

## **DEDICATION, PROTECTIVE RESTRICTION, COVENANT AND EASEMENTS AS PART OF THE PLAT OF QUINCY PLACE SUBDIVISION, DUNKIRK, INDIANA**

The undersigned, Biggs, Inc., owners of the real-estate know as Quincy Place Subdivision, do now and hereby cause said real estate to be platted into lots, streets and easements in accordance with the plan and plat attached thereto, subject to the covenants, restrictions and limitations hereinafter set forth. The provisions herein contained are for the mutual benefit and protection of the owners and occupiers, present and future, of any and all lots in said addition and they shall run with and bind the land and shall inure to the benefit of and be enforceable by the owners and occupiers of any lot or lots in the addition and their successors, grantees and assigns. The owners and occupiers, present and future, of any lot or lots in the addition shall be entitled to injunctive relief against any violation or attempted violation of the provisions hereof and also to damages for any injury resulting from any violation thereof, but there shall be no right of reversion, re-entry or forfeiture of title resulting from any violation. Lot Owners are informed that this is the first of several sections of a larger and similar type subdivision and these covenants will be modified to include the new sections as a part of the Quincy Place Community Association.

1. **Land Use** – No lot shall be used except for Single Family Residential purposes. Single family dwellings not to exceed two stories in height.
2. **Building Lines** - No structure shall be located on a lot nearer to the front Lot line, or nearer to the side street line than the minimum building setback lines shown on the plat. In any event, no building shall be located nearer than a distance of five (5) feet - or ten (10) percent of the Lot width, whichever is greater - to an interior Lot line. No dwelling shall be located on an interior Lot line near than five (5) feet to the rear Lot line.
3. **Dwelling Size** – No dwelling constructed on the tract or parcel shall have a minimum ground area, exclusive of open porches, breezeways and garages of less than 950 square feet for a one-story dwelling or 720 square feet for more than one story dwelling.
4. **Garages** – Each house shall include at least a one-car garage that shall be built as a part of said structure and attached thereto.
5. **Driveway** – All driveways from the street to the garage shall be concrete with a minimum width of 10 feet.
6. **Livestock and Poultry** – No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except dogs, cats or other household pets may be kept provided they are not kept, bred or maintained for any commercial purposes.

7. **Garbage and Refuse Disposal** – No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste shall not be kept except in sanitary containers. All trash, garbage or other wastes shall be disposed of through an off-site waste handler. No incineration, burial or other form of on-site method will be permitted.
8. **Fuel Storage Tanks** – No fuel storage tanks shall either be placed underground or concealed within the dwelling, garage or fence. No individual water supply system or individual sewage disposal system shall be installed, maintained or used on any lots in this addition.
9. **Utility Easements** – Easements, of varying widths and locations, for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat. No owner shall erect on a Lot, or grant to any person, firm or corporation the right, license, or 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 poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Subdivision). Nothing in these Covenants shall be construed to prohibit street lighting or ornamental yard lighting services by underground wires or cables. Electrical service entrance facilities installed for any residence or other structure on a Lot connecting it to the electrical distribution system of any electric public utility shall be provided by the Owner of the Lot who constructs the residence or structure, and shall carry not less than 3 wires and have a capacity of not less than 200 amperes. Any public utility charged with the maintenance of underground installations shall have access to all easements in which said installations are located for operation, maintenance and replacement of service connections.
10. **Surface Drainage Easements** – Surface drainage easements used for drainage purposes as shown on the Plat are intended for either periodic or occasional use as conduits for the flow of surface water runoff to a suitable outlet, and the surface of the Real Estate shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition, and the County Surveyor (or proper authority having jurisdiction over storm drainage) shall have the right to determine if any obstruction exist, and to repair and maintain, or require such repair and maintenance, as shall be reasonably necessary to keep the conduits unobstructed.
11. **Nuisances** – Noxious or offensive activity shall not occur upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. The lots may not be used for any business purpose not permitted by the City of Dunkirk Zoning Ordinance.
12. **No Structure** – No structure of a temporary character, camper or camping trailer, motor home, travel trailer, semi-tractor, basement, tent, shack or manufactured home (modular or mobile) shall be used or located on any lot for use as a residence, either temporarily or permanently.
13. **Free Standing Poles** – No clothes lines or clothes poles, or any other free-standing, semi-permanent or permanent poles, rigs, or devices, regardless of purpose, with the exception of a flag pole displaying the United States flag, shall be constructed, erected, located or used on a lot.

