STATE OF INDIANA	)	RIPLEY CIRCUIT COURT
	) SS.	
COUNTY OF RIPLEY	)	GENERAL TERM 2011
MELISSA BREWINGTON	)	CAUSE NO. [redacted]
Petitioner,	)	
vs.	)	
	)	
DANIEL BREWINGTON	)	
Respondent,	)	
pro-se.	)	

MOTION TO SET ASIDE DECREE

Movant Matthew P. Brewington, referred to throughout this complaint as Matthew, urges the Court to Set Aside the Judgment and Final Order on Decree of Dissolution of Marriage in the case of Melissa Brewington vs. Daniel Brewington pursuant to Indiana Trial Rules 19 and 60(B), and in support, shows the Court as follows.

HISTORY OF THE CASE

1. On August 18, 2009, Special Judge James D. Humphrey entered the Court's Judgment and Final Order on Decree of Dissolution of Marriage in the above case.

2. The trial court's decree stated, "At the time of filing (of dissolution), Husband had as an asset, a vested remainder interest in the Daniel P. Brewington (Sr.) Revocable Trust, (Respondent's Exhibit A), hereinafter referred to as the "Trust" valued at $264,530.00 based upon the following:

   a. (A) Daniel P. Brewington (Sr.), passed away on May 19, 1998, and at the time of his death was married to Sue A. Brewington and had two (2) children, namely, Respondent, Daniel Brewington and Matt Brewington.

b. (D) Pursuant to the "Trust", upon the death of Sue Brewington, the balance held in said Trust is to be distributed to Daniel P. Brewington's legal issue. (Respondent's Exhibit A), namely, Husband Daniel Brewington, and his brother Matt Brewington. This Court finds that Husband owns a specific remainder interest in the Trust Estate subject to Sue Brewington's life estate. The Court finds that this constitutes a vested remainder interest which may be sold, transferred, or mortgaged. That it has a present value as presented and set forth in Paragraph H below.

c. (H) As such the total value of the future interest vested in **both** (*emphasis added*) Daniel and Matt Brewington in the "Trust" was $529,060.00, at the time of filing and the value of the future interest attributable to Husband's share in the "Trust" was $264,530.00, at the time of filing.

3. The decree entered judgment in favor of Melissa Brewington and against Daniel Brewington in the amount of $122,280.80.

4. On July 20, 2010, the Indiana Court of Appeals AFFIRMED the trial court's rulings.

5. Ruling panel per curiam, the Indiana Court of Appeals stated "Daniel's remainder interest has a pecuniary value. In this regard, we find the rationale of *Moyars v. Moyars*, 717 N.E.2d 976 (Ind. Ct. App. 1999), *trans. denied*, to be helpful." The Court of Appeals stated the following:

a. As in *Moyars*, Daniel had no current possessory interest in the land, as his mother held a life estate therein. Daniel's right to take legal possession of the land at some point in the future was fixed and certain. Having

reviewed the trust document and in light of the above cases, we conclude that Daniel's interest was not too remote such that it should not have been considered as a marital asset. The trial court did not err in including Daniel's remainder interest in the marital estate.

6. On September 8, 2010 the Indiana Court of Appeals denied the petition for rehearing in this case. (Per the Clerk of the Indiana Court of Appeals' online docket)
7. On December 16, 2010 the Indiana Supreme Court denied the petition for transfer. (Per the Clerk of the Indiana Court of Appeals' online docket).

ARGUMENT

The case at hand is quite confusing as the Indiana Courts have previously held that "Case law has long established that an unvested interest in property is not divisible as a marital asset.... No one has vested rights in an ancestor's property until the latter's death.... ." *In re Marriage of Dall*, 681 N.E.2d 718 (Ind. App. 1997), Id. at 722. Although Indiana Courts have held that "Even some vested interests, such as remainders in which the spouses have no present possessory interest, are deemed too remote to be included in a property settlement", the appellate court held that Daniel's vested remainder interest, which the court declared that Daniel had no present possessory interest, had been properly included in the property settlement of the marital estate.

