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AMEND DECL 88.00

Amended Declaration of Covenants, Conditions and Restrictions

for

Barrington Estates

Amends and Replaces the Declaration of Covenants, Conditions and Restrictions for Barrington Estates dated March 30, 1997 and recorded in the Office of the Recorder of Hamilton County, Indiana on April 14, 1997 as Instrument Number 9713954.

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**AMENDED DECLARATION OF PROTECTIVE RESTRICTIONS,
COVENANTS, LIMITATIONS, EASEMENTS AND APPROVALS
APPENDED TO AS PART OF THE DEDICATION AND PLAT OF
BARRINGTON ESTATES
A SUBDIVISION OF REAL ESTATE IN
HAMILTON COUNTY, INDIANA**

This Amended Declaration of Protective Restrictions, Covenants, Limitations, Easements and Approvals for Barrington Estates is made this 15th day of April, 2003, by Cole Developers, LLC, an Indiana Limited Liability Company.

WHEREAS, Cole Developers, LLC hereby declares that it is the Owner and Developer of unsold sections of the real estate described in Exhibit A which is attached hereto, which includes Barrington Estates developed hereinafter, and do hereby lay off, plat and subdivide said real estate in accordance with those platted sections which have been certified and filed and/or will be certified and filed at different times hereinafter. The Subdivision shall be known and designated as Barrington Estates, a Subdivision of real estate in Hamilton County, Indiana.

WHEREAS, the Lots previously and subsequently platted shall be subject to and impressed with the covenants, agreements, restrictions, easements and limitations hereinafter set forth, and they shall be considered a part of every conveyance of land held, transferred, conveyed, leased or occupied in said Subdivision without being written therein. The provision herein contained are for the mutual benefit and protection of the Owners present and future of any and all land in the Subdivision, and they shall run with and bind the land and shall inure to the benefit of and be enforceable by the Owners of land included therein, their respective legal representatives, successors, grantees and assigns.

WHEREAS, the Lots shall be numbered in subsequent plats to files. All streets and easements specifically shown are described and are hereby expressly dedicated to Private use for their usual and intended purposes.

ARTICLE I

DEFINITIONS

1.01 Definitions. When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have all the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

- (a) "Association" shall mean and refer to the Barrington Estates

Community Association, Inc., its successors and assigns.

- (b) “Architectural Review Board” shall mean and refer to the committee established by the Board of Directors to administer the Architectural functions and obligations described in Article V herein.
- (c) “Articles of Incorporation” shall mean and refer to the Articles of Incorporation of the Barrington Estates ownership, as amended from time to time.
- (d) “Assessment” shall mean and refer to an Owner’s share of the Common Expenses or other charges from time to time assessed against an Owner by the Association in the manner herein provided. “Assessment” also includes annual Association Dues.
- (e) “Association” shall mean and refer to the Barrington Estates Owners Association, Inc., an Indiana nonprofit corporation to be established by the Declarant, its successors and assigns.
- (f) “Barrington Estates” shall mean and refer collectively to each subdivision or section of the Barrington Estates Development, the master plan of which is attached as Exhibit A and as it may change from time to time.
- (g) “Board of Directors” or “Board” shall mean and refer to the Board of Directors of the Association.
- (h) “By-Laws of the Association” or the “By-Laws” shall mean and refer to the By-Laws of the Association.
- (i) “Class A Owner” shall mean and refer to one or more Persons, including the Declarant, who or which owns fee simple title to any Lot or Dwelling, excluding, however, those persons having such an interest under a Mortgage.
- (j) “Class B Owner” shall mean and refer to one or more Persons (a.k.a. Developer or Declarant) who or which owns title to the Barrington Estates property.
- (k) “Common Area” shall mean and refer to all real property owned by the Association for the common use and enjoyment of the Owners and shall include, but not be limited to signage, entry ways, recreation areas, easements, including utility easements and

- all real property dedicated as a public right-of-way.
- (l) “Common Expenses” shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, if any, pursuant to the provisions of this Declaration.
 - (m) “Declarant” shall mean and refer to Cole Developers, LLC, an Indiana limited liability company, its successors and assigns.
 - (n) “Declaration” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Barrington Estates and all amendments and supplements thereof filed for record with the Recorder of Hamilton County, Indiana.
 - (o) “Development” shall mean and refer to the Property and all improvements located or constructed thereon.
 - (p) “Dwelling Unit” shall mean and refer to the structure used as a residential living unit located upon a Lot, including the garage and any appurtenances.
 - (q) “Lot” shall mean any type of Lot as platted or any tract or tracts of land as conveyed originally or by subsequent Owners, which may consist of one or more Lots or parts of one or more Lots as platted upon which a residence may be erected in accordance with the restrictions here above set out or such further restrictions as may be imposed by any applicable zoning ordinance, PROVIDED, HOWEVER, no tract of land consisting of part of any one Lot or parts of more than one Lot shall be considered a “Lot” unless said tract of land has a frontage of 110 feet in width at the established building line as shown on the plat unless otherwise approved by the Declarant.
 - (r) “Mortgage” shall mean and refer to a mortgage, security deed, deed of trust, installment land sales contract, or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title to a Lot of Dwelling.
 - (s) “Mortgagee” shall mean and refer to the holder of a Mortgage.
 - (t) “Occupant” shall mean and refer to any person, including, without limitation, any Owner or any guest, invitee, tenant, or family member of an Owner, occupying or otherwise using a Dwelling

within the Development.

- (u) “Owner” shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the properties, including contract sellers, but excluding those having interest merely as security for the performance of any obligation.
- (v) “Person” shall mean and refer to a natural person, corporation, partnership, Limited Liability Company, association, trust, or other legal entity, or any combination thereof.
- (w) “Plats” shall mean the surveys of the Property, which are recorded with the Recorder of Hamilton County, Indiana.
- (x) “Properties” shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be added to and brought within the jurisdiction of the Association.
- (xi) “Proxy” – shall mean that it is a signed note naming who it is that will vote for whom. It shall have the Lot number, street address, Lot owners name printed and script signature.
- (y) “Restrictions” shall mean and refer to the Dedication, Protective Restrictions, Covenants, Limitations, easements and Approvals appended to as part of the Dedication and Plat of Barrington Estates.
- (z) “Subdivision” shall mean Barrington Estates, a subdivision of real estate located in Fall Creek Township, Hamilton County, Indiana.

ARTICLE II

PROPERTY RIGHTS

2.01 All Owners. Each Lot and Dwelling shall for all purposes constitute real property which, subject to the provisions of this Declaration, may be conveyed, transferred and encumbered the same as any other real property. Each Owner, shall be entitled to the exclusive ownership and possession of the Lot and Dwelling owned by such Owner, subject to the provisions of this Declaration, including without limitation, the provisions of this Article II. The Ownership of each Lot and Dwelling shall include, and there shall pass, with each Lot and Dwelling as an appurtenance thereto, whether or not separately described, all of

the right, title and interest in and to the Common Areas as established hereunder, which shall include, but not be limited to membership in the Association. Each Owner shall automatically become a member of the Association and shall remain a member until such time as his/her ownership ceases for any reason, at which time his/her membership in the Association shall automatically pass to the successor-in-interest to his/her Lot and Dwelling.

2.02 Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be maintained and/or owned by the Association, and which shall be appurtenance to and shall pass with the title to every Lot, subject to the provisions of this Declaration and the rules, regulations, fees and changes from time to time established by the Board of Directors in accordance with the By-laws, and subject to the following provisions:

(a) The right of the Association to suspend the voting rights of an Owner for any period during which any assessments against such Owner's Lot remains unpaid; and for a period not to exceed 30 days for any infraction to its published rules and regulations after hearing by the Board of Directors of the Association.

(b) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Class B members. At such time as the Class B membership ceases in accordance with 3.02 of Article III hereof, no further dedication or transfer by the Association of any part of the Common Area to any public agency, authority or utility shall be effective unless an instrument signed by two-thirds (2/3) of the Class A members agreeing to such dedication or transfer has been recorded.

