



# **DAVID BRENTON'S TEAM**

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## **RE/MAX Select, REALTORS**

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The covenants provided may or may not include any amendments made due to governing agencies (ie: national, state, city, local and neighborhood agencies). Please contact the Recorder's office for the county where the property is located to receive updated information.

**The information is deemed reliable, but not guaranteed.**

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

BROOKSTONE SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR Brookstone Subdivision ("Declaration"), made this 31<sup>st</sup> day of October, 1994, Robert J. Lane, Inc. (hereinafter referred to as "Declarant"),

WITNESSETH THAT:

WHEREAS the following facts are true:

A. Declarant is the owner of certain real estate located in Johnson County, Indiana, more particularly described in the attached Exhibit "A" ("Real Estate"); and

B. Declarant intends to subdivide the Real Estate into 65 residential lots as generally shown on the plat for Brookstone Subdivision as hereinafter recorded in the Office of the Recorder of Johnson County, Indiana.

C. Declarant intends to sell and convey the residential Lots within Brookstone and desires to subject the Real Estate to certain terms, covenants, conditions and restrictions in order to ensure that the development and use of the various Lots on the Real Estate are harmonious and do not adversely affect the value of surrounding Lots on the Real Estate; and

D. Declarant desires to provide for maintenance of the Drainage System and Common Amenities in or Brookstone Subdivision, and to that end desires to establish certain obligations on said Owners and a system of assessments and charges upon said Owners for certain maintenance and other costs in connection with the operation of the Drainage System and Common Amenities;

E. Declarant has or will incorporate under the laws of Indiana a non-profit corporation known as Brookstone Owners' Association, Inc. to provide an agency for which may be delegated and assigned the powers of owning, maintaining and administering the Drainage System and Common Amenities, enforcing these Restrictions, collecting and disbursing the Assessments and other charges hereinafter created, and promoting the health, safety and welfare of the Owners of the Lots.

## TABLE OF CONTENTS

	Page No.
1 GENERAL PURPOSE OF COVENANTS .....	2
2 DEFINITIONS FOR ALL PURPOSES OF THIS DECLARATION .....	2
3 GENERAL RESTRICTIONS .....	4
4 LAKE AREAS. ....	7
5 BROOKSTONE ARCHITECTURAL CONTROL COMMITTEE .....	9
6 COVENANTS FOR MAINTENANCE ASSESSMENTS .....	10
7 DECLARANT'S/ASSOCIATION'S RIGHT TO GUARANTEE COMPLIANCE .....	13
8 ORGANIZATION AND DUTIES OF ASSOCIATION .....	14
9 EXPANSION OF SUBDIVISION .....	17
10 GENERAL PROVISIONS .....	17

NOW, THEREFORE, Declarant hereby declares that all \_\_\_\_\_ and lands in Real Estate as it is now held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, is subject to the following terms, covenants, conditions and restrictions. All of the terms, covenants, conditions and restrictions shall run with the Real Estate and shall be binding upon the Declarant and upon the parties having or acquiring any right, title, or interest, legal or equitable, in and to the Real Estate or any part or parts thereof and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to the Real Estate or any part or parts thereof.

1 GENERAL PURPOSE OF COVENANTS

The Real Estate is hereby subjected to the covenants, conditions and restrictions ("Restrictions") herein to ensure and provide for adequate and proper maintenance of the Drainage System and Common Amenities in or serving Brookstone so as to meet the requirements of certain governmental agencies, all for the purpose of benefitting all Lots within Brookstone and to ensure the maintenance of the Drainage System and Common Amenities.

2 DEFINITIONS FOR ALL PURPOSES OF THIS DECLARATION

The following terms, whenever used in this Declaration, shall have the meanings assigned to them by this Section 2:

2.1 Architectural Control Committee. The Architectural Control Committee, or "ACC", means the Architectural Control Committee for Brookstone to be appointed in accordance with this Declaration.

2.2 Assessment. "Assessment" means the share of the Maintenance Expenses imposed upon each Lot, as determined and levied pursuant to the provisions of this Declaration.

2.3 Association. "Association" means Brookstone Owners' Association, Inc., a nonprofit Indiana Corporation, formed or to be formed for the purpose of determining and collecting the Assessments and overseeing and enforcing the terms of this Declaration.

2.4 Board of Directors. "Board of Directors" means the Board of Directors of the Association elected pursuant to the Articles and Bylaws of the Association.

2.5 Brookstone. The term "Brookstone" means all sections of the Real Estate as platted and recorded by Declarant in accordance with the provisions of this Declaration.

2.6 Declarant. "Declarant" means Robert J. Lane, Indiana Corporation, or any other person, firm, corporation or partnership which succeeds to the interest of Robert J. Lane, Inc. as developer of Brookstone.

2.7 Common Amenities. "Common Amenities" shall mean any landscaping, decorative signage, lighting or other such common amenities provided by the Association within the Streets, Easements or Lakes Areas.

2.8 Covenants. "Covenants" means those covenants, conditions and restrictions affecting the Real Estate as established by Declarant in this Declaration.

2.9 Drainage System. "Drainage System" means the detention area, open ditches, swales, storm sewers, subsurface drainage tiles, pipes and structures, and other structures, fixtures, properties, equipment and facilities or other such drainage improvements located in, upon, or under the Easements, Streets, the Lake, or the Off-Site Swale Property, and all appurtenances thereto relating to the purpose of controlling the drainage of surface and subsurface waters from, over, and across Brookstone.

