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross-liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under policies purchased by the Association.

Section 3. Monthly Assessment for Insurance. The premiums for all such insurance hereinabove described shall be paid by the Association and the pro-rata cost thereof shall become a separate monthly assessment to which each Lot conveyed by Declarant shall be subject under the terms and provisions of Article VIII. Each Owner shall prepay to the Association at the time his Lot is conveyed to such Owner an amount equal to thirteen (13) monthly insurance assessments and shall maintain such prepayment account at all times. The Association shall hold such funds in escrow for the payment for the purchase of insurance as herein provided or shall use such funds to prepay the premiums of

the required insurance. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.

Section 4. Distribution to Mortgagees. In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event any remittances shall be to the Owner and his mortgagee jointly.

Section 5. Additional Insurance. Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable at his own expense affording coverage upon his personal property, the contents of his residence (including, but not limited to, all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by him) and his personal property stored elsewhere on the Properties, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association. Each Owner may obtain casualty insurance at his own expense upon his Lot but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Association pursuant to this paragraph due to proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided.

Section 6. Casualty and Restoration. Damage to or destruction of the Common Area or any residence due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose.

Section 7. Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area or any Building or Buildings so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a special assessment against all Lots for such deficiency.

For purposes of Section 6 above, repair, reconstruction and restoration shall mean construction or rebuilding of the Common Area or any residence(s) to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same or similar type of architecture.

Section 8. Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association

as a reserve or may be used in the maintenance and operation of the Properties.

Section 9. Remedies. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against another Owner for committing negligent, willful or malicious damage.

**ARTICLE XII**  
**Easements**

Section 1. Encroachments. In the event that (i) by reason of the construction, repair, reconstruction, settlement or shifting of any Lot, or any part of the Common Areas, any Lot or Common Area encroaches or shall hereafter encroach upon any part of any other Lot, or any part of any Lot encroaches or shall hereafter encroach upon any part of the Common Areas, or any other Lot; (ii) by reason of the design or construction of any residence, it shall be necessary or advantageous to a Lot Owner to use or occupy any portion of the Common Areas for any reasonable use appurtenant to said Lot, which will not unreasonably interfere with the use or enjoyment of the Common Areas by other Lot Owners, or (iii) by reason of the design or construction of utility and ventilation systems, any mains, pipes, ducts, or conduits serving more than one Lot encroach or shall hereafter encroach upon any part of any Lot; then in any such case valid easements for the maintenance of such encroachment and for such use of the Common Areas are hereby established and shall exist for the benefit of such Lot, or the Common Areas, as the case may be, so long as all or any part of such Lot shall remain standing; provided, however, that in no event shall valid easement for any encroachment or use of the Common Areas be created in favor of any Lot Owner if such encroachment or use is detrimental to or interferes with the reasonable use and enjoyment of the Property by the other Lot Owners or has been created by the Lot Owner or his agent through intentional, willful or negligent conduct.

Section 2. Easements for Utilities. Indiana Bell Telephone Company, Indianapolis Power & Light Company, Beech Grove Department of Public Works and Indianapolis Water Company, any cable television service, and all other suppliers of utilities serving the Properties are hereby granted the right to install, lay, construct, operate, maintain, renew, repair or replace, conduits, cables, pipes, tile and wire and other equipment into, over, under, along and on any portion of the Common Areas or under the Lots for the purpose of providing the Property with utility services and repair thereof, together with the reasonable right of ingress to and egress from the Properties for said purpose. The Declarant, Board or Association may hereafter grant other or additional easements for utility purposes for the benefit of the Properties, over, under, along and on any portion of said Common Areas, and each Lot Owner hereby grants the Declarant, Board or Association an irrevocable power of attorney to execute, acknowledge and record for and in the name of such Lot Owner, such instruments as may be necessary to effectuate the foregoing. Easements are also hereby declared and granted to install, lay, operate, maintain, repair and replace any pipes, tile, wire, ducts, conduits, public utility lines, components of communication systems, if any, or structural components, which may run through the walls of a residence, whether or not such walls lie in whole or in part within the Lot boundaries.

Section 3. Easements to Run with Land. All easements and rights described herein are easements appurtenant running with the land and, so long as the Properties are subject to the provisions of this Declaration, shall remain in full force and effect, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any Lot Owner, purchaser, mortgagee and other person having an interest in the Properties, or any part or portion thereof. Reference in the respective deeds of conveyance, or in any mortgage or other evidence of obligation, to the easements and rights described in this Article, or described in any other part of this Declaration, shall be sufficient to create and reserve such easements and rights to respective grantees, mortgagees and trustees of such Lot Ownerships as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

Section 4. Easement for Construction. During the period of any construction or reconstruction on the Property by the Declarant, Board or Association, the Declarant, Board or Association, their contractors and subcontractors, and their respective agents and employees shall have the right and easement to use the Common Areas, and, if necessary, the Lots themselves, for purposes of ingress, egress and access to Lots as may be required in connection with said construction or reconstruction.

Section 5. Additional Easement Rights. Declarant further reserves unto itself an easement and the full right, title and authority to relocate, alter or otherwise change the location of any drainage, utility, and sewer easement or any street and to grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within any Lot or Lots or any portion of the Properties. Declarant further reserves the right to more specifically describe or to change the description of any street or any drainage, utility and sewer easement, or other easement, license or right-of-way by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Marion County, Indiana and any Owner of any Lot shall take title subject to the rights and easements reserved herein; provided, however, the rights reserved in this Section 5 shall not be exercised in a manner which unreasonably and adversely affects any Lot or portion thereof or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress and egress to any Lot. The rights and easements reserved by Declarant in this Section 5 shall run with the land and Declarant's right to further alter or grant easements shall automatically terminate one (1) year after Declarant shall have conveyed the last Lot within the Properties or on January 1, 1986, whichever first occurs.

Section 6. Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars, ambulances, etc., and emergency personnel, public and private, over and upon the street and any pedestrian walkways or sidewalks.

Section 7. Easement for Signs. Declarant reserves unto itself for so long as it owns four (4) or more Lots, and thereafter reserves and grants to the Owners by and through the Association, the right and easement to erect and maintain an entryway sign. Declarant reserves unto itself for so long as it

owns four (4) or more lots, and thereafter reserves and grants to the Association, the right and easement to erect and maintain directional signs upon the Properties. Such directional signs shall contain only directional information such as street addresses, shall comply with all applicable zoning requirements, and shall be maintained by the Association.

ARTICLE XIII  
Party Walls

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing lines between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. Subject to the provisions of Article XI hereof, if a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article but subject to the provision of Article XI hereof, an Owner who by his negligent, malicious or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE XIV  
Condemnation

In the case of taking or condemnation by competent authority of any part of the Properties, the Association shall, if necessary, restore the improvements in the remaining portion of the Properties to conform as closely as possible to the general design, structure and materials used with respect to the improvements as they existed prior to the taking or condemnation. Any proceeds or awards made to the Association in connection with any such taking or condemnation shall be applied first to the cost of any restoration, and any remaining portion of such proceeds or awards shall be applied to pay the Common Expenses. Each Lot Owner shall be entitled to the award made as compensation for his loss subject to the right of any mortgagees of said Lot. In the event that part or all of one or more Lots is taken or condemned, then the portions so taken or condemned shall be deemed to have been removed from the provisions of the Declaration. The President and Secretary of the Association

shall execute and record an instrument on behalf of the Association as required by the Act which amends this Declaration, effective as of the effective date of the taking or condemnation, to reflect the removal of property as a result of an occurrence covered by this Section. From and after the effective date of the amendment referred to in the preceding sentence, the Owner of a Lot which is removed in part or in whole from the provisions of this Declaration shall only be liable for the payment of assessments based on the percentage of his remaining interest in his Lot.

ARTICLE XV  
General Provisions

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the persons in ownership from time to time of the Lots, Metropolitan Development Commission of Indianapolis, Indiana, its successors and assigns and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 2. Amendment. This Declaration may be amended or changed at any time within ten (10) years following the date of recordation by an instrument recorded in the Office of the Recorder of Marion County, Indiana, signed or approved by at least two-thirds (2/3) of the then Owners; provided, however, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. This Declaration may also be amended by Declarant, if it then has any ownership interest in the Properties, at any time within (2) years after the recordation hereof. However, Declarant shall not effect any of the following changes without the approval of two-thirds (2/3) of the first mortgagees of the Units (based upon one (1) vote for each mortgage) and two-thirds (2/3) of Owners of Lots (excluding Declarant):

- (a) the abandonment, partition, subdivision, encumbrance, sale or transfer (other than to the Association) of the Common Area (other than the granting or altering of utility and drainage easements);
- (b) change in the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;
- (c) allow the Association to maintain fire and extended insurance coverage on the Common Area in an amount less than the full insurable value thereof (based on current replacement cost);
- (d) allow the Association to use hazard insurance proceeds for losses to the Common Area for other than the repair, replacement or reconstruction of the Common Area.



This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty (20) years from the date of recordation in the Office of the Recorder of Marion County, Indiana, and shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten-year period it is amended or changed in whole or in part as hereinabove provided. Invalidation of any of the covenants, conditions and restrictions of this Declaration by judgment of decree shall in no way affect any of the other provisions hereof, but the same shall remain in full force and effect.

