

ELKHART COUNTY RECORDER  
SUSAN M GUIPE  
FILED FOR RECORD

2003-47175

2003 NOV -6 P 1:24

THE REFUGE PROTECTIVE RESTRICTIONS,  
COVENANTS, LIMITATIONS, AND EASEMENTS  
FOR LOTS 1 - 20

IN  
ELKHART COUNTY, INDIANA

Recitals

- A. These Protective Restrictions, Covenants, Limitations and Easements are for Lots 1 through 20 of what will be referred to as "The Refuge" (hereinafter referred to as "The Refuge Covenants"), a subdivision in Baugo Township, Elkhart County, State of Indiana, were recorded in the Office of the Recorder of Elkhart County, State of Indiana, on the 23rd day of April, 20003, at Plat Book 28, Page 39.
- B. The Developer, its successors or assigns, has the exclusive right until the Control Date to amend any or all of the restrictions and covenants of The Refuge, said control date being designated when one hundred percent (100%) of the lots have been sold by the Developer.
- C. Pursuant to Paragraph 26 of The Refuge Covenants, the Developer is also granted the right for a period of ten (10) years from the date of the recording of the Plat of The Refuge to amend any or all of the restrictions and covenants pertaining thereto.

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Amendments

In consideration of the premises, and pursuant to the authority hereinabove described, the following is hereby adopted as The Protective Restrictions, Covenants, Limitations, and Easements for The Refuge in Elkhart County, Indiana.

As more particularly described above, all the lots in said addition shall be subject to and impressed with the covenants, agreements, easements, restrictions, limitations, and charges hereinafter set forth; and they shall be considered a part of the conveyance of any lot in said addition without being written therein. The provisions herein contained are for the mutual benefit and protection of the owners, present and future, of any and all lots in said addition, and they shall run with the land and inure to the benefit of and be enforceable by the owner, or owners, of any land or lots included in said addition, their respective legal representatives, heirs, successors, grantees and assigns. The owner, or owners, present and future, of any land or lot included in said addition shall be entitled to

→ Deering Development, 58300 Ash Rd, Danaba 40561

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injunctive relief against any violation or attempted violation of the provisions hereof and also damages for any injuries resulting from any violation hereof, but there shall be no right of reversion or forfeiture of title resulting from such violation. The restrictions and limitations imposed upon said addition are as follows:

1. **Architectural Control Committee.** Each dwelling unit built on a lot must be built by a builder approved by the Developer, Deering Development, LLC, (hereinafter referred to as the "Developer"). In order to maintain harmonious structural design, no building for the principle use of residential dwelling may be erected on any lot, unless and until the plans and specifications therefor have been approved in writing by The Refuge Architectural Control Committee. There is hereby created, The Refuge Architectural Control Committee, which shall consist of three (3) persons appointed by the Developer or its successors and assigns, from time to time, who shall serve until they are removed by the Developer or have resigned. This Committee may designate any one of its members to act on its behalf. In the event of any vacancy on the Committee, the Developer shall appoint a replacement, but if the Developer shall fail to appoint a replacement for a period of 60 days after any vacancy, the Committee may appoint a successor. The Committee shall have the authority to approve all plans and specifications for all structures to be erected in the subdivision. No construction of any structure shall be commenced until the Committee shall have issued its written approval, which may be withheld in its sole and unreviewable discretion. Prior to any clearing of trees and/or excavating on any lot, all trees designated to be removed shall first be marked. The Developer shall be notified and given three days to review and approve or request specific trees remain, provided remaining trees do not prohibit construction of said home, pool or other landscaping. Developer reserves the right to remove trees for other uses, provided Developer removes trees within thirty days after notification by lot owner. The decision of the Committee shall be entirely within its discretion.

The Developer may remove any member of the Committee at any time, with or without cause.

2. **A. Land Use and Building Types.** No dwelling shall be erected, altered, placed, or permitted to remain on any lot, other than one single-family dwelling not to exceed two and one-half (2 1/2) stories in height and an attached private garage for not more than three (3) cars; exceptions may be made to this section only if they are unanimously approved in writing by the Architectural Control Committee. No business may be operated on any lot.
- B. Home Occupations.** No lot or lots known and designated as Lots 1 through 20 shall be used for any purpose other than as a single-family residence.
- C. Sales and Promotions.** The Developer, or its assigns, may make use of one (1) lot which may have improvements thereon for realty sales and promotion purposes and construction of homes, notwithstanding anything which may appear to the contrary therein.

