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For Class "C" Pass "69"

BLUEWATER ESTATES

**ENGINEER:**  
*Engineering Vision Inc.*  
5201 COLDWATER ROAD, SUITE 150  
FT. WAYNE, IN. 46825 PHONE (219) 464-2748

DEVELOPER: CHARLIE HERBST INC.  
2605 COVINGTON WOODS BLVD  
FORT WAYNE, IN. 46804

APPROVED THIS 4<sup>th</sup> DAY OF January, 1995  
ALLEN COUNTY BOARD OF COMMISSIONERS

*John C. McCombs*  
 JOHN C. MCCOMB, PRESIDENT  
*Frederick Starn*  
 FREDERICK STARN, SECRETARY  
 EDWIN J. ROUSSEAU, VICE PRESIDENT  
 ATTNEY: *Theresa Brown*  
 THERESA BROWN, AUDITOR  
 ALLEN COUNTY, INDIANA


APPROVED THIS 23<sup>rd</sup> DAY OF November, 1994  
ALLEN COUNTY PLAN COMMISSION

ARTHUR G. SPIROU, PRESIDENT  
*Walter Q. Shattuck*  
 SHIRLEY A. WEISSERT, VICE-PRESIDENT

APPROVED THIS 22 DAY OF December, 1994  
FOR DRAINAGE ONLY. 0

JEFFREY W. SCORR, ALLEN COUNTY SURVEYOR  
APPROVED FOR DRAINAGE ONLY

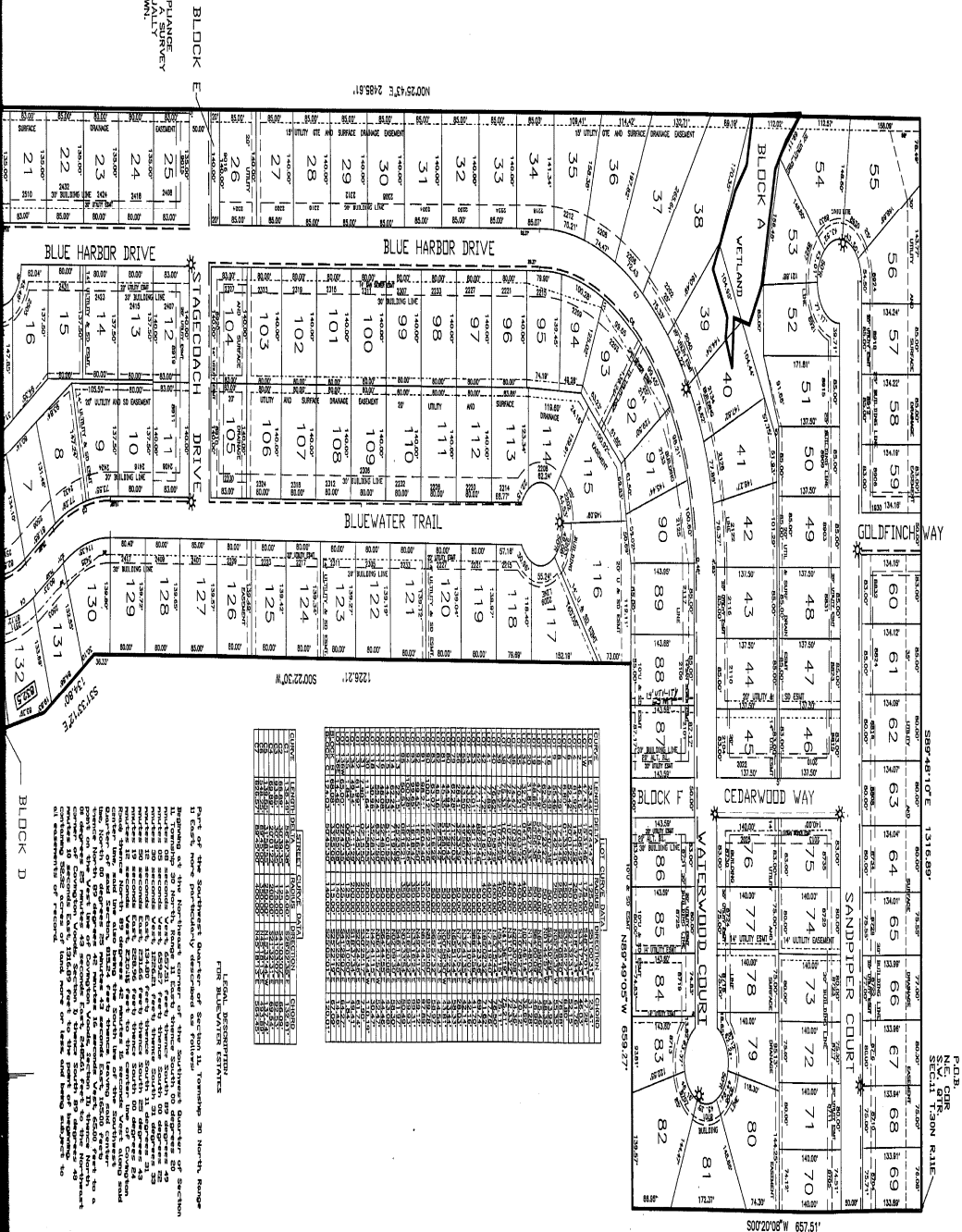
APPROVED THIS 3 DAY OF Jan, 1997  
FORT WAYNE - ALLEN COUNTY BOARD OF HEALTH  
Dr. Jane M. Irmischer  
DR. JANE M. IRMSCHER

