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**DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS &  
EASEMENTS AS PART OF THE PLAT OF  
CLAYBROOKE SUBDIVISION**

**ROANOKE, INDIANA**

**DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS & EASEMENTS**  
**AS PART OF THE PLAT OF CLAYBROOKE SUBDIVISION,**  
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THIS DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS & EASEMENTS AS PART OF THE PLAT OF CLAYBROOKE SUBDIVISION ("Dedication"), made on the day hereinafter set forth by BIGGS INDIANA PROPERTIES, LLC, an Indiana corporation, as the owner in fee simple of Lots Numbered 1 through 56 consecutive and inclusive, in Claybrooke Subdivision, Roanoke, Indiana, according to the Plat thereof recorded on November 15, 2017, in the Office of the Huntington County, Indiana, Recorder as Instrument Number 2017005830 ("Claybrooke").

WHEREAS, Biggs Indiana Properties, LLC, desires to impose upon each and all of said Lots in Claybrooke with the protective restrictions, covenants and easements hereinafter set forth:

NOW THEREFORE, Biggs Indiana Properties, LLC, hereby declares that all of the aforesaid Lots Numbered 1 through 56 as originally platted and as may be further divided, amended or replatted, in Claybrooke shall be impressed with and shall be held, sold, and conveyed subject to all of the following protective restrictions, covenants and easements which shall run with said Lots and be binding on all parties now having or hereafter acquiring any right, title or interest in the same or any part thereof, their heirs, successors and assigns and shall inure to the benefit of and be enforceable by each owner thereof, the Developer, the Association, and/or the Villa Association (as such terms are hereinafter defined).

**ARTICLE I**

**DEFINITIONS**

Section 1. "Developer" shall mean Biggs Indiana Properties, LLC, an Indiana limited liability company, its successor(s) and assign(s).

Section 2. "Lot" or "Lots" shall mean and refer to any or all of Lots 1 through 56, inclusive, as shown on the Plat and such additional lots created by the division of Villa Lots as herein set forth. "Villa Lot" or "Villa Lots" shall mean and refer to only Lots 32 through 46, inclusive, as shown on the Plat and as further subdivided to accommodate the construction of duplex, zero-lot line villaminiums. At the time that any of the originally platted fifteen (15) Villa Lots is further subdivided into two separate parcels in order to accommodate the construction of a duplex zero-lot line villaminium, each such separate parcel shall thereafter also be considered a Lot and Villa Lot for all purposes of this Dedication. For clarification, as originally platted, there are 15 Villa Lots, each of which has been designed to accommodate the construction of a duplex, zero-lot line, villaminium. In the event that a duplex villaminium is constructed on each

of the originally platted fifteen (15) Villa Lots, there will then be a total of thirty (30) Villa Lots, and each of the those thirty (30) Villa Lots will be also be a Lot. At that time, there will be 71 Lots in Claybrooke (41 single-family lots, and 30 Villa Lots).

Section 3. "Owner" and "Owners" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 4. "Association" shall mean and refer to "Claybrooke Homeowners Association, Inc." (or other name allowed under Article III, Section 1 of this Dedication), an Indiana not-for-profit corporation, its successors and assigns. The membership of the Association shall consist of the Owners of the Lots in Claybrooke as well as the owners of other lots in other existing and future sections, if any, of the Claybrooke subdivision.

Section 5. "Villa Association" shall mean and refer to "Villas of Claybrooke Homeowners Association, Inc." (or other name allowed under Article VII, Section 1 of this Dedication), an Indiana not-for-profit corporation, its successors and assigns. The membership of the Villa Association shall consist of the Owners of Villa Lots and Duplex Villa Lots in Claybrooke, as well as the owners of certain other lots in other existing and future sections of the Claybrooke subdivision, if any.

Section 6. "Plat" shall mean and refer to the plat of Claybrooke, including any and all amendments and/or re-plats thereof, as recorded in the Office of the Recorder of Huntington County, Indiana.

Section 7. "Living Unit" and/or "Dwelling Unit" shall mean and refer to the portion of a building, including the attached garage, erected on any Lot which is constructed and intended for the use and occupancy as a single-family residence. In the case of a duplex villa, the Living Unit would consist of the building that is constructed on one Villa Lot that is attached to, but separated by a common wall, from the Living Unit that is on an adjoining Villa Lot.

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

Section 9. "Villa Association Board of Directors" shall mean and refer to the Board of Directors of the Villa Association.

Section 10. "Street" shall mean any street, avenue, roadway, cul-de-sac or boulevard of whatever name which is shown on the Plat and which has been heretofore and is dedicated to the public for use as a public street.

Section 11. Other capitalized terms shall have the meaning(s) assigned to them in the remainder of this Dedication.

## **ARTICLE II**

### **PERMITTED LOT USE**

Section 1. Permitted Lot Use. All Lots may only be used for single-family residential purposes.

Section 2. Driveways. All driveways from the street to the garage of each Living Unit shall be poured concrete and not less than twenty (20) feet in width.

Section 3. Minimum Area. Except as provided below, no Living Unit shall be erected or permitted on any Lot having a ground floor area, exclusive of open porches, breezeways or garage, of less than 1,200 square feet in the case of a one-story dwelling, or less than 800 square feet for a dwelling of more than one story, provided that the dwelling of more than one-story must have a total of not less than 1400 square feet. Notwithstanding the above, A Living Unit on a Villa Lot may have a ground floor area, exclusive on open porches, breezeways or garage, of 1,100 square feet or more. All Living Units must have at least a 2-car garage attached to it.