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D. Architectural Control. No building or other structure shall be erected, constructed, placed, maintained, or altered on any lot, nor shall the natural topography or drainage of any lot be altered, until the construction plans of the structure or for the topographical alterations have been approved by the Architectural Control Committee. The plans must show floor plan, quality of construction materials, outside colors to be used, harmony of external design with existing structures and location with respect to lot lines, topography, and finish grade elevation. Plans shall include placement on lot with detail showing all pavement, well and septic locations, as well as legally positioning the well and septic systems in relationship to neighboring, existing homes to comply with Elkhart County Health Department Regulations in the County where the Lot is located. One (1) set of complete plans must be submitted. It will be retained in the Developer's office and will not be returned to the owner. The Committee's approval or disapproval, as required in the covenants, shall be in writing, with reasons for the denial stipulated. Approval must be obtained for pavement of any kind, including, but not restricted to, parking and recreational use. No structure of any kind which does not comply fully with such approved plans shall be erected, constructed, placed, or maintained upon any lot, and no changes or deviations in or from such plans as approved shall be made without the Committee's prior written consent. Neither the Developer, The Refuge Architectural Control Committee, nor any member thereof, nor any of their respective heirs, personal representatives, successors, or assigns, shall be liable to anyone by reason of any mistake in judgment, negligence, or nonfeasance arising out of or relating to the approval or disapproval or failure to approve any plans so submitted, nor shall they, or any of them, be responsible or liable for any structural defects in such plans or any drainage problems resulting therefrom. Every person or entity who submits plans to the Architectural Control Committee, agrees, by submission of such plans, that he or it will not bring any action or suit against the Committee or the Developer or any Homeowner's Association, to recover any damages or to require the Committee or the Developer to take, or refrain from taking, any action. Neither the submission of any complete sets of plans to the Developer's office for review by the Architectural Control Committee, nor the approval thereof by the Committee, shall be deemed to guarantee or require the actual construction of the building or structure therein described, and no adjacent lot owner may claim any reliance upon the submission and/or approval of any such plans for the buildings or structures described therein.

3. Dwelling Size.

A. General Restrictions. No dwelling shall be permitted on any lot with living floor area of the main structure, exclusive of one-story open porches and garages, of less than the following number of square feet for the following types of dwellings. In specific given areas, minimum square footage will be the following:

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|             | <u>Type of House</u> | <u>Minimum Square Footage</u> |
|-------------|----------------------|-------------------------------|
| Lots 1 – 7  | Ranch Style          | 1,200 square feet             |
|             | 1 ½ & 2 Story        | 1,500 square feet             |
| Lots 8 – 20 | Ranch Style          | 1,400 square feet             |
|             | 1 ½ & 2 Story        | 1,700 square feet             |

However, the Architectural Control Committee may consider and allow a lot owner's request for smaller square footage allowance if the plans for the residence show that the residence to be built is architecturally and aesthetically consistent with other residences in The Refuge, but approval is within the sole discretion of the Committee

**B. Garages.** All dwellings must have a full-size attached garage which is capable of storing at least two (2) automobiles, but not to exceed space for three (3) automobiles, without written consent from the Architectural Control Committee, which may be withheld in its discretion.

**4. Building Location.** No building shall be located on any lot nearer to the right-of-way line than the minimum building setback lines as shown on the recorded Plat. Each building, porch, deck, pool or pool fencing shall be located no closer than forty (40) feet to any rear lot line and ten (10) feet from any side lot line. For the purpose of this covenant, eaves and steps shall (at the Developer's discretion) not be considered as a part of the buildings; provided, however, that this shall not be construed so as to permit any portion of a building on a lot to be located nearer than ten (10) feet from any other lot. Nothing in this provision shall authorize a violation of County building codes or set back requirements.