CONFIRMED THIS 5<sup>th</sup> DAY OF January, 1995  
ALLEN COUNTY DEPARTMENT OF PLANNING SERVICES  
  
DENNIS A. GORDON, EXECUTIVE DIRECTOR

I, MARK L. STRONG, HEREBY CERTIFY THAT I AM A LAND SURVEYOR LICENSED IN COMPLIANCE WITH THE LAWS OF THE STATE OF INDIANA; THAT THIS PLAT CORRECTLY REPRESENTS A SURVEY COMPLETED BY ME ON OCTOBER 20, 1994; THAT ALL MARKERS SHOWN THEREON ACTUALLY EXIST; AND THAT THEIR LOCATIONS, SIZE, TYPE AND MATERIAL ARE ACCURATELY SHOWN.

MARK L. STRONG, LS # S0295

NOTES: ALL RIGHT OF WAYS TO BE 50 FEET, EXCEPT ENTRANCE  
AT INTERSECTION RAIL = 20'



PROTECTIVE RESTRICTIONS, COVENANTS,  
LIMITATIONS AND EASEMENTS APPENDED TO  
AND MADE A PART OF THE DEDICATION  
AND PLAT OF BLUEWATER ESTATES

A SUBDIVISION IN ABOITE TOWNSHIP, ALLEN COUNTY, INDIANA

95-000821

*PLAT CAB "C" PAGE "49"*

All the Lots in Bluewater Estates, 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 Bluewater Estates, without being written therein. The provisions herein contained are for the mutual benefit and protection of the Owners, present or future, of any and all Lots in Bluewater Estates and they shall run with the land and inure to the benefit of and be enforceable by the Owner of any land or Lots included in said Subdivision, their respective legal representatives, heirs, successors, grantees and assigns. The Owner, or Owners, present or future, of any land or Lot included in said Subdivision shall be entitled to injunctive relief against any violation or attempted violation of the provisions hereof and also damages for any injuries resulting from any violation thereof; but there shall be no right of reversion or forfeiture of title resulting from such violation.

PREFACE

BLUEWATER ESTATES is a tract of real estate in Aboite Township which will ultimately be subdivided into residential Lots, Lakes and Common Areas. Developer has caused an Indiana Nonprofit Corporation to be formed with the name BLUEWATER ESTATES COMMUNITY ASSOCIATION, INC., it being Developer's intention that each Owner of a Lot in BLUEWATER ESTATES shall be a member of said Community Association and shall be bound by its Articles of Incorporation and By-Laws. It shall be the obligation of the Association to make provisions for maintenance of all Common Areas and Lakes located in BLUEWATER ESTATES, and for the pond located East of the Subdivision near Lot 128.

It is the Developer's intent that all of the regulations with respect to the use and occupancy of BLUEWATER ESTATES be designed to accommodate the desires of the occupants of BLUEWATER ESTATES from time to time, to preserve property values, and to be flexible enough to meet specific needs, including the need to raise funds. Accordingly, this Preface and its statements shall be deemed a covenant of equal force and effect as all others herein set forth.

ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean and refer to the BLUEWATER ESTATES COMMUNITY ASSOCIATION, INC., a nonprofit corporation formed under the laws of the State of Indiana, its successors and assigns.

DULY ENTERED FOR TAXATION

JAN 6 1995

*[Signature]*  
AUDITOR OF ALLEN COUNTY

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94-12329-  
AUDITORS NUMBER

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Section 2. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties; provided, however, that with respect to any Lot subject to a contract for conditional sale of real estate, the contract purchaser, rather than the holder of the fee simple title, shall be deemed the Owner.

Section 3. "Properties" shall mean and refer to that certain real estate herein described, and all prior and future platted sections of BLUEWATER ESTATES together with any other additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Areas" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners, said areas being designated on the plat of BLUEWATER ESTATES as Blocks A, B, C, and D, and any portion of E conveyed to the Association.

Section 5. "Lakes" shall mean the storm water detention basins owned by the Association that are a part of the Storm Water Drainage System set up to handle the runoff of surface waters from BLUEWATER ESTATES, said areas being designated on the plat of BLUEWATER ESTATES as "Lakes" or within the area designated as Blocks A and B, and the area designated Wet Land within Block A and the pond located East of the Subdivision, near Lot 128.

Section 6. "Lot" shall mean either any of said Lots as platted or any tract or tracts of land as conveyed originally or by subsequent Owners, which may consist of one or more Lots or parts of one or more Lots as platted upon which a residence may be erected in accordance with the restrictions hereinabove set out or such further restrictions as may be imposed by any applicable zoning ordinance, PROVIDED, HOWEVER, no tract of land consisting of part of any one Lot or parts of more than one Lot shall be considered a "Lot" unless said tract of land has a frontage of 70 feet in width at the established building line as shown on this plat.

Section 7. "Developer" shall mean Charlie Herbst, Inc., its successor or successors in interest as such Developer, as designated by it or its successors.

Section 8. "Subdivision" shall mean BLUEWATER ESTATES.

Section 9. "Storm Water Drainage System" shall mean the storm water detention basins together with their outlet and water level control structures set up to handle the runoff of surface waters from BLUEWATER ESTATES and the pond located East of the Subdivision, near Lot 128.

ARTICLE II  
COMMON AREAS, LAKES AND STORM WATER DRAINAGE SYSTEM

Section 1. Maintenance of the Lakes. It shall be the obligation of the Association to make provision for the aesthetic maintenance of the lakes located within BLUEWATER ESTATES and the pond located East of the Subdivision,

near Lot 128, including by way of illustration but not by way of limitation, weed control and insect control.

Section 2. Maintenance of the Storm Water Detention System. It shall be the obligation of the Association to make provision for the operation, maintenance, repair and replacement, if necessary, of the Storm Water Drainage System, including the storm water detention basins and their outlet and water control structures, as filed with the Allen County Plan Commission in conjunction with the approval of BLUEWATER ESTATES, including but not limited to (1) the payment of taxes and insurance in connection therewith, (2) the repair, replacement and improvements thereto, and (3) the payment of costs of labor and equipment and materials required in the management, supervision, maintenance and repair thereof.

The Owner of any Lot in BLUEWATER ESTATES and/or the Allen County Drainage Board, or its successor agency, shall have the right to order the Association to carry out its obligation to maintain, repair and/or replace the Storm Water Drainage System, as above provided, and to assess the Owners of all Lots in BLUEWATER ESTATES with the cost thereof.

Section 3. Maintenance of the Common Areas. It shall be the obligation of the Association to make provision for the operation, maintenance, repair and replacement, if necessary, of the Common Areas located within BLUEWATER ESTATES and the pond located East of the Subdivision, near Lot 128.

Section 4. Conveyance. The Lakes and Common Areas in BLUEWATER ESTATES will be deeded to the Association as soon as all improvements thereto have been completed by Developer. The Association shall accept such conveyance, and thereafter be responsible for the maintenance and subsequent improvement of said Common Areas and Lakes.