2.10 Easements. "Easements" mean to those areas reserved as easements, on the Plat or Plats of Brookstone.

2.11 Lake. "Lake" means the wet storm water retention ponds existing within the Lake Area.

2.12 Lake Areas. "Lake Area" means those areas reserved as Lake Area easements, on the Plat or Plats of Brookstone.

2.13 Lake Lot Owners. "Lake Lot Owners" means the Owners of Lots numbered ~~12-21; 27-34~~ as shown on the Plat or Plats of Brookstone.  
45-63

2.14 Lot. "Lot" means any of the separate parcels numbered and identified on the Plat or Plats of Brookstone, as the same may be recorded from time to time.

2.15 Maintenance Expense. "Maintenance Expense" means the actual or estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of the Drainage System and Common Amenities and any other cost or expense incurred by the Association for the benefit and perpetuation of the Drainage System and Common Amenities.

2.16 Mortgagee. The term "Mortgagee" means any holder, insurer, or guarantor of any first mortgage on any Lot.

2.17 Off-Site Swale Property. "Off-Site Swale Property" means the real property described on the attached Exhibit "G", incorporated herein by reference.

2.18 Owner. "Owner" means any person or persons after the date of this Declaration, legal and/or equitable title in any Lot; provided, however, that "Owner" shall not include any holder of any mortgage of all or any part of any Lot, so long as such holder does not hold both legal and equitable title thereto.

2.19 Plat. "Plat" means the final Plat or Plats of Brookstone as the same may be recorded from time to time in the Office of the Recorder of Johnson County, Indiana.

2.20 Streets. "Streets" means all of the public and private roadways to the respective right-of-way lines thereof, as shown on the Plat or Plats of Brookstone, as the same may be recorded from time to time, which have been or hereafter are constructed for the purpose of providing common access for Owners, occupants and their guests and invitees, to any or all Lots.

### 3 GENERAL RESTRICTIONS

3.1 Maintenance of Premises. In order to maintain the standards of the property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Owner shall maintain their Lot and improvements situated thereon in a manner so as to prevent the Lot or improvements from becoming unsightly, and specifically, Owner shall:

(a) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds. Grass allowed to grow to a height in excess of six inches (6") shall be deemed unsightly.

(b) Cut down and remove dead trees.

(c) Keep the exterior of all improvements in such state of repair or maintenance so as to avoid their becoming unsightly.

(d) Prevent the existence of any other condition that reasonably tends to detract from or diminish the appearance of the Lot and/or Brookstone.

Failure to comply shall warrant the Declarant, authorized agents of Johnson County or the Association to cut the growth or weeds, or clear the refuse from the Lot at the expense of the Owner, and there shall be a lien against said Lot for the expense thereof.

3.2 Residential Purpose. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted on any Lot other than a dwelling not to exceed

two (2) stories in height. A dwelling shall have an attached garage of a size to accommodate at least two (2) cars.

3.3 Setbacks. 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. The minimum side yard set back shall be ten feet (10') and minimum aggregate of the side yards on any Lot shall be twenty-five feet (25'). The minimum rear yard setback shall be twenty feet (20'). For the purposes of this covenant, eaves, steps and open porches shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

3.4 Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat.

3.5 Unoperative Parked Vehicles. At no time shall any unlicensed, unoperative vehicle be permitted on any Lot, Street or Easement (unless kept entirely within a garage).

3.6 Trucks, Boats, Recreational Vehicles. No semi-truck, trailer, boat or trailer, mobile home, or recreational vehicle, or any similar equipment shall be permitted to be kept on any Lot, Street or Easement (unless kept entirely within a garage).

3.7 Nuisances. No noxious, obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. This provision may be construed to prohibit extremely audible music or activities.

3.8 Outdoor Storage. No large volume of materials or supplies, large machinery or equipment shall be permitted to be kept or stored on any Lot except within the dwelling.

3.9 Signs. No sign of any kind shall be displayed to the public view on any Lot except one (1) professionally manufactured sign of not more than five square feet advertising the property for sale or rent.

3.10 Childcare Services. No pre-school, babysitting business or such childcare services for more than six (6) children shall be allowed to operate upon any Lot.

3.11 Mining Operations. No oil drilling, oil development operation, oil refining quarrying, or mining operations of any kind shall be permitted upon or in any Lot nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for

oil or natural gas shall be erected, maintained or permitted on any Lot.

3.12 Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets may be kept provided that they are not bred, kept or maintained for any commercial use and are housed within the dwelling.

3.13 Rubbish, Trash And Garbage. Rubbish, trash, garbage or any other waste shall not be allowed to be compiled, accumulated or dumped on any Lot. Garbage and trash shall be kept in appropriate containers which are not visible from the street, except on collection day.

3.14 Corner Lot. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and one-half (2.5) and eight (8) feet above the centerline grades of the intersecting streets shall be placed or permitted on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting them at points twenty-five (25) feet from the intersection of the street right-of-way lines, or in the case of a rounded property corner, from the intersections of the street right-of-way lines extended. The same sight line limitations shall apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstructions of such sight lines.