**5. Easements.** There are strips of ground variable in width, as shown on the Plat, and marked "easements", reserved for the installation of water and sewer mains, poles, ducts, lines and wires, and overland drainage flows, subject at all times to the proper authorities and easements herein reserved. No permanent structures shall be erected or maintained upon said strips of land, except as noted in paragraph 6 and 7, regarding screening of non-access easements. No changes shall be made in the grading of any lot areas used as berm and storm drainage runoff, but lot owners shall take their titles subject to the rights of the public utilities. Furthermore, any utility company, in setting utility poles, shall have the right to set anchor transformer poles at any change of direction of their lines. Such anchor poles may be set on any lot line outside the easement and not more than ten (10) feet from the rear line of any lot. All utility pedestals and transformers shall be erected on or within five (5) feet of the nearest corner lot. An easement is also granted to the Association, its officers, agents, and employees, and to any management companies selected by the Association, to enter, cross-over, or otherwise utilize any portion of the lot in the performance of its duties granted by these Covenants and Restrictions, the By-Laws, and Articles of Incorporation.

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6. **Protective Screening.** Protective screening areas are established as shown on the recorded Plat and are noted as "non-access easements". Except as otherwise provided herein regarding street intersections under "Sight Distance at Intersection", planting shall be retained and maintained throughout the entire length of such areas by the owners or owners of the lots at their own expense to form an effective screen for the protection of the residential area. No screen planting over seventy-two (72) inches high shall be permitted between the building set back line and front lot line on all lots, or as deemed necessary.

7. **Perimeter Fencing.** All fencing must be approved by the Architectural Control Committee in writing and must conform to present architectural standards as set by the style of home thereon built, and may be withheld in the Committee's discretion, but no fencing shall be allowed in front of any home.

8. **Nuisances.** No obnoxious or offensive activity shall be carried on upon said lot, nor shall anything be done thereon which may become an annoyance or nuisance in the neighborhood.

9. **Temporary Structures.** No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

10. **Storage.** No lot shall be used for storage of old lumber, boats, cars, materials or debris of any kind which would tend to make the lot unsightly in appearance and character.

11. **Pools and Recreational Facilities.** No above ground pools shall be permitted. In-ground pools and permanent or paved recreational athletic facilities (including, but not limited to, tennis, basketball and volleyball courts) may not be erected, built or installed on any lot unless and until the plans and specifications therefor have been approved in writing by The Refuge Architectural Control Committee, as provided in paragraph 1 hereof. Any and all lighting fixtures for any such facilities are also subject to such prior approval.

12. **Detached Buildings.** The construction and placement of any detached pet shelter, play house, structures designed for the storage of lawn tools, toys, swimming pool apparatus, or any other personal property must be of a quality construction, and must be maintained in attractive and neat appearance and blend with the established home and be submitted to the Architectural Control Committee for prior approval before beginning construction. The Architectural Control Committee may require protective screening around these structures. Approval for the construction and placement of the structure must be obtained from the Architectural Control Committee as provided for in paragraph 1 hereof. Approval for the construction and placement of well or pump house must be obtained from The Refuge Architectural Control Committee in writing.

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13. Driveways. No stone or cinder driveways shall be permitted. All driveways are to be a minimum of twelve (12) feet wide and must be constructed of concrete. The depth of the concrete shall be at least four (4) inches thick. Circular drives in front of homes (if any) must be a minimum of eight (8) feet wide.

14. Signs. No sign of any kind shall be displayed to the public view on any lot except one (1) sign of not more than five (5) square feet advertising home for sale or rent, or a sign of any dimension used by a builder to advertise the property during the construction and sales period. There is reserved to the Developer, its successors and assigns, the right to construct signs as they desire in order to foster promotion and effect sales of lots or structures in said development. No sign shall be permitted to promote the sale of an undeveloped lot except by Developer or with Developer's written consent.

15. Livestock and Poultry. 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 they are not kept, bred or maintained for any commercial purposes and are not permitted to become a neighborhood nuisance or hazard in any manner. No vicious or attack trained dogs shall be kept at any time on any lot, and no pot belly pigs or animals normally considered "wild" shall be kept or maintained on any lot.