### ARTICLE III COMMON AREA PROPERTY RIGHTS

Section 1. Owner's Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas in each Section of BLUEWATER ESTATES except the pond located East of the Subdivision, near Lot 128, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Areas;
- b. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 30 days for any infraction of its published rules and regulations after hearing by the Board of Directors of the Association; and

- c. The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Areas and facilities to the members of his family, his tenants, his guests or invitees or contract purchasers who reside on the property.

#### ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot in the Properties shall be a member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot.

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

Class A. Class A members shall be all Owners exclusive of Charlie Herbst, Inc. and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be Charlie Herbst, Inc. and shall be entitled to three (3) votes for each Lot owned. Class B Membership shall cease and be converted to Class A Membership upon the happening of either of the following events, whichever occurs earlier:

- a. When fee simple title to 75% of the Lots in the Subdivision have been conveyed by Charlie Herbst, Inc., or;
- b. On December 31, 2010.

#### ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner, exclusive of Charlie Herbst, Inc., hereby covenants, and each Owner of any Lot by acceptance of a deed therefor whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements. All of the aforesaid assessments are to be established and collected as hereinafter provided. All assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such

assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to (1) promote the recreation, health, and welfare of the residents in the Subdivision, (2) for the improvement and maintenance of the Common Areas and the facilities thereon, (3) for the care, preservation, supervision, improvement and maintenance and the operation by the Association of the Storm Water Drainage System, including the storm water detention basin or basins together with their outlet and water level control structures, and including the pond located East of the Subdivision near Lot 128, (4) for the aesthetic maintenance of the lakes, and (5) for such other community purposes as the Association may properly determine.

Section 3. Maximum Annual Assessment.

a. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Seventy-Five Dollars (\$75.00) per Lot.

b. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 10% above the maximum assessment for the previous year without a vote of the membership.

c. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 10% by the vote or written assent of 51% of each class of members.

d. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Storm Water Drainage System. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any new construction or repair or replacement thereof of the Storm Water Detention System.

Section 5. Notice and Quorum For Any Action Authorized Under Section 3. Any action authorized under Section 3 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite percentage of each class of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than 30 days from the date of such meeting.

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Section 6. Uniform Rate of Assessment. All assessments must be fixed at a uniform rate for all Lots assessed, and may be collected on a monthly or yearly basis.

Section 7. Date of Commencement of Annual Assessments. Due Dates. The annual assessments provided for herein shall commence as to all Lots in BLUEWATER ESTATES on the first day of the month following conveyance of the first Lot in BLUEWATER ESTATES to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the day of its issuance.

Section 8. Effect of Non-Payment of Assessments. Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 12% per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his 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 first mortgage. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### ARTICLE VI ARCHITECTURAL CONTROL

No building, fence, wall or other structure of any kind whatsoever, nor any exterior addition to or change or alteration therein (all such buildings, fences, walls, structures, additions, changes, and alterations being herein called "improvements") shall be commenced, erected or maintained upon any Lot until two (2) sets of plans and specifications showing the nature, kind, shape, height, materials, and the location of the same shall have been submitted to and approved in writing as to harmony of external design and the location in relation to surrounding structures and topography by the Architectural Control Committee, such Committee to be initially appointed by the Developer and composed of three (3) members, the first Committee members to be: Charles A. Herbst, Todd A. Herbst and Scott A. Herbst. In the event of death or resignation of any member of the Committee, the Developer shall have full authority to designate a successor until such time as all homes in the

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Subdivision have been constructed. Thereafter in the event of the death or resignation of any member of the Committee, the Board of Directors of the Association shall have full authority to designate a successor. Except for the initial three members or any successor member appointed by Developer, each member of this committee must be an Owner of a Lot in the Subdivision. The Board of Directors shall also have full authority to remove any member, except the initial three members or any successor member appointed by Developer, from the Committee by means of a majority vote of the Board and to appoint a successor. In the event the Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and this Article will be deemed to have been fully complied with. All improvements shall be constructed in accordance with the plans and specifications submitted to and approved in writing by the Architectural Control Committee, and any improvements not so constructed shall be subject to immediate removal and the Lot shall be restored to its condition prior thereto, all at Owner's expense. Neither the Owner or anyone engaged by the Owner shall change or alter the finish grade of any lot as established by the Developer without the prior written permission of the Architectural Control Committee. In the event the Association shall prevail in any litigation brought for the purpose of enforcing compliance with the provisions of this Article or Article VI hereof, it shall be entitled to recover from the defendant(s) reasonable attorney fees and costs incurred by the Association in such enforcement.