Section 3. Annexation. Additional residential property may be annexed to the Properties with the consent of a majority of ownership of the Units by the recording of a declaration applicable to such annexed real estate which incorporates the terms of the Declaration herein.

Section 4. Special Amendment. Notwithstanding any other provision of this Declaration, Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lot Ownership, or (iii) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record Special Amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section shall terminate at such time as the Declarant no longer holds or controls title to a Lot.

Section 5. Provisions Relating to Mortgagees.

a) Any lender or lenders holding a first mortgage or first mortgages upon any Unit or Units may, jointly or singly, pay any real estate taxes or other taxes or charges which are in default and which may or have become a charge or lien against any Common Area or any property owned by the Association and such lender or lenders may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such Common Area or other property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this section shall be entitled to immediate reimbursement therefore from the Association along with any costs incurred, including reasonable attorneys' fees.

b) Upon request in writing, each first mortgagee of a Lot shall have the right:

(i) to examine the books and records of the Association during normal business hours;

(ii) to receive any annual financial statements which are prepared and distributed by the Association to the Lot Owners at the end of each of its respective fiscal years.

c) The Association, upon request, shall provide written notification to any lender holding a first mortgage upon any Lot specifying the defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-laws or any other applicable documents which default has not been cured within sixty (60) days.

d) No provision of this Declaration or Articles of Incorporation of the Association or any similar instrument pertaining to the Properties or the Lots therein shall be deemed to give a Lot Owner or any other party priority over any rights of the first mortgagees of Lots pursuant to their mortgages in the case of distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of the Lots and/or the Common Areas, or any portion thereof or interest therein. In such event, the holder of any first mortgage on a Lot shall be entitled, upon specific written request, to timely written notice of any such loss.

e) There shall be included in each annual assessment levied by the Association (but not as a special assessment) an amount sufficient to establish an adequate reserve fund for maintenance, repairs and replacement in connection with those portions of the Common Areas that must be replaced on periodic basis.

f) Each first mortgagee of a Lot shall be furnished notice in writing by the Association of any damage to or destruction or taking of the Common Areas if such damage or destruction or taking exceeds Ten Thousand Dollars (\$10,000.00) or if damage shall occur to a Lot in excess of Five Thousand Dollars (\$5,000.00), notice of such event shall also be given.

Section 6. Sight Distances at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street, shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight-line limitations shall apply to any lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.



LEGAL DESCRIPTION:

Part of the Northeast Quarter of Section 29, Township 15 North, Range 4 East in Marion County, Indiana more particularly described as follows:

Commencing at the Northeast corner of the said Quarter Section; thence South 00 degrees 05 minutes 03 seconds West along the East line of the said Quarter Section 503.70 feet; thence South 89 degrees 59 minutes 16 seconds West parallel with the North line of the said Quarter Section 659.40 feet to the Place of Beginning, which place of beginning lies on the North line of a tract commonly known as Tract #2 in Bischoff Brothers, Inc. Main Street Survey, recorded, March 10, 1958 in Deed Record 1697, page 406 in the Office of the Recorder of Marion County, Indiana; thence North 00 degrees 05 minutes 03 seconds East parallel with the East line of the said Quarter Section 167.90 feet; thence South 89 degrees 59 minutes 16 seconds West parallel with the North line of the said Quarter Section 332.30 feet; thence North 00 degrees 05 minutes 03 seconds East parallel with the East line of the said Quarter Section 167.90 feet to the Southeast corner of a tract commonly known as Tract #1 in Bischoff's Albany Street Survey recorded May 17, 1957, in Deed Record 1663, page 253 in the said Recorder's Office; thence South 89 degrees 59 minutes 16 seconds West along the South line of Tracts 1 through 11 in said Bischoff's Albany Street Survey 668.50 feet to a point, said point being South 00 degrees 05 minutes 03 seconds West parallel with the East line of the said Quarter Section 167.90 feet from a point on the North line of the said Quarter Section which lies North 89 degrees 59 minutes 16 seconds East 1018.30 feet from the Northwest corner of the said Quarter Section; thence South 00 degrees 05 minutes 03 seconds West parallel with the East line of the said Quarter Section 167.90 feet; thence South 89 degrees 59 minutes 16 seconds West parallel with the North line of the said Quarter Section 671.50 feet to the Southwest corner of land conveyed to Indianapolis Power and Light Company by deed recorded July 23, 1930 in Deed Record 864, page 176 in the said Recorder's Office; thence North 00 degrees 05 minutes 03 seconds East along the West line of the said land conveyed to Indianapolis Power and Light Company 25.00 feet to the Southeast corner of land as Quit Claimed to Donald H. Wright by deed recorded June 16, 1977 as Instrument #77-35869 in the said Recorder's Office; thence South 89 degrees 59 minutes 16 seconds West along the South line of said Donald H. Wright land 7.25 feet to the Northeast corner of land conveyed to Terrace Park Apartments by deed recorded November 3, 1976 as Instrument #76-66749 in the said Recorder's Office, which Northeast corner lies 310.8 feet South of the North line of the said Quarter Section and 2338.95 feet West of the East line of the said Quarter Section; thence South 00 degrees 05 minutes 03 seconds West along the East line of the said Terrace Park Apartments land 192.90 feet to the Northwest corner of a tract commonly known as Tract #29 in said Bischoff Brothers, Inc. Main Street Survey; thence North 89 degrees 59 minutes 16 seconds East parallel with the North line of the said Quarter Section and along the North line of the said Bischoff Brothers, Inc., Main Street Survey 1679.55 feet to the place of beginning.

EXHIBIT "A"

83 32862

20 J66

Cross-Reference: 1983-32662

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BEECH TREE CONDOMINIUMS**

THIS AMENDED AND RESTATED DECLARATION was made on the date hereinafter set forth.

**WITNESSETH:**

WHEREAS, the Beech Tree subdivision located in Marion County, Indiana was established by a certain Declaration of Covenants, Conditions and Restrictions which was recorded on May 16, 1983, as Instrument No. 1983-32662 in the Office of the Recorder of Marion County, Indiana, said Declaration together with all amendments and/or supplements thereto being hereafter referred to as the "Original Declaration"; and

WHEREAS, Plats filed with the Office of the Recorder of Marion County, Indiana for Beech Tree established a total of forty-six (46) residential Lots and Common Area comprising the Beech Tree subdivision in accordance with the Declaration; and

WHEREAS, a Special Meeting of the Owners and the Beech Tree Homeowners Association, Inc. ("Association") was held on February 26, 2005; and

WHEREAS, the purposes of said Special Meeting as stated in the notice for the meeting was for the Association's members to discuss and approve the following Amended & Restated Declaration, and the Amended and Restated By-Laws attached hereto; and

WHEREAS, at said Special Meeting, the Owners of forty-three (43) of the forty-six (46) Lots, in person or by proxy, approved this Amended and Restated Declaration and the Amended and Restated By-Laws pursuant to the terms below; and

WHEREAS, the Owners of said Lots desire to amend certain provisions of the Original Declaration and to restate the same for the convenience of the Owners such that this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Beech Tree in no way nullifies or changes the Original Declaration or the effective date of the Original Declaration. However, upon the date of recording of this Amended & Restated Declaration with the Marion County Recorder's Office, the Original Declaration shall no longer be in effect and shall be replaced by the following.

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Inst # 2005-0043266

NOW, THEREFORE, the Owners in Beech Tree hereby amend and restate the Original Declaration such that all of the platted Lots and lands located within Beech Tree as they have been platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following restrictions, all of which were and are declared and agreed to be in furtherance of a plan for the improvement and sale of said Lots and lands in Beech Tree. Such restrictions below were and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the development as a whole and of each of said Lots situated therein. All of the restrictions shall run with the land and shall be binding upon the Owners and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of all successors in title to any real estate in the development. Now, therefore, the Original Declaration which is applicable to all Owners and residents within Beech Tree is hereby amended and restated as follows:

**ARTICLE 1**  
**NAME**

This subdivision shall be known and designated as Beech Tree Condominiums, a subdivision located in Marion County, Indiana.

**ARTICLE 2**  
**DEFINITIONS**

**Section 2.1.** "Association" means the Beech Tree Homeowners Association, Inc., an Indiana nonprofit corporation, its successors and assigns.

**Section 2.2.** "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 2.3.** "Properties" or "Beech Tree" means the real estate described in Exhibit "A" attached hereto.

**Section 2.4.** "Plat" means the sub-division plat of the Properties recorded in the office of the Recorder of Marion County, Indiana, as the same may be hereafter amended or supplemented.

**Section 2.5.** "Lot" means any plat of land shown upon any recorded subdivision map or plat of Beech Tree with the exception of the Common Areas. There are forty-six (46) Lots in Beech Tree. Each Lot shall contain a single family residential dwelling with a one car attached garage. Each Lot shall contain an area which exceeds the exterior face of the foundation wall dimensions of the structure by one (1) inch; and shall include the Lot's side of one-half (½) of any party wall dividing a Residence from any other Residence. Additionally, each Lot may include a "patio" area and/or balcony or porch on the Properties contiguous and appurtenant to the Lot, together with a private walkway and driveway. Further, the Final Plat may include for

each platted Lot, areas specifically reserved for landscape gardening.