Section 4. Building Lines. No Living Unit, garage or other building of any kind (collectively "Building"), fence or wall of any type shall be erected, placed or located on any Lot nearer to the front lot line (or nearer to the side lot line on corner lots) than the minimum building set-back line as shown on the Plat. No Building shall be located nearer than six (6) feet to any side lot line (fifteen (15) feet side set-back off R/W on corner lots) except in the case of a zero-lot line duplex villa where there shall be no side set back requirement along the side line that is adjacent to the common wall of the attached Living Units. A Building may not be located closer than fifteen (15) feet to the rear lot line. No tree, shrub, planting or other obstruction shall be permitted which obstructs a clear view at intersections. The Plat sets forth utility easements and set back requirements that may impose other restrictions on the location of Buildings, fences, walls or other improvements on a Lot.

Section 5. Yard Lights. Each Owner of a Lot shall install and maintain an automatically controlled (photo cell) post yard light or similar illumination device ("Yard Light") in the front yard fifteen (15) feet (plus or minus one foot) from the road right-of-way. The Yard Light shall be kept operational and illuminated during all non-daylight hours. The Yard Light design, wattage and location shall be submitted to, and approved by, the Architectural Control Committee.

Section 6. Signs. No sign shall be erected or permitted on any Lot or in any common areas as shown on the Plat, except (i) subdivision designation and subdivision informational signs (owned by the Developer, the Association or the Villa Association) located in the commons area, (ii) one professional sign of not more than one (1) foot square, (iii) one sign of not more than five (5) square feet advertising the property for sale, (iv) one security sign (such as ADT) of not more than one (1) foot square, and (v) signs used by a builder to advertise the property during the construction and sales period.

Section 7. Landscaping. Upon completion of the original construction of a Living Unit, the applicable Lot must be landscaped with a minimum of ten (10) shrubs (fifteen (15) shrubs for Villa Lots) and two (2) trees, with at least one (1) trees located in the front yard.

Section 8. Nuisance. No noxious or unreasonably offensive activity shall be carried on upon any Lot nor shall anything be done thereon which (i) creates a nuisance by reason of odor, fumes, dust, smoke, noise, or pollution, or any other means (ii) which is hazardous by reason of fire or explosion, or (iii) that is in violation of the laws of the State of Indiana or the County of Huntington or the Town of Roanoke, Indiana.

Section 9. Animals. No Lot shall be used for the purpose of raising, breeding or keeping animals, livestock or poultry except that dogs, cats and other common domestic household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose.

Section 10. Storage Tanks. No fuel or oil storage tanks in excess of six (6) gallons may be maintained on any Lot. No underground tanks of any kind shall be permitted on a Lot.

Section 11. Antennas/Solar Panels. No radio or television antenna, satellite receiver dish, solar panel(s) or similar structures (collectively "Antenna/Panels") shall be allowed on any Lot, or attached to any home, building or structure of any kind, that attains a height of more than three (3) feet above the highest portion of the Living Unit on the Lot. In addition, the Antenna/Panel, individually or in combination with all other Antenna/Panels that are a part of a system, shall not be larger than five (5) feet in height, width and total square footage without approval of the Architectural Control Committee. The location of all Antennas/Panels shall require the approval of the Architectural Control.

Section 12. Pools and Hot Tubs. No above-ground pool, except for spas, hot tubs, whirlpools and similar facilities that do not exceed a 400 gallon capacity, shall be commenced, erected or maintained on any Lot. All in-ground pools and spas, hot tubs, whirlpools and similar facilities are subject to the Architectural Control Committee review process set forth this Dedication.

Section 13. Motor Vehicles. No unlicensed or unregistered automobile, truck, van or any other type of motorized vehicle ("Motor Vehicle") may be parked or maintained on any Lot except completely enclosed in a garage. No Motor Vehicle may be disassembled or be allowed to remain in a state of disassembly so that it is not legally "road worthy" on any Lot except when the vehicle is completely enclosed within a garage.

Section 14. No Temporary Structures. No structure of a temporary character, house trailer, basement, shack, un-attached garage, barn, tool shed, or other outbuilding shall be constructed, erected or located on a Lot and used as a residence, either temporarily or permanently; provided, however, that a basement may be constructed in connection with the construction of a Living Unit.

Section 15. Outside Storage. No trailer of any type, boat, camper, recreational vehicle, motor home, four- and three- wheeler, ATV, motorcycle, commercial vehicle, truck, or any other similar wheeled vehicle (excepting passenger cars, pick-up trucks, passenger vans and similar vehicles designed primarily for the non-commercial transportation of passengers) shall be permitted to be parked ungaraged on a Lot except (i) entirely on the concrete driveway; and (ii) for a period not to exceed seventy-two (72) consecutive hours, or for a period not to exceed in the aggregate nine (9) days per calendar year. The term 'truck' as used in this Section means every motor vehicle designed, used, or maintained primarily for commercial purposes or the transportation of property, which is rated one (1) ton or more. Passenger cars, pick-up trucks, passenger vans and similar vehicles designed primarily for the non-commercial transportation of passengers may parked on a Lot only in the garage or entirely on the concrete driveway.

