

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT  
IN AND FOR HIGHLANDS COUNTY, FLORIDA

LINDA S. SLICKER,

Plaintiff,

v.

CASE NO.: 09-1850-GCS

FRANK R. BRANCA JR. and BONNIE SUE  
BRANCA; et. al.

Defendants.

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**HEARTLAND'S ANSWER TO AMENDED COUNTERCLAIM**

Counterclaim Defendant, Heartland National Bank, a National Banking Association, answers the Amended Counterclaim filed by Defendants, FRANK R. BRANCA JR. and BONNIE SUE BRANCA, STEVE GRICE and MARY JOE GRICE, KENNETH GRICE and CLARA GRICE, STEVE COOPER a/k/a STEVEN FRANK COOPER, LISA MICHELLE COOPER, and WALTER F. SHERERTZ and states:

1. Paragraphs 1 to 39 are admitted.
2. As to paragraph 40, without knowledge and therefore denied.
3. Paragraphs 41 through 47 are admitted.
4. As to paragraphs 48 through 54, without knowledge and therefore denied.
5. Paragraphs 55 through 59 are admitted.
6. As to paragraphs 60 through 64, without knowledge and therefore denied.
7. Paragraphs 65 through 70 are admitted.
8. As to paragraphs 71 and 72, without knowledge and therefore denied.
9. As to paragraphs 73 through 100, Heartland is not a party to these counts

and therefore does not respond to these allegations.



**HEARTLAND's CROSSCLAIM, COUNTERCLAIM  
AND THIRD PARTY CLAIMS**

Counterclaim Defendant, HEARTLAND NATIONAL BANK, a National Banking Association, ("Heartland") sues MOSES ANDERSON SR. and MOSES ANDERSON JR.; LINDA S. SLICKER; BANK ONE, N.A.; HOME LOAN CENTER, INC. d/b/a LENDING TREE LOANS; KENNETH GRICE and CLARA GRICE; STEVE GRICE and MARY JOE GRICE; PNC MORTGAGE a division of PNC BANK; FRANK R. BRANCA JR. and BONNIE SUE BRANCA; WALTER F. SHERERTZ; EDWIN C. PIGMAN and DARLENE R. PIGMAN; TAYLOR, BEAN & WHITAKER MORTGAGE CORPORATION; WAUCHULA STATE BANK; FRED W. HAAS and JUDITH A. HAAS; BSM FINANCIAL, L.P.; SOUTH FLORIDA SOD, INC.; KAREN S. RUDOLPH; FIRST UNION NATIONAL BANK; JUSTIN C. JACKSON; HIGHLANDS INDEPENDENT BANK; BRENDA BOGNER; JIMMIE ALLEN WHITMORE and SHARON LEE WHITMORE; ELAINE LA CROIX; R. ELIZABETH ALLGOOD; SUE-ELLA PERRY; JAMES D. BRIMLOW and LEE ANN BRIMLOW; HOWARD CHAD PRITCHETT and ROGER D. GURGANUS; and DAVID JOSEPH MARLEY and EVELYN RENEE MARLEY; and states:

**COMMON ALLEGATIONS**

1. This action involves property located in Highlands County, Florida and venue and jurisdiction are appropriate in this Court pursuant to F.S. 47.011 and F.S. 26.012.

2. Heartland obtained title to the following described parcel by Certificate of Title recorded at O.R. Book 2268, Page 1376 of the Public Records of Highlands County, Florida.

The West  $\frac{1}{2}$  of Lot 12 also described as: The West  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$

and

The West  $\frac{1}{2}$  of Lot 15, also described as: the west  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of the southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$ ,

All lying in Section 5, township 33 South, Range 29 East, Highlands County, Florida;

A copy of the Certificate of Title is attached hereto as **Exhibit "A"** and this parcel shall hereinafter be referred to as ("Parcel 1")

3. Defendants, MOSES ANDERSON SR., and MOSES ANDERSON JR., ("Anderson"), obtained title to the following described parcel by the Warranty Deed recorded at O.R. Book 2106, Page 37 of the Public Records of Highlands County, Florida;

E  $\frac{1}{2}$  of Lot 12, described as the E  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$ , Section 5; and the E  $\frac{1}{2}$  of Lot 15, described as the E  $\frac{1}{2}$  of the SW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$ , Section 5; all in Township 33 South, Range 29 East, Highlands County, Florida.

A copy of the Warranty Deed is attached hereto as **Exhibit "B"** and this parcel shall hereinafter be referred to as ("Parcel 2").

4. Defendant, LINDA S. SLICKER, ("Slicker"), obtained title to the following described parcel by the Warranty Deed recorded at O.R. Book 1486, page 543 of the Public Records of Highlands County, Florida;

Lot Sixteen (16), T & K UNRECORDED, more particularly described as the Northeast Quarter of the Southeast Quarter of the Northeast Quarter of Section 5, Township 33 South, Range 29 East, Highlands County, Florida.

A copy of the Warranty Deed is attached hereto as **Exhibit "C"** and this parcel shall hereinafter be referred to as ("Parcel 3").

5. Defendant, BANK ONE, N.A., ("Bank One"), is the record owner of a Mortgage against Parcel 3 which was given by Slicker on January 7, 2003 and which is recorded at O.R. Book 1650, Page 1079 of the Public Records of Highlands County, Florida. A copy of this mortgage is attached hereto as **Exhibit "D"**.