**Section 2.6.** "Residence" means the single family residential dwelling contained on a Lot.

**Section 2.7.** "Declarant" means Par Development Corp., its successors and assigns as a declaring, which was the original developer of Beech Tree.

**Section 2.8.** "Board of Directors" means the Board of Directors of the Association.

**Section 2.9.** "Common Area" means any and all real estate and facilities and all personal property owned by the Association for the benefit, use and enjoyment of its members. Common Area includes all Limited Common Areas but does not include any Lots.

**Section 2.10.** "Limited Common Area" means all the real estate (including improvements thereto) owned by the Association but restricted in use to the Unit(s) appurtenant thereto.

### **ARTICLE 3** **COMMON AREAS**

**Section 3.1. Obligation of the Association.** The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners, of the Common Area and Limited Common Area owned by the Association and all improvements thereon, and shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management.

**Section 3.2. Owners' Rights and Easements of Enjoyment.** Every Owner shall have a non-exclusive right and easement of enjoyment in and to all of the Common Area from the date of Lot purchase, except as otherwise provided herein. These rights and easements may be delegated to family members, lessees and guests of every such Owner (subject to any reasonable and non-discriminatory rules and regulations which may be enacted by the Board of Directors) which shall be appurtenant to and shall pass with membership in the Association, subject to the following provisions:

(a.) The right of the Association, acting through the Board of Directors, to suspend the voting rights of any Owner for any period during which any assessment remains unpaid; and for a period not to exceed sixty (60) days for any period of time during which an Owner is violating the Association's published rules and regulations or any provisions in this Declaration;

(b.) The right of the Association, acting through the Board of Directors, to promulgate reasonable rules and regulations governing the use of the Common Area and Limited Common Areas;

(c.) All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented;

(d.) The right of the Association, acting through the Board of Directors, to mortgage any or all of the Common Area with the assent of two-thirds (2/3) of the votes of all members;

(e.) The right of the Association, acting through the Board of Directors, to grant reasonable utility and other easements across and through the Common Area and Limited Common Areas for the benefit of its members as deemed necessary or desirable by the Board; and

**Section 3.3. Title to All Common Areas.** The Association owns title to all Common Area, subject to restrictions, conditions, limitations, and easements of record.

**Section 3.4. Property Subject to Declaration.** The Properties which are, and shall be, held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration are located in Marion County, State of Indiana, and are more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof.

#### **ARTICLE 4** **LOTS**

**Section 4.1. Number of Lots.** This subdivision consists of 46 Lots numbered from 1 to 46, both inclusive, with easements as indicated by the Plat.

**Section 4.2. Land Use.** All Residences and Lots shall be used exclusively for single-family residential purposes.

**Section 4.3. Conveyance of Lots.** Each Lot within the Properties shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

**Section 4.4. Leasing of Residences.** Any lease of a Residence by an Owner shall be in writing and shall not be for a period of less than one year. Any lease shall require the Lot to be used for a single-family residential dwelling. In accordance with Indiana law, no Residence in Beech Tree may be leased to anyone under the age of 18. The Owner who leases his or her Residence must, if requested by the Board, furnish the Board with a copy of the lease. Owners who lease their Residence must, at their expense, furnish the renter with a copy of the Association's Declaration of Covenants, the By-Laws, and Rules & Regulations. Renters must abide by the provisions of the same in the same manner as the Owners. Landlords are ultimately responsible to make sure that their renters and residents in the Residence comply with all such covenants and rules. To protect the value of our property at Beech Tree there shall be no more than 5% (Three) of the residences leased at any one given time. Anyone purchasing a residence must live in the residence one year before the residence may be leased.



**ARTICLE 5**  
**ACCESS RIGHTS OF ASSOCIATION**

Certain utility lines, sewer, drainage and other facilities and other improvements located on one Lot may serve other Lots. The Association and any member thereof whose enjoyment of the use and occupancy of his Lot is affected thereby, their respective officers, agents, employees and contractors, shall have an easement thereto and shall have the right, at reasonable times and at any time in case of emergency, to go upon any other Lot for the purpose of maintaining or causing to be maintained or repaired any party walls, utility lines, sewer or other facilities which serve more than one Lot.

**ARTICLE 6**  
**USE AND ARCHITECTURAL RESTRICTIONS**

**Section 6.1. Architectural Control.** No building, fence, wall or other structure or exterior improvement of any kind (including fences, yards, landscaping, patios, decks, driveways, porches or sidewalks) shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein, other than by the Board of Directors, be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefore as above provided.

**Section 6.2. Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or surrounding Common Area, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Dogs, cats or other household pets may be kept inside the Owner's Residence. Pets may not be housed on the enclosed patios or upon any of the lawn areas. No pets are allowed to run loose through Beech Tree; they must be kept on a leash. Owners who walk their pets are not to allow the pets to litter any of the Common Areas with the pet's waste. Owners must clean up the pet's waste. Owners may not allow the pet's waste to accumulate on the enclosed patio area.

In addition to the above, in no event will any dog whose breed is known for its viciousness or ill temper be permitted anywhere within Beech Tree, including but not limited to the American Staffordshire Terrier (commonly known as a "Pit Bull Terrier"), the Doberman Pinscher, the Rottweiler, and the Chow. This prohibition against such breeds shall be effective on the date of filing of this provision with the County Recorder. Any dog kept within Beech Tree prior to the effective date of the above restrictions which satisfied the then-existing restrictions for pets shall be permitted to remain on the Property. However, any dog brought into Beech Tree hereafter must comply with the above conditions.

**Section 6.3. Prohibited Activities.** No obnoxious or offensive activity shall be carried on upon any Lot or Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any other homeowner. Each Lot and all Common Areas

and Limited Common Areas, shall be kept and maintained in a sightly and orderly manner and no trash or other rubbish shall be permitted to accumulate thereon. The Board of Directors shall promulgate and enforce such rules and regulations as it deems necessary for the common good in this regard.

**Section 6.4. Drainage.** Any field tile or underground drain which is encountered in the construction of any improvements on any Lot shall be perpetuated and all Owners of Lots and their successors shall comply with The Indiana Drainage Code of 1965, and all amendments thereto.

**Section 6.5. Antennae and Satellite Dishes.** Exterior television, radio, satellite dishes or other type of antennae are permitted under the following conditions:

1. The satellite dish may not be more than 24" in diameter.
2. The antennae or satellite dish may not be mounted upon the patio fence.
3. The antennae or satellite dish may be mounted on the building structure provided the homeowner assumes responsibility for damage caused by the mounting or removal of the antennae or satellite dish. The homeowner will be responsible for maintaining the structure in the future from roof leaks or masonry leaks caused by the mounting of the antennae or satellite dish.
4. The satellite dish may not be installed in the grassy area as this would interfere with mowing.
5. The wires from the satellite dish to the house must be concealed as much as possible. The wires may not be strung upon the fence or upon the building.
6. The hole where the wires enter the house must be properly sealed against moisture.
7. The above provisions apply to the Owner who installed the dish as well as all subsequent Owners.
8. No ham radio or CB radio antennas are allowed.

**Section 6.6. Trash Burning.** No burning of any trash and no accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on any Lot.

**Section 6.7. Storage of Vehicles.** Except as herein elsewhere provided, no junk vehicle, motorcycles, commercial vehicle, trailer truck, camper, camp truck, house trailer, boat or the like, shall be kept upon the Properties (except in enclosed garages) nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon.

**Section 6.8. Trash Containers.** Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. Trash must not be allowed to accumulate on any lawn or Common Area or upon the enclosed patios. Bags of trash may not be kept outside on any of these areas. Trash, including newspapers, may not be placed at the curb side for pickup until after 4:00 PM the day before the scheduled pickup. Garbage cans may never be kept in public view except during the regular pickup time.

**Section 6.9. Signs.** No "For Sale", "For Rent" or similar signs will be allowed upon any of the lawns, mailboxes, buildings, windows or vehicles at Beech Tree.

**Section 6.10. Home Occupations.** No home occupation shall be conducted or maintained in any Residence or Lot other than one which is incidental to a business, profession or occupation of the Owner or occupant of any such Lot and which is generally or regularly conducted in another location away from such Lot.

**Section 6.11. Outbuildings.** No structure of a temporary character, trailer, tent, shack, barn or other outbuilding shall be used on any portion of the property without the approval of the Board and only if installed in the Limited Common Area of the Owner's Lot.

**Section 6.12. Rules Violation.** There shall be no violation of any rules for the Residences, Lots and Common Area which may from time to time be adopted by the Board of Directors or promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in the By-Laws, authorized to adopt such rules.

**Section 6.13. Plat Restrictions.** In addition to the foregoing restrictions, all restrictions of the Plat as to the use of the Properties are incorporated by reference herein as restrictions of this Declaration.

**Section 6.14. Easement Obstruction.** No structure, planting or other material other than driveways or sidewalks shall be placed or permitted to remain upon any portion of the Properties which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels.