(c) The right of the Association to borrow money (i) for the purpose of improving the Development, or any portion thereof, (ii) for acquiring additional Common Areas (iii) for constructing, repairing, maintaining or improving any facilities located or to be located within the Development, or (iv) for providing the services authorized herein, and, subject to the provisions of Section 4.10 hereof, to give as security for the payment of any such loan a mortgage or other security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Association shall be subject and subordinate to any and all rights, interest, options, licenses, easements, and privileges herein reserved or established for the benefit of Declarant, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

(d) The right of the Association to grant and accept easements as provided in Section 2.04 here of and to dedicate or transfer fee simple title to all or any

portion of the Common Areas to any public agency or authority, governmental authority, body politic, public or private utility, or other person, provided that such transfer of the title must be approved by a majority of the members present in person or by proxy at a duly held meeting of the Association and by Declarant, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

2.03 Additions to Common Area. The Developer reserves the right so long as Class B members of the Association exist, to convey and transfer to the Association such additional area and/or personal property as the Developer within its sole discretion deems appropriate, and the Association shall accept such transfer and shall hold such property as a part of the Common Area of the Subdivision.

2.04 Easements for Utilities. There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement, as well as the power to grant and accept easements to and from any public authority or agency, public or private utility, or other person, upon, over, under and across (i) all of the Common Areas, (ii) all land within easement areas shown on recorded subdivision plats and (iii) all land located along the interior of and within five (5') feet of each boundary of all Lots and all Dwellings, such lands to be bounded by the exterior boundaries of such Lots and Dwellings and by lines in the interior of such Lots and Dwellings which are exactly (5') feet from such exterior boundaries, for the purpose of installing, replacing, repairing, maintaining all utilities, including, but not limited to storm sewers, drainage systems, electrical, gas, telephone, cable television, water, sewer, advanced water treatment and irrigation lines. Such easements may be granted or accepted by Declarant, its successors or assigns, or by the Board of Directors, provided, however, that for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale, or has the unexpired option to add the Additional Property or any portion thereof to the Development, the Board of Directors must obtain the written consent of Declarant prior to granting or accepting any such easements. To the extent practicable, all utility lines and facilities serving the Development and located therein shall be located underground. By virtue of any such easement, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove trees, bushes or shrubbery, (iii) to grade, excavate or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use of such utilities and systems.

ARTICLE III

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

3.01 Membership.

(a) Owners of Lots and Dwellings. Each Class A Owner shall have a membership in the ASSOCIATION. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling, and ownership of a Lot or Dwelling shall be the sole qualification. In the event that fee title to a Lot or Dwelling is transferred or otherwise conveyed, the membership in the association, which is appurtenant thereto, shall automatically pass to such transferee. The foregoing is not intended to include Mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership with the Association. Where a mortgagee or other person holding an interest in a Lot or Dwelling as security for the performance of an obligation acquires title to such Lot or Dwelling through a foreclosure proceeding or the issuance of a deed in lieu of foreclosure, such mortgagee or other transferee shall be deemed to have a membership in the Association upon acquiring title to such Lot or Dwelling. Notwithstanding any of the foregoing to the contrary, no Owner, whether one or more persons, shall have more than one membership per Lot or Dwelling. In the event of multiple Owners of a Lot or Dwelling, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote and to hold an office in the Association, may be exercised by a member, but in no event shall more than one vote be cast or more than one office held for each Lot or Dwelling, and further provided that a member casting a vote or holding an office with respect to his Lot or Dwelling shall not be entitled to cast an additional vote or to hold an additional office for the Lot upon which his/her residential unit is located. When more than one person holds an interest in any Lot or Dwelling, the vote for such Lot or Dwelling shall be exercised as those Owners of such Lot or Dwelling themselves determine and notify the Secretary or an Assistant Secretary of the Association prior to any meeting. In the absence of such notice, the vote appurtenant to such Lot or Dwelling shall be suspended in the event more than one person seeks to exercise it. Such a suspended vote shall be counted for the purpose of calculating a quorum, but such a suspended vote shall not be cast with regard to voting matters of the Association until the persons owning such Lot or Dwelling determine how such vote shall be cast and so advise the Secretary or Assistant Secretary of the Association. The voting weight appurtenant to each Lot or Dwelling is equal and each Lot or Dwelling shall have one vote. Such voting weight shall continue to be equally apportioned upon the addition of all or

a portion of the Additional Property to the Development, and each Lot or Dwelling therein shall have one vote. Each Owner, by acceptance of a deed or other conveyance for a Lot or Dwelling, consents and agrees to the dilution of his/her voting interest in the Association by virtue of the submission from time to time of the Additional Property or any portion thereof to the terms of this Declaration as provided herein.

3.02 Classes. The association shall have two classes of voting members:

Class A. Class A members shall be all Owners of Lots in the Subdivision and such members shall be entitled to one vote for each Lot owned.

Class B. Class B member(s) shall be Joseph Kunzer and Theodore McMullen, or Cole Developers, LLC, its successors and assigns, and such member(s) shall be entitled to six (6) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When title to all Lots in all sections of Barrington Estates have been conveyed,
or
- (b) on December 31, 2020.

3.03 Board of Directors.

- (a) Management. The business and affairs of the Homeowner's Association shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he/she is an owner of a Lot. Quorum for the Board of Directors to conduct business shall be more than 50% of the Board of Directors membership.
- (b) Initial Board of Directors. The initial Board of Directors that were voted on October 30th, 2003 shall hold office until December 31st, 2006. At that time 2 Board positions will come up for a vote, 3 Board positions the 2nd year, then the last 2 Board positions the 3rd year thereafter. In the event of any vacancy or vacancies occurring in the initial Board for any reason or cause whatsoever prior to December 31st, 2006, every such vacancy shall be filled by a person appointed by the Declarant and the remaining Board of Directors, who shall thereafter be deemed a member of the initial Board and fulfill the remaining term.
- (c) Qualifications.
 - (i) Where an owner consists of more than one person or is a partnership (other than the Declarant), trust or other legal entity, then one of the persons constituting the multiple Owner, or partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot may be represented on the Board

- of Directors by more than one person at a time. (ii) The board of Directors shall be composed of no more than seven (7) and no less than three (3) persons.
- (d) Term of Office and Vacancy. At least one (1) member of the Board of Directors shall be elected at each annual meeting of the Barrington Estates Homeowner's Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until December 31st, 2006 or the annual meeting within 90 days of 12/31/06. After each Initial Board member's term expires, each new term will be for three (3) years. There shall be separate nominations and elections by the Board of Directors for Officers, chairmanships and committees at the first Board of Directors meeting of the year. Officers shall be elected by the Board on an annual term at the first Board of Directors meeting of the year. Directors may remove and/or replace officers/chairmanships & committee members as needed without cause or reason at any point in the year. Each Director shall hold office throughout the term of their election and until their successor is elected and qualified. There shall be no more than 3 elections of Directors for 3-year terms in any one year. If a Directorship comes up due to someone that has been removed or in respect to whom there has otherwise been a vacancy, the election at the following annual meeting will be to fill the remaining term limit.
- (e) Removal of Directors. A Director or Directors may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, their successor shall be nominated and elected by the owners at the meeting. A Director so elected shall serve the remaining term.
- (f) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Barrington Estates Homeowner's Association, which represents all of the Owners and is responsible for running the day-to-day, year-to-year business of the Association.
- (g) Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power: to employ any person or company that will help perform a function for the Board or the Homeowner's Association; to purchase, lease or otherwise obtain property for the Homeowner's Association; to discharge and remove such personnel/company that the Board feels may be necessary for the Board to perform its duties; and to pay all costs associated with running the Association.
- (h) Non-Liability of Directors. The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Barrington Estates Homeowner's Association shall indemnify and hold harmless and defend each of the Directors,

their heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that they are or were a director of the Barrington Estates Homeowner's Association, against any and all liability to any person, firm or association arising out of contracts made by the Board on behalf of the Barrington Estates Homeowner's Association, against the reasonable expenses, including, but not limited to, attorneys fees. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Barrington Estates Homeowner's Association.