6. Defendant, HOME LOAN CENTER INC. d/b/a LENDING TREE LOANS ("Home Loan"), is the record owner of a Mortgage against Parcel 3 which was given by Slicker on May 28, 2005 and which is recorded at O.R. Book 1861, Page 1138 of the Public Records of Highlands County, Florida. A copy of this mortgage is attached hereto as **Exhibit "E"**.

7. Defendants, KENNETH GRICE and CLARA GRICE, ("K.Grice"), obtained title to the following described parcel by Warranty Deed recorded at O.R. Book 2165, Page 996 of the Public Records of Highlands County, Florida;

A portion of Tract Seven, lying in Section 5, Township 33 South, Range 29 East, Highlands County, Florida, being more particularly described as follows; Commence at the Northeast Corner of the said Section; thence Run South 2°13'00" East and along the East line of said Section a distance of 1280.91 feet to the Southeast corner of the Northeast ¼ of the Northeast ¼; Thence South 89°24'15" West and along the South line of the Northeast ¼ of the Northeast ¼ of Section 5 a distance of 663.87 feet of the Southeast corner of Tract 7; Thence continue South 89°24'15" West a distance of 414.87 feet for point of Beginning; Thence continue South 89°24'15" West a distance of 249.00 feet to the Southwest Corner of the Northeast ¼ of the Northeast ¼ of said Section; Thence North 02°03'58" West a distance of 175.00 feet; Thence North 89°24'15" East a Distance of 249.00 feet; Thence South 02°03'58" East a

distance of 175.00 feet to the Point of Beginning,  
containing 1.00 acre.

A copy of the Warranty Deed is attached hereto as **Exhibit "F"** and this parcel shall hereinafter be referred to as ("Parcel 4").

8. Defendants, STEVE GRICE and MARY JO GRICE ("S. Grice") obtained title to the following described parcel by Warranty Deed recorded at O.R. Book 1486, Page 1904 of the Public Records of Highlands County, Florida;

A portion of Section 5, Township 33 South, Range 29 East, Highlands County, Florida, being more particularly described as follows: COMMERCE at the Northeast Corner of said Section 5; thence South 2 degrees 13 minutes 00 seconds East along the East Line of said Section 5 a distance of 1280.91 feet to the Southeast Corner of the Northeast Quarter of the Northeast Quarter of said Section 5; thence South 89 degrees 24 minutes 15 Seconds West along the South Line of the Northeast Quarter of the Northeast Quarter of said Section 5 a distance of 663.87 feet for the POINT OF BEGINNING; thence continue South 89 degrees 24 minutes 15 seconds West a distance of 663.87 to the Southwest Corner of the Northeast Quarter of the Northeast Quarter of said Section 5; thence North 2 degrees 03 minutes 58 seconds West along the West Line of the Northeast Quarter of the Northeast Quarter of said Section 5 a distance of 656.80 feet; thence North 89 degrees 24 minutes 15 seconds East a distance of 663.00 feet; thence South 2 degrees 08 minutes 29 seconds East a distance of 656.82 feet to the POINT OF BEGINNING. Also known as TRACT 7 of BATTIS ACRES UNRECORDED.

A Portion of Section 5, Township 33 South, Range 29 East, Highlands County, Florida, being more particularly described as Follows: COMMENCE at the Northeast Corner of said Section 5; thence South 2 degrees 13 minutes 00 seconds Ease along the East Line of said Section 5 a distance of 624.06 feet; thence South 89 degrees 24 minutes 15 seconds West a distance of 663.00 feet for the POINT OF

BEGINNING; thence continue South 89 degrees 24 minutes 15 seconds West a distance of 663.00 feet to a point on the West Line of the Northeast Quarter of the Northeast Quarter of said Section 5; thence North 2 degrees 03 minutes 58 seconds West along the West line of the Northeast Quarter of the Northeast Quarter of said Section 5 a distance of 635.55 feet to the Northwest Corner of the Northeast Quarter of the Northeast Quarter of said Section 5; thence North 89 degrees 54 minutes 10 seconds East along the North Line of said Section 5 a distance of 656.28 feet; thence South 2 degrees 41 minutes 33 seconds East a distance of 630.05 feet to the POINT OF BEGINNING. Also known as TRACT 8 of BATTIS ACRES UNRECORDED.

A copy of the Warranty Deed is attached hereto as **Exhibit "G"** and this parcel shall hereinafter be referred to as ("Parcel 5")

9. Defendant, PNC MORTGAGE, a division of PNC BANK ("PNC") is the record owner of a Mortgage against Parcel 5 which was given by S. Grice on January 20, 2010 and which is recorded at O.R. Book 2224, Page 561 of the Public Records of Highlands County, Florida. A copy of this mortgage is attached hereto as **Exhibit "H"**.

