



Not Just for One Transaction, But for Life

First American Title Insurance Company
Indianapolis Downtown—Corporate
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Telephone (317) 684-7556

Subdivision Covenants and Restrictions

The information is provided as a public service only. The information on this site is general in nature, unofficial and is not a valid reference for any legal purposes. The user agrees to hold harmless, protect, indemnify, and forever release First American Title Insurance Company and its officers, directors, agents, and employees, from and against any and all liabilities, losses, damage, expenses and charges, including but not limited to attorneys' fees and expenses of litigation, which may be sustained or incurred by the user under, or arising directly or indirectly out of the use of the information contained in this site.

We, R & F Development, Inc. by John Forcum, owner of the land shown and described hereon, do hereby lay off, plat and subdivide said real estate in accordance with the within plat.

This subdivision shall be known and designated as Briarwood Trace, Section Five. All streets shown and not heretofore dedicated are hereby dedicated to the public. Front building setback lines are hereby established as shown on this plat, between which lines and property lines of the private streets there shall be erected or maintained no buildings or structures. The strips of ground shown on this plat and marked drainage and utility easement (D. & U.E.) and sanitary sewer and drainage and utility easement (S.S. & D. & U.E.) are reserved for the use of the public utilities for the installation of water and sewer mains, poles, ducts, lines and wires, drainage facilities. The strips of ground are subject at all times to the proper authorities and to the easement herein reserved. No permanent or other structures are to be erected or maintained on said strips of land, but owners of lots in this subdivision shall take their titles subject to the rights of the public utilities and to the rights of the owners of the other lots in this subdivision.

1. Drainage Swales (Ditches)

Ditches along dedicated roadways and within the right-of-way, or on dedicated drainage easements are not to be altered, dug out, filled in, tiled, or otherwise changed without the written permission of the Hancock County Drainage Board (Commissioners). Property owners must maintain these swales as sodded grass ways or other non-eroding surfaces. Water from roof or parking areas must be contained on the property long enough so that said such water will not damage drainage swales or ditches. Driveways may be constructed over these swales or ditches only when appropriate sized culverts are installed as set out in 7-1-47 (5) of the Hancock County Subdivision Control Ordinance.

2. Altering Drainage Swales

Any property owner altering, changing or damaging the drainage swales or ditches will be held responsible for such action and will be given 10 days notice by registered mail to repair said damage, after which time, if no action is taken, the Hancock County Drainage Board (Commissioners) will cause said repairs to be accomplished, and the bill for such repairs will be sent to the affected property owner for immediate payment.

3. Corner Lots

No fence, wall, hedge, tree or shrub planting which obstructs sight lines and elevations between 2.5 and 8 feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting points 40 feet from the intersection of said street lines (40 feet for minor streets and 75 feet for arterial streets) or in the case of a rounded property corner from the intersection of the street right-of-way lines extended. The same sight line limitations shall apply to any lot within 10 feet of the intersection of a street right-of-way line with the edge of the driveway pavement or alley line. No driveway shall be located within 70 feet of the intersection of two street centerlines.

4. Drainage

4a. Open channel and tile drains within all drain easements shall be regulated drains subject to Indiana Code 36-9-27 and its amendments.

4b. It shall be the responsibility of the owner of any lot or parcel of land within the area of this plat to comply at all times with the provisions of the drainage plan as approved for this plat by the Hancock County Drainage Board through its agents, the Hancock County Surveyor and the Hancock County Engineer, and the requirements of all drainage permits for this plat by said Hancock County Drainage Board.

4c. The property shall be graded pursuant to the final construction plan and may not thereafter be changed without the written approval of the Hancock County Surveyor, whose decision may be appealed to the Hancock County Drainage Board.

4d. No trees or shrubs shall be planted, nor any structure erected in any drainage easement, unless otherwise approved by the Hancock County Surveyor and the Hancock County Engineer.