ARTICLE IV

MAINTENANCE

4.01 Responsibilities of Owners. Unless specifically identified herein, all maintenance and repair of Lots and Dwellings together with all other improvements thereon or therein and all lawns, landscaping and grounds on and within a Lot or Dwelling shall be the responsibility of the Owner of such Lot or Dwelling. Each Owner shall be responsible for maintaining such Owner's Lot or Dwelling as the case may be, in a neat, clean and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all Dwellings, buildings, other structures, lawns, trees, shrubs, hedges, grass and other landscaping. As provided in Article IV Section 2 (b) (4.02 (b)) hereof, the Owner of a Lot or Dwelling shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining or cleaning any item which is the responsibility of such Owner, but which responsibility such Owner fails or refuses to discharge. No Owner of a Lot or Dwelling or others shall: (i) decorate, change or otherwise alter the appearance of any portion of the exterior of a Dwelling, building or other improvement of the landscaping, grounds or other improvements within a Lot unless such decoration, change, or alteration is first approved, in writing, by the Architectural Review Board, or (ii) do any work which, in the reasonable opinion of the Architectural Review Board, would jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement or hereditaments thereto, without in every such case obtaining the written approval of the Architectural Review Board and the Owners directly affected thereby or benefiting from such easement or hereditament.

4.02 Association's Responsibility

(a) Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Areas, which responsibility shall include the maintenance, repair, and replacement of: (i) roads, walks, trails, lakes, ponds, parking lots, landscaping, landscaped areas and other improvements situated within the Common Areas or within the easements described in Section 2.04 hereof, (ii) such utility lines (including by not limited to

force main sewer lines in all Sections), pipes, plumbing, wires, conduits, and related systems which are a part of the Common Areas and which are not maintained by a public authority, public or private utility, or other person. The Association shall not be liable for injury or damage to any person or property: (A) caused by weather conditions or by any Owner or any other person not acting as either an agent or employee of the Association, (B) resulting from any rain or other surface water which may leak or flow from any portion of the Common Areas, or (C) caused by a pipe, plumbing, drain, conduit, appliance, equipment, utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair, nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of the Common Areas or any other portion of the Property. No diminution or abatement of assessments, fees or charges shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments, fees and charges being a separate and independent covenant on the part of each Owner.

(b) In the event that Declarant or the Board of Directors determines that: (i) any Owner of a Lot or Dwelling has failed or refused to discharge properly his/her or its obligations with regard to the maintenance, cleaning, repair, or replacement of items for which he/she or it is responsible hereunder, or (ii) the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner of a Lot or Dwelling, his/her family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then, in either case, the Owner is responsible and a lien may be placed on his/her property.

(c) Upon closing on a Lot or Lots, the owner shall pay to the Barrington Estates Homeowner's Association the pro-rated portion of the yearly assessment due for the current year.

(d) An annual report consisting of at least the following shall be distributed to all Members within ninety (90) days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited or reviewed basis, as determined by the Board, by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any first mortgage on a Lot, the Association shall provide an audited financial statement.

4.03 Creation of the Lien and Personal Obligation of Assessments.

Each Owner of any Lot, excepting Cole Developers, LLC 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) Annual Assessments, such assessment to be established and collected as hereinafter provided: Assessments or any installments thereof which are not paid when due shall bear interest at a fluctuating rate equal to the maximum rate of interest which may be charged under the laws of the State of Indiana for consumer loans, adjusted on the first day of each calendar year. If any Owner shall fail, refuse or neglect to make any payment of any Assessment when due, the Board of Directors of the Association may, in its discretion, declare the entire balance of unpaid assessment to be due and payable, with interest as aforesaid, and file a written Notice of Lien against Owner's Lot in the office of the Recorder of Hamilton County, Indiana, which Notice of Lien shall perfect the lien of the Association and have the same force and effect as, and be enforced in the same manner as, a mortgage lien under Indiana law, and shall include attorney's fees, title expenses, interest and any costs of collection. If an Owner's assessment account is not paid current, the Owner may not vote; (2) Assessments pursuant to this Article IV, Section 2 (b) (4.02 (b)).

4.04 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of residents of Barrington Estates, and in particular for the improvement and maintenance of the ponds, entrance ways and all other Common Areas, including but not limited to, repair, maintenance, the cost of labor, equipment and materials, supervision, security, lighting, lawn care, snow removal, insurance, taxes, and all other things necessary or desirable in the opinion of the Board of Directors of the Association in connection therewith.

4.05 Maximum Annual Assessments. The Owner of each Lot or Dwelling in the Property shall pay annual assessments which, beginning in 2004, shall be an amount not less than FOUR HUNDRED NINETY DOLLARS (\$490).

- (a). The maximum Annual Assessment may be increased each year not more than 20% above the maximum assessment for the previous year without a vote of the membership.
- (b). The maximum Annual Assessment may be increased above 20% by the vote or written assent of 51% of each class of members.
- (c). The Board of Directors may fix the Annual Assessment at an amount not in

excess of the maximum.

4.06 Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a special assessment (“Special Assessment”) applicable to that year only for the purpose of defraying, in whole or in part, the cost of construction, repair or replacement of capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of 51% of each class or members.

4.07 Individual Assessments. Any expenses of the Association occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests, or invitees of any Owner shall be specially assessed against such Owners and their respective Lots or Dwellings. The individual assessments provided for in this Section 4.07 shall be levied by the Board of Directors and the amount and due date of such assessment so levied by the Board shall be as specified by the Board.

4.08 Notice and Quorum For Any Action Authorized Under 4.05 or 4.06. Any action authorized under Section 5 or 6 of this Article IV (4.05 or 4.06) and requiring a vote or written assent of a certain percentage of the Association membership shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than 10 days nor more than 30 days in advance of the meeting. If the proposed action as favored by a majority of the votes cast at such meeting, but such vote is less than the requisite 51% of each class of members, members who were not present in person or by proxy may give their assent in writing provided the same is obtained by the appropriate officers of the Association not later than 15 days from the date of such meeting. Quorum, to conduct business, for a Barrington Estates Homeowner’s Association meeting, overseen by the Board of Directors, shall be 10 % of all Class A Lots (i.e. 100 Lots = at least 10 Lot owners including the Board of Directors may vote on issues and conduct business for the Homeowners). The Board of Directors shall oversee all Barrington Estates Homeowner’s Association meetings.

4.09 Date of Commencement of Annual Assessments: Due Dates. The Board of Directors shall equally fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

4.10 Effect of Nonpayment of Assessment: Remedies of the Association.

Any annual assessment or assessment pursuant to Article IV Section 2 (b) (4.02b) not paid within thirty (30) days after the due date shall bear interest from the due date as provided in Section 3 of this Article IV (4.03). The Association may bring an action at law against the Owner personally obligated to pay the same; may foreclose the lien against the property in accordance with the provisions of Section 3 of this Article IV (4.03); or may do both. No Owner may waive Article IV by non-use of the Common Areas or by abandonment of a Lot.

4.11 Subordination of the Lien to Mortgages. The lien of any assessments provided for in this Article IV shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot shall not affect such assessment lien. (However, sale or transfer of any Lot pursuant to a judgment and court order on a foreclosure of any first mortgage shall extinguish the lien of such assessments as to payments, which became due prior to such sale or transfer.) No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL STANDARDS

5.01 Purpose. In order to preserve the natural setting and beauty of the Development, to establish and preserve a harmonious and aesthetically pleasing design for the Development, and to protect and promote the value of the Development, the Lots, Dwellings and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article V. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article V.

5.02 Architectural Review Board. The Board of Directors shall establish the Architectural Review Board, hereinafter the "ARB" of not less than three (3) and not more than five (5) members. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. Notwithstanding the foregoing to the contrary, any member appointed to the ARB by the Board shall be subject to the prior approval of Declarant until that date which is three (3) years from and after the date on which Declarant's right to appoint and remove officers and directors of the Association is terminated. The ARB shall elect a chairman and the person, or in their absence, the vice chairman, shall be the presiding officer at its meetings. The ARB shall meet at least once in each calendar month, as well as upon call of the chairman, and all meetings shall be held at such places as may be

designated by the chairman. A majority of the members shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or a proxy at a meeting of the ARB shall constitute a quorum for the transaction of business, and affirmative vote of a majority of those present in person or by proxy at a meeting of the ARB shall constitute the action of the ARB on any matter before it. The ARB is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, attorneys, and/or other professionals in order to advise and assist the ARB in performing its functions set forth herein. Each member of the ARB may be paid a stipend or honorarium as from time to time determined by the Board. The ARB is hereby empowered to establish and promulgate architectural and landscaping policies and procedures, which must be adhered to by all Owners, with the exception of Declarant, in undertaking any improvement within any Lot, Dwelling or Common Area.