3.15 Field Tiles. Any field tile or underground drain which is on any Lot must be allowed to perpetuate and all owners of the Lots in this Subdivision and their successors shall comply with the Indiana Drainage Code of 1965.

3.16 Minimum Living Space. The minimum square footage of living space of dwellings within Brookstone, exclusive of porches, garages or basements shall be no less than:

- (a) One Thousand Five Hundred (1,500) square feet for single story dwellings; and
- (b) Nine Hundred (900) square feet for the ground floor of two-story dwellings.

3.17 Outbuildings. No detached garages, sheds, barns, shacks or tents shall be maintained on any Lot. Storage buildings may be approved by the Architectural Control Committee with strict adherence to the Architectural Control Committee standards, specifications and requirements which shall include, but not be limited to the requirement that the roof and siding and or trim color schemes match the dwelling on the Lot.

3.18 Driveways And Carports. All driveways must be paved with concrete, asphalt or other all-weather surface excluding gravel. No carports are permitted.

3.19 Communication Devices. Satellite dishes, free standing antennas, or any other such visible communication receiving or transmitting devices are prohibited, excepting antennas attached to the dwelling which do not rise above the peak of the roof.

3.20 Wells And Septic Tanks. No water wells shall be drilled on any Lot. Septic tanks are prohibited.

3.21 Swimming Pools. Above-ground swimming pools are prohibited.

3.22 Construction, Earth-Moving, Excavation. No construction, significant earth-moving, or excavating work of any nature may be conducted on any Lot.

3.23 Fences, Walls, Barriers. All fences, walls, barriers or like structures must be approved in writing by the Architectural Control Committee prior to their construction. No such structures shall exceed eight feet (8') in height. No such structure shall be placed closer to the front Lot line than the front building setback line.

3.24 Structures. No decorative structure, statue, or other structure may be placed on the Lot closer to the front Lot line than the front building setback line.

3.25 Construction, Earth-Moving, Excavation. No significant construction, earth-moving, or excavating work of any nature may be conducted by Owner within the Easements.

#### 4 LAKE AREAS.

4.1 Lake Drainage Easement. The Association shall have a permanent easement over, across and under all Lake Areas for the purpose of improving, altering, maintaining, dredging, regrading, reconstructing and/or repairing the Lake Areas, and all facilities, improvements and appurtenances thereto, as may be necessary for the Lake Areas to properly function, serve and provide its intended storm water retention and related or drainage benefits to Brookstone, ("Drainage Easement").

4.2 Lake Use. Recreational use of the Lake Areas shall be prohibited until residential structures have been built upon more than three-fourths (¾ths) of the Lots. Thereafter, the Association shall adopt, by no less than a two-thirds (⅔ths) vote of all Lake Lot Owners, rules and regulations relating to the recreational, if any, use

by the Lake Lot Owners. No use by the Owners or Lake Lot Owners may interfere with the Drainage System of which the Lake Areas are a part, and such uses are at all times subject to the Association's easement for the maintenance of the Drainage System as provided herein and on the Plat. "Lake Lot Owners" shall mean all Owners of Lots which are encumbered by Lake Area Easements.

- 4.3 Board of Managers. Upon the Declarant to relinquish control of the Association pursuant to this Declaration, the Lake Lot Owners shall form an association in which each Lake Lot Owner shall have one vote in the selection of a Board of Managers which shall consist of not less than three nor more than nine members. Thereafter, on the first Saturday in March of each calendar year, the voting Lake Lot Owners shall elect the Board of Managers for the ensuing year to a term commencing April 1st and expiring March 31st.
- 4.4 Rules and Regulations. The Lake Lot Owners shall specifically adopt rules and regulations relating to landscaping, tiering, terracing, seawalls or other shoreline protection or decoration, docks, lighting and other such water and shoreline structures or facilities. No such structures or facilities shall be installed, placed or constructed without the prior approval of detailed plans submitted to the Board of Managers. The Board of Managers shall in no case approve any facilities or structures which in any way negatively affect the drainage functions of the lake or the Drainage Easement rights held by the Association.
- 4.5 Recreational Use Easement. All Lake Lot Owners will take title subject to an easement in favor of the other Lake Lot Owners to utilize the Lakes in a manner consistent with all properly promulgated rules and regulations relating to recreational use. The rights of a Lake Lot Owners using the Lakes for a recreational use, pursuant to this easement right, shall be subordinate to the rights of the Lake Lot Owners upon whose Lot such using Lake Lot Owner is at any point in time physically located.
- 4.6 Non-Liability of Board of Managers. The Board of Managers shall not be held as an entity, collectively, individually or personally liable in the discharge of their official duties.
- 4.7 Non-Disturbance of Lake Areas. Lake Lot Owner or third party shall do or permit to be done any action or activity which could result in pollution of the Lake

Area, diversion of water, change in level, earth disturbance resulting in silting, conduct which could result in an adverse affect upon drainage of the subdivision, proper Lake Area management, or water quality.

- 4.8 Enforcement of Lake Area Rules. The Board of Managers, in behalf of all Lake Lot Owners, or any individual Lake Lot Owner, shall have the authority to institute an action for injunction to abate such activity or seek mandatory relief for correction of, or violation of, any properly promulgated, rules and regulations or damage caused to the Lake Area, recreational or aesthetic improvements together with any damages incurred, and upon recovery of judgment shall be entitled to costs together with reasonable attorneys' fees.