14. **Storage of Equipment** – No boat, boat trailer, motor home, camping or other trailers, semi-tractor, or other machinery or equipment of any kind shall be kept on any lot for more than 48 hours, except within a completely enclosed building.
15. **Signs** – No signs of any kind shall be displayed to the public view on any lot except one sign of not more than six square feet advertising the property for sale or rent and signs used by the builder to advertise the property during the construction and sale period. The developer may construct a sign or signs naming and advertising the subdivision.
16. **Community Association** – The Developers shall cause to be incorporated Quincy Place Community Association, Inc., a not for profit association. Only one such association shall be recognized and approved by the Developers.
- A. **Membership** – One membership shall be created for each lot or living unit planned in the addition. Membership shall be comprised of owners of lots in all sections of Quincy Place.
- B. **Membership Transfer** – Memberships will transfer from the Developer to his grantee upon delivery of the deed.
- C. **Continuing Membership** – The purchaser of any lot or living unit in the addition shall be a member of said Association and shall continue to be a member of said Association so long as he/she continues to be the owner of a lot or living unit in the addition for the purposes herein mentioned. Membership shall pass with the ownership of the land or living unit.
- D. **Transfer of Membership Rights and Privileges To Lease** – Each owner or in lieu thereof each Lessee of a living unit (with the written consent of such owner to the Association) shall be a member of the Association and have the right to the owner's vote and privileges. Membership, where assigned to a Lease, will pass with the lease except if the owner may withdraw his membership assignment to the Lessee at his discretion by a sixty-(60) day notice in writing to the Association.
17. **Assessments** – Developer, for each lot and/or living unit owned by Developer within the addition, hereby covenants, and each owner of any lot or living unit, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or conveyance, shall be deemed to covenant and agree to pay to the Community Association the Maintenance Fund assessments and charges, as hereinafter provided.
- A. **Maintenance Fund** – The "Maintenance Fund" assessment shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of resident of the addition and in particular, for the improvement and maintenance of the sidewalks, surface drainage system, playgrounds, 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 Members of the Association in connection therewith.

The amount of said Maintenance Fund Assessment is established as follows:

- I. An annual assessment fee for the calendar year starting January 1, 2001, shall be ten dollars (\$10.00) per assessable membership.
  - II. For each year thereafter, the Board of Directors of the Association shall establish a budget for such calendar year and shall determine the annual membership assessment required to meet said budget. The Board of Directors shall establish such budget and assessment for each such calendar year at a meeting to be held before October 31<sup>st</sup> of each preceding calendar year. The Board of Directors shall then mail to all Association members a copy of said budget and notice of the ensuing year's assessment not later than November 15<sup>th</sup> of the year prior to the year to which the assessment is applicable.
  - III. The amount of the assessment set by the Board of Directors for any such calendar year may be changed by the members of the Association at a meeting duly called for that purpose as hereinafter provided. The President or Secretary of the Association shall call a meeting of the membership of the Association, to be held before December 31<sup>st</sup> of the year before the year to which the assessment is applicable. Upon receipt, prior to November 30<sup>th</sup>, of a written petition for assessment review bearing the signatures of at least twenty percent (20%) of the memberships of the Association, a meeting to review the forthcoming year's assessment shall be scheduled. The President or Secretary of the Association shall give at least fifteen (15) days written notice of such meeting to all members.
  - IV. Any change so adopted in the amount of the assessment set by the Board of Directors must have the assent of two-thirds (2/3) of the memberships of the association who are voting in person or by proxy at a meeting duly called for such purpose. At any meeting, a quorum of not less than fifty percent (50%) of all memberships shall be required.
- B. **Collection** - Such Maintenance Fund Assessment, together with interest thereon and costs of collection as hereafter provided shall be a lien upon the property against which each assessment is made. Each such assessment, together with interest thereon and costs of collection, shall be the personal obligation of the person or persons who was the owner of such property at the time the assessment fell due. The obligation of the assessment is upon the owner of the property or the living unit and is not transferred, even though the owner may have transferred the membership and voting rights in the Community Association, as hereinbefore provided. If the assessments are not paid on the due date, then such assessments shall be a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representative and assigns. However, the personal obligation of the then owner to pay such assessment shall remain a personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within sixty (60) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and the Association may bring an action against the owner personally obligated to pay the same, or foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing such action. The lien of the assessments as provided for herein shall be subordinated to the lien of any mortgages now or hereafter placed upon the property, taxes and assessments for public improvements.