Section 16. Free-Standing Poles. No clothes lines or clothes poles, or any other free-standing, semi-permanent or permanent poles, rigs, or devices, shall be permitted on any Lot or attached to any Structure (as defined in Section 18 below) or Living Unit, regardless of purpose, except that, subject to review and approval by the Architectural Control Committee, the following may be permitted: (i) a pole located behind the Living Unit that only supports bird or other animal feeder(s) or house(s), provided any feeder or house does not exceed two (2) cubic feet in size; (ii) a single flag pole post; (iii) a basketball goal with post; and (iv) an Antenna/Panel under Section 11 above.

Section 17. Dumping. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept except in sanitary containers. All sanitary containers must be kept inside the Building or Structure except for a twenty-four hour period each week when they may be placed outside for pick up. No incinerators shall be allowed on a Lot.

Section 18. Outbuildings. No free-standing shed, garden house, un-attached garage or any other type of outbuilding that is not otherwise structurally attached to a Living Unit (collectively "Structure") shall be allowed on any Lot without the approval of the Architectural Control Committee. All Structures otherwise approved by the Architectural Control Committee must have the same style and color of siding and roof as the Living Unit on the Lot and cannot exceed 12' x 14' - except for Lots 47 through 54, inclusive, the size may not exceed 10' x 12'.

Section 19. Fencing. No fencing of any type shall be permitted on any Lot except that a wood, vinyl, wrought iron or similar style fence shall be allowed provided it is approved by the Architectural Control Committee as to style, material, color, height and location. Any area of a Villa Lot or a Duplex Villa Lot that is enclosed by a fence shall be excluded from any maintenance obligation of the Villa Association and the Owner of the area that is enclosed shall maintain that area, at such Owner's sole cost and expense, to the same standard that the Villa Association maintains the other Villa Lots and Duplex Villa Lots.

Section 20. Individual Utilities. No individual water supply system or individual sewage disposal system shall be installed, maintained, or used on any Lot.

Section 21. Easements. Easements are hereby expressly reserved and dedicated with dimensions, boundaries and locations as designated on the Plat for the installation and maintenance of public utilities (including but not limited to, water, gas, telephone, electricity, cable T.V., and any other utilities of a public or quasi-public nature) and sewer and drainage facilities.

- a. Any utility company and the Developer, and each of their respective successors and assigns, will have the right to enter upon said easements for any lawful purpose. All easements shall be kept free at all times of any Building or other permanent structure except improvements installed by an authorized utility and removal of any obstruction by a utility company shall in no way obligate the company to restore the obstruction to its original form.
- b. No Living Unit, Building or other Structure shall be connected with distribution facilities provided by electrical, television or telephone services, except by means of wires, cables or conduits situated beneath the surface of the ground (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave Claybrooke subdivision, and except for such housing, pedestals or facilities as may be appropriate for connection of utility services for a Lot). Nothing herein shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables.
- c. The utility operating the sewer lines and sewage disposal plant for said subdivision shall have jurisdiction over the installation of all sewer connections and the same shall be installed to the property lines of each Lot by the Developer. No rain or storm water runoff from roofs, street pavements or otherwise, or any other surface water, shall at anytime be discharged into, or permitted to flow into, the sanitary sewer system, which shall be a separate sewer system from the storm water and surface water run-off system. No sanitary sewage shall at any time be discharged or permitted to flow into the storm water and surface water run-off sewer system.

Section 22. Mailboxes. Mailboxes will be located at the location(s) that the Developer along with the U.S. Postal Service designates. No individual mailboxes and/or newspaper boxes will be allowed without the approval of the Architectural Control Committee.

Section 23. Sidewalks. Each Owner subsequent to the Developer shall provide and maintain a concrete public sidewalk across the front of each Lot (and along the side(s) of each corner Lot). Sidewalks shall be five (5) feet in width.

Section 24. Front Exteriors. All front elevations may consist of vinyl siding, but must include at least 200 square feet of brick, stone or similar masonry product to highlight or complement the vinyl siding and, excepting duplex villaminiums, the pitch on the main roof must be 6/12 or greater.

### **ARTICLE III**

#### **COMMUNITY ASSOCIATION - GENERAL**

Section 1. Association. At a time deemed appropriate by the Developer, the Developer shall cause the Association to be incorporated. At a time deemed appropriate by the Developer, the Developer shall cause to be conveyed to the Association, and the Association shall accept, ownership of all common area, and all fixtures located thereon owned by Developer, including without limitation all detention ponds and areas, subdivision entrance ways and signage, and associated lighting, in Claybrooke subdivision. In the event that the name "Claybrooke Homeowners Association, Inc." is not readily available for use, as determined by the Indiana Secretary of State or for any other reason, Developer may choose a different name for the Association.

Section 2. Membership. One membership shall be created for each Lot in the entire subdivision of Claybrooke. Membership shall include owners of lots in future sections, if any, of Claybrooke ("Members"). Memberships will transfer from the Developer to his grantee upon delivery of the deed of a Lot to the new Owner.

Section 3. Continuing Membership. The Owner of a Lot shall be a member of the Association and shall continue to be a member of the Association so long as he/she continues to be the Owner of a Lot. Membership shall pass with the ownership of the Lot.

Section 4. Maintenance Fund. The Annual Assessment (as defined in Article IV below) shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of residents of the Claybrooke subdivision including, without limitation, to pay the cost of improvement, maintenance and repair of all common areas in Claybrooke subdivision, the entrance ways, lights and signs, detention ponds or areas, and all other things necessary or desirable in the opinion of the Association in connection therewith.

Section 5. Board of Directors. The Members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association. Until such time as the Association is incorporated by the Developer and a Board of Directors is elected for the Association, the Developer shall have all the powers and duties granted to the Association and the Board of Directors in this Dedication.