## 5 BROOKSTONE ARCHITECTURAL CONTROL COMMITTEE

5.1 Appointment Of Architectural Control Committee. The Board of Directors of the Association, or Declarant, so long as Declarant owns more than three (3) Lots and, shall appoint an Architectural Control Committee to be composed of three (3) members.

5.2 Builder Approval. The Declarant through the Architectural Control Committee shall establish a set of Builder Standards to apply to all persons or entities intending to provide construction services for the initial construction of a residential dwelling upon a Lot ("Builder"). All Builders must be pre-approved by the Architectural Control Committee prior to construction activities on the Lot and shall be obligated to follow all rules and regulations established by the Architectural Control Committee pursuant to this provision, throughout the course of such construction.

5.3 Construction Approvals. No construction of any building or structure of any kind, including additions, alterations, fences, screens and walls shall begin within Brookstone until the plans and specifications, locations and plot plan thereof, in detail and to scale have been submitted to and approved by the Architectural Control Committee. The plans and specifications of and location of all construction shall be in compliance with all applicable regulatory codes, including those relating to building, plumbing, and electrical requirements, and shall also comply to all zoning covenants and restrictions which are applicable to the Real Estate. Refusal of approval of plans and specifications, location and plot plan by Declarant may be based on any ground, including purely aesthetic grounds, in the sole and absolute discretion of the Architectural Control Committee. Declarant shall not be responsible for any defects in such plans or specifications, or in

any building or structure erected according to such p specifications.

The plans and specifications submitted to Declarant contain a plot plan to scale with adequate provision landscaping, including the planting of trees and shrubs. determination of whether adequate provision has been made landscaping shall be at the sole discretion of the Architectural Control Committee. The required landscaping and driveways shall be completed at the time of completion of the building, or as soon as weather and season permit.

5.4 Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.

5.5 Liability of Committee. Neither the Committee nor any agent thereof, nor Declarant, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

5.6 Inspection. The Committee or its agent may inspect work being performed to assure compliance with the approved plans and this Declaration.

## 6 COVENANTS FOR MAINTENANCE ASSESSMENTS

6.1 Purpose of the Assessments. The Assessments levied by the Association shall be used for the purpose of maintenance of the Drainage System and Common Amenities serving Brookstone, as the same may be platted from time to time, including, but not limited to, the payment of any necessary insurance thereon and for the cost of labor, equipment, material, and management furnished with respect to the Drainage System and Common Amenities provided that the Association shall not be responsible for the replacement, repair or maintenance of any part of the Drainage System and Common Amenities which is or hereafter may be dedicated to the public. Each Owner hereby covenants and agrees to pay to the Association:

6.1.1 A pro-rata share (as hereinafter defined) of the annual Assessments fixed, established, and determined from time to time as hereinafter provided.

6.1.2 A pro-rata share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

6.2 Liability for Assessments. Each Assessment, with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot and shall constitute a lien from and after the due date thereof in favor of the Association upon each Lot. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each Lot at the time when the Assessment is due. 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 become due prior to such sale or transfer. No such sale or transfer shall relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

6.3 Pro-rata Share. The pro-rata share of each Owner for purposes of this section shall be the percentage obtained by dividing one by the total number of Lots shown on the Plat or Plats of Brookstone, as the same may be recorded from time to time ("Pro-Rata Share").

6.4 Basis of Annual Assessments. The Board of Directors of the Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth all Maintenance Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be delivered to each Owner within thirty (30) days to the beginning of each fiscal year of the Association.

6.5 Basis of Special Assessments. Should the Board of Directors of the Association at any time during the fiscal year determine that the Assessments levied with respect to such year are insufficient to pay the Maintenance Expenses for such year, the Board of Directors of the Association may, at any time, and from time to time, levy such special Assessments as it may deem necessary for meeting the Maintenance Expenses. In addition, the Board of Directors of the Association shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Maintenance Expense not provided for by the annual Assessments.

6.6 Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The annual Assessments provided for herein shall commence as to all Lots in Brookstone on the first day of the month following the Declarant's transfer of control of the Association to the Owners pursuant to Section 10.13 below. Declarant shall not be obligated to pay any assessments prior to said transfer, but shall be obligated to pay all maintenance expenses prior to said

transfer. The first annual Assessment shall be prorated for the balance of the fiscal year of the Association in which such Assessment is made. The annual Assessment for each year after the first Assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

#### 6.7 Duties of the Association.

6.7.1 The Board of Directors of the Association shall cause proper books and records of the levy and collection of each annual and special Assessment to be kept and maintained, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept in the office of the Association and shall be available for the inspection and copying by each Owner for duty authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing of such notice.

6.7.2 The Association shall promptly furnish to any Owner or Mortgagee upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to such requesting Owner's or Mortgagee's Lot. As to any persons relying thereon, such certificate shall be conclusive evidence of payment of any Assessments therein stated to have been paid.

6.7.3 The Association shall notify any Mortgagee from which it has received a written request for notice of any default in the performance by any Owner of any obligation under the By-Laws of the Association or this Declaration which is not cured within sixty (60) days.