## **ARTICLE 7** **ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS**

**Section 7.1. Membership.** Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

**Section 7.2. Class of Membership.** The Association shall have only one class of membership. Members shall be all Owners and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the owners of the Lots among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

**Section 7.3. Board of Directors.** The Owners shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws which are attached hereto. The Board of Directors shall manage the affairs of the Association and shall promulgate such rules and regulations as the Board deems advisable for the health, safety, welfare of the Lots' inhabitants and guests and the orderly conduct of the affairs of the Association.

**Section 7.4. Professional Management.** No contract or agreement for professional management of the Association shall be for a term in excess of two (2) years. Any such

agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of thirty (30) days or less.

## **ARTICLE 8** **COVENANT FOR ASSESSMENTS**

**Section 8.1. Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges for maintenance, insurance and property taxes related to the Common Area; (2) special assessments for capital improvements and operating deficits; and (3) special assessments as provided in Article 9. Such assessments shall be established and collected as hereinafter provided. The monthly and special assessments, together with late fees, costs, and reasonable attorneys' fees, shall be a charge on the Lot and Residence and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with late fees, costs, and reasonable attorneys' 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 his successors in title unless expressly assumed by them.

**Section 8.2. Real Estate Taxes.** As part of the monthly assessments, each Owner shall pay 1/46<sup>th</sup> of the real estate taxes assessed against the Common Area in addition to the real estate taxes assessed against his Lot.

**Section 8.3. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in Beech Tree and for the improvement and maintenance of the Common Area, the exterior of the Residence and other purposes as specifically provided herein.

**Section 8.4. Maximum Monthly Assessments.** Because of uncertainties in usual and ordinary Common Area expenses due to the Indiana real property reassessment, rising cost of energy, inflation, and other unforeseeable operating expenses, the Board of Directors of the Association may increase the assessment by a sum not to exceed Ten Percent (10%) per annum without vote of the Membership. However, any such increase shall be documented by normal accounting procedures and distributed to the Membership to demonstrate that such increases are attributable to actual operating expenses and replacement reserve contingencies and the moneys received shall be entirely expended on Association expenses or placed in the Association's reserve funds for later use.

The maximum annual assessment per Lot may be increased above the maximum percentage by a vote of two-thirds (2/3) of the Members who are voting in person or by proxy at a meeting duly called for this purpose at which a regular quorum is present.

**Section 8.5. Special Assessments for Capital Improvements and Operating Deficits.** In addition to the monthly assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction,

reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur. However, any such special assessment must first have the assent of a majority of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose at which a regular quorum is present. A special assessment may be due and payable in a lump sum or in two or more installments, as determined by the Board of Directors.

**Section 8.6. Uniform Rate of Assessment.** Both monthly and special assessments for Common Area expenses, Common Area capital improvements and operating deficits must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. Other Lot assessments (not including special assessments under Article 9 below and Section 14.1) shall be fixed at a uniform rate for all Lots.

**Section 8.7. Date of Commencement of Monthly Assessments: Due Dates.** The monthly assessment provided for herein shall commence as to each Lot on the first day of January each year. The Board of Directors shall fix the amount of the monthly assessments for the next year no later than December 1st. Written notice of special assessments and such other assessment notices as the Board of Director shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge no to exceed \$100, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

**Section 8.8. Effect of Nonpayment of Assessments; Remedies of the Association.** If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due (pursuant to Section 8.7), then the entire unpaid assessment shall become delinquent and shall become, together with late fees, and cost of collection binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not received by the Association by noon on the second (2nd) day of the month when due, the Board may impose a late fee in an amount up to twenty percent (20%) of the delinquent installment (see the Association's Rules and Regulations for the exact amount of the late fee) and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, or both. In any action to recover a delinquent assessment, whether by foreclosure or otherwise, the Board for and on behalf of the Association shall be entitled to recover from the Owner of the respective Lot and Residence, regardless of whether litigation is initiated, costs and expenses of such action incurred, including but not limited to collection costs incurred by the Association to any Managing Agent for processing delinquent Owners' accounts and reasonable attorneys' fees

No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

**Section 8.9. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

## **ARTICLE 9** **MAINTENANCE**

**Section 9.1. Maintenance by Owners.** The Owner of each Lot shall furnish and be responsible for, at his own expense, all the maintenance, repairs, decorating and replacements for his Residence, including the heating and air conditioning system, any utility system of which his Lot is the sole beneficiary, and any partitions and interior walls. He further shall be responsible for the maintenance, repair and replacement of the private driveway to his Lot, the private walkway to his Lot, all windows in his residence and also the doors leading into the Residence, and any and all other maintenance, repair, and replacements of the improvements on his Residence unless otherwise provided herein. All draperies must be lined in order to provide a uniform exterior appearance of the Residence.

To the extent that equipment, facilities and fixtures within any Lot shall be connected to similar equipment, facilities or fixtures affecting or serving other Lots, then the use thereof by the Owner of such Lot shall be subject to the rules and regulations of the Association. The authorized representatives of the Association or Board of Directors or the manager or managing agent for the Association shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to any equipment, facilities or fixtures affecting or serving other Lots.

The individual Owner is responsible for the maintenance, repair and replacement of the heating, air-conditioning, plumbing, electrical, utility system and exterior light fixtures. Individual Owners are responsible for all interior maintenance such as painting, wall repairs, appliances, garage door openers and other interior features. Individual Owners are responsible for all window and glass repairs and replacements as well as replacements and repairs to the doors. Replacement of exterior light fixtures, windows or doors must first receive the approval of the Board. Individual Owners are responsible for the maintenance, repair, or replacement of all concrete surfaces including porches, patios, driveways and sidewalks. The sidewalk parallel to the street is maintained on a 50/50 basis by the city of Beech Grove and the Association. Replacement of concrete surfaces must first receive Board approval. Individual Owners are responsible for maintenance, repair, or replacement of the wooden patio decks. Changes to the original format of the decks must first receive Board approval. **Individual Owners causing damage to the vinyl patio fences or buildings exterior, (drilling holes, hanging or fastening anything to the brick, vinyl siding or vinyl fences) without the approval of the Board will be responsible for all repairs and replacement of such damage.**

**Section 9.2. Snow Removal.** Snow will be removed by the Association from the front porches, the walks from the porch to the driveways, and the driveways if a continuous snow measures three inches (3") or deeper. Removal will not normally begin until the snowfall has ended. If blowing or drifting or additional snow accumulates to three inches (3") or more, follow-up removal will take place. The city of Beech Grove is responsible for removing snow from Ticen Court itself. Snow will not normally be removed from the walk that parallels the street. The Board will not apply salt or chemicals to any concrete surfaces since these items may damage the concrete. Owners are cautioned about using these items since they are responsible for concrete repairs and replacement.

**Section 9.3. Maintenance Obligations of Association with Respect to Lots.** The Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, and other exterior improvements, lawns, shrubs, trees, and snow removal from the paved driveway to the front porch. Such maintenance shall not include glass surfaces, doors and doorways, windows, window frames and any utility system benefiting only one Lot. The Association will not provide replacement, care for roofs or exterior building surfaces when an antennae or satellite dish is mounted on the building structure by an individual Owner; the Owner will be responsible for maintaining the structure in the future from roof leaks or masonry leaks caused by the mounting of the antennae or satellite dish.

If the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Common Area assessment to which such Lot is subject.

**Section 9.4. Maintenance of the Common Area.** The Association shall be responsible for the maintenance, repair and replacement of the Common Area and improvements thereon; however, the Association shall not maintain that portion of the sewers, water, drainage or roadway systems which are dedicated to and accepted by the City of Beech Grove for maintenance and repair.

## CHICAGO TITLE ARTICLE 10 INSURANCE

**Section 10.1. Casualty Insurance.** The Association shall purchase a master casualty insurance policy or policies affording fire and extended coverage insurance insuring the properties, including the Common Area and all Lots, in an amount consonant with the full replacement value of the improvements excluding, as to any Lot and the improvements thereon, all fixtures, betterments and improvements installed by any owner and excluding any personal property owned by any owner whether located in or on the Lot elsewhere. If the Association can obtain such coverage for reasonable amounts, it shall also obtain "all risk" coverage. The Association shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Association, it may cause such full replacement value to be determined by a qualified appraiser and the cost of any such appraisal shall be

included in the monthly maintenance assessment for each Lot on a pro rata basis. Such insurance coverage shall be for the benefit of the Association, each Owner, and, if applicable, the first Mortgages of each Lot.

Such master casualty insurance policy, and “all risk” coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Association, its Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms, that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted.

**Section 10.2. Liability Insurance.** The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association, its Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Association, all Owners and all other persons entitled to occupy any Lot.

The Association shall also purchase and obtain a fidelity bond indemnifying the Association, the Board and the Owners from loss of funds resulting from fraudulent or dishonest acts of any employee, officer, director or agent of the Association or its management agent or of any other person handling the funds of the Association, the Board or the Owners in an amount not less than One Hundred Percent (100%) of the total annual assessment for the Properties plus the amounts on deposit in the Association’s reserve funds. The Association shall also purchase directors and officers liability insurance.

The Association shall also obtain any other insurance required by law to be maintained, including but not limited to worker’s compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross-liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under policies purchased by the Association.