### **ARTICLE IV**

#### **COMMUNITY ASSOCIATION - COVENANT FOR ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Except the Developer, each Owner of a Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association, or to the Developer prior to the formation of the Association, annual assessments or charges ("Annual Assessment"), and any Special Assessment under Section 4, to be paid on January 1 of each year (hereinafter called "Annual Payment Date") or otherwise as the Association may elect from



time-to-time. The Annual Assessments and any Special Assessment (collectively "Assessment" or Assessments"), together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to any successor-in-title unless such successor(s) expressly assumes the same.

Section 2. Purpose of Assessments. The Assessments shall be used exclusively to effectuate the duties and purposes of the Association as set forth in this Declaration, its Articles of Incorporation and/or By-Laws, including without limitation, all activities determined by its Board of Directors to be necessary or advisable related thereto such as securing insurance and/or accounting and legal services for the Association. All Assessments shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of residents of the Claybrooke and in particular, for the improvement and maintenance of the common areas, including but not limited to, repair, maintenance, the cost of labor, equipment and materials, supervision, security, lighting, insurance, taxes, and all other things necessary or desirable in the opinion of the Board of Directors of the Association in connection therewith.

Section 3. Maximum Annual Assessment.

- a. Until January 1, 2019, the maximum Annual Assessment on any Lot shall be Fifty Dollars (\$50.00).
- b. From and after January 1, 2019, the maximum Annual Assessment may be increased each calendar year by the Board of Directors (or by the Developer if the Association is not yet formed) by a percentage that is not more than twelve percent (12%) above the Annual Assessment that was charged during the previous calendar year, without a vote of the membership.
- c. From and after January 1, 2019, the maximum Annual Assessment may be increased by a percentage in excess of twelve percent (12%) above the Annual Assessment that was charged during the previous calendar year only upon approval of the Board of Directors (or by the Developer until the Association is formed) and a majority of the votes of the Members who are voting in person or by proxy, at a meeting duly called for this purpose.
- d. As determined by the Board of Directors from time-to-time, a portion of the Annual Assessments may be set aside or otherwise allocated to a reserve fund for the purpose of providing funds for future repairs and maintenance.

Section 4. Special Assessments for Capital Improvements and Operating Deficits. In addition to the Annual Assessment authorized above, the Association may levy a special assessment ("Special Assessment") for any capital improvement(s) within the powers or duties of the Association or for the purpose of paying, in whole or in part, any operating deficit(s) which the Association may from time-to-time incur, provided that any Special Assessments

shall have the approval of a majority of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4.

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article IV shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting or as otherwise required by the Articles of Incorporation and By-Laws of the Association. At the first such meeting called, the presence of members, in person or by proxy, entitled to cast fifty percent (50%) or more of all the votes of the Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event of a conflict between (i) the provisions of this Dedication and (ii) the Articles of Incorporation and/or By-Laws of the Association, the Articles of Incorporation and By-Laws shall control.

Section 6. Uniform Rate of Assessments. Except as provided below, Annual and Special Assessments must be fixed at a uniform rate for all Lots. Assessments shall be collected on an annual basis unless otherwise determined by the Board of Directors from time-to-time. Notwithstanding the foregoing, there shall be no Annual Assessments or Special Assessments assessed against any Lot owned by the Developer and the Developer shall not owe any Assessment at any time to the Association.

Section 7. Date of Commencement of Assessments. The due dates for all Assessments shall be established by the Board of Directors. The Association (or the Developer until the Association is formed) shall upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an authorized representative setting forth whether the Assessments on a specified Lot have been paid or are delinquent. A properly executed certificate from the Association regarding the status of Assessments chargeable against any Lot shall be binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. If any Annual Assessment or Special Assessment (or installment if applicable) is not paid on the date when due, then the entire unpaid Assessment shall become delinquent and shall become, together with interest thereon and cost of collection, including reasonable attorney's fees, a continuing lien on the applicable Lot assessed and it shall be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment became due. The personal obligation of the Owner to pay such Assessments shall remain the Owner's personal obligation and shall not pass to successors in title unless expressly assumed.

If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest from the due date at the rate of twelve percent (12%) per annum, and the Association (or the Developer until the Association has been commenced) may (i) record a Notice of Lien against the Lot in the office of the Recorder of Huntington County, Indiana, which Notice of Lien shall perfect the lien of the Association and have the same force and

effect as, and shall be enforced in the same manner as, a mortgage lien under Indiana law, and shall include the right to recover attorney's fees, title expenses, interest and all other costs of collection; and/or (ii) bring legal action against the Owner to collect all sums due and/or to foreclose the lien against the Lot. In any successful legal proceeding, the Association and/or the Developer that brought the legal proceeding shall be entitled to recover all its reasonable attorney's fees, costs and expenses incurred.

No Owner may waive or otherwise escape liability for the Annual Assessment and/or Special Assessment provided for herein by non-use of the Common Area, refusal to allow the Association to perform any action or by abandonment of the Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any prior first lien mortgage and purchase money mortgage. Sale or transfer of any Lot shall not affect the Assessments' lien. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any prior mortgage on such Lot (without the necessity of joining the Association or the Developer in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all Assessments becoming due prior to the date of such sale or transfer.

## ARTICLE V

### COMMUNITY ASSOCIATION - ARCHITECTURAL CONTROL COMMITTEE

Section 1. Applicability. This Article V shall apply only to only Lots 1 through 31, and 47 through 56, inclusive, in Claybrooke (collectively "Single-Family Lots"). The Villa Lots shall be governed by the Villa Association Architectural Control Committee established in Article IX of this Dedication.