10. Defendants, FRANK R. BRANCA JR., and BONNIE SUE BRANCA, ("Branca"), obtained title to the following described parcel by Warranty Deed recorded at O.R. Book 1658, Page 531 of the Public Records of Highlands County, Florida;

A portion of Section 5, Township 33 South, Range 29 East, Highlands County, Florida, being more particularly described as follows: COMMENCE at the Northeast corner of said Section 5; thence South 2 degrees 13 minutes 00 seconds East along the East Line of said Section 5 a distance of 624.06 feet for the point of Beginning; thence continue South 2 degrees 13 minutes 00 Seconds East a distance of 656.85 feet to the Southeast corner of the Northeast Quarter of the Northeast Quarter of said Section 5; thence south 89 degrees 24 minutes 15 seconds West

along the South line of the Northeast Quarter of the Northeast Quarter of said Section 5 a distance of 663.87 feet; thence North 2 degrees 08 minutes 29 seconds West a distance of 656.82 feet; thence North 89 degrees 24 minutes 15 seconds East a distance of 663.00 feet to the Point of Beginning.

Also known as Tract 6 of BATTS ACRES  
UNRECORDED SUBDIVISION

A copy of the Warranty Deed is attached hereto as **Exhibit "I"** and this parcel shall hereinafter be referred to as ("Parcel 6").

11. Defendant, WALTER F. SHERERTZ, ("Sherertz"), obtained title to the following described parcel by Warranty Deed recorded at O.R. Book 1119, Page 1300 of the Public Records of Highlands County, Florida;

A portion of Section 4, Township 33 South, Range 29 East, Highlands County, Florida, being more particularly described as follows: Commence at the Northwest Corner of said Section 4; thence South 2°13'00" East along the West line of said Section 4 a distance of 640 feet to the Northwest Corner of the South ½ of the North ½ of the Northwest ¼ of said Section 4 and for the Point of Beginning; thence South 89°51'13" East along the North Line of the South ½ of the North ½ of the Northwest ¼ of said Section 4 a distance of 319.86 feet to a point in the center of Bonnett Creek; thence South 34°48'35" West along the center of said creek a distance of 132.52 feet; thence South 51°12'44" West still along said creek a distance of 122.48 feet; thence South 25°23'25" East still along said creek a distance of 59.91 feet; thence South 24°52'24" West still along said creek a distance of 141.33 feet; thence South 14°35'50" East still along said creek a distance of 173.45 feet; thence south 23°49'02" West still along said creek a distance of 113.36 feet to a point on the South line of the South ½ of the North ½ of the Northwest ¼ of said Section 4; thence North 89°49'26" West along the South line of the South ½ of the North ½ of the Northwest ¼ of said Section 4 a distance of 88.15 feet to the Southwest Corner of the South ½ of the North ½ of the Northwest ¼ of said

Section 4; thence North 2°13'00" West along the West line of said Section 4 a distance of 640.46 feet to the Point of Beginning.

A copy of the Warranty Deed is attached hereto as **Exhibit "J"** and this parcel shall hereinafter be referred to as ("Parcel 7").

12. Defendants, EDWIN C. PIGMAN and DARLENE R. PIGMAN, ("Pigman"), obtained title to the following described parcel by Warranty Deed recorded at O.R. Book 1791, Page 1471 of the Public Records of Highlands County, Florida;

The Northwest ¼ of the Southwest ¼ of the Northwest ¼ of Section 4, Township 33 South, Range 29 East, Highlands County, Florida.

A copy of the Warranty Deed is attached hereto as **Exhibit "K"** and this parcel shall hereinafter be referred to as ("Parcel 8").

13. Defendant, TAYLOR, BEAN & WHITAKER MORTGAGE CORPORATION, ("Taylor, Bean") is the record owner of a Mortgage against Parcel 8 which was given by Pigman on September 21, 2004 and which is recorded at O.R. Book 1791, Page 1473 of the Public Records of Highlands County, Florida. A copy of this mortgage is attached hereto as **Exhibit "L"**.

14. Defendant, WAUCHULA STATE BANK, ("Wauchula"), is the record owner of a Mortgage against Parcel 8 which was given by Pigman on November 21, 2007 and which is recorded at O.R. Book 2112, Page 1419 of the Public Records of Highlands County, Florida. A copy of this Mortgage is attached hereto as **Exhibit "M"**.

15. Defendants, FRED W. HAAS and JUDITH A. HAAS, ("Haas"), obtained title to the following described parcel by Warranty Deed recorded at O.R. Book 1815, Page 223 of the Public Records of Highlands County, Florida;



The S.E.1/4 of the S.E. ¼ of the N.E. ¼ of Section 5, Township 33 South, Range 29 East, Public Records of Highlands Count, Florida. Subject to the North 25 feet and East 25 feet for ingress and egress.

A copy of the Warranty Deed is attached hereto as **Exhibit “N”** and this parcel shall hereinafter be referred to as (Parcel 9”).

16. Defendant, BSM FINANCIAL, L.P., (“BSM”), is the record owner of a Mortgage against Parcel 9 which was given by Haas on December 10, 2004 and which is recorded at O.R. Book 1815, Page 224 of the Public Records of Highlands County, Florida. A copy of this mortgage is attached hereto as **Exhibit “O”**.

17. Defendants, SOUTH FLORIDA SOD, INC., (“S.F. Sod”), obtained title to the following described parcels by the Warranty Deed recorded at O.R. Book 1661, Page 1274 of the Public Records of Highlands County, Florida;

**Parcel 1:**

The Southwest Quarter of the Northwest Quarter of Section 4, Township 33 South, Range 29 East, Highlands County, Florida. Also known as Lot 8, of T & K ACRES UNRECORDED.