In *Hacker v. Hacker*, 659 N.E.2d 1104 (Ind. App., 1995), the Indiana Court of Appeals wrote:

> "Although John is an only child and could eventually inherit the farm either through a will or under the laws of intestate succession, this potential inheritance would evaporate if, in the intervening years, John's parents sell the farm or devise the property to someone else. In addition,

> unforeseeable changes in the farm marketplace or in governmental policy regarding farm subsidies or the laws of inheritance or taxation could considerably change the farm's value.
>
> In light of these contingencies, John's potential inheritance is analogous to the remote interest considered by this court in McNevin v. McNevin, supra, 447 N.E.2d 611. The McNevin court held that a wife's unliquidated tort claim was neither divisible as marital property nor could it be considered a factor in awarding property settlements. "Unlike future pension benefits, which have some approximate value, and unlike future salary, which may be estimated and discounted to present worth, an unliquidated tort claim has no present ascertainable value. Any attempt at valuation would be based upon pure speculation...." 447 N.E.2d at 618." 659 N.E.2d at 1112.

Despite the appellate court's findings in Hacker, where the court excluded property from the marital "pot" because the value and future possession of the property were contingent upon many extraneous factors (i.e. death, taxes, sale, etc...), the court likened the current case to *Moyars v. Moyars,* 717 N.E.2d 976 (Ind. Ct. App. 1999). Moyars states, "In August 1997, Mechelle filed a petition for dissolution of the marriage. David counter-petitioned. The trial court joined Geneva Moyars and David's two siblings in the dissolution proceeding as persons needed for a just adjudication. [717 N.E.2d 978]," yet in the current case, the trial court failed to join Daniel Brewington's sibling, Matthew P. Brewington, as a "person needed for a just adjudication."

In re Marriage of Dall, 681 N.E.2d 718 (Ind. App. 1997), Id. at 723, states, "It is axiomatic that a divorce decree does not affect the rights of nonparties. Sovern, 535 N.E.2d at 566." As the Indiana Court of Appeals held that Daniel Brewington's (Jr.) one-half (1/2) share of a future interest in the assets of the Daniel P. Brewington (Sr.) Revocable Trust was a marital asset, it is axiomatic that Matthew P. Brewington, as the holder of the other one-half (1/2) share of the future interest, is an indispensible party with a direct interest in any legal adjudication concerning the value and division of any

"remainder interest(s)" belonging to the Trust. If the Indiana Appellate Court determined that *Moyars* prevailed over cases such as *Hacker*, then the trial court erred in not joining Matthew P. Brewington and/or any other indispensible parties.

As the *Dall* court stated that "it is axiomatic that a divorce decree does not affect the rights of nonparties", the *Dall* court also opined that the failure to join indispensible parties during the original proceedings did not waive the ability to address the error. *Dall* states:

> "The dissent contends that the parties have waived any error arising from their failure to join Wife's parents as necessary parties. See Ind. Trial Rule 12(B)(7). However, reliance on the waiver doctrine does not resolve this case. Just as joinder alone does not convert the property interest claimed into a present vested interest or bring it into the marital estate, neither does the mere failure to join Wife's parents enable the court to issue an enforceable order dividing the real estate. We should not sanction a trial court order that purports to divide property in which the parties do not hold a present vested interest and that is unenforceable against interested nonparties. (681 N.E.2d 718 (Ind. App. 1997), Id. at 723)"

Matthew P. Brewington as an Indispensible Party

"The law is settled that no one's rights may be adversely affected if he is not a party to the litigation." Kieler v. C.A.T. by Trammel, 616 N.E.2d 34, 38 (Ind.Ct.App.1993). Clearly Matthew had an interest in the dissolution proceedings because the trial court ruled that Matthew's interest in the Trust was equal to that of his brother Daniel; yet the trial court failed to join Matthew as in indispensible party even though the trial court placed a value on Matthew's interest and then proceeded to divide it. It isn't at the discretion of the Court or the Petitioner to determine how or why Matthew's rights have been adversely affected, as Matthew's rights could have been adequately addressed only by Matthew during the course of a legal proceeding to which Matthew was a party. In the current case, Matthew was never joined as an indispensible party. In *Dean*, the Court