**Section 10.3. Monthly Assessment for Insurance.** The premiums for all such insurance hereinabove described shall be paid by the Association and the pro-rata cost thereof shall be part of the monthly assessment to which each Lot is subject under Section 8.1 above. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby.



**Section 10.4. Distribution to Mortgagee.** In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event any remittances shall be to the Owner and his mortgagee jointly.

**Section 10.5. Additional Insurance.** Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable at his own expense affording coverage upon his personal property, the contents of his residence (including, but not limited to, all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by him) and his personal property stored elsewhere on the Properties, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association. Each Owner may obtain casualty insurance at his own expense upon his Lot but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association.

If a casualty loss is sustained and there is a reduction in the amount of proceeds which would otherwise be payable on the insurance purchased by the Association pursuant to this paragraph due to proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided.

**Section 10.6. Casualty and Restoration.** Damage to or destruction of the Common Area or any residence due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose.

**Section 10.7. Insufficiency of Insurance Proceeds.** If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area or any Building or Buildings so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a special assessment against all Lots for such deficiency.

For purposes of Section 10.6 above, repair, reconstruction and restoration shall mean construction or rebuilding of the Common Area or any residence(s) to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same or similar type of architecture.

**Section 10.8. Surplus of Insurance Proceeds.** In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Properties.

**Section 10.9. Remedies.** The action of the Board of Directors in proceeding to repair or

reconstruct damage shall not constitute a waiver of any rights against another Owner for committing negligent, willful or malicious damage.

## **ARTICLE 11** **EASEMENTS**

**Section 11.1. Encroachments.** In the event that (i) by reason of construction, repair, reconstruction, settlement or shifting of any Lot, or any part of the Common Areas, any Lot or Common Area encroaches or shall hereafter encroach upon any part of the Common Areas, or any other Lot; (ii) by reason of the design or construction of any residence, it shall be necessary or advantageous to a Lot Owner to use or occupy any portion of the Common Areas for any reasonable use appurtenant to said Lot, which will not unreasonably interfere with the use or enjoyment of the Common Areas by other Lot Owners, or (iii) by reason of the design or construction of utility and ventilation systems, any mains, pipes, ducts, or conduits serving more than one Lot encroach or shall hereafter encroach upon any part of any Lot; then in any such case valid easements for the maintenance of such encroachment and for such use of the Common Areas are hereby established and shall exist for the benefit of such Lot, or the Common Areas, as the case may be, so long as all or any part of such Lot shall remain standing; provided, however, that in no event shall valid easement for any encroachment or use of the Common Areas be created in favor of the Lot Owner if such encroachment or use is detrimental to or interferes with the reasonable use and enjoyment of the Property by the other Lot Owners or has been created by the Lot Owner or his agent through intentional, willful or negligent conduct.

**Section 11.2. Easements for Utilities.** The Telephone Company, Indianapolis Power & Light Company, Beech Grove Department of Public Works and Indianapolis Water Company, any cable television service, and all other suppliers of utilities serving the Properties are hereby granted the right to install, lay, construct, operate, maintain, renew, repair or replace, conduits, cables, pipes, tile and wire and other equipment into, over, under, along and on any portion of the Common Areas or under the Lots for the purpose of providing the Property with utility services and repair thereof, together with the reasonable right of ingress to and egress from the Properties for said purpose. The Board of Directors may grant other or additional easements for utility purposes for the benefit of Beech Tree, over, under, along and on any portion of said Common Areas, and each Lot Owner hereby grants the Board or Association an irrevocable power of attorney to execute, acknowledge and record for and in the name of such Lot Owner, such instruments as may be necessary to effectuate the foregoing. Easements are also hereby declared and granted to install, lay, operate, maintain, repair and replace any pipes, tile, wire, ducts, conduits, public utility lines, components of communication systems, if any, or structural components, which may run through the walls of a residence, whether or not such walls lie in whole or in part within the Lot boundaries.

**Section 11.3. Easements to Run with Land.** All easements and rights described herein are easements appurtenant running with the land and, so long as the Properties are subject to the provisions of this Declaration, shall remain in full force and effect, and shall inure to the benefit of and be binding on the Declarant, its successors and assigns, and any Lot Owner, purchaser, mortgagee and other person having an interest in Beech Tree, or any part thereof. Reference in the respective deeds of conveyance, or in any mortgage or other evidence of obligation, to the

easements and rights described in the Article, or described in any other part of this Declaration, shall be sufficient to create and reserve such easements and rights to respective grantees, mortgagees and trustees of such Lot Ownerships as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

**Section 11.4. Easement for Construction.** During the period of any construction or reconstruction on the Property by the Board or Association, the Board or Association, their contractors and subcontractors, and their respective agents and employees shall have the right and easement to use the Common Areas, and, if necessary, the Lots themselves, for purposes of ingress, egress and access to Lots as may be required in connection with said construction or reconstruction.

**Section 11.5. Easement for Emergency Purposes.** An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars, ambulances, etc., and emergency personnel, public and private, over and upon the street and any pedestrian walkways or sidewalks.

**Section 11.6. Easement for Signs.** The Owners by and through the Association, have the right and easement to erect and maintain an entryway sign. The Association has the right and easement to erect and maintain directional signs upon the Properties. Such directional signs shall contain only directional information such as street addresses, shall comply with all applicable zoning requirements, and shall be maintained by the Association.

## **ARTICLE 12** **PARTY WALLS**

**Section 12.1. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing lines between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 12.2. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

**Section 12.3. Destruction by Fire or Other Casualty.** Subject to the provisions of Article 10 hereof, if a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

**Section 12.4. Weatherproofing.** Notwithstanding any other provision of this Article but subject to the provision of Article 10 hereof, an Owner who by his negligent, malicious or willful act causes the party wall to be exposed to the elements shall bear the whole cost of

furnishing the necessary protection against such elements.

**Section 12.5. Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

### **ARTICLE 13** **CONDEMNATION**

In the case of taking or condemnation by competent authority of any part of the Properties, the Association shall, if necessary, restore the improvements in the remaining portion of the Properties to conform as closely as possible to the general design, structure and materials used with respect to the improvements as they existed prior to the taking or condemnation. Any proceeds or awards made to the Association in connection with any such taking or condemnation shall be applied first to the cost of any restoration, and any remaining portion of such proceeds or awards shall be applied to pay the Common Expenses. Each Lot Owner shall be entitled to the award made as compensation for his loss subject to the right of any mortgagees of said Lot. In the event that part or all of one or more Lots is taken or condemned, then the portions so taken or condemned shall be deemed to have been removed from the provisions of the Declaration. The President and Secretary of the Association shall execute and record an instrument on behalf of the Association as required by the Act which amends this Declaration, effective as of the effective date of the taking or condemnation, to reflect the removal of property as a result of an occurrence covered by this Section. From and after the effective date of the amendment referred to in the preceding sentence, the Owner of a Lot which is removed in part or in whole from the provisions of this Declaration shall only be liable for the payment of assessments based on the percentage of his remaining interest in his Lot.

### **ARTICLE 14** **GENERAL PROVISIONS**

**Section 14.1. Right of Enforcement.** In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, or the rules and regulations adopted by the Board of Directors, the Association and any Owner shall have the right to enforce the covenants, conditions and restrictions contained herein, or applicable rules, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Furthermore, if the Association's Board sends a violating Owner a second or subsequent written notice of violation (i.e., "violation letters"), the Association may charge an administrative fee of up to and including \$30 per violation letter. (There shall be no such fee for the first violation letter.) Also, if the Association incurs attorneys fees with respect to a defaulting or violating Owner; regardless of whether litigation is filed, such attorneys fees shall be the responsibility of the applicable Owner. The administrative fees for violation letters and the

attorneys fees shall constitute a Special Assessment against such Owner and the Owner's Lot, collectible as described in Section 8.8.

There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach of any attempted violation or breach of any of the within covenants or restrictions, or the Association's Rules and Regulations, cannot be adequately remedied by action at law or exclusively by recovery of damages.

**Section 14.2. Amendment.** This Declaration may be amended or changed at any time by an instrument recorded in the Office of the Recorder of Marion County, Indiana, signed or approved by the then Owners of at least twenty-four (24) of the forty-six (46) Residences. However, any amendment shall not affect any of the following changes without the approval of two-thirds (2/3) of the first mortgagees of the Residence (based upon one (1) vote for each mortgage) and two-thirds (2/3) of the Owners:

- (a) the abandonment, partition, subdivision, encumbrance, sale or transfer (other than to the Association) of the Common Area (other than the granting or altering of utility and drainage easements);
- (b) change in the method of determining the obligations, assessments, dues or other changes which may be levied against an Owner;
- (c) allow the Association to maintain fire and extended insurance coverage on the Common Area in an amount less than the full insurable value thereof (based on current replacement cost);
- (d) allow the Association to use hazard insurance proceeds for losses to the Common Area for other than the repair, replacement or reconstruction of the Common Area.

This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty (20) years from the date of recordation in the Office of the Recorder of Marion County, Indiana, and shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten-year period it is amended or changed in whole or in part as hereinabove provided. Invalidation of any of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way affect any of the other provisions hereof, but the same shall remain in full force and effect.