AND The Northwest Quarter of the Northwest quarter of the Southwest Quarter of Section 4, Township 33 South, Range 29 East, Highlands County, Florida. Also known as Lot 11, of T & K ACRES UNRECORDED.

AND The Southwest Quarter of the Southwest Quarter of the Northwest Quarter of Section 4, Township 33 South, Range 29 East, Highlands County, Florida. Also known as Lot 14 of T & K ACRES UNRECORDED.

**Parcel 2:**

The SE ¼ of the NW ¼ and the East ½ of the SW ¼ of the NW ¼ and the SE ¼ of the SW ¼ of the NE ¼ and the West ½ of the SE ¼ of the SW ¼ of the NE ¼ and the East ½ of the NW ¼ of the SW ¼ and the NE ¼ of the SW ¼ and the North ½ of the SE ¼ of the SW ¼ and the SE ¼ of the SE ¼ of the SW ¼ and

the East  $\frac{1}{2}$  of the SW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$ , of Section 4, Township 33 South, Range 29 East, Highlands County, Florida, LESS AND EXCEPT the following:

The North 198 ft. of the South 298 ft. of the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 4, Township 33 south, Range 29 East, LESS AND EXCEPT the West 70 ft. and the East 1030 ft. thereof, as conveyed by deed recorded in O.R. Book 510, Page 885, Public Records of Highlands County, Florida, LESS existing road right-of-way.

**Parcel 3:**

The West Half of the East Half of the Northeast Quarter of the Northwest Quarter of Section 33, Township 33 South, Range 29 East, Highlands County, Florida .

**Parcel 4:**

The North 198 feet of the South 298 feet, LESS AND EXCEPT the West 70 feet and the East 1030 Feet thereof, of the Northeast Quarter of the Southwest Quarter of Section 4, Township 33 South, Range 29 East, Highlands County, Florida.

A copy of the Warranty Deed is attached hereto as **Exhibit "P"** and these parcels shall hereinafter be referred to as ("Parcels 10, 13 and 15").

18. Wauchula is the record owner of a Mortgage against Parcels 10, 13 and 15 which was given by S.F. Sod on January 25, 2005 and which is recorded at O.R. Book 1821, Page 1508 of the Public Records of Highlands County, Florida. A copy of this Mortgage is attached hereto as **Exhibit "Q"**.

19. Defendant, KAREN S. RUDOLPH, ("Rudolph"), obtained title to the following described parcel by the Warranty Deed recorded at O.R. Book 1823, Page 702 of the Public Records of Highlands County, Florida;

The NE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of SE  $\frac{1}{4}$  of Section 5, Township 33 South, Range 29 East, Highlands County, Florida.

A copy of the Warranty Deed is attached hereto as **Exhibit "R"** and this parcel shall hereinafter be referred to as ("Parcels 11 and 12").

20. Defendant, FIRST UNION NATIONAL BANK ("First Union") is the record owner of a Mortgage against Parcels 11 and 12 which was given by Rudolph on March 23, 1998 and which is recorded at O.R. Book 1405, Page 841 of the Public Records of Highlands County, Florida. A copy of this Mortgage is attached hereto as **Exhibit "S"**.

21. Defendant, JUSTIN C. JACKSON, ("Jackson"), obtained title to the following described parcel by Warranty Deed recorded at O.R. Book 1481, Page 4 of the Public Records of Highlands County, Florida.

The Southeast Quarter of the Northeast Quarter of the Southeast Quarter of Section 5, Township 33 South, Range 29 East, Highlands County, Florida. Also, known as Lot 7 of T & K UNRECORDED.

A copy of the Warranty Deed is attached hereto as **Exhibit "T"** and this parcel shall hereinafter be referred to as ("Parcel 14").

22. Defendant, HIGHLANDS INDEPENDENT BANK, ("Highlands Independent"), is the record owner of a Mortgage against Parcel 14 which was given by Jackson on February 8, 2005 and which is recorded at O.R. Book 1827, Page 1425 of the Public Records of Highlands County, Florida. A copy of this Mortgage is attached hereto as **Exhibit "U"**.

23. Defendant, BRENDA BOGNER, ("Bogner"), obtained title to the following described parcel by Warranty Deed recorded at O.R. Book 1594, Page 1782 of the Public Records of Highlands County, Florida;

The Easterly  $\frac{1}{2}$  of the North  $\frac{1}{2}$  of the North  $\frac{1}{2}$  of SE  $\frac{1}{4}$  of SE  $\frac{1}{4}$  of Section 5, Township 33 South, Range 29 East, Highlands County, Florida together with any and all ingress and egress easements.

A copy of the Warranty Deed is attached hereto as **Exhibit "V"** and this parcel shall hereinafter be referred to as ("Parcel 16").

24. Bogner obtained title to the following described parcel by Quit Claim Deed recorded at O.R. Book 1478, Page 1717 of the Public Records of Highlands County, Florida;

The Southeast Quarter of the Northwest Quarter of the Southeast Quarter of the Southeast Quarter and the Northeast Quarter of the Southwest Quarter of the Southeast Quarter of the Southeast Quarter, Section 5, Township 33 South, Range 29 East, Highlands County, Florida. Also know as the East Half of Lot 3 of T & K ACRES UNRECORDED.