#### ARTICLE VII GENERAL PROVISIONS

Section 1. No Lot shall be used except for residential purposes. No building shall be erected, altered placed or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two and one-half stories in height. Each house shall include not less than a two-car garage, which shall be built as part of said structure and attached thereto.

Section 2. No building shall be built on any Lot having a ground floor area upon the foundation, exclusive of one-story open porches, breezeway, or garage, of less than that shown on the table on the face of the plat.

Section 3. No building shall be located on any Lot nearer to the front Lot line or nearer to the side street line than the minimum building setback lines shown on the recorded plat. Alternate building lines are shown for corner lots, the greater building line for the front street and the lesser for the side street. There shall be a set back of twenty (20) feet from Block F to accommodate possible future dedication as a street. No building shall be located nearer than seven (7) feet to an interior Lot line. No dwelling shall be located on any interior Lot nearer than twenty-five (25) feet to the rear Lot line.

Section 4. No dwelling shall be erected or placed on any Lot having a width of less than seventy (70) feet at the minimum building setback line, nor shall any

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dwelling be erected or placed on any Lot having an area of less than 10,000 square feet.

Section 5. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No Owner of any Lot shall erect or grant to any person, firm or corporation, the right, license 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 such poles and overhead facilities that may be required by those utilities serving the subdivision). Nothing herein shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service entrance facilities installed for any house or other structure connecting the same to the electrical distribution system of any electric public utility shall be provided by the Owners of all Lots and shall carry not less than three (3) wires and have a capacity of not less than 200 amperes. Any electric public utility charged with the maintenance of any underground installation shall have access to all easements in which said underground installations are located for operation, maintenance and replacement of service connections. Any such electric public utility shall not be liable for damage to walks, driveways, lawn or landscaping which may result from installation, repair or maintenance of such service.

Section 6. Surface Drainage Easements as shown on the plat are intended for either periodic or occasional use as conductors for the flow of surface water run-off to a suitable outlet, and the land surface 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 a proper public authority having jurisdiction over storm drainage shall have the right to determine if any obstructions exist and to repair and maintain, or to require such repair and maintenance as shall be reasonably necessary to keep the conductors unobstructed.

Section 7. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 8. No structure of a temporary character, trailer, camper or camping trailer, mobile home, motor home, travel trailer, semi-tractor, boat, boat trailer, above-ground pool, clothes lines, basement, tent, shack, garage, barn, detached storage shed, dog house, or other outbuilding shall be either used or located on any Lot at any time or used as a residence either temporarily or permanently, with the exception of cabanas approved by the Architectural Control Committee used in connection with in-ground swimming pools, gazebo, decks or landscaping.

Section 9. No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than one square foot, one sign of not more than six square feet, advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

Section 10. No radio or television antenna or satellite receiver ("dish") with more than thirty (30) square feet of grid area or which attains a height in excess of six (6) feet above the highest point of the roof shall be attached to any dwelling house. No free standing or detached radio or television antenna, satellite receiver ("dish"), or similar structure shall be permitted on any Lot.

Section 11. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot. No derrick or other structure designed for the use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot.

Section 12. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Dogs, cats or other household pets (1) may not be left outside in an Owner's absence, (2) must be leashed at all times when outside, and (3) must be restrained from barking, howling and yelping. Owners are responsible for clean-up of pet excreta in streets as well as in Owner's and neighbors' yards.

Section 13. 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. No incinerators or outside incinerators shall be kept or allowed on any Lot. All containers for the storage of such material shall be kept in a clean and sanitary condition and be concealed by either being buried or kept in the garage or an enclosure attached to the main structure.

Section 14. All buildings shall be constructed in a substantial and good workmanlike manner and of new materials. No roll siding, asbestos siding, or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any building on any Lots of said Subdivision, and no roll roofing of any description or character shall be used on the roof of any dwelling house or attached garage on any of said Lots. No free standing solar panels, chasers, or similar structures shall be permitted upon any Lot. Solar panels, chasers, or similar structures may be attached to the roof of a dwelling subject to approval of the Architectural Control Committee pursuant to Article VI; however, they may not extend higher than four (4) inches from the surface of the roof. Further, no log cabins shall be permitted upon any Lot.