stated, "Neither Mother nor Father represented the State's interests in the prior proceeding. Father's interests were adverse to the State." *In re: Marriage of Dean*, 787 N.E. 2d 445, 449. "Clearly, the State could have been added as a party in the dissolution action pursuant to Trial Rule 19(A), because the State's absence impeded its ability to protect its interest." Just as in *Dean*, neither Melissa nor Daniel represented Matthew's interests during the divorce proceedings and Matthew's absence impeded his ability to present his interest. Melissa's interests were adverse to Matthew especially as the terms of the Trust set forth a scenario where Matthew could acquire all assets owned by Trust following the death of the Beneficiary. Matthew's absence in itself makes it impossible to determine the scope of Matthew's interest in the proceedings. Even the Petitioner acknowledged the importance of joining interested parties. In the Petitioner's Motion to Join Sue Brewington[1], filed June 6, 2008, the Petitioner stated that it was necessary to join a party with "an interest relating to the subject of this action and is so situated that the disposition of the action in [his/her] absence may as a practical matter impair or impede [his/her] ability to protect that interest." During the final hearing on dissolution, Petitioner stated that Matthew had an interest in the property in the trust that was equal to that of the Respondent's, yet the Petitioner failed to make any attempt to notify Matthew of the proceedings nor did the Petitioner attempt to join Matthew as a party. The Petitioner attempted to join Sue Brewington as a party to deal with matters concerning the division of kitchen appliances, yet the Petitioner failed to make any effort to join any indispensible non-parties in the Petitioner's quest to obtain a share of $1,425,000[2] worth of assets within the Daniel P. Brewington Revocable Trust Agreement. Even if Matthew

[1] Petitioner's motion made no mention of the property within the trust in the Motion to Join Sue Brewington as a Party. The Petitioner's motion was denied on July 21, 2008.
[2] Value is based solely on the opinion of Petitioner's expert, Nelson Elliot.

was aware of the Petitioner's claim to property in the trust that Matthew had an interest in, it would have been nonsensical for Matthew to petition the Court to join him as a party when the Court refused to join Sue Brewington[3] as a party. The Court denied the Petitioner's motion to join Sue Brewington then the Court proceeded to adjudicate matters dealing with the Trust[4] in the absence of the beneficiary of the Trust, Sue Brewington.

On September 15, 2009, South Eastern Indiana Title, Inc. issued a letter [Attached hereto as Exhibit A] that explained the findings of a preliminary title search of the records of Ripley County, Indiana, up to September 10, 2009, pertaining to The Daniel P. Brewington Revocable Trust. The findings of the title search are as followed:

1. "Said real estate is titled in the names of The Daniel P. Brewington Revocable Trust, pursuant to Revocable Trust Agreement dated April 21, 1998."
2. Real estate taxes had been paid in full for Tracts I, II, and III.
3. Two mortgages were executed by Robert Brewington; Trustee of the Revocable Trust Agreement of Daniel P. Brewington dated April 20, 1998 in favor of Friendship State Bank. The amounts of the mortgages listed are $102,370.12 and $35,000.00. Both mortgages were recorded July 10, 2001 in Instrument #2001-4090 and #2001-4091, respectively, of the records of Ripley County.

[3] Sue Brewington is the beneficiary of the Trust and is the only party that has any entitlement to the assets within the Trust; pending the Trustee's discretion.
[4] The Petitioner failed to make any attempt to notify or join the Trustee of the Daniel P. Brewington Revocable Trust.

4. Two right-of-way easements executed by Daniel P. Brewington Revocable Trust in favor of Elrod Water Company d/b/a Hoosier Hills Regional Water District.
5. Judgment and final order on decree of dissolution of marriage filed by Melissa Brewington vs. Daniel Brewington on August 18, 2009 under Cause No. 69C01-0701-DR-007 of the records of Ripley County.

Matthew P. Brewington has no control over the Trust or Trustee. Matthew P. Brewington has no control of taxes, mortgages, easements, etc., that can dramatically affect the value of the property within the Daniel P. Brewington Revocable Trust Agreement. The lien resulting from the judgment and final order on decree of dissolution of marriage filed by Melissa Brewington vs. Daniel Brewington prohibits Matthew P. Brewington from acquiring any assets of the Trust, upon the death of the beneficiary, until the lien is satisfied.