AND:

The South half of the Northeast Quarter of the Southeast Quarter of the Southeast Quarter and the North Half of the Southeast Quarter of the Southeast Quarter of the Southeast Quarter, Section 5, Township 33, South, Range 29 East, Highlands County, Florida. Also known as Lot 4 of T & K ACRES UNRECORDED.

A copy of the Quit Claim Deed is attached hereto as **Exhibit "W"** and this parcel shall hereinafter be referred to as ("Parcels 17 and 23").

25. Defendants, JIMMIE ALLEN WHITMORE and SHARON LEE WHITMORE, ("Whitmore"), obtained title to the following described parcel by Warranty Deed recorded at O.R. Book 1901, Page 1781 of the Public Records of Highlands County, Florida;

The South Half of the Southeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$ , Section 5, Township 33 South, Range 29 East, Highlands County, Florida. Being part of Lot 2, T & K ACRES UNRECORDED.

A copy of the Warranty Deed is attached hereto as **Exhibit "X"** and this parcel shall hereinafter be referred to as ("Parcel 18").

26. Defendant, ELAINE LA CROIX, ("La Croix"), obtained title to the following described parcel by Quit Claim Deed recorded at O.R. Book 1357, Page 974 of the Public Records of Highlands County, Florida;

The South Half of Lot Two (2), T. & K. ACRES UNRECORDED being described as: The North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter of Section 8, Township 33 south, Range 29 East, Highlands County, Florida.

A copy of the Warranty Deed is attached hereto as **Exhibit "Y"** and this parcel shall hereinafter be referred to as ("Parcel 19").

27. Highlands Independent is the record owner of a Mortgage against Parcel 19 which was given by David and Elaine La Croix on June 1, 2005 and which is recorded at O.R. Book 1864, Page 1241 of the Public Records of Highlands County, Florida. A copy of this Mortgage is attached hereto as **Exhibit "Z"**.

28. Whitmore obtained title to the following described parcel by Warranty Deed recorded at O.R. Book 1346, Page 1099 of the Public Records of Highlands County, Florida;

A Parcel of land lying in the Northeast Quarter of Section 8, Township 33 South, Range 29 East, Highlands County, Florida more particularly described as follows: Commence at the Northeast Corner of Section 8, Township 33 South, Range 29 East, Highlands County, Florida; thence South )) degrees 26 minutes 15 seconds West along the

section line a distance of 331.21 feet to the Point of Beginning; thence continue with aforesaid line a distance of 715.04 feet to a point on the center line of an existing grade; thence south 58 degrees 26 minutes 15 seconds West along said center line a distance of 309.12 feet to a point; thence North 30 degrees 04 minutes 09 seconds West a distance of 633.94 feet to a point; thence North 00 degrees 26 minutes 15 seconds East a distance of 321.72 feet to a point; thence North 89 degrees 21 minutes 50 seconds East a distance of 584.06 feet to the Point of Beginning.

AND:

A parcel of land lying in the Northeast Quarter of Section 8, Township 33 South, Range 29 East, Highlands County, Florida, more particularly described as follows: Commence at the Northeast corner of Section 8, Township 33 south, Range 29 East Highlands County, Florida, thence South 00 degrees 26 minutes 15 seconds West along the section line a distance of 1,046.25 feet to a point on the center line of an existing grade, thence South 58 degrees 26 minutes 15 seconds West along said center line a distance of 309.12 feet to the Point of Beginning; thence North 30 degrees 04 minutes 09 seconds West a distance of 633.94 feet to a point; thence North 00 degrees 26 minutes 15 seconds East a distance of 321.72 feet to a point; thence south 89 degrees 21 minutes 50 seconds West along the North boundary of the South Quarter a distance of 89/1 feet to a point; thence south 00 degrees 26 minutes 15 seconds West a distance of 1,122.99 feet to the center line of an existing grade; thence North 58 degrees 26 minutes 15 seconds East along the said center line a distance of 484.52 feet to the Point of Beginning.

A copy of the Warranty Deed is attached hereto as **Exhibit "AA"** and this parcel shall hereinafter be referred to as ("Parcel 20").

29. Defendant, R. ELIZABETH ALLGOOD, ("Allgood"), obtained title to the following described parcel by Warranty Deed recorded at O.R. Book 2293, Page 763 of the Public Records of Highlands County, Florida;

**TRACT 1:**

A portion of the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 4, Township 33 South, Range 29 East, Highlands County, Florida, being more particularly described as follows: Beginning at the Northeast corner of said Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 4; thence South  $02^{\circ}42'19''$  East and along the East line of said Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 4, for a distance of 358.68 feet to a point; thence North  $89^{\circ}43'12''$  West for a distance of 1261.15 feet to a point; thence North  $00^{\circ}01'26''$  East for a distance of 358.20 feet to a point on the North line of said Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of section 4, said point lying 70.00 feet East of the Northwest corner of said southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 4; thence South  $89^{\circ}43'12''$  East and along the North line of said Southwest  $\frac{1}{4}$  of the southwest  $\frac{1}{4}$  of Section 4, for a distance of 1244.07 feet to the Point of Beginning.

A copy of the Warranty Deed is attached hereto as **Exhibit "BB"** and this parcel shall hereinafter be referred to as ("Parcel 21A").