The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Development area and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography. The Architectural Review Board shall gather all bids and make recommendations to the Officers and Board that deal with all common property such as, but not limited to, air, land, landscaping, streets, structures, and water.

5.03 Permitted Improvements. No improvements of any nature whatsoever shall be constructed, altered, added to, or maintained upon any part of the Development, except: (i) for Dwellings and other improvements which are constructed by Declarant, (ii) such improvements as are approved by the ARB in accordance with this Article V, (iii) improvements which are pursuant to this Article V do not require the consent of the ARB.

5.04 Construction of Improvements.

(a) All buildings, structures, or other improvements (excepting sidewalks and driveways) on or with respect to any Lot or Dwelling shall be located only within the setback lines specified on the plats thereof recorded at the time of submission of said Lots or Dwellings to this Declaration, provided that the ARB shall be empowered to grant variances with respect to such setback lines provided that such variances are consistent with setback requirements of the County. To assure that Dwellings and other structures will be located so that the maximum view, privacy and breeze will be available to each Dwelling or structure, Dwellings and structures will be located with regard to the topography of each Lot and Dwelling taking into consideration the location of trees and vegetation and other aesthetic and environmental considerations, as well as the precise site and location of any other Dwellings or structures within the Development.

(b) The ARB, in its sole discretion, may require that an Owner of a Lot or Dwelling, their contractors and/or subcontractors post payment and/or performance bonds with the ARB to assure that such contractor or subcontractor shall satisfactorily complete such improvements, such bonds to be in the name of the Association and to be in form and amount satisfactory to the ARB. The exterior of any improvement to a Lot or a Dwelling shall be completed within twelve (12) months after the construction of same shall have been commenced, except where the ARB allows for an extension of time because such completion with such time is impossible or would result in great hardship to the Owner or builder thereof due to strikes, national emergencies, fires, floods, lightning, earthquakes or other casualties. In the event that such improvements or landscaping are not completed within the provided periods, the ARB shall be entitled to collect on or enforce any payment or performance bonds required hereunder so as to ensure the proper completion of any such improvements. Furthermore, the ARB shall be entitled to retain any sums so held in escrow as a penalty for such failure to complete, and such sums shall be remitted to and shall be the property of the Association. Any such sums so held in such escrow shall, at the discretion of the ARB, be invested so as to earn interest, and any interest earned thereon shall be paid to the Owner making such escrow deposit, if his/her escrow is refunded, or if remitted to the Association, shall be the property of the Association.

(d) Dwellings may not be temporarily or permanently occupied until a Certificate of Occupancy has been issued by the County. No temporary house, shack, tent, barn, or other outbuilding shall be permitted on any Lot or Dwelling, at any time, and except for temporary structures for social functions as may be permitted by rules and regulations promulgated by the Board, nor shall any stable, poultry house or yard, or other similar yard structure be constructed or allowed to remain on any Lot or Dwelling. During the continuance of construction by an Owner, such Owner shall require its contractors to maintain the Lot or Dwelling in a reasonably clean and uncluttered condition and, to the extent possible, such Owner shall cause its contractors to immediately remove all equipment, tools, construction material and debris from the Lot or Dwelling on which such construction has been completed.

5.05 Architectural Approval. To preserve the architectural and aesthetic appearance of the Development, no construction of improvements of any nature whatsoever shall be commenced or maintained by any Owner, other than Declarant, with respect to the construction or exterior of any Dwelling or with respect to any other portion of the Development, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mailboxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, bulkheads, exterior lights, garages, guest or

servant's quarters, or other outbuildings; nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until three (3) copies of the plans and specifications and related data (including, if required by the ARB, a survey showing the location of trees of six (6) inches in diameter at a height of four (4) feet and other significant vegetation on such Lot or Dwelling) showing the nature, color, type, shape, height, materials and location of the same shall have been submitted to and approved in writing as to:

- (i) the harmony of external design, (ii) location, (iii) quality of design, workmanship and materials; and (iv) appearance in relation to surrounding structures and topography by the ARB.

At least one copy of such plans, specifications, and related data so submitted shall be retained in the records of the ARB and one copy shall be returned to the Owner marked "**approved**", "**approved with conditions**" or "**disapproved**". The ARB shall establish a fee sufficient to cover the expenses of reviewing plans and related data and to compensate any consulting architects, landscape architects, urban designers, inspectors, or attorneys retained in accordance with the terms hereof. Notwithstanding the foregoing, an Owner may make interior improvements and alterations within his/her Dwelling without the necessity of approval or review by the ARB. The ARB shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association. In connection with approval rights and to prevent excessive drainage or surface water run-off, the ARB shall have the right to establish a maximum percentage of a Lot or Dwelling which may be covered by Dwellings, buildings, structures, or other improvements, which standards shall be promulgated on the basis of topography, percolation rate of the soil types and conditions, vegetation cover, and other environmental factors. Following approval of any plans and specifications by the ARB, representatives of the ARB shall have the right during reasonable hours to enter upon and inspect any Lot or Dwelling, or other improvements with respect to which construction is underway to determine whether or not the plans and specifications therefore have been approved and are being complied with. In the event the ARB shall determine that such plans and specifications have not been approved or are not being complied with, the ARB shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In the event the ARB fails to approve or disapprove in writing any proposed plans and specifications within sixty (60) days after such plans and specifications shall have been submitted, such plans and specifications will be deemed to have been expressly approved. Upon approval of plans and specifications, no further approval under this Article V shall be required with respect thereto, unless such construction has not substantially commenced within sixty (60) days of the approval of such plans and specifications (e.g. clearing and

grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed. Refusal of approval of plans and specifications may be based by the ARB upon any ground which is consistent with the objects and purposes of this Declaration, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

Required Building Plan Information (but not limited to) –

- Residence floor plans (showing what will be finished and what is not) and foundation
- Building elevations from all 4 sides
- Materials and colors proposed for exterior walls, roof and driveway
- Existing grades; finished grading plan (coordinated with Hamilton County's approved Architectural Planning Criteria)
- Building location with dimensions to property lines
- Drives, walks, walls, pools and enclosures, terraces and docks
- Areas to be grassed and irrigated; type of grass planted
- Irrigation system design and type
- Landscape planting plan

This is a builder-approved subdivision. New builders may be added to the list but prior approval is a must to have your plans approved. The ARB will make all approvals or disapprovals when plans are submitted. Some information from the builder may be needed by the ARB before an approval is made.

5.06 Landscaping Approval. To preserve the aesthetic appearance of the Development, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed by any Owner of a Lot or Dwelling, other than Declarant, unless and until the plans therefore have been submitted to and approved in writing by the ARB. The provisions of Section 5 (5.05) hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc. shall also be applicable to any proposed landscaping, clearing, grading, excavation or filling. Such plans shall include a grading plan and calculation of the ratio of the area to be covered by grass lawns versus the area to be left in a natural state, and the ARB shall be entitled to promulgate standards with respect to such ratios. Such landscape and grading plans shall be reviewed and approved with consideration to the harmony of the proposed landscape design to the environmental character in the surrounding area, integration of any structures and proposed landscaping to the character and nature of the surrounding area, the preservation of natural drainage patterns, the visual impact to surrounding areas and the establishment of adequate and sufficient shading and buffering with regard to the individual Lot or Dwelling to the surrounding area. All of the landscaping of Dwellings must be completed within ninety (90) days of occupancy or substantial completion of the Dwelling,

whichever date shall first occur. The Lots shall be landscaped according to plans approved by the ARB. All shrubs, trees, grass and plantings of every kind shall be properly sized and kept well maintained, properly cultivated and free of trash and other unsightly material. Each Lot Owner shall be required to plant a minimum of six (6) trees with a trunk of no less than three (3) inches in diameter.

All lawns must be sodded or hydro seeded as determined by the ARB in its sole discretion. Irrigation is required for all lawns in full, unless approved otherwise by the Architectural Review Board such as in heavy wooded areas. No synthetic or artificial plant materials such as Astroturf or imported, exotic and/or inorganic materials such as lava rock will be approved by the ARB in areas visible from off site or adjacent lots. Irrigation and turf shall be extended to the areas along roads.