**Section 14.3. Provisions Relating to Mortgagees.**

(a) Any lender or lenders holding a first mortgage upon any Residence or Lot may, jointly or singly, pay any real estate taxes or other taxes or charges which are in default and which may or have become a charge or lien against any Common Area or any property owned by the Association and such lender or lenders may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such Common Area or other property owned by the Association or covering

any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this section shall be entitled to immediate reimbursement therefore from the Association along with any costs incurred, including reasonable attorneys' fees.

(b) Upon request in writing, each first mortgagee of a Lot shall have the right:

(i) to examine the books and records of the Association during normal business hours;

(ii) to receive any annual financial statements which are prepared and distributed by the Association to the Lot Owners at the end of each of its respective fiscal years.

(c) The Association, upon request, shall provide written notification to any lender holding a first mortgage upon any Lot specifying the defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents which default has not been cured within sixty (60) days.

(d) No provision of this Declaration or Articles of Incorporation of the Association or any similar instrument pertaining to the Properties or the Lots therein shall be deemed to give a Lot Owner or any other party priority over any rights of the first mortgagees of Lots pursuant to their mortgages in the case of distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of the Lots and/or the Common Areas, or any portion thereof or interest therein. In such event, the holder of any first mortgage on a Lot shall be entitled, upon specific written request, to timely written notice of any such loss.

(e) There shall be included in each annual assessment levied by the Association (but not as a special assessment) an amount sufficient to establish an adequate reserve fund for maintenance, repairs and replacement in connection with those portions of the Common Areas that must be replaced on periodic basis.

(f) Each first mortgage of a Lot shall be furnished notice in writing by the Association of any damage to or destruction or taking of the Common Areas if such damage or destruction or taking exceeds Ten Thousand Dollars (\$10,000.00) or if damage shall occur to a Lot in excess of Five Thousand Dollars (\$5,000.00), notice of such event shall also be given.

**Section 14.4. Sight Distances at Intersections.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and nine (9) feet above the street, shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight-line limitations shall apply to any lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is



**EXHIBIT A**  
**LEGAL DESCRIPTION:**

Part of the Northeast Quarter of Section 29, Township 15 North, Range 4 East in Marion County, Indiana more particularly described as follows:

Commencing at the Northeast corner of the said Quarter Section; thence South 00 degrees 05 minutes 03 seconds West along the East line of the said Quarter Section 503.70 feet; thence South 89 degrees 59 minutes 16 seconds West parallel with the North line of the said Quarter Section 659.40 feet to the Place of Beginning, which place of beginning lies on the North line of a tract commonly known as Tract #2 in Bischoff Brothers, Inc. Main Street Survey, recorded, March 10, 1958 in Deed Record 1697, page 406 in the Office of the Recorder of Marion County, Indiana; thence North 00 degrees 05 minutes 03 seconds East parallel with the East line of the said Quarter Section 167.90 feet; thence South 89 degrees 59 minutes 16 seconds West parallel with the North line of the said Quarter Section 332.30 feet; thence North 00 degrees 05 minutes 03 seconds East parallel with the East line of the said Quarter Section 167.90 feet to the Southeast corner of a tract commonly known as Tract #1 in Bischoff's Albany Street Survey recorded May 17, 1957, in Deed Record 1663, page 253 in the said Recorder's Office; thence South 89 degrees 59 minutes 16 seconds West along the South line of Tracts 1 through 11 in said Bischoff's Albany Street Survey 668.50 feet to a point, said point being South 00 degrees 05 minutes 03 seconds West parallel with the East line of the said Quarter Section 167.90 feet from a point on the North line of the said Quarter Section which lies North 89 degrees 59 minutes 16 seconds East 1018.30 feet from the Northwest corner of the said Quarter Section; thence South 00 degrees 05 minutes 03 seconds West parallel with the East line of the said Quarter Section 167.90 feet; thence South 89 degrees 59 minutes 16 seconds West parallel with the North line of the said Quarter section 671.50 feet to the Southwest corner of land conveyed to Indianapolis Power and Light Company by deed recorded July 23, 1930 in Deed Record 864, page 176 in the said Recorder's Office; thence North 00 degrees 05 minutes 03 seconds East along the West line of the said land conveyed to Indianapolis Power and Light Company 25.00 feet to the Southeast corner of land as Quit Claimed to Donald H. Wright by deed recorded June 16, 1977 as Instrument #77-35869 in the said Recorder's Office; thence South 89 degrees 59 minutes 16 seconds West along the South line of said Donald H. Wright land 7.25 feet to the Northeast corner of land conveyed to Terrace Park Apartments by deed recorded November 3, 1976 as Instrument #76-66749, in the said Recorder's Office, which Northeast corner lies 310.8 feet South of the North line of the said Quarter Section and 2338.95 feet West of the East line of the said Quarter Section; thence South 00 degrees 05 minutes 03 seconds West along the East line of the said Terrace Park Apartments land 192.90 feet to the Northwest corner of a tract commonly known as Tract # 29 in said Bischoff Brothers, Inc. Main Street Survey; thence North 89 degrees 59 minutes 16 seconds East parallel with the North line of the said Quarter Section and along the North line of the said Bischoff Brothers, Inc., Main Street Survey 1679.55 feet to the place of beginning.



9-166

**AMENDED AND RESTATED BY-LAWS**  
**OF**  
**BEECH TREE HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE 1**  
**Association**

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**Section 1.1. Association.** Beech Tree Homeowners Association, Inc. ("Association") has been formed as a nonprofit corporation under the Indiana Nonprofit Corporations Act of 1991, as amended (hereafter, the "Nonprofit Act"), and shall be the governing body for all of the Lot Owners for the maintenance, repair, replacement, administration and operation of Beech Tree Condominiums ("Property"), located in Marion County, Indianapolis, Indiana. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the use and benefit of Lot Owners in accordance with the provisions contained herein. The Association has been established in conjunction with the filing of the Record Plat of Beech Tree Condominiums ("Plat") and the Declaration of Covenants, Conditions and Restrictions filed with the Office of the Marion County Recorder on May 16, 1983, as Instrument No. 1983-32662.

**ARTICLE 2**  
**Membership**

**Section 2.1. Duration of Membership; Withdrawal.** Membership in the Corporation shall terminate upon the relinquishment, whether voluntarily or otherwise, of Lot ownership in Beech Tree Condominiums. All rights and privileges of a member in the Association shall cease on the termination of membership.

**ARTICLE 3**  
**Meetings of Members**

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**Section 3.1. Quorum.** Meetings of the members shall be held at the Beech Tree Property or at such other place in Marion County, Indiana, as may be designated in any notice of a meeting. The presence in person or by proxy at any meeting of the members having twenty-five percent (25%) of the total votes shall constitute a quorum. Unless otherwise expressly provided by law, the Articles of Incorporation or these By-Laws, any action may be taken at any meeting of the members at which a quorum is present upon the affirmative vote of the members having a majority of the total votes present at such meeting.

**Section 3.2. Annual Meeting.** The annual meeting of the members shall be held in the month of April or May each year, with the specific date, time and place to be determined by the Board of Directors. At each annual meeting, the Members shall elect the Board of Directors of the Association in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

**Section 3.3. Special Meetings.** Special meetings of the members may be called

by the president, by a majority of the board of directors, or by a petition in writing signed the Owners of at least (10%) of the forty-six (46) Lots in Beech Tree. The resolution or petition shall be presented to the President or Secretary of the Association and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

**Section 3.4. Notice of Meetings.** Written notice stating the place, day and hour of any meeting of members and, in the case of special meetings or when otherwise required by law, the purpose for which any such meeting is called, shall be delivered or mailed by the secretary of the Association to each member of record at least ten (10) days before the date of such meeting. Any written notice delivered to the Members as part of a newsletter or other publication regularly sent to the Members constitutes a written notice. If at any meeting an amendment to the Declaration, the Articles of Incorporation, or these By-Laws is to be considered, the notice of such meeting shall describe the nature of such proposed amendment. All notices shall be mailed by first-class U.S. Mail, postage prepaid, or delivered to the Members at their respective addresses as the same shall appear upon the records of the Association. If an annual or special meeting of Members is adjourned to a different date, time or place, written notice is not required to be given of the new date, time or place so long as the new date, time and place is announced at the meeting before adjournment.

**Section 3.5. Waiver of Notice.** Notice of any meeting may be waived by any member in writing filed with the secretary of the Association. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

**Section 3.6. Voting Rights.** Each Member shall be entitled to cast one (1) vote for each Lot of which such Member is the Owner. In voting for Directors, each Owner (or his or her representative) shall be entitled to cast one (1) vote for each directorship being filled at that meeting, and the candidate(s) receiving the highest number of votes shall fill the available directorship(s); provided that no Owner shall be allowed to accumulate his or her votes. To the extent provided in the Nonprofit Act, and except as otherwise provided in the Declaration, the Articles of Incorporation or these By-Laws, plurality voting shall be permitted such that at a meeting, if a quorum exists, action on a matter is approved if the votes cast in favor of the action exceed the votes opposing the action.