30. Defendant, SUE-ELLA PERRY, ("Perry"), is the record owner of a Mortgage against Parcel 21A which was given by Allgood on August 10, 2011 and which is recorded at O.R. Book 2293, Page 765 of the Public Records of Highlands County, Florida. A copy of this Mortgage is attached hereto as **Exhibit "CC"**.

31. Defendants, JAMES D. BRIMLOW and LEIGH ANN BRIMLOW, ("Brimlow"), obtained title to the following described parcel by Warranty Deed recorded at O.R. Book 2299, Page 953 of the Public Records of Highlands County, Florida;

**TRACT 2:**

A portion of the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 4, Township 33 South, Range 29 East, Highlands County, Florida, being more particularly described as follows: Commence at the Northeast corner of said Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 4, thence South  $02^{\circ}42'19''$  East and along the East line of said Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of

Section 4, for a distance of 358.68 feet to the Point of Beginning; thence continue South 02°42'19" East and along the East line of said Southwest ¼ of the Southwest ¼ of Section 4, for a distance of 189.55 feet to appoint; thence North 89°43'12" West for a distance of 451.03 feet to a point; thence South 58°09'29" West for a distance of 964.49 feet to a point; thence North 00°01'26" East for a distance of 702.14 feet to a point; thence South 89°43'12" East for distance of 1261.15 feet to the Point of Beginning.

A copy of the Warranty Deed is attached hereto as **Exhibit "DD"** and this parcel shall hereinafter be referred to as ("Parcel 21B")

32. Defendant, HOWARD CHAD PRITCHETT and ROGER D. GURGANUS, ("Pritchett/Gurganus"), is the record owner of a Mortgage against Parcel 21B which was given by Brimlow on October 3, 2011 and which is recorded at O.R. Book 2299, Page 955 of the Public Records of Highlands County, Florida. A copy of this mortgage is attached hereto as **Exhibit "EE"**.

33. Defendants, Pritchett/Gurganus, obtained title to the following described parcel by Warranty Deed recorded at O.R. Book 2244, Page 120 of the Public Records of Highlands County, Florida;

The SW ¼ of the SW ¼ of Section 4 and all of the NW ¼ of the NW ¼ of Section 9 lying North of Old Bombing Range Road, all in Township 33 South, Range 29 East, less and except the following described tract to-wit: Begin at the NW corner of said Section 9; thence South 00°26'15" West 662.42 feet; thence North 89°22'40" East 13 feet; thence in a Northerly direction to a point on the North line of said Section 9 being 18 feet East of the NW corner of said Section 9; thence in a Northerly direction to a point on the North line of the SW ¼ of the SW ¼ of said Section 4 being 70 feet East of the NW corner of said SW ¼ of the SW ¼ of said Section 4; thence West 70 feet to



said corner; thence south 2°13' East 1330.12 feet to the point of Beginning.

A copy of the Warranty Deed is attached hereto as **Exhibit "FF"**. The property conveyed by this Warranty Deed included the parcel referred to as Tract 6 in the Survey recorded at O.R. Book 2229, page 189 of the Public Records of Highlands County, Florida, a copy of which said survey is attached hereto as **Exhibit "GG"**. Tract 6 abuts Bonnett Creek Road and shall hereinafter be referred to as ("Parcel 22").

34. Defendants, DAVID JOSEPH MARLEY and EVELYN RENEE MARLEY, ("Marley"), obtained title to the following described parcel by Warranty Deed recorded at O.R. Book 1447, Page 470 of the Public Records of Highlands County, Florida;

The Northwest Quarter of the Southwest Quarter of the Southeast Quarter of the Southeast Quarter in Section 5, township 33 South Range 29 East, Highlands County, Florida. Also known as a portion of Lot 3 of T & K ACRES UNRECORDED.

AND:

The Southwest Quarter of the Northwest Quarter of the Southeast Quarter of the Southeast Quarter of Section 5 Township 33 South Range 29 East, Highlands County, Florida. Also known as a Portion of Lot 3.1 of T & K ACRES UNRECORDED.

A copy of the Warranty Deed is attached hereto as **Exhibit "HH"** and this parcel shall hereinafter be referred to as ("Parcel 24").