5.07 Approval Not a Guarantee. No approval of plans and specifications and no publication of architectural standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any Dwelling or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association nor the ARB shall be responsible or liable for any defects in any plans or specifications submitted, revised or approved pursuant to the terms of this Article V, nor any defects in construction undertaken pursuant to such plans and specifications.

5.08 Appeal. Each Lot owner may appeal the Architectural Review Board's decisions to the Board of Directors. A written appeal must be submitted and heard within 30 days of giving the written appeal to the President of the Barrington Estates Homeowner's Association. The Board of Directors may reverse or modify such decision (including approve a Lot development plan deemed denied by the failure of the ARB to action such plan within the specified period) by a two-thirds (2/3) vote of the Directors then serving.

ARTICLE VI

GENERAL PROVISIONS

6.01 Residential Purposes. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two and one half (2 ½) stories in height. Each Dwelling Unit shall include as a minimum a three-car garage.

A "detached single family dwelling" could include a room or a suite of rooms within a single family appearing dwelling for occupancy by relatives of the

owner. Occupancy of said room or suite of rooms is limited to relatives of the owner and/or domestic help.

6.02 Home Occupations. No Lot shall be used for any purpose other than as a single-family residence, except that home occupation, defined as follows may be permitted; (a) any use conducted entirely within the Dwelling Unit and participated in solely by a member of the immediate family residing in said Dwelling Unit, which use is clearly incidental and secondary to the use of the Dwelling Unit for dwelling purposes and does not change the character thereof and in connection other than that of a Dwelling Unit; (b) no commodity is sold upon the Lot; (c) no person is employed in such home occupation other than a member of the immediate family residing in the Dwelling Unit; and (d) no mechanical or electrical equipment is used; provided that, in no event shall a barber shop, styling salon, beauty parlor, tea room, licensed child care center or other licensed or regulated baby-sitting services, animal hospital, or any form of animal care or treatment such as dog trimming be construed as a home occupation.

6.03 Building Sizes. The front elevation of each house shall be a minimum of 75 feet unless otherwise approved by the ARB. No Dwelling Unit shall be built on any Lot having the living area of the main structure, exclusive of basements, one-story open porches, breezeways or garages of less than the following number of square feet for the following types of dwellings. All Dwellings will have basements with a minimum of 1,750 sq. ft. unless the ARB approves in writing otherwise. The *minimum* first floor living area of any type of Dwelling Unit shall be no less than 2,000 square feet. Minimum overall square footage shall be the following:

All roof slopes, at a minimum, are to be 12/12 pitch side to side and 10/12 front to back. The first floor must be at least 2 ft. above finished grade.

<u>Type of Home</u>	<u>Minimum Square Footage</u>
One Story	3,250 square feet **
Two Story	3,500 square feet **
1-1/2 story, Bi-Level and Tri-Level	3,500 square feet (permitted terrain as designated by the Developer) **

**Each home must have at least 1,750 sq. ft. of basement living space (can be unfinished)

6.04 Garages. All dwelling Units must have an attached garage of at least 660 square feet and not more than 1,200 square feet. Such attached, side or courtyard entrance garage must have openings for at least three automobiles and be at least eight (8) feet in height. Additional front-load garage openings may be considered.

Exceptions to this section may be granted by the Architectural Review Board in accordance with the provisions of Article V.

6.05 Building Setbacks. No Dwelling Unit or any improvements or structures shall be located on any Lot nearer to the front Lot line or nearer to the side street line or the rear property line than the minimum building setback lines shown on the recorded plat. The front building line shall be parallel with the front property line at a setback distance of at least sixty (60) feet, unless otherwise approved by the ARB. In any event, no Dwelling Unit shall be located nearer than a distance of twenty (20) feet to a side Lot line, and no nearer than a distance of fifty (50) feet to a rear property line if there is no rear setback line shown on the recorded plat. Again, the ARB has ability to approve otherwise.

6.06 Utility and Drainage Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No owner of any Lot shall erect or grant to any person, firm or corporation, the right license of privilege to erect or use or permit the use of overhead wires, poles or overhead facilities of any kind for electrical, telephone or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the subdivision). Nothing herein shall be construed to prohibit street lighting or ornamental yard lighting services by underground wires or cables. Electrical service entrance facilities installed for any Dwelling Unit or other structure connecting the same to the electrical distribution system of any electric public utility shall be provided by the Owners of all Lots and shall carry not less than (3) wires and have a capacity of not less than 200 amperes. Any electric public utility charged with the maintenance of any underground installation shall have access to all easements in which said underground installations are located for operation, maintenance and replacement of service connections. Any such electric public utility shall not be liable for damage to walks, driveways, lawn or landscaping which may result from installation, repair or maintenance of such service. Grass is only allowed to be planted in the north 15 feet of the 25-foot landscape and non-access easement adjacent to 136th Street.

6.07 Maintenance of Lots and Dwelling Units.

- (a) No Lot and no Dwelling Unit shall be permitted to become overgrown, unsightly or to fall into disrepair. All Dwelling Units shall at all times be kept in good condition and adequately painted or otherwise finished in accordance with specifications established by the ARB. Each Owner, successors and assigns, hereby grants to the Association, jointly and severally, the right to make any necessary alterations, repairs or maintenance approved by the ARB to carry out the intent of this provision and they further agree to reimburse the Association for any expenses actually incurred in carrying out the foregoing. The Association may assess and collect such reimbursement in the same manner as it assesses

and collects yearly assessments pursuant to Article IV above, and such amounts shall become a lien upon the Lot as provided in Article IV.

- (b) The owner of a Lot shall be responsible for maintaining and keeping the landscape irrigation system installed in good working order.
- (C) All Lots need to be cut once a month that do not have a Dwelling Unit started. Once construction is started, the yard needs to be maintained to prevent unsightly growth of vegetation and noxious weeds.
- (d) In the event the Common Area or Common Facility is damaged or destroyed by an Owner or any of their guests, tenants, licensees, agents, builders, contractors, or member(s) of their family, such Owner authorizes the Architectural Review Board to repair said damaged area; the Architectural Review Board shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the ARB in the discretion of the ARB. An amount equal to the costs incurred to affect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said Owner(s).

6.08 Nuisances.

No noxious or offensive activity shall be carried out upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Without limiting any of the foregoing, no exterior lights, the principal beam of which shines upon portions of a Lot other than the Lot upon which they are located, or which otherwise cause unreasonable interference with the use and enjoyment of a Lot by the occupants thereof, and no speakers, horns, whistles, bells or other sound devices shall be located, used or placed on the premises, except security devices used exclusively for security purposes which are activated only in emergency situations or for testing thereof. Noisy and/or loose animals shall constitute a nuisance.

6.09 Storage and Temporary Structures Storage. No structure of a temporary character, trailer, boat trailer, truck commercial vehicle, recreational vehicle (RV), camper shell, all terrain vehicle (ATV) camper or camping trailer, tent, shack, garage, barn, storage barn or other outbuilding shall be either used or located on any Lot, where it is in site from other Lots, or adjacent to any Lot, private street or right-of-way within the Subdivision at anytime, or used as a residence either temporarily or permanently. Exceptions by the ARB can be made with written approval. Gazebos will be considered by the Architectural Review Board.

6.10 For Sale Signs. Once a home Dwelling Unit is occupied, no sign of any kind shall be displayed to the public view on any Lot except one sign of no more than six square feet advertising such Lot for sale. Rummage or other sale signs

may be placed on Lots for no more than seven days in a calendar year. Special permission may be granted by Cole Developers, LLC or the ARB for some promotions that would require larger and greater number of signs such as “Parade of Homes”. Such permission must be secured in writing before the placement of additional signage. (See also 6.36 and 6.37 pertaining to signs).

6.11 Radio and Television Antennas. No radio or television antenna shall be attached to any Dwelling Unit. No freestanding radio or television antenna shall be permitted upon or in any Lot. No television receiving disk or dish larger than forty (40”) inches shall be permitted on any Lot or on any Dwelling Unit and its location must be in the most conspicuous location and approved by the Architectural Review Board. No solar panels shall be permitted without written approval by the ARB.

6.12 Drilling, Refining, Quarrying, and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot. No derrick or other structure designed for the use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

6.13 Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. Animals shall be confined to the owner’s property at all times by electric fence or leashed at all times.