5. Driveways

All houses and garages shall be provided with hard-surface driveways constructed of concrete, which shall be installed by the builder concurrently with the original construction of the house, and which shall be available for use not later than the date of initial occupancy of such house, and shall thereafter be maintained solely as concrete driveways unless otherwise approved by the Architectural Control Committee.

5a. Right-of-Way

No trees or landscaping shall be planted in Hancock County Right-of-Way or drainage easements except for those labeled as landscape easements.

No fence, wall, hedge, tree or shrub planting which obstructs sight lines and elevations between two and one-half and eight feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting points 40 feet from the intersection of the minor street lines, and 75 feet from the intersection of arterial streets, or in the case of rounded property corner, from the intersection of the street right-of-way lines extended.

The same sight line limitations shall apply to any lot within ten feet of the intersection of a street right-of-way line with the edge of the driveway pavement or alley lines. No driveway shall be located within 70 feet of the intersection of two streets lines. No drainage structures shall be located within driveway limits.

No sump drains or other drains shall outlet onto the street.

No trees shall be planted in the county right-of-way.

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The Hon. J. J. ... Auditor of Hancock County

BRIARWOOD Section 5

WOOD TRACE

SECTION FIVE

COVENANTS

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No vehicle shall be parked on the public street for more than twenty-four(24) hours.

Snow removal for the subdivision internal streets shall be the responsibility of the Homeowner's Association.

The maintenance of all irrigation or sprinkler systems installed in the right-of-way shall be the responsibility of the the individual homeowner or the developer. Hancock County assumes no responsibility for maintenance or damage of any kind.

Each homeowner (lot owner) shall be responsible for constructing a four (4) feet wide concrete sidewalk of 4,000 psi concrete, four (4) inches thick sloped toward the street with expansion joints each forty-eight (48) feet along the entire street frontage of their respective lot. The sidewalk shall be constructed prior to the finish lot grading. The sidewalk shall be located one (1) foot inside the street right-of-way line. The lot owner is responsible for the repair and maintenance of the sidewalk for the initial 1 year from the completion of the residence. Thereafter, the Homeowners Association shall be responsible for maintenance and upkeep of the sidewalk except for any damage done by the adjoining lot owner. All public sidewalks shall comply with all Americans with Disabilities Act (ADA), as amended requirements and in the situation of a conflict between ADA rule, covenants or other regulations, the ADA shall govern.

Unless provided by the local municipality, the Homeowners Association shall negotiate with and procure trash pick-up and curbside recycling services from one (1) provider for all of the owners in the subdivision.

The Homeowners Association shall employ a managing agent or a real estate managing company to assist with the management, administration, operation, and maintenance of the subdivision.

6. Minimum Living Space Areas; Minimum Brick or Masonary Requirements; Minimum Landscaping Requirements

6a.

The minimum square footage of living space of dwellings constructed on various residential lots in the development, exclusive of porches, garages, terraces, carports, accessory buildings, or basements below ground level shall be no less than 1,900 square feet of ground floor living area for a one-story structure and a minimum of 2,200 square feet of living area if higher than one story. Each dwelling shall have a two or three car-attached garage.

6b.

The front elevation of one story structures shall be constructed entirely of brick and masonry materials, exclusive of doors, windows, gables, and garage doors, and 50% of the front elevation of higher than one story structures shall be brick or masonry, and said computation shall be exclusive of doors, windows, gables, and garage doors.

6c.

All homes shall have a planting and mulching plan to include at least 6 shrubs and 2 trees. Shrubs shall be a minimum of 18 inches in height. Shade trees shall have a minimum caliper of 2 inches.

7. Residential Use Only

All lots in this subdivision shall be used solely for residential purposes except for residences used as model homes during the sale and development of this subdivision. No motor home, trailer, tent, shack, basement, or other outbuildings shall be used for temporary or permanent residential purposes on any lot in the subdivision. No dog kennel, junkyard, or commercial business will be permitted in the subdivision.