16. Garbage and Refuse Disposal: Open Burning Prohibited. No lot or portion of any lot, shall be used or maintained as a dumping ground for rubbish, grass clippings, leaves, tree limbs, or compost. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for storage or disposal of such materials shall be kept in a clean and sanitary condition. No open burning shall be permitted on any lot, whether in incinerators, containers or otherwise, but this shall not be construed as to prohibit a backyard barbecue. The prohibition against burning shall include, but not be limited to, trash, waste, refuse, building materials, leaves, tree limbs, grass clippings, debris and any other material of any kind or description, however, a homeowner shall be permitted to have a campfire (or barbecue) pit up to three (3) feet in diameter for clean burning wood or charcoal provided it does not present a fire hazard or smoke nuisance to any property. Grass clippings, leaves, and other waste may not be placed on any other property in The Refuge. Any dirt, concrete or debris tracked or distributed off lot which home is being constructed may be removed by developer at property owners expense. All property owners shall comply with State and local erosion control plans. Any debris placed anywhere in the subdivision may be cleaned up by the Developer at the offender's expense.

While a home is under construction, all debris shall be contained in such a manner that it will not be permitted to litter adjoining properties. If loose debris becomes a general nuisance, the Association, at the option of the Architectural Control Committee may elect to clean up the debris at the cost of the lot owner.

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

18. **Completion Date.** Any structure begun must be completed within a period of one (1) year from the beginning date, or thereafter completely removed. Construction must begin on any lot within three years of the purchase date from the Developer or the Developer may (but is not required to) purchase the lot back at any time prior to commencement of construction for the purchase price paid to Developer less ten percent (10%). The side, front and rear yards of each lot shall be planted with grass, sod or ground cover, unless otherwise approved by the Architectural Control Committee, within one hundred twenty (120) days after the structure is completed, or the structure is occupied as a residence, whichever is earlier. All landscaping is subject to review and approval of the Committee. An initial landscape design shall be submitted to the Committee for its approval prior to when the owner of the lot occupies the home on the lot. If two or more contiguous lots are owned by the same owner, or owners, the lots shall be considered as one lot for landscaping control purposes, and shall be maintained in accordance with these provisions. In addition, on wooded lots where there is a separation between the tree line and the curb, all areas between the tree line and the curb must be planted with grass, sod, or ground cover.

Undeveloped or vacant lots shall be kept free of rubbish and weeds and shall be mowed once a week during the applicable growing season; and grass height shall be maintained at a reasonable length. Upon violation of this provision and after giving the owner ten (10) days notice to cure the condition, the Association, at the option of the Board of Directors, may elect to perform such maintenance at the cost of the owner. The Developer shall be exempt from paragraph No. 18, but shall maintain unsold lots at the Developer's discretion.

19. **Fuel Storage Tanks.** No oil or fuel storage tanks may be installed underground or concealed within the main structure of the dwelling, basement or attached garage.

20. **Lot Division.** There shall be no subdivision or sale of any lot by a homeowner for the purpose of building an additional dwelling on any lot or portion of any lot.

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21. **Lighting.** A dusk to dawn light (or gas light) of the type approved by the Architectural Control Committee shall be installed by the Builder or lot owner on each lot in front of the front building setback line. If electric, post lights shall be equipped with automatic operators (electric eye) to provide light from sundown to dawn.

22. **Recreational and Commercial Vehicles: Parking.** No recreational or commercial vehicles (campers, trailers, trucks, boats or snowmobiles) may be kept in open areas in this subdivision, whether such open areas are on or off the lot of any lot owner. No motor vehicles of any kind or description may be parked, kept, stored or otherwise maintained on any street or lawn area, nor may any vehicle be parked on any street between the hours of 2:00 o'clock a.m. and 6:00 o'clock a.m. All vehicles parked overnight shall be located entirely within a garage or driveway.

23. **Homeowner's Association.** The Refuge Homeowner's Association, Inc., hereinafter referred to as the "Association", which shall be an Indiana Corporation, shall be created by the Developer acting on behalf of the owners and future owners of lots in The Refuge.