Section 2. Composition. The Architectural Control Committee ("Committee") shall be composed of three members. During the time that the Developer owns any Single-Family Lot, any Villa Lot, or any lot in the other sections, if any, of Claybrooke, the Architectural Control Committee ("Committee") shall be appointed by the Developer; provided, however, Developer may by written notice to the Association transfer its power of appointment of the Committee to the Association at any time. Thereafter, the members shall be appointed by the Board of Directors of the Association. The Committee may appoint one member to act for it in any or all matters, as the Committee may in its absolute discretion decide from time-to-time.

Section 3. Authority. No Living Unit, Building, Structure, Antenna/Panel, fence, wall, pole, pool, trampoline, or other improvement or structure of any kind, temporary or permanent, ("Improvement") shall be constructed or placed on any Single-Family Lot or attached in any manner to a Living Unit, Building or Structure thereon, nor shall any exterior addition, change or alteration ("Alteration") be made to an existing Living Unit, Building, Structure or Improvement on a Single-Family Lot until plans and specifications ("Plans") for the Improvement and/or Alteration showing the nature, kind, shape, dimensions, height,

materials, color and location (collectively "Specifications") are submitted to and approved by the Committee in writing as to the harmony of the Improvement's/Alteration's Specifications with Claybrooke subdivision, in general, and, more specifically, to the other Living Units therein. The Committee may not approve any Improvement or Alteration that is otherwise specifically prohibited by the terms of this Dedication without properly amending the Dedication according to the provisions of Article XI.

Section 4. Timing. Within thirty (30) days after receipt of written Specifications that clearly set forth all of the information required to be submitted under section 2 above, the Committee must approve or reject the Plans in writing delivered to the Owner requesting the approval. In the event that the Committee fails to act within the thirty (30) day time frame, no approval will thereafter be required for the exact Plans submitted provided that the Owner who submitted the Plans has an appropriately dated delivery receipt signed by a current member of the Committee and a copy of such receipt is delivered to the Association prior to beginning the Improvement or Alteration. Notwithstanding the foregoing, the Committee's failure to act shall not permit an Improvement or Alteration that is otherwise prohibited by the terms of this Dedication.

## **ARTICLE VI**

### **COMMUNITY ASSOCIATION - INSURANCE**

Section 1. Liability Insurance. The Association (once formed) may purchase and maintain comprehensive liability insurance policy(ies) in such amount or amounts as the Board of Directors shall deem appropriate from time-to-time. Such comprehensive liability insurance may provide coverage to the Association, its Board of Directors, any committee of the Association or Board of Directors, the Architectural Control Committee and all persons acting as agents or employees of any of the foregoing with respect to the Association.

Section 2. Other Insurance. The Association (once formed) may obtain all insurance required by law to be maintained and such other insurance as the Board of Directors shall from time-to-time deem necessary, advisable or appropriate. Such insurance coverage may also provide for and cover cross liability claims of one insured party against another insured party. Such insurance may inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf of the Association.

Section 3. Monthly Assessment for Insurance. The premiums for all such insurance maintained by the Association shall be paid from the Annual Assessment or Special Assessment permitted by this Dedication.

## **ARTICLE VII**

### **VILLA ASSOCIATION - MEMBERSHIP AND VOTING RIGHTS**

Section 1. Villas of Claybrooke Homeowners Association, Inc. The Developer will form and incorporate the Villa Association and the Villa Association shall be authorized to

exercise and enjoy all the powers (i) set forth herein, (ii) established by its Articles of Incorporation and By-Laws, (iii) all other rights and privileges granted by the Indiana Nonprofit Corporations Act and all Acts amendatory thereof or supplemental thereto, and (iv) all other powers conferred upon corporation by the laws of the State of Indiana insofar as not in conflict herewith. In the event that the name "Villas of Claybrooke Homeowners Association, Inc." is not readily available for use, as determined by the Indiana Secretary of State or for any other reason, Developer may chose a different name for the Villa Association.

Section 2. Membership. Upon the initial sale of each Villa Lot by the Developer, the purchaser and all subsequent owners thereafter shall become a member of the Villa Association effective on the date of ownership thereof. An Owner's membership shall transfer to the subsequent purchasers on the effective date of the conveyance of the Villa Lot. Upon becoming a member of the Villa Association, a member shall be obligated to pay assessments to the Villa Association in accordance with Article VIII of this Dedication, and shall be bound by all of the other terms of this Dedication. Membership shall be appurtenant to and may not be separated from the ownership of any Villa Lot. The Owner of a Villa Lot must be a member of the Villa Association.

Section 3. Other Members. Developer reserves the right to (i) include and burden other real estate that is currently, or will be in the future, a part of the Claybrooke subdivision with similar covenants, restrictions and limitations as are contained in this Dedication, (ii) include the owners of said other real estate ("Other Owners") in the Villa Association as equal members with the same rights, privileges and obligations, and (iii) obligate the Villa Association to maintain such other real estate ("Other Real Estate") in the same manner as herein provided for the Villa Lots.