#### 6.8 Non-payment of Assessments; Remedies of Association.

6.8.1 If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be

binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.

6.8.2 If any Assessment upon any Lot is not paid within fifteen (15) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at the annual interest rate allowable on judgments rendered in the State of Indiana at the time such Assessment is due, and the Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys fees, and in the event a judgment is obtained, such judgment shall include such interest, costs, and attorneys' fees.

6.9 Adjustments. In the event that the amounts actually expended by the Association for Maintenance Expenses in any fiscal year exceed the amounts budgeted and assessed for Maintenance Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Maintenance Expenses in any fiscal year exceed the amount actually expended by the Association for Maintenance Expenses for that fiscal year, a Pro-Rata Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s).

## 7 DECLARANT'S/ASSOCIATION'S RIGHT TO GUARANTEE COMPLIANCE

7.1 In the event the Owner of any Lot in Brookstone shall fail to maintain that Lot or any of its improvements situated therein in accordance with the provisions of these Covenants, the Association, or prior to the Association's incorporation, the Declarant, shall have the right, but not the obligation, by and through its agents and employees or contractors to enter upon said Lot, perform such acts as may be reasonably necessary to make such Lot and improvements thereon, if any, conform to the requirements of these Covenants. The cost thereof to the Association or Declarant shall be collected in any reasonable manner from Owner. Neither Association/Declarant nor any of its agents, employees, or contractors shall be liable for any damage which may result from

any maintenance work performed hereunder at the time dwellings are constructed upon.

## 8 ORGANIZATION AND DUTIES OF ASSOCIATION

8.1 Organization of Association. The Declarant shall establish the Association to be organized as a mutual benefit and nonprofit corporation under the laws of the State of Indiana, to be operated in accordance with The Articles of Incorporation which have been filed or will be filed by Declarant.

8.2 Membership. The members of the Association shall consist of the Declarant and the Owners of Lots in Brookstone as the same may be platted from time to time, provided that, in the event that any one Lot shall be owned by more than one person, partnership, trust, corporation or other entity, they shall be treated collectively as one member for voting purposes.

The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one 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 among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B members shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned, and the first Board of Directors during their respective terms, who shall have no voting rights. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) On January 1, 2000.

8.3 Board Of Directors. The members shall elect a Board of Directors of the Association as prescribed by the Association By-Laws. The Board of Directors shall manage the affairs of the Association.

8.4 General Duties of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place and stead of, the individual Owners in all matters pertaining to the maintenance, repair and replacement, of the Drainage System and Common Amenities, the determination of Maintenance Expenses, the collection of annual and special

Assessments, for the perpetuation of the Drainage System and Common Amenities and common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the Covenants contained in this Declaration. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color or authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

8.5 Amendment of Declaration. The Association shall have the right to amend this Declaration at any time, and from time to time, upon the recommendation of an amendment to the Association by its Board of Directors, and the subsequent approval of such amendment by both the Owners of at least two-thirds of the Lots and the Mortgagees of at least two-thirds of the Mortgagees requesting notice of such actions provided, however, that any such amendment of this Declaration shall not bring about any inequitable Assessments on any particular Owner(s). Each such amendment must be evidenced by a written instrument, signed and acknowledged by duly authorized officers of the Association, and by Declarant when its approval is required, setting forth facts sufficient to indicate compliance with this paragraph, including as an exhibit or addendum thereto a certified copy of the minutes of the Association meeting at which the necessary actions were taken, and such amendment shall not be effective until recorded in the Office of the Recorder of Johnson County. No such amendment shall substantially alter the Drainage System and Common Amenities or effect a modification of any covenants or commitments undertaken in connection with any platting approvals or zoning without the prior approval of the appropriate government authorities.

8.6 Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury with the amount of such coverage in no event to be less than One Million Dollars (\$1,000,000.00) for any single occurrence, occurring on or in connection with the Drainage System and Common Amenities. The Association shall also maintain in force adequate casualty and extended coverage insurance, insuring the Drainage System and Common Amenities against casualty, vandalism and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full replacement value of such Drainage System and Common Amenities improvements. The Association shall notify all Mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, the

Declarant, any property manager, their respective employees and agents, the Lot Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more insured parties against other insured parties.

The Association shall maintain a fidelity bond indemnifying the Association, the Board of Directors and the Lot Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of three (3) months' Assessments on all Lots in Brookstone, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all Mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason.

**8.7 Condemnation; Destruction.** In the event that any of the Drainage System and Common Amenities shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any part of the Drainage System and Common Amenities condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Drainage System and Common Amenities or turned over to the Owners in proportion to their Pro-Rata Shares, whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Drainage System and Common Amenities; provided, however, that upon request of any Owner(s), the Association shall pursue such claims on such requesting Owner(s) behalf, and shall turn any recoveries for such Owners over to such Owners directly. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any part of the Drainage System and Common Amenities.

**8.8 Mortgagees' Rights.** The mortgagees shall have the right, at their option, jointly or severally, to pay charges which are in

default or which may or have become a charge against the Drainage System and Common Amenities, to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Drainage System and Common Amenities, and Mortgagees making such payment shall be owed immediate reimbursement therefor from the Association.