Satisfying the lien resulting from Melissa Brewington vs. Daniel Brewington is impossible under court's findings. The court's ruling has created a "chicken and the egg" scenario as Trust property would first have to be sold to satisfy the lien on the property but the judgment lien itself prevents any land from being sold. As the trial court failed to join the Trustee and/or Trust to the proceedings, the court is unable to compel the Trustee to sell the property to satisfy the lien. Upon the death of the Beneficiary, the property of the Trust would be subject to sheriffs' auctions and/or foreclosure, as the Trust's ability to operate would be paralyzed by a judgment lien of a proceeding that the Trust was not a party to. If one were to argue that Matthew's brother Daniel was responsible for paying the lien, Matthew's interest is still contingent on the actions of a party to a legal action

that Matthew was not a party to. Even if the Trust has the ability to liquidate land, if the value of the Trust falls below $244,561.60, Matthew P. Brewington would receive less than half of his share of the assets guaranteed to him by the Trust Agreement, as $122,280.80 would have to be first paid to Melissa Brewington in order to settle the lien. According to the terms of the Daniel P. Brewington (Sr.) Revocable Trust, if Daniel Brewington (Jr.) and his legal issue fail to survive the Beneficiary, upon the death of the Beneficiary, all of the assets in the Trust are to be directed to Matthew P. Brewington. Under the current ruling, Matthew P. Brewington would effectively have to pay Melissa Brewington a $122,280.80 "release fee" in order for the Trustee to direct all assets to Matthew P. Brewington pursuant to the terms of the Daniel P. Brewington Revocable Trust Agreement.

As Indiana Trial Rule 19(b) follows the federal rule, Matthew finds "it instructive to examine federal authorities on issues involving the rule where Indiana precedent is lacking. Legg v. O'Connor (1990), Ind.App., 557 N.E.2d 675." In Stewart v. United States, 242 F. 2d 49 (5th. Cir., 1957) the Fifth Circuit of the United States Court of Appeals stated:

> "It is well settled under the decisions of this Court that no decree can be entered affecting the title to property or cancelling any cloud thereon unless all of the parties interested in the title or in the particular cloud and who will be directly affected by any judgment that may be rendered are properly before the Court. Hudson v. Newell, 5 Cir., 1949, 172 F.2d 848, and cases cited; Mackintosh v. Marks' Estate, 5 Cir., 1955, 225 F.2d 211, and Estes v. Shell Oil Co., 5 Cir., 1956, 234 F.2d 847."

The court erred in not joining Matthew P. Brewington to the proceedings when the court assigned a value to and included the Daniel P Brewington (Sr.) Revocable Trust in the marital estate of Melissa and Daniel Brewington as Matthew has an interest in the

Trust equal to that of his brother Daniel; thus violating Matthew's rights to due process. As Matthew only recently discovered that his rights were affected by the lien, which was a result of the above decree, Matthew was unable to move the trial court to join him as an indispensible party during the pendency of the trial.

In *McShan v. Sherrill*, 283 F.2d 462, the Ninth Circuit of the United States Court of Appeals addressed the timeframe for raising an objection to the absence of an indispensible party. The Court wrote:

> Appellees complain of appellants' delay in raising the objection and of the nature of the evidence supporting it. The absence of indispensable parties can be raised at any time, however, even by the appellate court on its own motion. Haby v. Stanolind Oil & Gas Co., 5 Cir., 1955, 225 F.2d 723; Brown v. Christman, 1942, 75 U.S.App.D.C. 203, 126 F.2d 625; Flynn v. Brooks, 1939, 70 App.D.C. 243, 105 F.2d 766; 3 Moore, Federal Practice (2d ed. 1948) § 19.05. Rule 12(h) F.R. Civ.P. provides that the defense of failure to join an indispensable party is never waived. As stated in Brown v. Christman, supra, 126 F.2d at page 632: "If they are indispensable parties it is our duty to protect their interests on this appeal, even though the question was not raised in the District Court; and it will be the duty of the District Court to protect them in any further proceedings there." The defect is not "jurisdictional", in one sense of the word, but, as stated in State of Washington v. United States, supra, 87 F.2d at page 427, quoting from Shields v. Barrow, 1855, 17 How. 129, 141, 58 U.S. 129, 130, 15 L.Ed. 158, which in turn quoted from Mallow v. Hinde, 1827, 12 Wheat. 193, 198, 25 U.S. 193, 6 L.Ed. 599, is predicated "on the ground that no court can adjudicate directly upon a person's right, without the party being either actually or constructively before the court."