Section 4. Purposes. The Villa Association shall have the following purposes:

- a. To establish an association of the Owners of Villa Lots and the Other Owners in the Claybrooke subdivision;
- b. To provide to the Villa Lots and to the Other Real Estate snow removal and yard care services at a level of service determined by the Board of Directors;
- c. Upon request of an owner of a lot in the Claybrooke subdivision that is not required to be a member of the Villa Association ("Non-Villa Other Real Estate") by this Dedication, and subject to the approval of the Villa Association Board of Directors from year-to-year and to the payment of applicable fees to the Villa Association by the owner of the Non-Villa Other Real Estate, to provide snow removal and yard care services to Non-Villa Other Real Estate to the same extent provided to the Lots and Other Real Estate; and
- d. For the Villa Lots and the Other Real Estate, to protect the harmony of all Living Units' external design, location and landscaping in relation to all other Living Units and to exercise the powers and responsibilities of the Villa

Association set forth in this Dedication and in any other recorded covenants governing the Other Real Estate.

Section 5. Classes of Membership. The Villa Association shall have one (1) class of voting membership:

Class A. Class "A" members shall consist of each Owner of a Villa Lot as well as each of the Other Owners ("Members"). Members shall be entitled to one (1) vote for each Villa Lot and one (1) vote for each lot in the Other Real Estate that the Member owns. When more than one (1) person holds an interest in a Lot or in a lot in the Other Real Estate, all such persons shall be Members, but the single vote for such Lot or lot in the Other Real Estate shall be exercised as they among themselves determine. In no event shall more than one (1) vote be cast with respect to Lot or lot in the Other Real Estate.

Section 6. Villa Association Board of Directors. The Members shall elect a Board of Directors of the Villa Association as prescribed by the Villa Association' By-Laws. The Villa Association Board of Directors shall manage the affairs of the Villa Association. Until such time as the Villa Association is incorporated by the Developer and a Villa Association Board of Directors is elected, the Developer shall have all the powers and duties granted to the Villa Association and the Villa Association Board of Directors in this Dedication.

## **ARTICLE VIII**

### **VILLA ASSOCIATION - COVENANT FOR ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Villa Assessments. Except the Developer, each Owner of a Villa Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Villa Association:

- a. Monthly assessments or charges ("Monthly Villa Assessments"); and
- b. Special assessments for capital improvements and operating deficits ("Special Villa Assessments").

The Monthly Villa Assessments and Special Villa Assessments, (collectively "Villa Assessment" or "Villa Assessments"), together with interest, costs, and reasonable attorneys' fees, shall be a charge on, and shall be a continuing lien upon, the Villa Lot against which each such Villa Assessment is made. Each such Villa Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Villa Lot at the time when the Villa Assessment became due. The personal obligation for delinquent Villa Assessments shall not pass to any successor-in-title unless such successor(s) expressly assumes the same.

Section 2. Purpose of Villa Assessments. The Villa Assessments levied by the Villa Association shall be used exclusively to effectuate the duties and purposes of the Villa

Association as set forth in this Declaration, in any recorded covenants governing the Other Real Estate, and in its Articles of Incorporation and By-Laws, including without limitation all activities determined by the Villa Association Board of Directors to be necessary or advisable related thereto such as securing insurance and/or accounting and legal services for the Villa Association.

Section 3. Maximum Monthly Villa Assessments.

- a. Until January 1, 2019 the maximum Monthly Villa Assessment on any Villa Lot shall be Ninety-Six Dollars (\$96.00).
- b. From and after January 1, 2019, the maximum Monthly Villa Assessments may be increased each calendar year by the Villa Association Board of Directors by a percentage that is not more than twelve percent (12%) above the Monthly Villa Assessment that was charged during the previous calendar year, without a vote of the membership.
- c. From and after January 1, 2019, the maximum Monthly Villa Assessment may be increased by a percentage in excess of twelve percent (12%) above the Monthly Villa Assessment that was charged during the previous calendar year only upon approval of the Villa Association Board of Directors and a majority of the votes of the Members who are voting in person or by proxy, at a meeting duly called for this purpose.
- d. As determined by the Villa Association Board of Directors from time-to-time, a portion of the Monthly Villa Assessments may be set aside or otherwise allocated to a reserve fund for the purpose of providing funds for future repairs and maintenance.

Section 4. Special Villa Assessments for Capital Improvements and Operating Deficits. In addition to the Monthly Villa Assessments authorized above, the Villa Association may levy a Special Villa Assessment for any capital improvement(s) within the powers or duties of the Villa Association or for the purpose of paying, in whole or in part, any operating deficit(s) which the Villa Association may from time-to-time incur, provided that any Special Villa Assessments shall have the approval of a majority of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article VIII shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting or as otherwise required by the Articles of Incorporation and By-Laws of the Villa Association. At the first such meeting called, the presence of Members, in person or by proxy, entitled to cast sixty percent (60%) or more of all the votes of the Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the

preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event of a conflict between (i) the provisions of this Dedication and (ii) the Articles of Incorporation and/or By-Laws of the Villa Association, the Articles of Incorporation and By-Laws shall control.

Section 6. Uniform Rate of Villa Assessments. Except as provided below, Monthly Villa Assessments and Special Villa Assessments must be fixed at a uniform rate for all Villa Lots and lots in the Other Real Estate. Villa Assessments shall be collected on a monthly basis unless otherwise determined by the Villa Association Board of Directors from time-to-time. Notwithstanding the foregoing, there shall be no Monthly Villa Assessments or Special Villa Assessments assessed against any Villa Lot owned by the Developer. Further, it is anticipated that the fifteen (15) originally platted Villa Lots may or will ultimately be divided by the Developer into a total of thirty (30) Duplex Villa Lots to accommodate the construction of duplex (zero-lot line) villas on each of the original fifteen (15) platted Villa Lots. In the event that one or more of the original fifteen (15) platted Villa Lots is not further subdivided from or after the time it is originally deeded from the Developer, during the time that it is not further subdivided, it shall be deemed to constitute two (2) separate Villa Lots under Articles VII, VIII, IX, X and Section 2 of Article XI of this Dedication. As such, any undivided Villa Lot shall be subject to Assessment as if it were two (2) separate Villa Lots and the Owner shall be entitled to two (2) votes in the Association.