6.14 Building Materials.

(a) All Dwelling Units and other permitted structures shall be constructed in a substantial and good workmanlike manner and of new materials. No roll vinyl siding, asbestos siding or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any Dwelling Unit or other permitted structure on any Lots of said Subdivision. In any event, all exterior building materials must be approved by the Architectural Review Board. Each builder shall execute a written covenant to comply with all requirements of this Declaration and the requirements of the ARB. All builders must be approved even if the Lot owner is the builder.

(b) Each construction site shall have a commercial trash receptacle or other receptacle approved by the Architectural Review Board located thereon which is emptied on a regular and timely basis. It must always remain closed and never allowed to have trash above the top line of the receptacle.

(b) No temporary trailers shall be placed on any construction site without the prior

written approval of the Architectural Review Board.

- (d) The failure by a contractor to abide by the covenants, conditions and restrictions shall result in the Owner of the Lot whose home is being constructed to be assessed and subject to the lien rights of the Barrington Estates Homeowner's Association and/or the Declarant for all monies incurred by the Barrington Estates Homeowner's Association and/or the Declarant for cleaning up the site. During Construction of a residence, the Lot Owner shall be liable and will be charged by the Barrington Estates Homeowner's Association and/or the Declarant for any damage to the Master Common Area, Neighborhood Common Area, and/or roadways abutting the Owner's Lot, other owner(s) Lot(s) and/or property on their Lot(s), whether or not the perpetrator of the damage is known.
- (e) Once Construction has commenced, work thereon must be performed diligently and completed within one (1) year, unless approved otherwise by the Architectural Review Board. If an improvement has been partially or totally destroyed by fire or otherwise, such structure shall be restored within three (3) months from the time of such destruction or damage. If for any reason work is discontinued and/or there is no substantial progress towards completion for a continuous one (1) month period, then the Barrington Estates Homeowner's Association and or the Declarant shall have the right, but not the obligation, after ten (10) days notice to the Owner of record of the Lot, to invade the premises, and take such steps as may be required to correct an undesirable appearance, specifically including the right to demolish a partially completed structure and remove the debris from the Lot. Further, the Barrington Estates Homeowner's Association and or the Declarant shall have the right, but not the obligation, to complete said home in substantial accordance with the plans and specifications previously approved by the Architectural Review Board allowing for such deviations from the plans as the Barrington Estates Homeowner's Association and/or the Declarant, in its sole discretion, deems appropriate. The reason for such correction shall be solely in the discretion of the Barrington Estates Homeowner's Association and/or the Declarant and may include, but not be limited to, purely aesthetic grounds. The Owner of the Lot shall be liable for all costs incurred in such action and the total costs thereof will be a lien on the Lot, which lien may be foreclosed in the same manner as it provide herein for the enforcement of Barrington Estates Homeowner's Association and/or the Declarant.
- (d) Temporary Driveway. To further preserve the overall appearance of the community during the time of home construction, each builder is required to install and maintain a temporary stone drive or equivalent on each Lot. Such temporary drive shall provide for construction access from the public street to the building area and must prevent mud from entering the street at all times.
- (e) Erosion Control and Tree Protection Measures. During periods of construction of a home or improvements on a Lot, the builder shall provide adequate physical barriers

such as straw bales or snow fencing in order to protect trees from Damage by construction equipment and related activities. In addition builders and Lot owners shall be required to exercise erosion control measures to prevent silt transportation to the main drainage ways and streets. Builders shall provide silt fencing at least around all edges of the Lot along with other ways to stop silt-sediment transportations. The owner or owners of a Lot shall be responsible for the performance of all requirements of these guidelines by the builders and contractors employed or engaged by or through such owner or owners.

(f) Windows and Awnings

- (i) Awnings, hurricane shutters, solar film and other window shading or decoration shall be subject to the prior approval and control of the Architectural Review Board signed approval.
- (ii) Windows are required on all sides of a Dwelling Unit the Lot width of which is at least 70 feet at the building line. For Lots less than 70 feet wide at the building line, windows are required on three (3) sides of the Dwelling Unit. In the Event that a side of a Dwelling Unit does not have a window, it shall have at least two (2) architectural breaks, such as a chimney or another corner break, not including the corners of that side.

- (g) Colors. No exterior colors on any structure shall be permitted that, in the judgment of the Architectural Review Board, would be inharmonious or discordant or incongruous with the intended development of the Property. The initial exterior color of structures and any later changes thereto must be approved in writing by the Architectural Review Board. Painting the current color does not mean automatic approval.

6.15 Driveways. All driveways from the street to the garage shall be poured concrete, masonry or exposed aggregate, and not less than twelve (12) feet in width. Asphalt is expressly prohibited. Any culvert pipe under driveways shall be capped at both ends with tapered metal and sections. Temporary stone driveways must be put in before foundation is started. These must be maintained to not allow earth to be transported to the streets.

6.16 Use of Public Easements. In addition to the utility easements herein designated, easements in the streets, as shown on this plat, are hereby reserved and granted to the Developer, the Association and any public or quasi-public utility company engaged in supplying one or more of the utility services contemplated in Sections 6 and 7 or this Section 16 of Article VI, and their respective successors and assigns, to install, lay erect, construct, renew, operate, repair, replace, maintain and remove all and every type of gas main, water main and sewer main (sanitary and/or storm) with all necessary appliances, subject, nevertheless, to all reasonable requirements of any governmental body having jurisdiction thereof as to maintenance and repair of said streets.

6.17 Sanitary Sewer Restrictions. No rain and storm water runoff or such things as roof water, street pavement and surface water, caused by natural precipitation, shall at any time be discharged into or permitted to flow into the Sanitary Sewage System, which shall be a separate sewer system from the Storm Water and Surface Water Runoff Sewer System. No sanitary sewage shall at any time be discharged or permitted to flow into the above-mentioned Storm Water and Surface Water Runoff Sewer System.

6.18 Improvements. Before any Dwelling Unit on any Lot in this Subdivision shall be used and occupied as a dwelling or otherwise, the Developer or any subsequent Owner of such Lot shall install improvements serving such Lot as provided in the plans and specifications for such improvements filed with the appropriate governmental authorities, together with any amendments or additions thereto which said governmental authorities may authorize or require. This covenant shall run with the land and be enforceable by any governmental authority having jurisdiction over the Subdivision, by the Association, or by any aggrieved Lot Owner in this Subdivision.

6.19 Permits and Certificates. Before any Dwelling Unit located on any Lot may be used or occupied, such user or occupier shall first obtain from the Town of Noblesville or current governing authority an Improvement Location Permit and a Certificate of Occupancy as required by the Hamilton County Zoning Ordinance.

Before any building permit can be issued by the Noblesville or Hamilton County Department of Planning (or current governing authority), you must have a signed approval from the Barrington Estates Architectural Review Board.

6.20 Pools and Hot Tubs. No above ground pool shall be placed or maintained on any Lot. No in-ground pool or hot tub will be permitted in front of a dwelling, and the pool must be entirely within the rear and side building lines. All pools must be enclosed by a fence of the approved styles or must have an automatic pool cover and be in full and complete compliance with state and local ordinances and safety regulations. In any event, a proposed pool must be approved prior to installation in writing by the Architectural Review Board. Children's temporary wading pools which are less than eighteen (18") inches deep and no wider than thirteen (13') feet in width at any point do not need approval. All pools must be entirely behind the front building lines. Wading pools

should not set out longer than 48 hours unless approved by the ARB.

6.21 Fencing. The only fencing permitted shall be a rod-iron fence of not more than six feet in height within the building lines of the rear yard. Dog runs adjacent to the service area of the home but not visible from surrounding dwellings or street will also be permitted. In any event, all proposed fencing must be approved prior to installation in writing by the Architectural Review Board.

6.22 Service Screening, Storage Areas. Garbage and refuse shall be placed in containers, which shall be concealed and contained within the Dwelling Unit, or shall be concealed by means of a screening wall or material similar to and compatible with that of the Dwelling Unit or shall be concealed by sufficient landscaping to provide a permanent screen at all times of the year. These elements shall be integrated with the Dwelling Unit plan, be designed so as not to attract attention, and shall be located in as reasonably inconspicuous manner as is possible. Unless specifically approved by the Architectural Review Board in writing, no materials, supplies or equipment shall be stored on a Lot except inside a closed Dwelling Unit, or behind a visual barrier screening such areas so that they are not visible from neighboring streets or Lots.