Just as the District Court has the responsibility to protect the rights of indispensable parties, this Court has the responsibility to protect the rights of indispensable parties that were not properly notified and/or joined to the proceedings prior to issuing the final decree. With that said, the only remedy to protect Matthew P. Brewington's, and/or any other indispensable parties' rights to due process is to vacate the August 18, 2009 Judgment and Final Order on Decree of Dissolution of Marriage, as the dissolution

decree is constitutionally invalid. In *Anderson Federal Sav. and Loan Ass'n v. Guardianship of Davidson*, 364 N.E.2d 781, 173 Ind.App. 549, the Indiana Appellate Court wrote, "The 'opportunity to be heard' is a fundemental requirement." See *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, at 313, 70 S.Ct. 652, at 656, 94 L.Ed. 865. The Supreme Court of the United States of America elaborated on *Mullane* and the rights of interested parties in *Armstrong v. Manzo*, 380 U.S. 545, 85 S. Ct. 1187, 14 L.Ed.2d62 (1965). The Supreme Court of the United States of America found that a hearing on a matter after a decree did not satisfy the Petitioner's constitutional rights to due process. The U.S. Supreme Court stated:

> In disposing of the first issue [failure to notify the petitioner of the pendency of the proceeding], there is no occasion to linger long. It is clear that failure to give the petitioner notice of the pending adoption proceedings violated the most rudimentary demands of due process of law. 'Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.' Mullane v. Central Hanover Bank & Tr. Co., 339 U.S. 306, at 313, 70 S.Ct. 652, at 656, 94 L.Ed. 865. 'An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278; Grannis v. Ordean, 234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363; Priest v. Board of Trustees of Town of Las Vegas, 232 U.S. 604, 34 S.Ct. 443, 58 L.Ed. 751; Roller v. Holly, 176 U.S. 398, 20 S.Ct. 410, 44 L.Ed. 52.' Id., at 314, 70 S.Ct. at 657. Questions frequently arise as to the adequacy of a particular form of notice in a particular case. See, e.g., Schroeder v. City of New York, 371 U.S. 208, 83 S.Ct. 279, 9 L.Ed.2d 255; New York v. New York, N.H. & H.R. Co., 344 U.S. 293, 73 S.Ct. 299, 97 L.Ed. 333; Walker v. Hutchinson City, 352 U.S. 112, 77 S.Ct. 200, 1 L.Ed.2d 178; Mullane v. Central Hanover Bank & Tr. Co., supra. But as to the basic requirement of notice itself there can be no doubt, where, as here, the result of the judicial proceeding was permanently to deprive a legitimate parent of all that parenthood implies. Cf. May v. Anderson, 345 U.S. 528, 533, 73 S.Ct. 840, 843, 97 L.Ed. 1221.

The Texas Court of Civil Appeals implicitly recognized this constitutional rule, but held, in accord with its under-

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standing of the Texas precedents, that whatever constitutional infirmity resulted from the failure to give the petitioner notice had been cured by the hearing subsequently afforded to him upon his motion to set aside the decree. 371 S.W.2d at 412. We cannot agree.

Had the petitioner been given the timely notice which the Constitution requires, the Manzos, as the moving parties, would have had the burden of proving their case as against whatever defenses the petitioner might have interposed. See Jones v. Willson, Tex.Civ.App., 285 S.W.2d 877; Ex parte Payne, Tex.Civ.App., 301 S.W.2d 194. It would have been incumbent upon them to show not only that Salvatore Manzo met all the requisites of an adoptive parent under Texas law, but also to prove why the petitioner's consent to the adoption was not required. Had neither side offered any evidence, those who initiated the adoption proceedings could not have prevailed.

Instead, the petitioner was faced on his first appearance in the courtroom with the task of overcoming an adverse decree entered by one judge, based upon a finding of nonsupport made by another judge. As the record shows, there was placed upon the petitioner the burden of affirmatively showing that he had contributed to the support of his daughter to the limit of his financial ability over the period involved. The burdens thus placed upon the petitioner were real, not purely theoretical. For 'it is plain that where the burden of proof lies may be decisive of the outcome.' Speiser v. Randall, 357 U.S. 513, 525, 78 S.Ct. 1332, 1342, 2 L.Ed.2d 1460. Yet these burdens would not have been imposed upon him had he been given timely notice in accord with the Constitution.