Section 7. Date of Commencement of Monthly Villa Assessments. The Monthly Villa Assessment provided for herein shall commence as to each Villa Lot on the first day of the first month following the initial conveyance of such Villa Lot by Developer. The Villa Association Board of Directors shall fix any increase in the amount of the Monthly Villa Assessment at least thirty (30) days in advance of the effective date of such increase. No Special Villa Assessments shall be made against any Villa Lot prior to the date on which Monthly Villa Assessments against that lot first commenced. Written notice of Special Villa Assessments and such other Villa Assessment notices as the Villa Association Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all Villa Assessments shall be established by the Villa Association Board of Directors. The Villa Association shall upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Villa Association setting forth whether the Villa Assessments on a specified Villa Lot have been paid or are delinquent. A properly executed certificate from the Villa Association regarding the status of Villa Assessments chargeable against any Villa Lot shall be binding upon the Villa Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Villa Assessments: Remedies of the Villa Association. If any Villa Assessment (or installment of such Villa Assessment, if applicable) is not paid on the date when due, then the entire unpaid Villa Assessment shall become delinquent and shall become, together with interest thereon and cost of collection, including reasonable attorney's fees, a continuing lien on the applicable Villa Lot assessed and it shall be the personal obligation of the person who was the Owner of such Villa Lot at the time when the Villa Assessment became due. The personal obligation of the Owner to pay such Villa Assessment shall remain the Owner's personal obligation and shall not pass to successors in title unless expressly assumed.



If the Villa Assessment is not paid within thirty (30) days after the due date, the Villa Assessment shall bear interest from the due date at the rate of twelve percent (12%) per annum, and the Villa Association (or the Developer until the Association has been commenced) may (i) record a Notice of Lien against the applicable Villa Lot in the office of the Recorder of Huntington County, Indiana, which Notice of Lien shall perfect the lien of the Villa Association and have the same force and effect as, and shall be enforced in the same manner as, a mortgage lien under Indiana law, and shall include the right to recover attorney's fees, title expenses, interest and all other costs of collection; and/or (ii) bring legal action against the Owner to collect all sums due and/or to foreclose the lien against the Villa Lot. In any successful legal proceeding, the Villa Association and/or the Developer shall be entitled to recover all its reasonable attorney's fees, costs and expenses incurred.

No Owner may waive or otherwise escape liability for the Villa Assessments provided for herein for any reason, including without limitation, by non-use of any Common Area, refusal to allow the Villa Association to perform its maintenance obligations or by abandonment of the Villa Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the Villa Assessments provided for herein shall be subordinate to the lien of any prior first lien mortgage or purchase money mortgage. Sale or transfer of any Villa Lot shall not affect the Villa Assessment lien. No sale or transfer shall relieve such Villa Lot from liability for any Villa Assessments thereafter becoming due or from the lien thereof, provided, however, the sale or transfer of any Villa Lot pursuant to the foreclosure of any such prior mortgage on such Villa Lot (without the necessity of joining the Villa Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all Villa Assessments becoming due prior to the date of such sale or transfer.

## ARTICLE IX

### VILLA ASSOCIATION - ARCHITECTURAL CONTROL COMMITTEE

Section 1. Applicability. This Article IX shall only apply to the Villa Lots.

Section 2. Composition. The Architectural Control Committee ("Villa Committee") shall be composed of up to three members. During the time that the Developer owns any Villa Lot or any lot in the Other Real Estate, the Villa Committee shall be appointed by the Developer provided, however, Developer may by written notice to the Villa Association transfer its power of appointment of the Villa Committee to the Villa Association at any time. Thereafter, the members shall be appointed by the Villa Association Board of Directors. The Villa Committee may appoint one member to act for it in any or all matters, as the Villa Committee may in its absolute discretion decide from time-to-time.

Section 3. Authority. No Living Unit, Building, Structure, Antenna/Panel, fence, wall, pole, pool, spa, hot tub, whirlpool, trampoline, or other improvement or structure of any kind, temporary or permanent, ("Improvement") shall be constructed or placed on any Villa

Lot or attached in any manner to a Living Unit, Building or Structure thereon, nor shall any exterior addition, change or alteration ("Alteration") be made to an existing Living Unit, Building, Structure or Improvement on a Villa Lot until plans and specifications ("Plans") for the Improvement and/or Alteration showing the nature, kind, shape, dimensions, height, materials, color and location (collectively "Specifications") are submitted to and approved by the Villa Committee in writing as to the harmony of the Improvement's/Alteration's Specifications with the other Villa Lots, in general, and, more specifically, to the other Living Units thereon. The Villa Committee may not approve any Improvement or Alteration that is otherwise specifically prohibited by the terms of this Dedication without properly amending this Dedication according to the provisions of Article XI.