6.23 Trash Removal. Only one (1) trash removal service will serve all of Barrington Estates, of which shall be approved by the Association. Trash containers must be stored inside garage area or area noted in above Section 22 and all trash must be secured in bags within containers. Bags and containers must be at the curb no more than twenty four (24) hours before and twelve (12) hours after pickup.

6.24 Mailboxes. The initial type (large box), location and installation of mailboxes shall be uniform and in accordance with design specifications established and approved in writing by the Architectural Review Board.

6.25 Times for Building Completion and Restoration. Every Dwelling Unit on any Lot in the Subdivision shall be completed within twelve (12) months after the beginning of such construction. No improvement which has been partially or totally destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

(a) Times for Building Commencement. An owner shall commence construction on his/her Lot within two (2) years from the date of closing, unless otherwise approved by the Developer and Board of Directors. If an original Owner resells his/her Lot within the initial two (2) year period, the new Owner(s) will be required to commence construction within two (2) years of the date of closing between the Declarant and the original Owner. If the Owner(s) do not commence construction within that period of time, then the Declarant shall have the right, but not the obligation, to purchase the Lot from the Owner

at ninety-six (96%) of the original purchase price paid to the Declarant. The Declarant and/or the Board of Directors may extend such date for commencement of construction to an Owner and such extension for one (1) Owner shall not give cause for such extension to any other Owner of a Lot.

6.26 Single Owner Contiguous Lots. Whenever two (2) or more contiguous Lots in the Subdivision shall be owned by the same person, and such Owner shall desire to use two or more of said Lots as a site for a single Dwelling Unit, he/she shall apply in writing to the Architectural Review Board and Board of Directors of the Association for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single Dwelling Unit shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as the Lots remain improved with one single Dwelling Unit.

6.27 Enforceability. The Association or the Developer shall have the right to enforce, by any proceeding at law or in equity, all Restrictions, Conditions, Covenants, reservations, liens and charges now or hereafter imposed by the provisions of these Restrictions. Failure by the Association or the Developer to enforce any Covenant or Restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, and shall not operate to deprive an Owner from enforcing said Covenant or Restriction. Any and all costs and expenses incurred by the Association in the enforcement of any of these Restrictions, Covenants, Conditions, reservations, liens and charges, including reasonable attorney fees, shall be assessed against the party against whom enforcement is sought and shall constitute a lien as set forth hereinabove. Reasonable hours to enter upon and inspect the Lot and Dwelling Unit, whether prior to, during or after the completion of any construction, for purposes of determining whether or not the provisions of these restrictions are being complied with and exercising all rights and powers conferred upon the Developer, the Architectural Review Board and the Association with respect to the enforcement or correction or remedy of any failure of the Owner to observe these Restrictions, the Developer, the ARB, the Association and such representatives shall not be deemed to have committed a trespass as a result thereof. Notwithstanding the foregoing, an occupied Dwelling Unit may not be entered hereunder unless written notice of such proposed entry shall have been given the Owner at least five days prior to such entry.

6.28 Partial Invalidation. Invalidation of any one of these Restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

6.29 Covenants, Restrictions, and Extensions. The Covenants and Restrictions herein contained shall run with the land, and be effective for a term of twenty (20) years from the date and automatically be extended for successive periods of ten

(10) years; provided these Restrictions may be amended by an instrument signed by not less than 75% of the Lot Owners; and provided further, the Developer, its successors or assigns shall, with the approval of the town of governing authority, have the exclusive right for a period of two (2) years from the date of recording of the plat to amend any of the Covenants and Restrictions.

6.30 Chimneys. All exterior fireplace chimneys shall be of masonry construction and must extend above the base of the roofline. Exceptions can be made with ARB approval.

6.31 Subdivision of Lots. No Lot or combination of Lots may be further subdivided without the approval of the Developers of Barrington Estates and/or the Board of Directors.

6.32 Exterior Building Surfaces. All exterior building surfaces, materials and colors shall be harmonious and compatible with the colors of the natural surrounding and other Dwelling Units and shall consist of not less than ninety percent (90%) brick, stone or stucco. Exception may be granted by the Architectural Review Board to architectural styles that fit a certain time period.

6.33 Dwelling Unit Exterior. All windows, porches, balconies and exteriors of all Dwelling Units shall at all times be maintained in a neat and orderly manner. No clotheslines or other outside drying or airing facilities shall be permitted.

6.34 Service Yards. All service areas, exterior utility equipment, loading docks, garbage disposal containers and other service areas shall be screened so as to not be visible from any public or private right-of-way or any portion of the Common Area. All utility and mechanical equipment and roof embellishments shall be screened so as not to be visible from any public or private right-of-way or any portion of the Common Area.

6.35 Exterior Appearance. No foil or other reflective materials shall be used on any windows for sun screens, blinds, shades, or other purpose, and all window treatments for all Dwellings within the Development shall conform to rules and regulations established by the Architectural Review Board. Except within screened service yards, outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed, or maintained, nor shall any clothing, rugs, or other item be hung on any railing, fence, hedge or wall.

6.36 Approval of Signs. Except as may be required by legal proceedings, no signs or advertising posters of any kind shall be maintained or permitted within any windows or on the exterior of any improvements located within the Development, without the express written permission of the Architectural Review

Board. The approval of any signs and posters, including, without limitation, name and address signs, shall be upon such conditions as may be from time to time determined by the ARB and may be arbitrarily withheld. Notwithstanding the foregoing, the restrictions of this Section shall not apply to Declarant. In addition, the Board of Directors, on behalf of the Association, shall have the right to erect reasonable and appropriate signs on any portion of the Common Areas and within designated easement areas. (For more about signs, see Sections 6.10 and 6.37).

6.37 Removal of Signs. Any signs or posters displayed within the Development in violation of the Covenants and Restrictions may be removed. The Declarant and/or the Officers/ARB/Board shall have the right to enter upon the premises where such signs or posters are displayed for the purpose of removing the unauthorized sign or poster without it being deemed a trespass. (For more about signs, see Sections 6.10 and 6.36).

6.38 Yard Lights. An electrical yard light (or gas light) of type and location approved in writing by the Architectural Review Board shall be installed by the builder or lot Owner on each Lot in front of the front building line. They must be placed 6ft from the edge of the interior side of driveway and 6 ft in front (toward the street) of sidewalk (to the house).

6.39 Fires. No outdoor fires for the purpose of burning leaves, grass or other forms of trash shall be permitted to burn upon any street, roadway, common area or Lot in this subdivision. No outside incinerators shall be kept or allowed on any Lot. Outdoor fires for the purpose of social activities will be the only fires allowed. Fire pits are allowed with the ARB written approval.

6.40 Boats and Docks. No motorized boats are allowed on lakes/ponds and all watercraft must be approved by the Association. No watercraft may create a wake or disturb the shoreline in the eyes of the Architectural Review Board. Boats can be removed by the ARB at owner's expense if the approval is revoked. Docks shall be allowed with the plans approved by the ARB in writing.

6.41 Leasing. No timeshare program shall be permitted on any Plot; however, an Owner may lease his Dwelling unit without prior approval, subject to the following restrictions and conditions:

- (a) The lease must be written, and a fully executed copy must be provided to the Board of Directors not less than thirty (30) days before the beginning of the lease term, together with such other information about the lessee(s) as the Board of Directors may require.
- (b) All of the provisions of the Covenants, Conditions and Restrictions of Barrington Estates pertaining to use and occupancy shall be applicable and enforceable against any person occupying a Dwelling Unit and or the Owner(s) of the Lot. The Board of

Directors has the right to require each Owner to produce proof of insurance. The costs incurred by the Board of Directors by any reason of any Owner's failure or refusal to comply with this Section shall be immediately due and payable by the Owner in all respects, together with interest, attorney's fees and costs of collection, upon the Board of Directors notifying the Owner, in writing, that it has procured such insurance.