Each owner of a lot in The Refuge shall be a member of the Association and shall be subject to the terms and conditions of its By-Laws, as amended from time to time, but collectively all owners of a single lot shall be entitled to cast only one (1) vote per lot at all meetings for each lot that is owned. So, for example, if three people own one lot, for any vote for the Home Owner's Association, the three would be entitled to a 1/3 of a single vote for any matter up for a vote. If two or more contiguous lots are owned by the same owner, or owners, the lots shall be considered as a single lot only for voting purposes. The purpose of the Association is to manage and to support financially the entrance and all street lighting and the provisions of security services as may be deemed advisable and practical in the sole discretion of the Association or, until such time as the Association is created by the Developer, in the sole discretion of the Developer, and all purposes as the membership deems necessary. The Association shall have the authority and obligation to assure that all environmental aspects of the property, including retention areas and entrance, are maintained in a manner which is in the best interest of all members of the Association; and the Association shall have the right to restrain various landowners from polluting lots. After its creation by the Developer, the Association shall conduct a meeting at least once each year to organize itself and elect its officers. The Association shall adopt bylaws for its government and may levy and collect dues. The Association shall have the authority to impose and collect annual assessments for the operation of street lighting and for the maintenance and improvement of the entrance or other "common areas" and for the provision of the aforesaid security services; provided, however, the total of such dues and assessments levied against such lot shall not exceed Two-Hundred Dollars (\$200.00) per lot per year, plus a One-Hundred Dollar (\$100.00) initiation fee upon the purchase of any lot or contiguous lots used for construction of one home. These assessments shall be levied equally on each lot of the recorded Plat of The Refuge. However the Developer shall be exempted from these assessments. Failure to pay said assessments or annual dues shall be a violation of these covenants and restrictions. Any such assessments or



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annual dues shall be billed by the Association to the owner of each lot during the year on a date set by the Board of Directors and shall be a lien in favor of the Association upon the lot against which such dues and assessments are charged until paid, which may be enforced in the same manner as is provided in the mechanic's lien statutes of the State of Indiana. Provided further, that any person purchasing or dealing with said lot may rely upon a certificate signed by the president or secretary of the Association showing the amount of said dues and assessments which are due and unpaid as of the date of such certificate, and the Association shall not be entitled to enforce any lien for such charge accruing prior to the date of any such certificate unless the amount thereof is shown in the said certificate. The within above described lien is not subordinate to any first mortgage lien. The Association may also enforce all other terms and conditions of these restrictive covenants, including, but not limited to, the restrictions concerning accumulations of rubbish, weeds or trash and may own any land for use by all or less than all of the lot owners as a "common area". Any past due annual dues, assessments or other charges assessable hereunder shall bear interest at the rate of twelve percent (12%) per annum commencing thirty (30) days after the same become due and with attorney's fees, and shall be due and payable without relief from valuation and appraisal laws. The Association may be formed for, and engage in, such other activities as may be beneficial to the lot owners, to the public at large, or which may qualify the Association as a "not-for-profit corporation or association", as defined in the Internal Revenue Code. Until such time as the Association is created by the Developer, the Developer, acting on behalf of the Association to be formed, shall be entitled to carry out the responsibilities assigned to, and enjoy and exercise the rights and powers granted to, the Association pursuant to these restrictions; provided, however, that the total of such dues and assessment levied by the Developer in such capacity against each lot shall not exceed One-Hundred Dollars (\$100.00) per lot per year so long as the Association has not been created and the Developer is acting in such capacity on behalf of the Association.

**24. Utilities and Television Antennas.** All public utility services, either in the streets or on any lots, including but not limited to electric, gas and telephone service, and cable television, shall be located underground, and shall not be visible. No outside above ground television, A.M., F.M., or short wave radio antennas or other antennas of any type shall be erected or maintained on any lots or structures in The Refuge. Satellite dishes are prohibited unless they are less than two (2) feet in diameter as determined by such supplier, and shall not be conspicuously visible from streets or other lots. All street or lot lighting shall be situated on posts with no lines visible, and must be approved by the Architectural Control Committee. To assure the enforcement of this restriction, the Developer, the Committee, and/or the Home Owner's Association are each free to take action as follows:

**A. Utility Poles and Overhead Lines.** To prohibit the erection and use of overhead wires, poles and other facilities of any kind, including but not limited to those associated with electrical, television, cable or telephone service electrically or by telephone from poles and overhead wires around the perimeter or the subdivision or development. Nothing herein should be construed to prohibit street

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lighting or ornamental yard lights if serviced by underground wire or cable and approved by the Architectural Control Committee.