Section 3. Timing. Within thirty (30) days after receipt of written Plans that clearly set forth all of the information required to be submitted under Section 3 above, the Villa Committee must approve or reject the Plans in a writing delivered to the Owner requesting the approval. In the event that the Villa Committee fails to act within the thirty (30) day time frame, no approval will thereafter be required for the exact Plans submitted provided the Owner that submitted the Plans (i) has an appropriately dated delivery receipt signed by a current member of the Villa Committee, (ii) delivers a copy of such receipt to the Villa Association prior to beginning the Improvement or Alteration, and (iii) that the proposed Improvement/Alteration is not otherwise specifically prohibited in whole or in part by the terms of this Dedication.

## **ARTICLE X**

### **VILLA ASSOCIATION - INSURANCE**

Section 1. Liability Insurance. The Villa Association (once formed) may purchase and maintain comprehensive liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time-to-time. Such comprehensive liability insurance may provide coverage to the Villa Association, its Board of Directors, any committee of the Villa Association or Villa Association Board of Directors, the Architectural Control Committee and all persons acting as agents or employees of any of the foregoing with respect to the Villa Association.

Section 2. Other Insurance. The Villa Association (once formed) may obtain all insurance required by law to be maintained and such other insurance as the Board of Directors shall from time-to-time deem necessary, advisable or appropriate.

Section 3. Monthly Assessment for Insurance. The premiums for all such insurance maintained by the Villa Association shall be paid from the Annual Assessment set out in Article VIII.

## **ARTICLE XI**

### **GENERAL PROVISIONS**

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, restrictions or other provisions set forth in this Dedication, the Developer, the Association, the Villa Association and/or any Owner shall have the right to enforce the terms of this Dedication and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief. In any such successful legal proceeding, the Association, the Villa Association, the Developer and/or the Owner bringing the successful action shall be entitled to recover from the party against whom the successful action was brought reasonable attorney's fees and the costs and expenses incurred.

Section 2. Amendment.

- a. Except as provided in subparagraph (c) below, Articles I through VI, inclusive, and Sections 1, 2(a), 3, 4 and 5 of Article XI of this Dedication may be amended at any time by an instrument recorded in the Office of the Recorder of Huntington County, Indiana, signed by the Owners (as of the date of the recording) of at least two-thirds (2/3) of the Lots.
- b. Except as provided in subparagraph (c) below, Articles VII through X, inclusive, and Section 2(b) of Article XI of this Dedication may be amended at any time by an instrument recorded in the Office of the Recorder of Huntington County, Indiana, signed by the Owners (as of the date of the recording) of at least two-thirds (2/3) of the Villa Lots.
- c. Notwithstanding the provisions of subparagraphs (a) and (b) above, during the time that Developer owns any Lot, none of the rights, interests, benefits, obligations or any other provision relating to the Developer, to the Association, or to the Villa Association may be amended or changed in any manner without also having the Developer's written consent on the amending instrument that is recorded with the Recorder of Huntington County, Indiana.
- d. Any part of this Dedication may be amended by the Developer acting alone at any time within thirty (30) months from the date of the recordation of the Dedication - provided Developer has an ownership interest in any Lot at the time the amending instrument is recorded.

Section 3. Effective Period. This Dedication shall be effective and binding for a period of twenty (20) years from the date of recordation in the Office of the Recorder of Huntington County, Indiana, and shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten-year period it is amended or changed in whole or in part as hereinabove provided. Invalidity of any of the covenants, conditions and restrictions of this Dedication by judgment or decree shall in no way affect any of the other provisions hereof, but the same shall remain in full force and effect.

Section 4. Permission. Each Owner by accepting a deed for a Lot hereby covenants and agrees to grant permission to such companies, and their respective employees, hired or engaged by the Association, the Villa Association and/or the Developer to access the Owner's Lot for any purpose that is the responsibility of the Association or the Villa Association pursuant to this Dedication.

Section 5. Conflict of Provisions. In the event that any provision of this Dedication conflicts with the Plat, the Plat shall control. In the event that any provision of this Dedication conflicts with any law, ordinance, statute or similar public requirement, the law, rule, ordinance or similar public requirement shall control. In the event that any provision of this Dedication conflicts with the Articles of Incorporation or By Laws of the Association or Villa Association, the Articles of Incorporation or By Laws shall control.

IN WITNESS WHEREOF, the undersigned have caused this Declaration to be executed on this 4<sup>th</sup> day of January 2018.

**BIGGS INDIANA PROPERTIES, LLC**

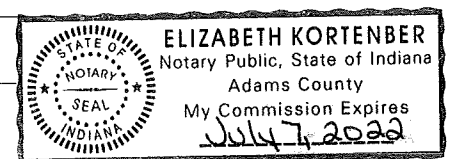
By: [Signature]  
Its: Managing Member

STATE OF INDIANA    )  
                                  )    SS  
COUNTY OF ADAMS    )

Before me, the undersigned Notary Public, in and for said County and State, this 4<sup>th</sup> day of January, 2018, personally appeared Kevan B. Biggs, as Managing Member of Biggs Indiana Properties, LLC, over the age of eighteen (18) years, and acknowledged the execution of the foregoing Dedication, Protective Restrictions, Covenants & Easements as his voluntary act and deed on behalf of said limited liability company for the uses and purposes set forth in this document.

Witness my hand and notarial seal this 4<sup>th</sup> day of January, 2018.

[Signature]  
Elizabeth Kortenber  
Printed Name



My Commission Expires: July 7, 2022

**Pursuant to IC 36-2-11-15(d):** I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law, Michael T. Blee.

**This Instrument Prepared by: Michael T. Blee, Attorney-at-Law, 522 South 13<sup>th</sup> Street, Decatur, IN 46733**