6.42 Solar Collectors. The location of and materials used in the construction of solar collectors shall be approved in writing by the Architectural Review Board. When a solar collector is used, it shall not be visible in general from any place off the Lot. All must be approved by the Architectural Review Board in writing.

6.43 Basketball Goals. All basketball goals will be translucent fiberglass (clear) and black poles. Basketball goals are not permitted within the front yard setback of any home. No goals are to be mounted to a building exterior.

6.44 Irrigation. All Lots will be required to have automatic irrigation on the entire Lot (including front, sides and backyards). Such equipment shall be pop-up spray type and hooked up to the water system available to each Lot. Pump and all hardware/piping shall be enclosed or buried. If enclosed it shall be architecturally compatible with the exterior of the home. When not in use, it shall not be seen. Irrigation may not be needed in certain areas approved in writing by the ARB due to being heavily wooded. Irrigation systems must be maintained in good working order and used to keep grasses green and yards in good condition, and not a nuisance to the neighborhood. The ARB will make all judgments on yards brought to them from other Lot owners.

6.45 Retaining Walls. Retaining walls must be architecturally compatible with the exterior of the home and shall be approved in writing by the Architectural Review Board.

6.46 Private Streets. Declarant hereby agrees that it shall convey and transfer the private streets included in the constituting a part of the Real Estate to the Association upon the completion of such private streets and gates in working order. The private streets so conveyed by the Declarant to the Association shall, at the time of such conveyance, be subject to all easements, Covenants, Conditions, Limitations, and Restrictions then of record, but shall be free and clear of all liens and financial encumbrances, other than the lien of the then-current non-delinquent installment of real estate taxes and Assessments and subsequent installments thereof, which shall thereafter be paid when due by the Association, and shall be further subject to the terms and provisions of this Declaration. Declarant reserves unto itself, its successors and assigns, and hereby establishes for each Owner(s) of Lots, their guests and invitees, and all public and quasi-public vehicles, an easement for ingress and egress on and over the private streets. The terms "public vehicles" and "quasi-public vehicles" shall include, but not be limited to, vehicles operated for police and fire protection, ambulances and other emergency vehicles, for trash collection, for mail, UPS, Fed Ex, and other delivery services operated in the performance of their duties. Due to the streets being private, no

parking of any vehicles will be allowed on the streets for more than a 24-hour period within one week. Exceptions can be made with prior approval from the ARB.

6.47 Notice of Private Street. Each Owner, by the acceptance of a deed to a Lot, acknowledges that all streets in Barrington Estates (Exhibit A description) are private streets and that the maintenance, repair and replacement of such private streets is the sole responsibility of the Association as described herein; each Owner further agrees that by the acceptance of a deed to a Lot, he/she waives the right to request the dedication of the private streets to the City of Noblesville, Indiana, City of Fishers, Indiana, Hamilton County Highway Department or to the board of Hamilton County Commissioners.

6.48 Waiver. No Owner may exempt themselves from liability for their contribution toward the common expenses by waiver of the use or enjoyment of any of the common area or by abandonment of their Lot.

6.49 No Liability. Declarant, the Board, the Architectural Review Board and any Secondary Declarant may grant, withhold or deny its permission or approval in any instance where its permission or approval is permitted or required without liability of any nature to owner or any other person for any reason whatsoever and any permission or approval granted shall be binding upon all persons.

6.50 Negligence. Each owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his/her negligence or by that of any member of the family or their guests, employees, agents or lessees to the extent that such expense is not covered by insurance.

6.51 Management. The Board of Directors may employ a third party to manage the Association and be paid out of the Association's budget. Other third parties may be hired to assist the Board in performing duties. The Board may also open and maintain bank accounts to operate the Association.

6.52 Storage Tanks. No gasoline tanks larger than five (5) gallons or oil storage tanks shall be located anywhere on the Lot without written approval by the ARB. No propane tanks larger than 1,000 gallons are allowed without written ARB approval. All propane tanks need to be buried in the ground behind the front building line.

6.53 Electric Bug Killers. Electric bug killers, "Zappers" and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners and shall only be operated when outside activities require the use thereof and not continuously. The ARB will settle any issues.

6.54 Model Homes. No owner of any Lot shall build or permit the building upon his/her Lot of any dwelling house that is to be used as a model home, without permission to do so from the Declarant and/or the Board of Directors.

6.55 Tree Preservation. No existing tree larger than four inches (4") in diameter which is located fifteen feet (15') outside of any building structure, drive, walk, patio, swimming pool, tennis court, or like amenity, shall be removed without the prior written approval of the Architectural Review Board. Such approval shall only be granted upon proof of unusual hardship in the practical utilization of the Lot. The removal or destruction of any such trees without the consent of the ARB shall result in the liability to the Owner of such Lot to replace said trees of like kind, quality and size or of the equivalent value as determined by a professional chosen by the ARB.

6.56 Playground. Any playground, common area or other play areas or equipment furnished by the Association or erected within the Barrington Estates properties shall be used at the risk of the user, and the Association shall not be held liable to any person(s) of any claim, damage, or injury occurring thereon or related to use thereof.

6.57 Gardens. All gardens must be located behind the rear building line. Any Gardens larger than 20' x 20' must be approved in writing by the Architectural Review Board. Any agricultural products must be approved by the ARB. No corn will be allowed.

6.58 Air Conditioners. No room air conditioning unit shall be installed so as to protrude from any structure located on a Lot (including but not limited to the window of any Residence or Garage) if the same would be visible from a public way, community area or any other Lot; provided, however, that this restriction shall not apply to central air conditioning units.

6.60 Cars and Trucks. No vehicles heavier than ¾ ton are to be parked in Barrington Estates without prior written approval by the ARB. No disabled/non-working vehicles are to be parked outside of a dwelling for longer than 24 hours. No cars are to be parked on the street longer than 24 hours within one week (7 consecutive days). Exceptions can be made with prior approval from the ARB.

IN WITNESS WHEREOF, duly authorized members of COLE DEVELOPERS, LLC have executed this Declaration under seal this 17 of May, 2004.

COLE DEVELOPERS, LLC

By [Signature] member 5/14/04
Joseph M. Kunzer Date
By [Signature] member 5/14/04
Theodore L. McMullen Date

STATE OF INDIANA)
)SS:
COUNTY OF Hamilton)

Before me, the undersigned, a Notary Public, in and for said County and State, this 17 day of May, 2004 personally appeared the within named Joseph M. Kunzer and Theodore L. McMullen, the owners of COLE DEVELOPERS, LLC, a corporation organized and existing under the laws of the State of Indiana, who by me duly sworn did say that said instrument was signed and acknowledged by them for and on behalf of said corporation, and further acknowledges the execution of said instrument to be their free act and deed, and the free act and deed of COLE DEVELOPERS, LLC.

WITNESS my hand and official seal.

COUNTY OF RESIDENCE:
MARION

MY COMMISSION EXPIRES:
11/12/2011

[Signature]
NOTARY PUBLIC
LISA WILSON
PRINTED

This Instrument was prepared by John E Bator, Bator, Redman Bruner Shive and Ludwig, P.C. 151 N. Delaware Street, 1106 Market Square Center, Indianapolis, IN 46204

Exhibit A

LAND DESCRIPTION

The East half of the Northwest quarter of Section 29, Township 18 North, Range 6 East, of the Second Principal Meridian, containing 80 acres, more or less, in Fall Creek Township, Hamilton County, Indiana.

EXCEPT beginning at a point on the North line of the Northwest quarter of Section 29, Township 18 North, Range 6 East, said point being 654.75 feet West of the Northeast corner of the Northwest Quarter of said Section 29, and running thence West 667.5 feet to the Northwest corner of the East half of said Northwest Quarter, and running thence South 278.5 feet on and along the West line of said East half of the Northwest Quarter, thence East 671.5 feet parallel with said North line of the Northwest quarter, thence Northerly 278.5 feet to the place of beginning. Being a part of the Northeast quarter of the Northwest quarter of Section 29, Township 18 North, Range 6 East and containing 4.28 acres, more or less. Subject to all property taxes not heretofore paid.

Also, the West half of the West half of the Northeast Quarter of Section 29, Township 18 North, Range 6 East, containing 40 acres, more or less.

Also, the North half of the East half of the West half of the Northeast Quarter of Section 29, Township 18 North, Range 6 East, containing 20 acres, more or less.