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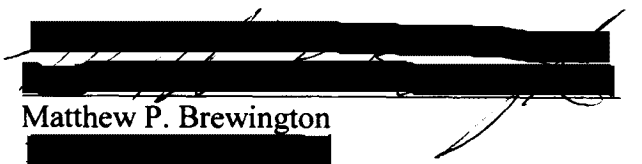
A fundamental requirement of due process is 'the opportunity to be heard.' Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 783. It is an opportunity which must be granted at a meaningful time and in a meaningful manner. The trial court could have fully accorded this right to the petitioner only by granting his motion to set aside the decree and consider the case anew. Only that would have wiped the slate clean. Only that would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place. His motion should have been granted.

The trial court stated that Matthew P. Brewington had a vested interest in the property within the Daniel P. Brewington Revocable Trust Agreement yet the court failed to join Matthew P. Brewington to the proceedings; thus denying Matthew the ability to cross-

examine evidence and witnesses during the proceedings. "The right to cross-examine witnesses under oath is not a rule of procedure or evidence. It is fundamental to due process, and cannot, unless waived, be denied by any trier of facts, any court, or administrative tribunal." Henry v. State, 1925, 196 Ind. 14, 146 N.E. 822; Alford v. U. S., 1931, 282 U.S. 687, 51 S.Ct. 281, 75 L.Ed. 624." As such, Matthew was unable to raise objections, present evidence, call his own experts and witnesses, and join all parties that are indispensible in adjudicating matters concerning Matthew's interest in assets within the Daniel P. Brewington Revocable Trust Agreement. Failure to join Matthew P. Brewington to any legal proceeding to which Matthew P. Brewington has a vested interest in, violates the most rudimentary demands of due process of law.

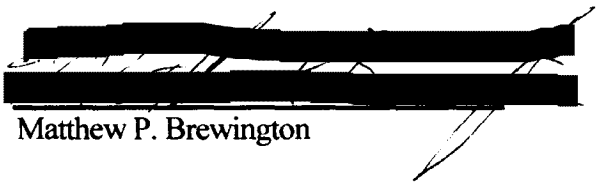
WHEREFORE, Matthew P. Brewington urges the Court to **expeditiously** (*emphasis added*) VACATE the August 18, 2009, Judgment and Final Order on Decree of Dissolution of Marriage of Melissa Brewington vs. Daniel Brewington in order to minimize damages to indispensible parties who were not appropriately joined in the above action, and for all other relief proper in the premises.

Respectfully Submitted,



Matthew P. Brewington
[redacted]
Louisville, KY [redacted]
[redacted] Phone
[redacted].com

I, Matthew P. Brewington, affirm, to the best of my recollection, under penalties of perjury that the foregoing representations are true.



Matthew P. Brewington

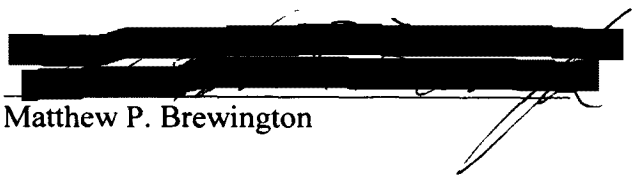
CERTIFICATE OF SERVICE

I, Matthew P. Brewington, certify that on the 16th day of February, 2011, a true and exact copy of the foregoing was hand delivered and/or served by ordinary mail, postage prepaid on:

Angela Loechel, Attorney for Petitioner
310 West High Street
Lawrenceburg, IN 47025

Daniel Brewington
[redacted]

Judge Ted Todd
Jefferson Circuit Court
300 East Main Street
Madison, IN 47250-3537



Matthew P. Brewington

S. E. INDIANA TITLE, INC.

1000 S.R. 46E.
P.O. BOX 95
BATESVILLE, INDIANA 47006

TELEPHONE
(812) 934-3388 or 934-6316
FAX (812) 934-4324

September 15, 2009

Friendship State Bank
P.O. Box 745
Versailles, IN 47042

In Re: Preliminary Title Check: The Daniel P. Brewington Revocable Trust, Pursuant to Revocable Trust Agreement dated April 21, 1998