8. Building Location

No building shall be located on any lot nearer to the front line or nearer to the side street line than the minimum building setback lines shown on the plat. No building shall be located on any lot nearer to the side lot line than seven and one-half feet (7.5'). No building shall be located closer to any rear lot line than 10 feet, but in no case shall it encroach upon any easement.

9. Health Concerns

All water systems and methods of sewage disposal in this subdivision are to be in compliance with the regulations or procedures by the State Board of Health, Gem Utilities, or other civil authority having jurisdiction. All sanitary sewage lines on the residential building lots shall be designed and constructed in accordance with the provisions and requirements of Gem Utilities Inc. No water wells or septic tanks shall be installed on any lot.

10. Nuisances

No noxious or offensive trade shall be permitted upon any lot in this subdivision nor shall anything be done thereon which may be a nuisance or annoyance to the neighborhood. No refuse will be maintained on the lot. Each lot owner shall comply with the garbage disposal and waste recycling methods determined by the homeowners association. Garbage and trash shall be kept in containers which are not visible from the street, except on collection day.

11. Limitation On Time

All residential construction must be completed within one year after the starting date, including the final grading.

12. Parking Limitations

No boats, campers, trailers of any kind, buses, mobile homes, trucks, motorcycles mini-bikes, or any other unconventional vehicles of any description, shall be permitted, parked, or stored anywhere within this subdivision except that any such vehicle may be parked or stored completely within an enclosed garage, except for personal automobiles, vans and pick up trucks which may be parked on the driveway. The parking of any type or kind of vehicle shall not be permissible upon the streets, other than temporary parking by guests, invitees, and

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Hancock County

SECTION FIVE
COVENANTS

subcontractors of any owner. Except within an enclosed garage, no inoperative or unlicensed vehicle shall be parked or repaired on any lot in this subdivision, or in any street thereon. Boats, Campers, and Motor Homes may be parked for a maximum of 2 days at one time for the purpose of preparation or loading.

13. Storage Tanks

No outside fuel storage tanks above or below ground shall be placed in this subdivision.

14. Fencing

Wood fencing shall be of shadow box style only, and chain link fencing shall be of black vinyl coated only, and shall not exceed four (4) feet in height and no fence shall be placed closer to the front lot line than the rear of the primary residence. On corner lots an additional requirement is that fences may not be placed closer to the street than the building setback line on the side of the primary residence. Fencing or fences shall be approved by the Architectural Control Committee prior to installation. All fences shall be of new materials. On lots where in-ground swimming pools are constructed, the fencing height may be increased to six (6) feet if the fence material is ornamental wrought iron and black in color or shadow box style.

15. Yard Decorations

Except seasonal decorations such as at Christmas, yard decorations shall be approved by the Architectural Control Committee.

16. Antennas

All communications antennas shall be placed indoors and out of view. Satellite dishes shall be placed behind the residence and not exceed 24" in diameter.

18. Mailboxes

The Developer or its Assigns shall require a standardized mailbox for each residence and shall establish a design, material, and paint specification for the mailbox which shall be standard for all mailboxes in this subdivision.

19. Architectural Control Committee

No building, fence, walls or other structure shall be erected, placed or altered on any building lot in this subdivision until the building plans, specifications and plot plan showing the location of such structures have been approved by the Architectural Control Committee. The purpose of the Committee shall be to enhance and protect the value, desirability, and attractiveness of the development as a whole and to ensure that all building, fences, walls or other structures are harmonious with the overall Architectural character of the subdivision. The destruction of trees and vegetation and any other matter as may affect the environment and ecology of this subdivision shall be proper concern of the Committee. The Architectural Control Committee shall be composed initially of the Developer, and after completion of the development by a committee of three homeowners designated by the Developer for the term of one (1) year and serving thereafter until their successors are elected by a majority vote of homeowners within the development.