Section 15. All driveways from the street to the garage shall be poured concrete and not less than sixteen (16) feet in width.

Section 16. No individual water supply system, or individual sewage disposal system shall be installed, maintained or used on any Lots in this subdivision.

Section 17. In addition to the utility easements herein designated, easements in the streets, as shown on this plat, are hereby reserved and granted to all Public Utility Companies, the proprietors of the land herein platted, and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain and remove all and every type of gas main, water main and sewer main (sanitary and/or storm) with all necessary

appliances, subject, nevertheless, to all reasonable requirements of any governmental body having jurisdiction thereof as to maintenance and repair of said streets.

Section 18. No rain and storm water run off or such things as roof water, street pavement and surface water, caused by natural precipitation, shall at any time be discharged into or permitted to flow into the Sanitary 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 above-mentioned Storm Water and Surface Water Run Off Sewer System.

Section 19. Before any house or building on any Lot or tract in this Subdivision shall be used or occupied as a dwelling or as otherwise provided by the Subdivision restrictions above, the Developer or any subsequent Owner of said Lot or tract shall install improvements serving said Lot or tract as provided in said plans and specifications for this Subdivision filed with the Board of County Commissioners. This covenant shall run with the land and be enforceable by the County of Allen, State of Indiana, or by an aggrieved Lot Owner in this Subdivision.

Section 20. Before any Lot or tract may be used or occupied, such user or occupier shall first obtain from the Allen County Zoning Administrator the Improvement Location Permit and Certificate of Compliance as required by the Allen County Zoning Ordinance.

Section 21. The Association, Charlie Herbst, Inc., or any Owner shall have the right to enforce, by any proceedings, 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. Failure by, the Association, Charlie Herbst, Inc., or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 22. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 23. No Lot or combination of Lots may be further subdivided until approval therefor has been obtained from the Allen County Plan Commission.

Section 24. The covenants and restrictions herein contained shall run with the land, and be effective for a term of twenty (20) years from the date these covenants and restrictions are recorded, after which time they shall automatically be extended for successive periods of ten (10) years; provided these covenants and restrictions may be amended by an instrument signed by not less than 75% of the Lot Owners, and provided further, Charlie Herbst, Inc. its successors or assigns, shall have the exclusive right for two (2) years from the date of recording of the plat to amend any of the Covenants and Restrictions, with the approval of the Allen County Plan Commission, except Section 2 above.

Section 25. All easements as dedicated on the face of the plat shall be kept free of all permanent structures, and the removal of any obstructions by the utility company shall in no way obligate the utility company in damages or to restore to its original form. All obstructions, structures, shrubbery, trees or other installation thereon whether temporary or permanent shall be subject to the paramount right of the utility to install, repair, maintain or replace its utility installation.

Section 26. Notwithstanding anything in these restrictions to the contrary otherwise providing, Charlie Herbst, Inc. and his assigns shall have the right from time to time to maintain a field office and sales office and model homes on any Lot or parcel within this subdivision and shall have the further right to place, light, and maintain signs promoting the development of the Subdivision and the sales of Lots and new homes within the Subdivision. Such signs, and any lighting thereof, shall be of a size and design as determined solely by Developer.

Section 27. No bare wire, metal or chain link fences will be permitted on any Lot. Vinyl coated wire may be used in conjunction with a wood fence. No fences will be permitted on any Lot without the prior written approval of the Architectural Control Committee as required under Article VI hereof. Maximum fence height shall be 72 inches.

Section 28. Each dwelling will cause a yard light or other illuminating device to be installed in the front yard approximately fourteen (14) feet nor more than sixteen (16) feet from the edge of the curb along the public right-of-way. Such yard light or illuminating device will be of such design and construction as shall be approved by the Architectural Control Committee. Any change in the location of said yard light or other illuminating device must first be approved by the Allen County Plan Commission or its successor agency. The Owners of said dwelling upon which said yard light or other illuminating device shall have been installed shall cause said yard light or other illuminating device to be illuminated at all times other than daylight hours.

Section 29. No horses and no motorized vehicles, including but not limited to snowmobiles and motorcycles, go-carts, and all terrain vehicles, shall be permitted on any of the easements or common areas, except such as are necessary in connection with utility uses.