B. **Electrical Service.** To require that the owner of any building erected on the property install an electric service entrance of sufficient capacity to meet present and future requirements of the occupants in accordance with the engineering standards of the electric utility company.

C. **Restoration.** To require owners to assume all landscaping responsibility and restoration of paved or planted areas made necessary by maintenance, replacement or expansion of the underground facilities.

D. **Accessibility.** To require accessibility to all strips in which underground service is located for operation, maintenance or replacement of facilities.

E. **Underground Service Laterals.** To require that the owner of any building erected on the property may pay any cost differential for underground service laterals.

25. **Septic Systems.** Until such time as a sanitary sewer system is constructed in the tract or an individual sewage disposal system is approved by the Indiana Health Department, a sanitary septic tank shall be installed at the lot owner's expense for each dwelling erected in the tract. Such septic tank shall be of a type and construction and so located on the individual lot as to be approved in writing by the appropriate regulatory agency as required in Elkhart County. No other sanitary provision or device for sewage disposal shall be installed or permitted to remain in this tract. Septic systems must be located consistent with applicable law, may not be mound systems unless approved in advance by the Committee, and must, at all times, comply with all county regulations.

26. **Amendment of Covenants.** It is expressly provided that the Developer, its successors or assigns, shall have the exclusive right for a period of ten (10) years from the date of recording the Plat for The Refuge to amend any or all of the restrictions or covenants herein contained; except that the Developer, its successors or assigns, shall not, during such ten (10) year period, increase the Two-Hundred Dollar (\$200.00) limitation on the total dues and assessments which may be levied annually by The Refuge Homeowners Association, Inc., against any lot. Such amendments signed and recorded in the office of the Recorder of Elkhart County shall become effective upon such recording. This shall include the right to waive any part of the restrictions or conditions as to any particular lot. After ten (10) years from the date of recording of The Refuge Plat, these Restrictions and Limitations, including that provision of paragraph 24 which places a Two-Hundred Dollar (\$200.00) maximum on the total dues and assessments which may be levied annually by The Refuge Homeowners Association, Inc., against any lot, may be amended at any time by the recording of such amendment executed by the Home Owner's Association, by Fifty-one percent (51%) vot of the lots of the Association. Such amendment signed and recorded in the office of the Recorder of Elkhart County shall

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become effective upon such recording. This shall include the right to waive any part of the restrictions or conditions as to any particular lot.

27. **Duration of Covenants.** These covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until ten (10) years after the recording of the plat for The Refuge, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless by a vote of Fifty-one percent (51%) of the lots of the Association covered by these covenants and restrictions, it is agreed to change such covenants or restrictions in whole or in part.

28. **Separability of Covenants.** Invalidation of any one (1) of the covenants or restrictions by judgment of a Court of competent jurisdiction shall in no way affect any of the other covenants or restrictions and all other provisions of these restrictions shall remain in full force and effect.

29. **Enforcement of Covenants.** The right to enforce these provisions by injunction, together with the right to cause the removal by due process of law of any structure, is hereby vested in each owner of a lot in The Refuge and in The Refuge Homeowners Association, Inc., its successors and assigns, and the Committee, and the Developer. These covenants and restrictions may all be enforced by a civil action for damages and by any other appropriate remedy at law or in equity. If any person or persons shall violate or attempt any of the covenants herein, it shall be lawful for any person or persons vested with the title to any of the lots hereinafter described, The Refuge Homeowners Association, Inc., its successors and assigns or the Developer, and/or the Committee, to proceed either in law or in equity, against such person or persons, violating or attempting to violate any such covenants, and to enjoin them from so doing, to recover damages for such violation and to seek all other appropriate relief. In the event that The Refuge Homeowner's Association, Inc., or the Developer or the Committee should employ counsel to enforce any of the foregoing covenants and restrictions, all costs incurred in such enforcement, including reasonable attorney's fees, shall be paid by the owner of such lot or lots against whom such enforcement action is brought, and The Refuge Homeowner's Association, Inc., or the Developer, and the Committee, as the case may be, shall have a lien upon such lot or lots to secure the lot owner's payment of all such costs, which lien shall be enforced in the same manner as is provided in the mechanic's lien statutes of the State of Indiana.

30. **Trash Pick Up.** All trash pick up shall be completed on one specified day of each week with The Refuge Homeowner's Association to elect the same by a majority vote.