21. Architectural Design

No dwelling, building structure, improvement, exterior alteration or change of original color or material shall be constructed, placed or performed on any lot in the Development without the prior approval of the Architectural Control ("Committee"). Such approval shall be obtained only after written application has been made to the Committee by the Owner of the lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction, improvement or alteration. Such plans shall include plot plans where applicable showing the location of all improvements existing under or upon the lot and the location of the improvement proposed to be constructed or placed upon the lot, each properly and clearly designated. Such plans and specification shall set forth color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. All plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1" Equals 10' or to such other scale as the Committee may require. There shall also be submitted, where applicable, the permits or reports required under Paragraph 3 of these Restrictions. All such plot plans shall be prepared by either a registered land surveyor, engineer or architect.

21. Solar Technology

Devices for solar technology must be architecturally integrated within the primary residence and must be approved by the Architectural Control Committee.

22. Construction Methods

No modular or concrete homes will be permitted in this subdivision. No wood foundations or wood basements shall be permitted.

23. Homeowners Association; Trash Removal and Recycling; Mandatory Professional Management Company

23a.

Each lot owner, by acceptance of a deed conveying title thereto, whether from the Developer or a subsequent owner of such lot, shall accept such deed subject to the provisions of the By-Laws of Briarwood Trace Homeowners Association, Inc. and thereby becomes a member of Briarwood Trace Homeowners Association, Inc. for the purposes outlined therein.

23b.

The Briarwood Trace Homeowners Association shall designate one vendor for the purpose of both trash and recycling service for the subdivision, and the cost shall be allocated to and paid for by the homeowners.

23c.

The Briarwood Trace Homeowners Association shall hire a professional manager for the Homeowners Association not later than when the Class B membership ceases and is converted to Class A membership pursuant the by-laws of the Briarwood Trace Homeowners Association.

24. Swimming Pools

Swimming pools must be placed behind the residence. All pools must be below ground and be enclosed by a six (6) foot high fence pursuant to paragraph 14 of these covenants.

25. Pets

No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except dogs, cats and other household pets may be kept, provided they are not kept, bred or maintained for any commercial purposes. Any animal so kept will not be permitted to roam at large within the subdivision and shall be confined to the owner's premises. Dog houses that use new wooden materials the same color of the primary residence may be approved. All doghouses must be near

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Auditor of Hancock County

the rear of the primary residence and not readily visible from the public street. Small fenced runs and rabbit houses will not be approved.

26. Lot Maintenance/Block Maintenance/Outbuildings

All lots on which construction has not begun must be mowed and maintained by the lot owner. After construction, the structure, grounds and recreational equipment shall be maintained in a neat and attractive manner. Firewood shall be kept behind the residence, and stacked in a neat manner. Brightly colored tarps are not to be used to cover items outdoors. The areas labeled as Blocks on the plat shall be deeded from the Developer to the Briarwood Trace Homeowners Association when the developer has transferred title to a minimum of 90% of the lots herein to an entity other than the Developer. The Developer shall maintain the Blocks until the title is transferred to the homeowners association, who will then be responsible for the maintenance, upkeep and other responsibilities as outlined in the association-by-laws. Outbuildings or outside storage units or accessory buildings shall not be constructed or permitted on any lot in this subdivision.

The owner of any lot in the Development shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly; and, specifically, such owner shall:

- (a) Mow the lot at such times as may be reasonably required in order to prevent unsightly growth of vegetation and noxious weeds.
- (b) Remove all debris or rubbish.
- (c) Cut down and remove dead trees.
- (d) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

In the event that the owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of these Restrictions. The cost therefor to the Association shall be added to and become a part of the annual charge to which said lot is subject and may be collected in any manner in which such annual charge may be collected. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage, which may result from any maintenance work performed hereunder.

27. Basketball Goals

Freestanding basketball goals with clear backboards may be constructed. Basketball goals attached to the house or garage shall not be permitted. All recreational equipment must be maintained in good condition.