Section 30. No swimming pool, hot tub, or fixture containing more than 150 gallons of water shall be permitted above ground level on any Lot. Any swimming pool, hot tub, or fixture containing water that is below ground level must be completely enclosed by a "privacy fence" that is not less than six (6) feet in height.

Section 31. No unlicensed or unregistered automobiles or motorized vehicles may be parked or maintained on any Lot. No motor vehicle may be disassembled or be allowed to remain in a state of disassembly on any Lot but, instead, shall be equipped at all times for on-road driving.

Section 32. No pole lighting erected by a Lot Owner shall exceed six (6) feet in height nor shall lighting attached to a dwelling be above the roof line.

Section 33. Nothing contained in or omitted from this Article VI shall be construed to permit any improvement (as that term is defined in Article V) to be constructed or maintained without first obtaining the approval of the Architectural Control Committee as required by Article V.

Section 34. Plans and specifications for this subdivision, on file with the Allen County Plan Commission require the installation of concrete sidewalks within the street rights-of-way, as follows:

The Westerly edge of Bluewater Trail from the Southeast corner of Lot 1 to the cul-de-sac at Lot 113;

The Easterly edge of Cedarwood Way adjacent to Lots 75 and 76;

The Easterly edge of Blue Harbor Drive and the Southerly edge of Waterwood Court from the Southwest corner of Lot 104 to the cul-de-sac at Lot 83;

The Easterly edge of Goldfinch Way adjacent to Lot 60;

The Northerly edge of Stagecoach Drive adjacent to Lots 26, 104 and 105;

The Westerly edge of Blue Harbor Drive from the Northeasterly corner of Lot 25 to the cul-de-sac at Lot 20;

The Northerly edge of Sandpiper Court from the cul-de-sac at Lot 56 to the Southeast corner of Lot 69;

The Easterly edge of Block F adjacent to Lot 86.

Installation of said sidewalks shall be the obligation of the owner of each lot, exclusive of the developer, and shall be completed in accordance with said plans and specifications and prior to the issuance of a Certificate of Compliance for any such lot and the cost of said installation shall be a lien against any such lot enforceable by the Allen County Plan Commission or its successor agency. Should such Certificates of Compliance be issued to the developer, said individual or corporation shall be considered an owner for the purposes of the enforcement of this covenant.

Section 35. Flood Protection Grades. In order to minimize potential damages from surface water, flood protection grades are established as set forth below. All dwellings shall be constructed at or above the minimum flood protection grades; such grades shall be the minimum elevation of a first floor or the minimum sill elevation of any opening below the first floor. The flood protection grades for the following lots shall be as follows:

<u>Lot Number</u>	<u>Feet Above Mean Sea Level</u>
5, 6, 17, 18, 19, 20, 132 and 133	832.5



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Section 36. The Lakes as shown on the plat of Bluewater Estates are intended for (1) detention basins for storm water runoff and (2) for limited recreational use except the pond located East of the Subdivision, near Lot 128 (i.e., skating and fishing only, both at the sole risk of the user) by the Owners of Lots in Bluewater Estates and their invitees. The Lakes are not intended for other recreational uses, and as such no swimming, boating, or other recreational use of the Lakes shall be permitted. Further, no piers, docks, or other structures shall be permitted to be placed within the Lakes other than piers which have been approved by the Architectural Control Committee, the materials, color and size of which shall all be compatible. In addition, inasmuch as no walkway easements have been provided around the shorelines of the Lakes, other than the occasional pond located within Blocks A and B, all Owners are expected to remain within the confines of their respective Lots or within the confines of the Common Areas and not have access to the water's edge on any neighboring Lot around the Lakes.

Section 37. There is a "wet land" located upon Block A and portions of Lots 39 and 40, as that term is defined by Federal regulations. No filling in of said "wet land" or construction or placement of any structure is permitted within said "wet land."

ARTICLE VIII  
PROVISIONS REGARDING USE OF UTILITY FACILITIES

Section 1. Neither the Owner, nor anyone engaged by Owner, shall construct or install any drainage or other utility lines within any dedicated public or private rights-of-way or utility easements, as the case may be, other than in accordance with generally accepted engineering practices and in a manner, that would not interfere with the use, maintenance and replacement of sewage and water lines installed by Developer, its successors and assigns.