Ladies/Gentlemen:

A preliminary title search of the records of Ripley County, Indiana, up to September 10, 2009 at 9:00 a.m. has been accomplished on the realty in question, described as follows:

TRACT I: Part of the Northwest Quarter of Section 32, Township 8 North, Range 12 East, more fully described as follows: Beginning at a stone at the Southwest corner of the Northwest Quarter of said Section 32, thence running along the Section line North 00° 10' West 1341.00 feet to the West 1/4 corner of the Northwest Quarter, thence South 87° 30' East 227.00 feet to an iron pin, thence North 27° 30' East 591.25 feet to a road nail in the centerline of County Road 200 North, thence along said centerline South 74° 00' East 709.95 feet to the centerline of Delaware Road, thence along said centerline South 19° 00' West 1118.70 feet to a road nail, thence South 07° 00' West 172.70 feet to a road nail, thence South 01° 00' West 442.53 feet to an iron pin, thence North 85° 24' West 527.66 feet to an iron pin, thence South 40.00 feet to an iron pin, thence North 89° 45' West 259.00 feet to the point of beginning, and containing 34.61 acres, more or less, but subject to all legal highways and easements of record.

TRACT II: Part of the Southwest Quarter of Section 22, Township 8 North, Range 12 East, and beginning at the Southwest corner of the above named Section, Town and Range; thence North on West line of said Section 18.38 chains to a stone from which a hickory 6" in diameter bears North 88° 30' East 7-1/2 links; thence East 16.30 chains to a stone; thence South 18.70 chains to an iron pin on South line of said Section; thence West 16.48 chains to the place of beginning, containing Thirty and Thirty-eight Hundredths (30.38) acres, more or less.

TRACT III: A part of the East Half of the Southeast Quarter of Section 21, Township 8 North, Range 12 East, beginning at the Southwest corner of said Half Quarter; thence North on Half Quarter line 100 rods to Walter Robinson's land; thence East with the South line of said Robinson's land 80.85 rods to the

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East line of said Section; thence South with said Section line 100 rods to the Southeast corner of said Section; thence West with the Section line 80.85 rods to the place of beginning, containing 50.45 acres, more or less. [redacted]: Beginning on the West line of said Half Quarter Section, North 00° 23' 12" East 16.50 feet from the Southwest corner of said Half Quarter Section, which point of beginning is on the North boundary of County Road 300 North; thence North 00° 23' 12" East 290.01 feet along the West line of said Half-Quarter Section, thence South 45° 33' 51" East 27.54 feet; thence South 25° 08' 13" East 300.77 feet to the North boundary of County Road 300 North; thence North 89° 24' 00" West 149.39 feet along said North boundary to the point of beginning and containing Five Hundred Thirty Thousandths (.530) of an acre, more or less. [redacted]: Commencing at the Southwest corner of said Half Quarter Section; thence North 00° 23' 12" East 16.50 feet along the West line of said Half Quarter Section to the North boundary of County Road 300 North; thence South 89° 24' 00" East 164.55 feet along said North boundary to the point of beginning of this description; thence North 85° 19' 20" East 187.34 feet; thence South 84° 48' 41" East 215.41 feet to the North boundary of Milan Road; thence North 89° 24' 00" West 401.26 feet along said North boundary and the North boundary of County Road 300 North to the point of beginning and containing Seventy-nine thousandths (0.079) acre, more or less. [redacted]: A part of the East Half of the Southeast Quarter of Section 21, Township 8 North, Range 12 East, located in Johnson Township, Ripley County, Indiana, described as follows: Commencing at the Southeast corner of Section 21, Township 8 North, Range 12 East, thence South 90° 00' 00" West, 794.90 feet to a steel nail along the center line of County Road 300 North; thence North 01° 24' 00" East, 15.93 feet to a concrete R/W marker; thence North 85° 07' 04" West, 151.86 feet to a T-bar and the actual point of beginning; thence North 85° 07' 04" West, 63.72 feet to a R/W marker; thence South 84° 41' 50" West, 201.20 feet to a R/W marker; thence North 25° 45' 13" West, 35.08 feet to a T-bar; thence North 00° 46' 39" East 261.25 feet to a T-bar; thence North 52° 15' 43" East, 225.15 feet to a T-bar; thence North 78° 42' 51" East, 128.07 feet to a T-bar; thence South 84° 09' 59" East, 86.82 feet to a T-bar; thence North 56° 04' 09" East, 46.31 feet to a T-bar; thence South 68° 03' 35" East, 173.62 feet to a T-bar; thence South 44° 54' 32" West, 417.91 feet to a T-bar; thence South 10° 51' 27" West, 100.50 feet to a T-bar to place of beginning. Containing 3.8390 acres of land. Containing in this description, 46.002 acres, more or less. Subject to any utility easements or right-of-ways that may be over or thru the premises. ALSO: Part of the Southwest Quarter of Section 22, Township 8 North, Range 12 East, and beginning at the Southwest corner of the above named Section, Town and Range; thence North