28. Sidewalks

Each homeowner (lot owner) shall be responsible for constructing a four (4) foot wide concrete sidewalk of 4,000 strength plain cement four (4) inches thick, sloped 1/4 inch per foot toward the street with expansion joints each forty-eight (48) feet, along the entire street frontage of their respective lot. The sidewalk shall be constructed prior to completing finish lot grading. The sidewalk shall be located one (1) foot inside the street right-of-way line, (not on the lot) and parallel to the street right-of-way line. The lot owner is responsible for the repair and maintenance of the sidewalk for the initial 1 year from completion of residence. Thereafter, the Homeowners Association shall be responsible for maintenance and upkeep of the sidewalk except for any damage done by the adjoining lot owner. All public sidewalks shall comply with all Americans with Disabilities Act (A.D.A.), as amended, requirements and in the situation of a conflict between A.D.A. rules, covenants or other regulations, the A.D.A. shall govern.

29. Irrigation Systems

Except adjacent to common areas, Blocks, or at entrances to the subdivision or other landscaped areas, irrigation systems shall not be placed in the public right-of-way or drainage easements.

30. Sump pumps

Sump pumps installed to receive and discharge ground waters or other storm waters shall be connected to the storm sewer where possible or discharged into a designated storm drainage channel. Sump pumps installed to receive and discharge floor drain flow or other sanitary sewage shall be connected to the sanitary sewers with approval from Gem Utilities, Inc. A sump pump shall be used for one function only, either the discharge of storm waters or the discharge of sanitary sewage. Footing drains shall be connected to storm sewers where possible or designated storm drainage channels. No footing drains or drainage tile shall be connected to the sanitary sewer. No roof downspouts, roof drains, nor roof drainage piping shall be connected to the storm drainage system. No down spouts or roof drains shall be connected to the sanitary sewers. Basement floor drains shall be connected to the sanitary sewers with approval from Gem Utilities, Inc. No sump pump, footing drain, roof downspout, or basement drain shall be connected to any street under drain, nor outlet onto the street.

31. Utility Easements

There are strips of property as shown on the recorded plat which are hereby designated and reserved for use of the public utilities for the installation and maintenance of utilities and drainage facilities (hereinafter referred to as Utility Easements). No permanent structure or other obstruction, shall be erected or maintained on such Utility Easement but each owner shall take title to that part of the utility easement comprising a part of his lot, subject to the rights of such public utility for ingress and egress in and along, across, through, and over the Utility Easement.

32. Enforcement of Covenants

The right to enforce these covenants by injunction, together with the right to cause the removal, by due process of law, of any structure or part thereof erected, or maintained in violation hereof, is hereby reserved to any owner of any of the real estate in this subdivision, including the developer. However, such time as the developer no longer owns any property contained in this subdivision Section, the developer no longer has any right, obligation or standing to enforce any covenant. The cost of enforcement of any violation of the Covenants contained herein, including any expenses and attorneys' fees shall be charged to the property owner in violation, and such costs, expenses and fees shall be collectible in the same manner as assessments as provided herein. In no event shall the Developer be responsible for any damages, fees, or expenses resulting from the enforcement or failure to enforce any covenant.

33. Duration of Covenants

These Covenants are to run with the land, and shall be binding on all parties and all persons claiming under them. At any time (with the exception of covenants 1 thru 4, which may not be changed), a

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Covenant may be changed in whole or in part upon 1) an affirmative vote of eighty percent (80%) of the then owners of lots in the subdivision, and 2) with the consent of the Developer. If the Developer does not own one or more lots in the subdivision, the consent of the Developer shall not be required. Invalidation of any of the foregoing Covenants, provisions, restrictions, or conditions by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

34. Pursuant to the Hancock County Code, include the following language in the platted covenants:

(1) Mailbox design and specifications shall be done in accordance with the U.S. Postal Service regulations. If nominal 6 x 6 posts are used, the specifications shall require that the posts be scored at ground level to the equivalent of a 4" x 4" post. Further, all county regulations for the placement of mailboxes shall be adhered to.

(2) Each residence, within one hundred eighty (180) days after the certificate of occupancy is issued, shall have in place a minimum landscape package for the front and side yards including at least one (1) trees, 8 shrubs, and a sodded front yard.

(a) The minimum number of shrubs required is a total for the side and front yard combined, not for each yard individually.