## 9 EXPANSION OF SUBDIVISION

9.1 Method and Scope of Expansion. Declarant, at its option, and from time to time, may expand Brookstone to include all or any parts of the tract described in the attached Exhibit B, by the addition of further sections consisting of one or more Lots and any Common Area, drainage facilities and/or other such common amenities which in the discretion of Declarant is appropriate for addition with such section. Such further sections, if added, shall be added by the recordation of a Plat of such section, consistent in detail and layout with Plat of sections previously recorded, and by the recordation of a supplemental declaration imposing upon such sections the terms and conditions of this Declaration, together with any provisions particular to such section. Declarant hereby covenants that the total number of Lots in Brookstone shall not exceed ONE HUNDRED TWENTY (120) and that no real estate shall be added thereto which is not within that described in Exhibit B.

9.2 Time for Expansion. No additional sections shall be added after the date which is fifteen (15) years after the date on which the first Plat for Brookstone was recorded.

## 10 GENERAL PROVISIONS

10.1 Covenants Run With the Land. The Restrictions created by this Declaration shall attach to and run with the Real Estate and shall be binding upon every person who may hereafter come into ownership, occupancy or possession of any portion of the Real Estate.

10.2 Scope of Covenants. Declarant and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be expressed in such deed, are deemed to have agreed to each and every one of the Covenants contained in this Declaration, and the same shall be of mutual and reciprocal benefit to Declarant and each Owner of each Lot. Declarant and each Owner shall be entitled to enforce this Declaration against any Owner to the full extent permitted herein and under applicable law, and shall have all rights and remedies for such enforcement at law or in equity. Each Owner shall be liable for any failure to fully comply with all of the Covenants contained in this Declaration only so long as each such Owner shall have any interest in any Lot; provided, however,

that the relinquishing of all of such interest shall not operate to release any Owner from liability for a failure to comply with this Declaration which occurred while said Owner had such interest.

10.3 Attorneys' Fees. As to any legal or equitable proceedings for the enforcement of, or to restrain the violation of this Declaration, or any provision thereof, if the party bringing such action is successful in obtaining any remedy against any defaulting Owner, such defaulting Owner shall pay the reasonable attorneys' fees of such successful party, in such amount as may be fixed by the Court in such proceedings.

10.4 Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Association, or any Owner to enforce any Covenant herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other such Covenant.

10.5 Rights of Mortgagees. Except to the extent otherwise provided herein, no breach of this Declaration shall defeat or render invalid the lien of any mortgage now or hereafter executed upon any portion of the Real Estate; provided, however, that if all or any portion of said Real Estate is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns shall hold any and all land so purchased subject to this Declaration. Other provisions herein notwithstanding, neither the Owners nor the Association shall have any right to make any amendment to this Declaration which materially impairs the rights of any Mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate at the time of such amendment.

10.6 Effect of Invalidation. If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

10.7 Section Headings. Section headings used herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular sections to which they refer.

10.8 Notices. All notices in connection with this Declaration shall be made in writing and shall be deemed delivered (a) upon personal delivery to the individual person, if any, designated in writing by the Owner, as listed in the roster of Owner's names and addresses referred to hereinabove; or (b) seventy-two hours after the deposit thereof in any United States main or branch post office, first class postage prepaid, properly addressed to the addressee thereof at the address listed in the said roster.

10.9 Deed Clause to Implement Declaration. Each Owner covenants and agrees that it will not execute or deliver any deed or conveyance of a fee title interest in any Lot, or any portion thereof, unless such deed or conveyance contains a clause substantially as follows:

"By acceptance and recording of this conveyance, the Grantee herein covenants and agrees to be bound by the Covenants For Brookstone Drainage System and Common Amenities pertaining to the real estate hereby granted, which is recorded in the Office of the Recorder of Johnson County, Indiana", and properly identifying the instrument number therein. However, the failure to include such clause shall not have any effect on this Declaration or the enforceability thereof against any Owner of any interest in any portion of the Real Estate.

10.10 Provision Against Merger. Declarant hereby intends that the Real Estate shall be subject to this Declaration, that the Covenants contained herein shall not be merged into the title of the Declarant regardless of whether Declarant is the fee title owner of all or any part of the Real Estate at the time this Declaration is executed or recorded.

10.11 Reservations of Declarant. Other provisions herein notwithstanding, Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant, so long as Declarant owns at least three (3) Lots within Brookstone without the approval or consent of the Owners or Mortgagees of the Lots provided that Declarant shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Declaration to any Owner, or substantially increases the obligations imposed by this Declaration on any Owner.

10.12 Annexation Waiver. All Lot owners who subsequently tap into or are connected with the sewer system provided for Brookstone Subdivision, as described in the Plat, release their right to object, remonstrate or appeal against pending or future annexation by the City of Greenwood pursuant to a certain contract dated MARCH 10, 1994 and recorded in the Johnson County Recorder's Office at Book 066, Page 715.

10.13 Transfer of Control of Owner's Association. Declarant shall transfer control of the Owner's Association to the Lot Owners no later than the earlier of (a) four months after three-fourths (3/4) of the Lots have been conveyed to Lot purchasers or (b) seven (7) years after the first Lot is conveyed.

In Witness Whereof, the Declarant has caused this Declaration to be executed on the date first above written.

ROBERT J. LANE, INC.