35. Parcels 20 and 22 abut Old Bombing Range Road at their Southern boundary.

36. Parcel 24 abuts Thomas Road at its Western boundary.

37. Old Bombing Range Road and Thomas Road are public roads.

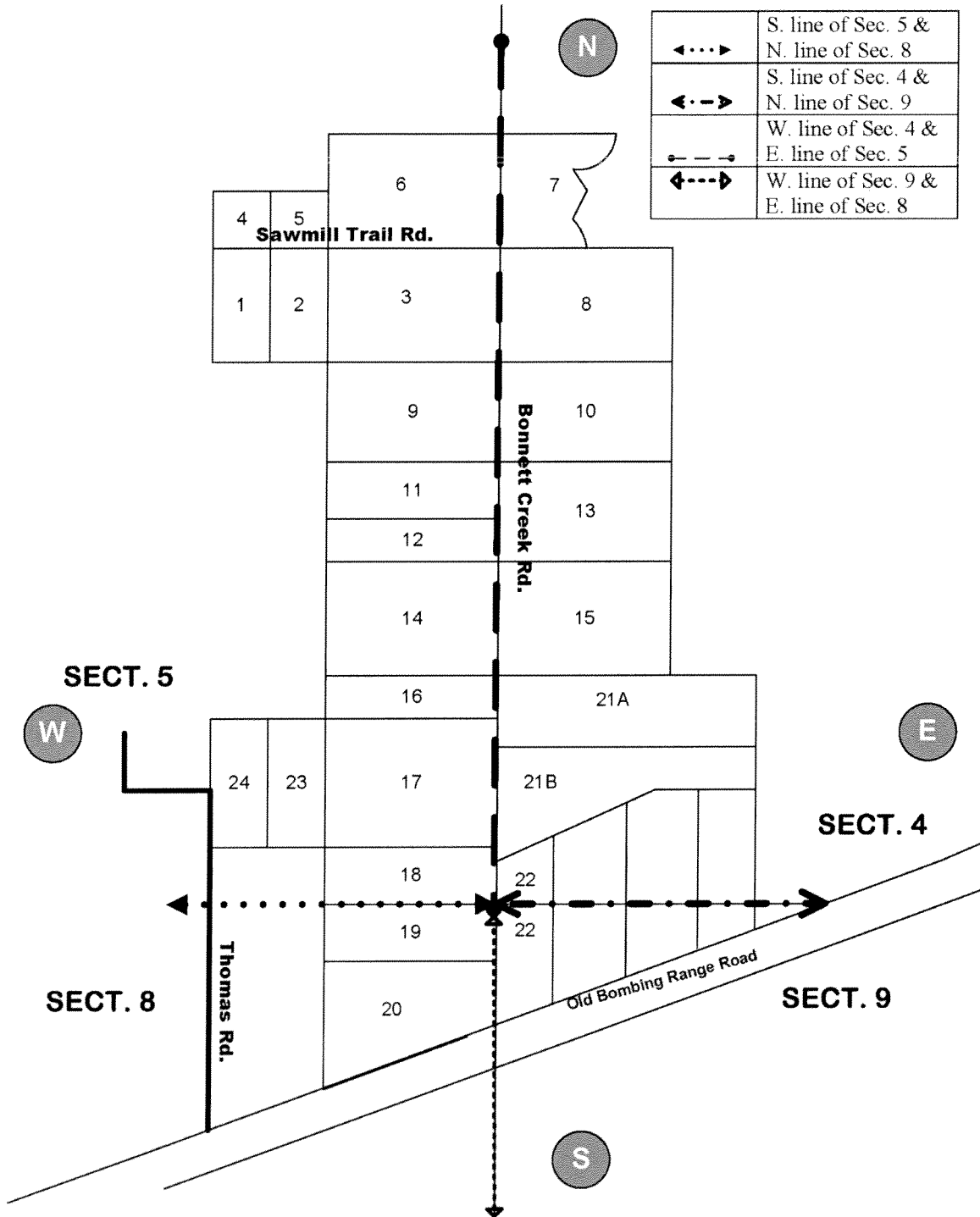
38. The Eastern boundary line of Parcels 3, 6, 9, 11, 12, 14, 16, 17 and 18 is the Eastern boundary line of Section 5, Township 33 South, Range 29 East, Highlands County Florida, and is also the Western boundary line of Parcels 7, 8, 10, 13, 15, 21A, 21B, and a portion of Parcel 22, and is also the Western boundary line of Section 4, Township 33 South, Range 29 East, Highlands County, Florida.

39. The Eastern boundary line of Parcels 19 and 20, is the Eastern boundary line of Section 8, Township 33 South, Range 29 East, Highlands County, Florida, and is also the Western boundary line of a portion of Parcel 22 and also the Western boundary line of Section 9, Township 33 South, Range 29 East, Highlands County, Florida.

40. A private dirt road named Bonnett Creek Road meanders along the common boundary line which is the Eastern boundary line of Parcels 3, 6, 9, 11, 12, 14, 16, 17, 18, 19 and 20 and the Western boundary line of Parcels 7, 8, 10, 13, 15, 21A, 21B and 22.

41. A private dirt road named Sawmill Trail Road meanders along the Northern boundary line of Lots 1, 2 and 3.

42. The following diagram depicts the relative locations of Parcels 1 through 24, the private and public roads nearest to these parcels and the section lines of Sections 4, 5, 8 and 9, Township 33 South, Range 29 East, Highlands County, Florida.



#	Parcel Owner
1	Heartland Nat. Bank
2	Anderson, M.
3	Slicker, L.
4	Grice, K.
5	Grice, S.
6	Branca, F.
7	Sherertz, W.
8	Pigman, E.
9	Haas, F.
10	S.F. Sod
11	Rudolph, K.
12	Rudolph, K.
13	S.F. Sod
14	Jackson, J.
15	S.F. Sod
16	Bogner, B.
17	Bogner, B.
18	Whitmore, S.
19	LaCroix, E.
20	Whitmore, S.
21A	Algood, R.
21B	Brimlow, J.
22	Pritchett, H. & Gurganus, R.
23	Bogner, B.
24	Marley, D. & Marley, E.