on west line of said section, 18.38 chains to a stone from which a hickory 6" in diameter bears North 88° 30' East, 7½ links, thence east 16.30 chains to a stone; thence South 18.70 chains to an iron pin on south line of said section; thence West 16.48 chains to the place of beginning.

and the following was found:

1. Said real estate is titled in the names of The Daniel P. Brewington Revocable Trust, pursuant to Revocable Trust Agreement dated April 21, 1998. Deed Record 211 at page 661 of the records of Ripley County.

2. Real estate taxes for 2008 and thereafter on **TRACT I**. Each installment of 2008 taxes payable in 2009 as shown by Parcel No. 012-100077-00 in Johnson Township is $173.70. The Spring installment was paid in full. No delinquent taxes are shown. LAND VALUATION: $25200; NO EXEMPTIONS. (Property I.D. #69-09-32-000-007.000-013).

3. Real estate taxes for 2008 and thereafter on **TRACT II**. Each installment of 2008 taxes payable in 2009 as shown by Parcel No. 008-100101-00 in Franklin Township is $809.18. The Spring installment was paid in full. No delinquent taxes are shown. LAND VALUATION: $70600; IMPROVEMENT VALUATION: $47400; NO EXEMPTIONS. (Property I.D. #69-09-22-000-030.000-009).

4. Real estate taxes for 2008 and thereafter on **TRACT III**. Each installment of 2008 taxes payable in 2009 as shown by Parcel No. 012-100096-01 in Johnson Township is $259.86. The Spring installment was paid in full. No delinquent taxes are shown. LAND VALUATION: $37700; NO EXEMPTIONS. (Property I.D. #69-09-21-000-016.000-013).

5. Real estate mortgage executed by Robert Brewington, Trustee of The Revocable Trust Agreement of Daniel P. Brewington dated April 20, 1998 in favor of Friendship State Bank in the amount of $102,370.12 July 6, 2001 and recorded July 10, 2001 in Instrument #2001-4090 of the records of Ripley County. w/ pay payoff

6. Real estate mortgage executed by Robert Brewington, Trustee of The Revocable Trust Agreement of Daniel P. Brewington dated April 20, 1998 in favor of Friendship State Bank in the amount of $35,000.00 July 6, 2001 and recorded July 10, 2001 in Instrument #2001-4091 of the records of Ripley County.

7. Right-of-way easement executed by Daniel P. Brewington Revocable Trust in favor of Elrod Water Company d/b/a Hoosier Hills dated September 24, 2001 and recorded October 4, 2001 in Instrument #2001-6212 of the records of Ripley County.

8. Right-of-way easement executed by Daniel P. Brewington Revocable Trust in favor of Elrod Water Company, Inc. d/b/a Hoosier Hills Regional Water District dated and recorded March 13, 2003 in Instrument #2003-2028 of the records of Ripley County.

9. UCC fixture filing executed by Robert Brewington, Jr. and Jeanette Brewington in favor of USDA - Farm Service Agency filed September 13, 2000 in Instrument #2000-0712 of the records of Ripley County. (Continuation filed by Commodity Credit Corporation in Instrument #2005-0022 of the records of Ripley County).

10. Judgment and final order on decree of dissolution of marriage filed by Melissa Brewington vs. Daniel Brewington on August 18, 2009 under Cause No. 69C01-0701-DR-007 of the records of Ripley County.

No other judgments or liens or easements against the same were found of record.

Respectfully submitted,

Attorney for S.E. INDIANA TITLE, INC.

DCA/tmw

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