(b) All trees shall be a minimum of 2" caliper and all shrubs shall be a minimum of 18" in height per National Nursery Standards.

(c) Lots that have existing trees in the front yard and are in number to meet the required minimum shall not be required to plant additional trees as herein required. In order for the existing trees to qualify as an existing tree it must be a minimum size of 2" in caliper measured six inches above the existing ground elevation at the base of the tree and be part of the finish landscape package upon completion of the residence and the final lot grading.

(d) All trees shall be planted such that upon maturation the branches and limbs shall not interfere with the adjacent property use. Any tree becoming such a nuisance shall be trimmed or cut back to eliminate the nuisance.

(3) The homeowners association shall contract with only one trash collection company for the entire development. The trash collection company shall also provide curbside recycling for the development.

(4) The residential structures shall include the following minimum building standards:

(a) Nine (9) inch overhangs on all roofs, except side gables.

(b) Main roof pitch of no less 5/12 in keeping with prior sections.

(c) Vinyl siding shall be approved and endorsed as meeting or exceeding ASTM D3679 by the Vinyl Siding Institute (VSI) through the VSI siding certification program. The minimum thickness of vinyl siding shall be 0.042 inches in keeping with prior sections.

(d) Attached two-car garage.

(5) Exterior chimneys for fireplaces shall be masonry in entirety unless placed on the rear exterior wall of the residence. Chimneys that do not originate on an exterior wall that protrude through the roof may be of material other than masonry, excluding aluminum.

(6) All porches on the front or side of the residence shall be constructed with nominal 6 x 6 column posts. Residences without covered porches shall have architecturally treated entranceways.

(7) All residences shall include decorative rectangular, round, half-round, or triangular front, gable roof vents or windows to match prior sections.

(8) Residences built upon corner lots shall have included with the construction a minimum of one (1) window, with a minimum size of three (3) feet by five (5) feet, on the side of the home facing the street (street side-yard).

(9) On corner lots the driveway shall be handed in the opposite side from the intersection of the street right-of-way lines.

(10) A deed restriction shall be included on each subdivision plat and lot indicating the right to farm of adjoining agricultural real estate as follows:

The owner(s) of the herein described real estate, for himself, and for all future owners and occupants of said real estate, or any parcel or division thereof, for and in consideration of the right to develop the real estate for other than agricultural uses, hereby:

(a) Acknowledges and agrees that the real estate is adjacent to an area zoned or used for agricultural purposes, which uses include, but are not limited to: a) production of crops; b) animal husbandry; c) land application of animal waste; d) raising, breeding and sale of livestock and poultry, including confinement feeding operations; e) use of farm machinery; and/or f) the sale of farm products.

(b) Waives any and all objections to any agricultural uses within two miles of any boundary of the real estate.

(c) Agrees that agricultural uses do not constitute a nuisance so long as they are not negligently maintained, do not cause bodily injury to third parties, or directly endanger human health.

(d) Agrees that this covenant is for the benefit of Hancock County, Indiana, and for all persons engaged in agricultural uses within two miles of any boundary of the real estate and is enforceable by any of the foregoing.

35. Severability

Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

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We, R. & F. Development, Inc., do hereby certify that we are the owners of the property described in the above caption and that as such owner, we have caused the said above described property to be surveyed and subdivided as shown on the herein drawn plat, as our own free and voluntary act and deed.

R & F DEVELOPMENT, INC.
BY: John F. Forcum
John Forcum, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF HANCOCK)

I, Teresa Spegel, a notary public in and for said County and State, do hereby certify that Steven R. Reilly is personally known to me to be the same person whose name is subscribed to the above certificate, appeared before me this day in person and acknowledged that he signed the above certificate as his own free and voluntary act and deed for the purpose therein set forth.

Given under my hand and notarial seal this 2nd day of February, 2006.

Teresa Spegel
Notary Public
Resident of Hancock County



My Commission Expires: 1-2-08
Printed Name: Teresa Spegel

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