**Section 3.7. Voting by Proxy.** A member entitled to vote at any meeting of members may vote either in person or by proxy executed in writing by the member or a duly authorized attorney-in-fact of such member. (For purposes of this section, a proxy granted by fax or email by a member shall be deemed "executed in writing by the member.")

**Section 3.8. Voting List.** The secretary or treasurer of the Association shall at all times keep a complete and accurate list of all Owners and members entitled to vote. Such list may be inspected by any member for any proper purpose at any reasonable time.

**Section 3.9. Conduct of Meetings.** Meetings of members, including the order of business, shall be conducted in accordance with Roberts' Rules of Order, latest edition, except insofar as the Articles of Incorporation, these By-Laws, or any rule adopted by the Board of Directors or members may otherwise provide. The members may, by unanimous consent, waive the requirements of this section, but such waiver shall not preclude any member from invoking the requirements of this section at any subsequent meeting.

**Section 3.10. Action by Consent.** Any action required to be taken at a meeting of members, or any action which may be taken at a meeting of members, may be taken without a meeting but with the same effect as a unanimous vote at a meeting, if, prior to such action, a consent in writing, setting forth the action so taken, shall be signed by all members entitled to vote with respect thereto, and such consent is filed with the minutes of the proceedings of the members.

**Section 3.11. Written Ballots.** In lieu of any annual or special meeting of the Members, written ballots may be utilized in the manner prescribed in the Nonprofit Act.

#### **ARTICLE 4** **Board of Directors**

**Section 4.1. Duties and Qualifications.** The business and affairs of the Association shall be managed by the Board of Directors. Each Director shall be a Owner in Beech Tree.

**Section 4.2. Number and Election.** The Board of Directors shall consist of six (6) directors who shall serve without compensation. Members of the Board of Directors shall be elected at each annual meeting of the Association. Each Director shall serve a term of two (2) years. Thus, one-half (1/2) of the persons on the Board of Directors shall be elected at each annual meeting of the Association. In all elections for members of the Board, each voting member shall be entitled to vote on a non-cumulative voting basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. The election and term of office as between candidates receiving the same number of votes shall be determined by lot. Any vacancy or vacancies occurring in the Board caused by a death, resignation, or otherwise other than a vacancy created by removal or an increase in the number of Directors, shall be filled until the next annual meeting of the Members through a vote of a majority of the remaining Directors. At the first annual meeting of the Members following any such vacancy, a Director shall be elected by the Owners to serve for the balance of the term of the Director in respect to whom there has been a vacancy. Despite the expiration of a Director's term, the Director continues to serve until a successor is appointed or elected and qualified.

**Section 4.3. Vacancies.** Any vacancy among the directors caused by death, resignation, removal or otherwise shall be filled by the remaining directors. A director chosen to fill a vacancy shall hold office until the expiration of the term of the director

causing the vacancy and until that director or his successor shall be elected and qualified.

**Section 4.4. Annual Meetings.** Unless otherwise agreed upon, the board of directors shall meet immediately following the annual meeting of the members, at the place where such meeting of members was held, for the purpose of election of officers of the Association and consideration of any other business which may be brought before the meeting. No notice shall be necessary for the holding of such annual meeting.

**Section 4.5. Other Meetings.** Regular meetings of the board of directors may be held pursuant to a resolution of the board to such effect. No notice shall be necessary for any regular meeting. Special meetings of the board of directors may be held upon the call of the president or of any three (3) members of the board and upon forty-eight (48) hours' notice specifying the time, place and general purposes of the meeting, given to each director either personally or by mail, fax, email or telephone. Notice of a special meeting may be waived in writing or by fax or email. Attendance at any special meeting shall constitute waiver of notice of such meeting.

**Section 4.6. Meetings Open to Owners.** Except for executive sessions, all meetings of the Board of Directors shall be open to attendance by any Owner. Meetings are held in Board members homes and can accommodate no more than three Owners per meeting. Owners must notify the Association's president at least 5 days before the meeting.

**Section 4.7. Meetings May be Attended by Electronic Voice Communication.** Any meeting of the board of directors may be attended by means of any form of electronic voice communication, provided that all Directors can simultaneously hear the proceedings and be heard by all the other directors in attendance at the meeting. A quorum for the meeting so held shall be computed on the basis of all persons in voice contact with each other. Any meeting so held shall be a formal meeting of the board of directors for all purposes, and any business may be transacted at such meeting that could be transacted if the Directors were assembled in physical proximity to each other.

**Section 4.8. Quorum.** A majority of the entire board of directors shall be necessary to constitute a quorum for the transaction of any business, and the act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the act of a greater number is required by law, the Articles of Incorporation, or these By-Laws.

**Section 4.9. Action by Consent.** Any action required or permitted to be taken at any meeting of the board of directors may be taken without a meeting, if prior to such action a written consent to such action is signed by all members of the board and such consent is filed with the minutes of proceedings of the board of directors.

**Section 4.10. Committees.** The president or the board of directors may from time to time create and appoint standing, advisory and special committees of members

and other appropriate individuals to undertake studies, make recommendations and carry on functions for the purpose of efficiently accomplishing the purposes of the Association.

**Section 4.11. Removal of Director.** A Director or Directors elected by the Owners, or elected by the Directors to fill a vacancy, may be removed by the Owners with or without cause if the number of votes cast to remove would be sufficient to elect the Director(s) at a meeting to elect Directors. A Director or Directors may be so removed by the Owners only at a meeting called for the purpose of removing the Director(s). The meeting notice must state that the purpose of the meeting is for voting upon the removal of the Director(s). In such case, his or their successor(s) shall be elected at the same meeting from eligible Owners nominated at the meeting to serve for the remainder of the term(s) of the removed Director(s).

**Section 4.12. General Powers and Duties of the Board.** The powers and duties of the Board shall include but are not limited to the following:

- (a) The Board shall provide for the operation, maintenance, repair, replacement and improvement of the Common Areas, as and to the extent provided in the Declaration.
- (b) The Board shall prepare, adopt and distribute the annual budget for the Association and provide the manner of assessing and collecting from the Owners their respective shares of estimated expenses.
- (c) The Board shall have the power and duty to provide for the designation, hiring and removal of employees and other personnel, including lawyers and accountants, to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the property and to delegate any such powers to a manager or managing agent (and any such employees or other personnel as may be the employees of the managing agent).
- (d) The Board shall have the power to own, convey, encumber, lease, or otherwise deal with Lots conveyed to or acquired by Association.
- (e) The Board or its agents, upon reasonable notice, may enter any Lot when necessary in connection with any maintenance or construction for which the Board is responsible or to make emergency repairs as may be necessary to prevent damage to the Common Areas or to any other Lot or Lots.
- (f) The Board may engage the services of an agent to manage the portions of the Property for which the Board is responsible pursuant to the Declaration, to the extent deemed advisable by the Board provided, however, that any agreement for professional management shall provide

for termination by either party with or without cause or payment of a termination fee upon thirty (30) days or less written notice and shall be for a term not to exceed two (2) years.

(g) The Board's powers herein enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the maintenance fund any structural alterations, capital additions to, or capital improvements of the Common Areas (other than for purposes of replacing or restoring portions of the Common Areas, subject to all the provisions of the Plat and Declaration or unless required for emergency repair, protection or operation of the Common Areas), requiring an expenditure in excess of Ten Thousand Dollars (\$10,000.00) without in each case the prior written approval of two-thirds (2/3) of the Lot Owners.

(h) All agreements, contracts, deeds, leases, vouchers for payment of expenditures and other instruments shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by the Treasurer and countersigned by the President of the Board. The managing agent of the Property may be authorized to execute those documents required to enable it to perform its duties under its management agreement.

(i) Upon a vote of at least two-thirds (2/3) of the entire Board, the Board shall have the authority to lease or to grant licenses, concessions and contracts with respect to any part of the Common Areas.

(j) Nothing hereinabove contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all members or any of them.

(k) The Board shall have the power to bid for and purchase any Residence and Lot at a sale pursuant to a mortgage foreclosure, or a foreclosure of the lien for Common Expenses, or at a sale pursuant to an order or direction of a court, or other involuntary sale, upon the consent or approval of Owners owning not less than sixty-six and two-thirds percent (66-2/3%) in the aggregate of the Lots.

(l) The Board shall have the power to exercise all other powers and duties of the Board of Directors or Lot Owners as a group referred to in the Plat and Declaration or these By-Laws.

(m) The Board shall have the authority to perform the duties and assume the obligations required of the Association under the forms of the Declaration, including the assessment of Lot Owners for Common Area

and other expenses.

**Section 4.13. Standards of Conduct and Liability of Directors and Officers.**

The standard and duty of conduct for and the standard or requirements for liability of the Directors and Officers of the Association shall be as set forth in the Nonprofit Act, as the same may be amended from time to time.

**ARTICLE 5**  
**Officers**

**Section 5.1. Officers and Qualifications Therefore.** The officers of the Association shall consist of a president, a vice president, a secretary and a treasurer. The officers shall be chosen from among the directors. Any two (2) or more offices may be held by the same person except that the duties of president and secretary shall not be performed by the same person.