By: *Robert J. Lane*  
ROBERT J. LANE, President

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF JOHNSON )

Before me, a Notary Public in and for said County and State, personally appeared Robert J. Lane, President, on behalf of Robert J. Lane, Inc., who acknowledged the execution of the foregoing, and who having been duly sworn upon his oath, stated that the representations therein contained are true.

My Commission Expires: *Sept. 25 1995*  
Notary Public *Rhonda W. Cobb*  
Resident of *Johnson* County, IN

lane\brocksto.02 deccov.3



*This document prepared by:*  
*Joe N. Van Valer, Attorney at Law*  
**VAN VALER WILLIAMS & HEWITT**  
300 South Madison Ave., Suite 400  
P.O. Box 405  
Greenwood, Indiana 46142  
(317) 838-1121

## LEGAL DESCRIPTION

Part of the Southeast Quarter and part of the Northeast Quarter and part of the Northwest Quarter of Section 28, Township 14 North, Range 3 East of the Second Principal Meridian in White River Township, Johnson County, Indiana, described as follows:

Commencing at the Northeast corner of the Southeast Quarter of the said Section 28; thence South 0 degrees 00 minutes 00 seconds West on and along the East line thereof; a distance of 495.00 feet to the Northeast corner of Pebble Run - Section One as recorded in Plat Cabinet "C", Slide 135 and 136 in the Recorder's Office of Johnson County, Indiana; thence South 88 degrees 58 minutes 21 seconds West on and along the North line of the subdivision a distance of 965.79 feet to the Point of Beginning of this described tract; thence South 88 degrees 59 minutes 21 seconds West a distance of 1338.42 feet; thence North 0 degrees 00 minutes 00 seconds East a distance of 495.67 feet to the South line of the Northeast Quarter of the said Section 28; thence South 88 degrees 59 minutes 56 seconds West on and along the said South line a distance of 360.78 feet to the Southwest corner of the said Quarter Section; thence South 88 degrees 57 minutes 18 seconds West on and along the South line of the Northwest Quarter of the said section 28, a distance of 10.99 feet to the centerline of Bluff Road; thence Northeasterly on and along the said centerline on a curve to the left which has a radius of 1924.06 feet a curved distance of 148.16 feet, said arc being subtended by a chord bearing North 10 degrees 01 minutes 30 seconds East a distance of 148.12; thence North 07 degrees 23 minutes 58 seconds East on and along the said centerline a distance of 158.30 feet; thence North 88 degrees 59 minutes 56 seconds East a distance of 501.34 feet; thence North 0 degrees 00 minutes 00 seconds East a distance of 29.29 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 214.98 feet; thence Southwesterly on a curve to the right which has a radius of 325.00 feet a curved distance of 39.77 feet, said arc being subtended by a chord bearing South 09 degrees 20 minutes 44 seconds West a distance of 39.75 feet; thence South 61 degrees 04 minutes 43 seconds East a distance of 182.10 feet; thence North 50 degrees 20 minutes 46 seconds East a distance of 48.20 feet; thence North 89 degrees 30 minutes 16 seconds East a distance of 540.00 feet; thence South 82 degrees 19 minutes 29 seconds East a distance of 50.46 feet; thence North 89 degrees 54 minutes 56 seconds East a distance of 166.67 feet; thence South 0 degrees 05 minutes 04 seconds East a distance of 720.00 feet to the point of beginning containing 25.651 acres more or less subject, however, to all legal rights-of-way and easements of record.

Part of the Southeast Quarter and part of the Northeast Quarter and part of the Northwest Quarter of Section 28, Township 14 North, Range 3 East of the Second Principal Meridian in White River Township, Johnson County, Indiana, described as follows:

Commencing at the Northeast corner of the Southeast Quarter of the said Section 28; thence South 0 degrees 00 minutes 00 seconds West on and along the East line thereof 495.00 feet to the Northeast corner of Pebble Run - Section One as recorded in Plat Cabinet "C", Slide 135 and 136 in the Recorder's Office of Johnson County Indiana; thence South 88 degrees 58 minutes 21 seconds West on and along the North line of the subdivision 965.79 feet to the Point of Beginning of this described tract; thence South 88 degrees 59 minutes 21 seconds West 813.42 feet; thence North 0 degrees 00 minutes 00 seconds East 495.82 feet to the South line of the Northeast Quarter of the said Section 28; thence South 88 degrees 59 minutes 56 seconds West on and along the said South line 885.78 feet to the Southwest corner of the said Quarter Section; thence South 88 degrees 57 minutes 19 seconds West on and along the South line of the Northwest Quarter of the said Section 28, 10.99 feet to the centerline of Bluff Road; thence Northeasterly on and along the said centerline on a curve to the left which has a radius of 1924.06 feet a curved distance of 148.16 feet, said arc being subtended by a chord bearing North 10 degrees 01 minutes 31 seconds East 148.12 feet; thence North 07 degrees 23 minutes 58 seconds East on and along the said centerline 158.30 feet; thence North 88 degrees 59 minutes 56 seconds East 501.34 feet; thence North 0 degrees 00 minutes 00 seconds East 268.12 feet; thence North 89 degrees 30 minutes 16 seconds East 1161.24 feet; thence South 0 degrees 05 minutes 04 seconds East 1053.34 feet to the Point of Beginning containing 27.86 acres more or less, subject to all legal rights-of-way and easements, Also,