18. **Terms** – These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded agreeing to change said covenants in whole or in part.
19. **Waiver** – The failure of either the Developer or an owner to enforce any covenant contained herein or right arising from any covenant contained herein shall in no case be deemed a waiver of that right or covenant.
20. **Severability** – Invalidation of any of these provision shall in no way affect any of the other provisions which shall remain in full force and effect.
21. **Right to Enforce** - The Association, Platter, the Dunkirk Plan Commission, or any owner 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 covenants and restrictions.
22. **Amendment** – These covenants may be amended within twenty-five (25) years after the date on which these covenants and restrictions are recorded by setting out in what respect these covenants and restrictions are to be amended. The Covenants may be amended from time to time and at any time, but only by an instrument signed and acknowledged by both, the then owners of not less than 75% of the lots in the subdivision, and the Jay County Plan Commission President. The signed Amendment to the Covenants shall then be recorded in the Office of the Recorder of Jay County, Indiana.
23. **Restrictions Separately Enforced** - Invalidation of any one of these covenants by judgement of court order shall in no way affect any of the other provisions, which shall remain in full force and affect.
24. **Enforcement** – Enforcement shall be by proceedings at law or in equity against any person, or persons, violating, or attempting to violate, any covenants, either to restrain violation or to recover damages. These covenants shall run with the land and be enforceable by the City of Dunkirk Plan Commission or by any aggrieved lot owner in this subdivision. Failure by the Plan Commission, Association, Developer or an Owner to enforce any provisions in the Covenants shall in no event be deemed a waiver of the right to do so later.

25. **Completion of Infrastructure** – Before any residence on a Lot shall be used and occupied as such, the Developer, or any subsequent Owner of the Lot, shall install all infrastructure improvements serving the Lot as shown on the approved plans and specifications for the Subdivision filed with the Plan Commission and other governmental agencies having jurisdiction over the Subdivision.
26. **"As-Built" Drawings** - The Developer shall provide an certified "As-Built" drawing of the completed infrastructure to the Plan Commission. The "As-Built" drawing shall include water mains, sanitary sewers, storm sewers and earthwork elevations for building pads and all drainage swales or pathways. The approved plans and specifications, the "As-Built" drawing and drainage swales or pathways shall run with the land and not be changed by purchasers of individual lots. The Plan Commission shall approve any changes or revisions to the plans or the "As-Built" Drawings. Enforcement of either approved or unapproved changes shall be by the Plan Commission or by any aggrieved Owner.

IN WITNESS WHEREOF, the said Biggs, Inc., has caused its corporate name to be hereunto subscribed by Ralph E. Biggs, it's President thereunto duly authorized by resolution of its Board of Directors this 28th day of February, ~~19~~ 2000

BIGGS, INC.

  
 Ralph E. Biggs, President

STATE OF INDIANA )  
 ) SS:  
 COUNTY OF JAY)

Before me the undersigned, a Notary Public for Adams County, State of Indiana, personally appeared Ralph E. Biggs and acknowledged the execution of this instrument this 28th day of February, ~~19~~ 2000



  
 Notary Public  
 Regina L. Glover

My commission expires: 8/23/00

APPROVED: \_\_\_\_\_  
 Bill Blankenbaker, President  
 City of Dunkirk Plan Commission

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 Date