**Section 5.2. Terms of Office.** Each of the officers of the Association shall be elected by a majority vote of the board of directors at its annual meeting and shall hold office for a term of one (1) year and until his successor shall be duly elected and qualified, or until resignation, removal or death.

**Section 5.3. Vacancies.** Whenever any vacancies shall occur in any of the offices of the Association for any reason, the same may be filled by the board of directors at any meeting thereof, and any officer so elected shall hold office until the expiration of the term of the officer causing the vacancy and until his successor shall be duly elected and qualified.

**Section 5.4. Removal.** Any officer of the Association may be removed, with or without cause, by the board of directors whenever a majority of board shall vote in favor of such removal.

**ARTICLE 6**  
**Powers and Duties of Officers**

**Section 6.1. President.** The president, if present, shall preside at all meetings of the members and the board of directors. Subject to the general control of the board of directors, the president shall perform all of the usual duties of the chief executive officer of a corporation.

**Section 6.2. Vice President.** Subject to the general control of the board of directors, the vice president shall discharge all the usual functions of the president if the president is not present and shall have such other powers and duties as these By-Laws or the board of directors may prescribe.

**Section 6.3. Secretary.** The secretary shall attend all meetings of the members and of the board of directors, and keep, or cause to be kept, a true and complete record of

the proceedings of such meetings, and he shall perform a like duty, when required, for all committees appointed by the president or the board of directors. If required, he shall attest the execution by the Association of deeds, leases, agreements and other official documents. He shall attend to the giving and serving of all notices of the Association, and in general shall perform all duties pertaining to the office of secretary and such other duties as these By-Laws or the board of directors may prescribe.

**Section 6.4. Treasurer.** The treasurer shall keep or cause to be kept correct and complete records of account, showing accurately at all times the financial condition of the Association. He shall have charge and custody of, and be responsible for, all funds, notes, securities and other valuables which may from time to time come into possession of the Association. He shall deposit, or cause to be deposited, all funds of the Association with such depositories as the board of directors shall designate. He shall furnish at meetings of the board of directors, or whenever requested, a statement of the financial condition of the Association, and in general shall perform all duties pertaining to the office of treasurer.

**Section 6.5 Assistant Officers.** The board of directors may from time to time designate and elect from among the Owners assistant officers who shall have such powers and duties as the officers whom they are elected to assist shall specify and delegate to them, and such other powers and duties as these By-laws or the board of directors may prescribe. An assistant secretary may, in the absence or disability of the secretary, attest the execution of all documents by the Association.

## **ARTICLE 7** **Miscellaneous**

**Section 7.1. Corporate Seal.** The Association shall have no seal.

**Section 7.2. Execution of Contracts and Other Documents.** Unless otherwise ordered by the board of directors, all written contract and other documents entered into by the Association shall be executed on behalf of the Association by the President and, if required, attested by the Secretary or Treasurer.

**Section 7.3. Fiscal Year.** The fiscal year of the Association shall begin on January 1 of each year and end on December 31.

## **ARTICLE 8** **Amendments**

Subject to law, the Articles of Incorporation, and the Declaration of Covenants, Conditions, the power to make, alter, amend or repeal all or any part of these By-Laws is vested in the Association's Board of Directors. The affirmative vote of a majority of the entire board of directors shall be necessary to effect any such changes in these By-Laws subject to the approval of Owners owing sixty-seven percent (67%) of the Residences.



70745 MAR 23 05

RECEIVED BY THE ASSOCIATION  
SUBJECT TO THE ACCEPTANCE  
FOR TRANSFER

**ARTICLE 9**  
**Indemnification of Directors and Officers**

To the extent not inconsistent with the laws of the State of Indiana, every person (and the heirs and personal representatives of such person) who is or was a director or officer of the Association shall be indemnified by the Association to the same and fullest extent that directors of nonprofit corporations are indemnified under the Nonprofit Act, as amended.

**CERTIFICATE**

The foregoing Amended and Restated Code of By-Laws were adopted by the Board of Directors on February 26, 2005, after being approved by the necessary number of Owners on said date.

James Murphy  
James Murphy, President  
Doris Polsley  
Doris Polsley, Secretary

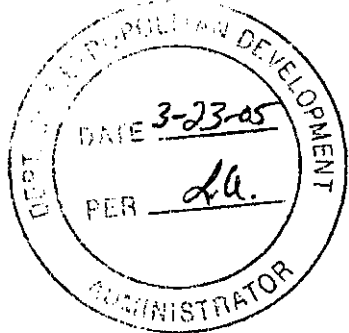
STATE OF INDIANA )  
COUNTY OF MARION )

Before me, a notary public, in and for said County and State, personally appeared James Murphy and Doris Polsley, the President and Secretary, respectively, of Beech Tree Homeowners Association, Inc., an Indiana nonprofit corporation, who acknowledged execution of the within and foregoing for and on behalf of said corporation and its members and who, being duly sworn, stated that the Certifications and representations made therein are true. Witness my hand and notarial seal this 21st day of March, 2005.

CAROLYN J. ALFREY  
Notary Public - Signature  
CAROLYN J. ALFREY  
Printed  
Residence County: MARION

My Commission Expires:  
9/29/2006

This instrument prepared by, and should be returned to, P. Thomas Murray, Jr., EADS MURRAY & PUGH, P.C., Attorneys at Law, 7321 Shadeland Station, Suite 250, Indianapolis, IN 46256. (317) 842-8550.



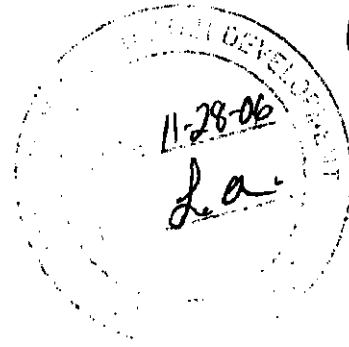
APPROVED THIS 21st  
DAY OF March 20 05  
PERRY TOWNSHIP ASSESSOR  
[Signature] GIS MANAGER

MARTHA A. WOMACKS  
MARION COUNTY RECORDER

660323 NOV 20 11

GUYTON, MISSOURI  
SUBJECT TO THE ORIGINAL

Cross-Reference: 1983-32662 and 2005-43266



**FIRST AMENDMENT TO THE AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR BEECH TREE CONDOMINIUMS**

This First Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Beech Tree Condominiums was executed as of the date set forth below.

**WITNESSETH:**

WHEREAS, the Beech Tree subdivision located in Marion County, Indiana was established by a certain Declaration of Covenants, Conditions and Restrictions which was recorded on May 16, 1983, as Instrument No. 1983-32662 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, in 2005, the Owners of Lots within Beech Tree approved an Amended and Restated Declaration of Covenants, Conditions and Restrictions Plats which was recorded on March 23, 2005, as Instrument No. 2005-43266 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, the Board of Directors of the Beech Tree Homeowners Association, Inc. ("Association") subsequently recommended an amendment to the Amended and Restated Declaration as set forth below; and

WHEREAS, after notice was duly given, the amendment set forth below was approved by the Owners of thirty-three (33) of the forty-six (46) Lots; and

NOW, THEREFORE, the Amended and Restated Declaration which is applicable to all Owners and residents within Beech Tree is hereby amended as follows:

1. Article VI, Section 6.9 of the Amended and Restated Declaration of Covenants is deleted and replaced by the following:

**Section 6.9. Signs.** Neat and professional looking "For Sale" signs, not to exceed 18" x 24", will be allowed in the kitchen window only. No "For Sale Signs" will be allowed on the lawns, mailboxes, buildings, or vehicles at Beech Tree. No yard information boxes will be permitted.

2. Acceptance and Ratification. The acceptance of a deed of conveyance or the act of occupancy of any one Lot shall constitute a ratification of this Amendment, together with the Amended and Restated Declaration, and all such provisions shall be covenants running with the land and shall bind any person having at any time having any interest or estate in a Lot or the Beech Tree Condominiums as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease.

3. Certification. The undersigned persons hereby represent and certify that all requirements for and conditions precedent to the Amendment of the Amended and Restated Declaration have been fulfilled and satisfied.

Executed this 24<sup>th</sup> day of November, 2006.

Beech Tree Homeowners Association, Inc., by:

James Murphy, President  
James Murphy, President

Attest: Sue Glover, Secretary  
Sue Glover, Secretary

STATE OF INDIANA     )  
  ) SS:  
COUNTY OF MARION    )

Before me, a notary public, in and for said County and State, personally appeared James Murphy and Sue Glover, the President and Secretary, respectively, of Beech Tree Homeowners Association, Inc., an Indiana nonprofit corporation, who acknowledged execution of the within and foregoing for and on behalf of said corporation and its members and who, being duly sworn, stated that the certifications and representations made therein are true. Witness my hand and notarial seal this 24 day of November, 2006.

Elizabeth C Carver  
Notary Public - Signature

My Commission Expires: 1/10/2014

Elizabeth C Carver  
Printed

Residence County: MARION

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law." P. Thomas Murray, Jr., Esq.

This instrument prepared by, and should be returned to, P. Thomas Murray, Jr., EADS MURRAY & PUGH, P.C., Attorneys at Law, 9515 E. 59<sup>th</sup> Street, Suite B, Indianapolis, IN 46216. (317) 536-2565.