31. **Landscaping.** All lots shall be maintained in good and orderly fashion, with appropriate landscaping in keeping with the pattern established in the subdivision. No lots shall be permitted to be overgrown or weed infested. All lots must have irrigation systems capable of adequately watering all cultivated areas; the systems must be maintained in good working order and operated sufficiently to insure proper growing conditions.

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32. **Tree Removal.** The Refuge Architectural Control Committee shall have the exclusive right to approve or disapprove of any and all trees to be removed from any lot for the purpose of constructing a home, or driveway, or for landscaping or any other purposes. The homeowner and his contractor shall notify the Developer in writing of his intentions to commence construction and mark trees to be cut and removed with orange spray paint forty-eight (48) hours prior to cutting or removing to allow sufficient time for inspection of trees to be removed.

33. **Effective Date.** These restrictions, covenants and amendments shall be deemed to be attached to and shall be considered a part of the Plats of The Refuge and shall become effective upon the recording of the Plats in the Office of the Recorder of Elkhart County, Indiana.

34. **Committee.** Whenever the Committee has the right to approve any matter as set forth in these restrictive covenants shall be at the sole and unreviewable discretion of the Committee, unless expressly stated otherwise in these restrictions.

35. **Adjacent Real Estate.** All lot owners are provided notice that adjacent to The Refuge is real estate being used as a Christian ministry (sometimes referring to itself as Voice Ministries). Each lot owner accepts the ownership of their lot with full knowledge of the same, and each lot owner understands and agrees that the owners of that adjacent real estate and the ministry and their invitees, licensees, agents, representatives, staff, employees, officers and directors will use the streets of the subdivision for ingress and egress, and may develop real estate adjacent to the subdivision for additional ministry purposes or residential purposes, and even two-plexes and/or four-plexes which each lot owner automatically consents to upon acceptance of ownership in said lots, voluntarily, and agrees not to oppose any such development. If any lot owner opposes any such development, ingress or egress, that owner or owner's agree that the ministry and the owner may enforce the consent by law and agree to be liable for all costs, expenses and reasonable fees, and damages, which the owners and/or ministry must suffer as a result of the same.

36. **Right of First Refusal.** The Developer shall have a right of first refusal on all lots and homes in The Refuge as follows:

A. If the Owner of a lot or home in The Refuge receives a bona fide offer from a third party to purchase their home/lot, the Owner shall promptly deliver to the Developer a copy of the Offer.

B. The Developer may elect to purchase the lot or home on the same terms and conditions proposed in the Offer, except that the Developer may substitute a Closing Date of not more than forty-five (45) days after its election to match the Offer, if the Closing Date in the Offer is less than forty-five (45) days.

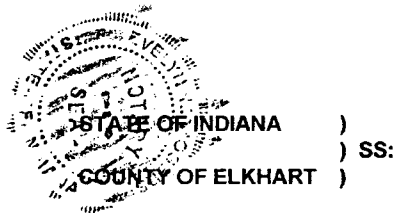
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C. The Developer shall exercise his right of first refusal by communicating with the Owner in writing, within fifteen (15) days of receipt of the Offer, of its willingness to match the Offer as described above.

D. If the Developer elects not to match the Offer or fails to exercise his right of first refusal within fifteen (15) days of receipt of the Offer, the Owner shall be free to accept the Offer without further notice to the Developer.

IN WITNESS WHEREOF, the foregoing instrument was executed this 6th day of November, 2003.

By: *Bob Deering*  
Bob Deering, Managing Member  
Deering Development, LLC



Before me, a Notary Republic in and for the said County and State, personally appeared Bob Deering, as Managing Member of Deering Development, LLC, an Indiana Limited Liability Company, who acknowledged the execution of the foregoing Protective Restrictions, Covenants, Limitations, and Easements for The Refuge, and who, having been duly sworn, stated that any representations therein contained are true.

WITNESS my hand and Notarial seal this 6th day of November, 2003.

My Commission Expires: November 13, 2010 *Joshua N. Vida*  
Signature of Notary Public

Joshua N. Vida  
Printed Name of Notary Public  
Residing in Elkhart County, IN

This instrument was prepared by: Bob Deering, Managing Member, Deering Development, LLC