Section 2. Owner acknowledges that the rules and regulations of the Indiana Utility Regulatory Commission provide that a sewage disposal company shall not be obliged to receive for treatment or disposal of any material except sewage as defined in Rule 1 (I) [170 IAC 8.5-1-1(i)]. Developer and Utility Center, Inc. shall not receive for treatment water discharged from sump pumps or footing drains, or rain water discharged from roofs, lawns, paved areas, etc. Owner agrees not to cause or permit waters above described to be directed in any manner into the sanitary sewer system of Developer and Utility Center, Inc. and their successors and assigns, and shall pay all costs of correction of any such violations, including attorney fees expended in securing compliance.

Section 3. Owner agrees that should Owner produce sewage which contains grease or a like substance, that grease traps shall be constructed and maintained by Owner for the purpose of preventing such substance coming into the sewage lines and treatment facilities.

Section 4. Owner agrees to save and hold harmless Developer from any claims, damages, actions, suits and proceedings of any kind or nature arising out of Owner's failure to do those things and perform those acts which would prevent

sewage backups into residences or other improvements for which sewer services are provided.

Section 5. Developer shall have the right to compel specific performance of the covenants in Article VIII dealing with the use of the utility lines and mains. If Developer or its successors and assigns incur any costs, including attorney fees, in enforcing their rights created hereunder as a result of Owner's failure to comply with the terms of these covenants, Developer and its successors and assigns shall be entitled to recover from Owner such costs and attorney fees incurred.

This instrument prepared by: Charles D. Bash, Attorney, 803 S. Calhoun Street, Suite 500, Fort Wayne, Indiana, 46802.



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LEGAL DESCRIPTION AND DEDICATION  
for  
BLUEWATER ESTATES

The undersigned, CHARLIE HERBST, INC., being the fee simple owner of the real estate in Allen County, Indiana, described on the face of the plat attached hereto, by virtue of that certain deed recorded as Document No. 94-58039 in the Office of the Recorder of Allen County, Indiana, does hereby lay off, plat, subdivide and dedicate said real estate in accordance with the information shown on the plat, being the certified plat appended hereto and incorporated herein. The subdivision shall be known and designated as BLUEWATER ESTATES.

The lots are numbered 1 through 136, both inclusive, and all dimensions are shown in feet and decimals of a foot on the plat. The ground designated Blocks A, B, C and D shall be Common Area. Block E shall be an area available for a lift station for sanitary sewer and for other utilities; and any portion of said Block E which Developer conveys to the Association shall be Common Area, subject to such utility rights, and any portion of said Block E conveyed to any utility provider shall not be Common Area. Block F may be dedicated by Developer as a public street or may be used, conveyed or dedicated by Developer in any other way not inconsistent with the attached Protective Restrictions, Covenants, Limitations and Easements. All streets and easements specifically shown or described are hereby dedicated to the public for their usual and intended purposes.

Said subdivision is subject to the Protective Restrictions, Covenants, Limitations and Easements for Bluewater Estates, which are attached hereto and made a part hereof.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this 20 day of December, 1994.

CHARLIE HERBST, INC.

By: Charles A. Herbst  
Charles A. Herbst, President



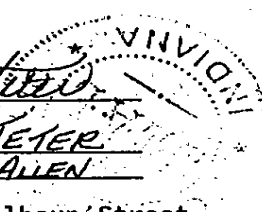
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STATE OF INDIANA )  
COUNTY OF ALLEN ) SS:

Before me, the undersigned, a Notary Public in and for said County and State, this 20th day of December, 1994, personally appeared Charles A. Herbst, the President of Charlie Herbst, Inc., to me known to be such officer of said corporation, and acknowledged the execution of the foregoing instrument for and on behalf of said corporation and by its authority. Witness my hand and notarial seal.

My Commission Expires:  
7-19-96

A circular notary seal for Mary K. Teter, Notary Public for Allen County, Indiana. The seal contains the text "NOTARY PUBLIC", "MARY K. TETER", and "ALLEN COUNTY, INDIANA".  
Notary Public  
Printed MARY K. TETER  
County of Residence ALLEN

This instrument prepared by Charles D. Bash, Attorney, 803 S. Calhoun Street, Suite 500, Fort Wayne, Indiana, 46802.



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