Part of the Northeast Quarter of Section 28, Township 14 North, Range 3 East of the Second Principal Meridian in White River Township, Johnson County, Indiana, described as follows;

Commencing at the Southeast corner of the said Quarter Section; thence North 0 degrees 07 minutes 15 seconds West on and along the East line thereof 975.37 feet to the Southeast corner of Mount Pleasant Subdivision by Richards and Landers as recorded in Plat Cabinet "C", Slide 511 in the Recorder's Office of Johnson County, Indiana; thence South 89 degrees 30 minutes 16 seconds West on and along the South line of the said Subdivision 965.79 feet to the Point of Beginning of this described tract; thence South 0 degrees 05 minutes 04 seconds East 426.00 feet; thence South 89 degrees 30 minutes 16 seconds West 1627.09 feet to the centerline of Bluff Road; thence North 07 degrees 23 minutes 58 seconds East on and along the said centerline 430.07 feet to the Southwest corner of the said Subdivision; thence North 89 degrees 30 minutes 16 seconds East on and along the South line thereof 1571.07 feet to the Point of Beginning containing 15.638 acres more or less, subject to all legal rights-of-way and easements, Also,

Part of the Southeast Quarter of Section 28, Township 14 North, Range 3 East of the Second Principal Meridian described as follows:

Beginning on the North line of the said Quarter Section 1779.20 feet West of the Northeast corner thereof; thence West on and along the said North line 525.0 feet; thence South parallel to the East line of the said Quarter Section 495 feet more or less to the owner's south property line; thence East on and along the said South line 525.0 feet to the owner's Southeast corner; thence North on and along the East line of the owner's land and parallel to the East line of the said Quarter Section 495 feet more or less to the Point of Beginning containing 5.98 acres more or less.

EXHIBIT B

BREHOB TO ROBERT J. LANE, INC.  
20 FOOT DRAINAGE STRIP

Part of the Southwest Quarter of Section 28, Township 14 North, Range 3 East of the Second Principal Meridian described as follows:

Beginning on the North line of the said Quarter Section 10.99 feet West of the Northeast corner thereof, said point being a P-K nail found in the centerline of Bluff Road; thence Southwesterly on and along the said centerline on a curve to the right which has a radius of 1924.06 feet a curved distance of 20.58 feet, said arc being subtended by a chord bearing South 12 degrees 23 minutes 39 seconds West 20.58 feet; thence South 88 degrees 48 minutes 01 second West 1224.49 feet to the East right-of-way line of State Road 37; thence Northeasterly on and along the said right-of-way line on a curve to the right which has a radius of 5609.58 feet a curved distance of 21.42 feet, said arc being subtended by a chord bearing North 19 degrees 48 minutes 15 seconds East 21.42 feet to an iron rod found on the North line of the said Quarter Section; thence North 88 degrees 48 minutes 01 second East on and along the said North line 1221.64 feet to the Point of Beginning containing 0.5616 acres, more or less, subject to all legal rights-of-way and easements including but not limited to a temporary construction easement for purposes of drainage structure installation ten feet in width, South of and adjacent to the aforescribed tract which shall revert back to the owner upon completion.

I hereby certify that the above plat and description are a true and accurate representation of a survey completed under my direction on September 20, 1993.



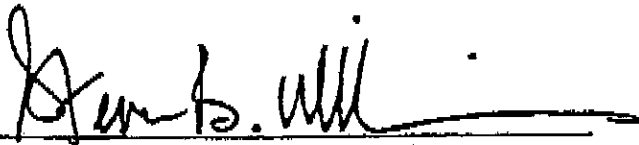
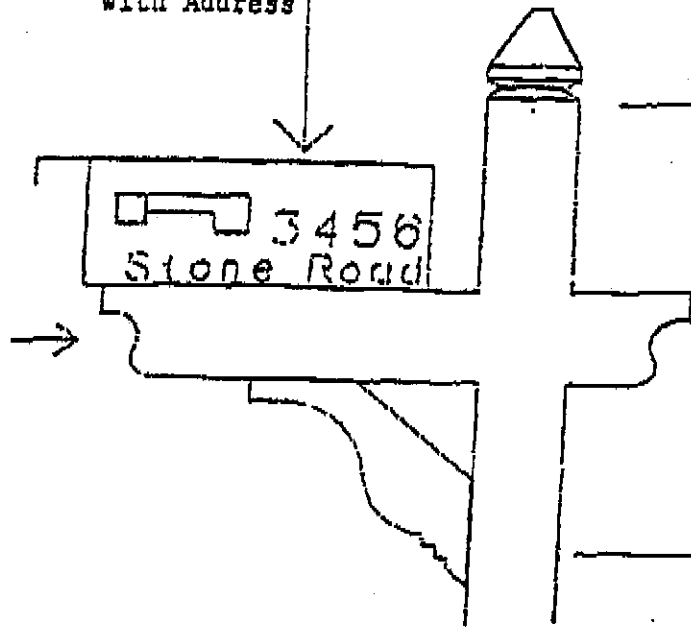
  
Steven B. Williams, L.S. No. S0390

EXHIBIT C

Medium Custom Mailbox  
with Address

6 X 6 Cedar

Paper Holder  
inside



Post Painted