**COUNT I – COMMON LAW WAY OF NECESSITY**

(Against Parcels 2, 3, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21A, 21B, 23 and, 24)

43. Heartland realleges paragraphs 1 through 42 as if set forth herein.

44. This is an action to establish and confirm a common law way of necessity pursuant to Florida Statute 704.01(1) against the parcels owned by Anderson, Slicker, Pigman, Haas, S.F. Sod, Rudolph, Jackson, Bogner, Allgood, Brimlow and Marley.

45. On February 10, 1987, Rufus J. Rhymes and Cora Leigh Rhymes conveyed a 171.58 acre parcel of land to Roger D. Gurganus and Susan G. Gurganus by that Certain Warranty Deed which was recorded at O.R. Book 931, Page 65 of the Public Records of Highlands County, Florida. A copy of this deed is attached hereto as **Exhibit “II”**. The 171.58 acre parcel shall hereinafter be referred to (“Rhymes Parcel”).

46. The Rhymes parcel included Parcels 1, 2, 3, 8, 9, 10 11, 12, 13, 14, 15, 16, 17, 18, 19, 23, 24, and portions of 21A and 21B.

47. On February 10, 1987, the only legal access to the Rhymes Parcel was provided by Thomas Road which abutted the Rhymes Parcel at the Western Boundary of Parcel 24.

48. On April 17, 1997, Roger D. Gurganus and Susan G. Gurganus conveyed Parcel 24 to David Marley by that Certain Warranty Deed recorded at O.R. Book 1366, Page 285 of the Public Records of Highlands County, Florida. A copy of this Deed is attached hereto as **Exhibit “JJ”** and shall hereinafter be referred to as (“the Gurganus to Marley deed”).

49. On April 17, 1997, the only legal access to the Rhymes Parcel was provided by Thomas Road which abutted the Rhymes Parcel at the Western Boundary of Parcel 24.

50. Upon the execution and delivery of the Gurganus to Marley deed, Lot 24 retained legal access via Thomas Road but Parcel 1 was landlocked.

51. As a result of the Gurganus to Marley deed, a common law way of necessity arose in favor of Parcel 1.

52. The common law way of necessity which arose when Parcel 1 was landlocked is reasonably necessary for the beneficial use and enjoyment of Parcel 1.

53. At all times since the Gurganus to Marley deed, Parcel 1 has had no access to a public road and has lacked an accessible right of way except for the common law way of necessity over Parcels 2, 3, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21A, 21B, 23 and 24.

54. As a result of the Gurganus to Marley deed, there was no other reasonable and practicable way of egress or ingress to Parcel 1 except over Parcels 24, 23 and 17 to Bonnett Creek Road to Sawmill Trail Road.

55. The common law way of necessity which arose when Gurganus landlocked Parcel 1 is reasonably necessary for the beneficial use and enjoyment of Parcel 1.

56. The nearest reasonable and practicable public road to Parcel 1 is Thomas Road. Parcel 1 would be landlocked and will not have access to Thomas Road without use of the common law way of necessity across Sawmill Trail Road, Bonnett Creek Road and Parcels, 17, 23 and 24.

57. Slicker erected a gate across Bonnett Creek Road and may object to Heartland using Bonnett Creek Road.

58. Heartland is seeking to confirm its rights of ingress and egress so that Parcel 1 can be used for a dwelling.

59. Heartland requires a way of necessity sufficient to accommodate ingress, egress and utility services for Parcel 1.

WHEREFORE, Plaintiff, HEARTLAND NATIONAL BANK, a National Banking Association, demands judgment confirming a common law way of necessity for ingress, egress and utility services across Parcels 24, 23, 17, 2, 3 and those Parcels across which Bonnett Creek traverses.

**COUNT II – STATUTORY WAY OF NECESSITY**  
**(Against all Parties)**

60. This is an action against all Parties to establish a statutory way of necessity pursuant to Florida Statute 704.01(2).

61. Heartland realleges paragraphs 1 through 42 as if set forth herein.

62. Parcel 1 is being used or is desired to be used as a dwelling.

63. Parcel 1 does not have a right to a common law way of necessity.

64. Parcel 1 has no access to a public road and is landlocked so that no practicable route of ingress or egress is available therefrom to the nearest public road.

65. Sawmill Trail Road to Bonnett Creek Road to Old Bombing Range Road provides the nearest and most practicable route for access to and from Parcel 1.

66. Heartland is entitled to a statutory way of necessity for ingress and egress over and across Sawmill Trail Road and Bonnett Creek Road to reach Old Bombing Range Road.

67. Alternatively, Heartland is entitled to a statutory way of necessity for ingress and egress over and across Sawmill Trail Road to Bonnett Creek Road to Thomas Road.

68. As a result of Parcel 1 being landlocked, Heartland requires a statutory way of necessity over and across Parcels 1, 2 and 3 to Bonnett Creek Road to reach either Thomas Road or Old Bombing Range Road.

69. Heartland offers and agrees to pay reasonable compensation to the owners of the parcels across which the statutory way of necessity is established by this court.

70. To the extent Defendants unreasonably refuse to permit use of a statutory way of necessity across their property, Heartland will be entitled to recover its attorneys fees pursuant to Section 704.04, Florida Statutes.

71. Heartland is obligated to pay the undersigned attorneys a reasonable fee for their services.

WHEREFORE, Plaintiff, HEARTLAND NATIONAL BANK, a National Banking Association, demands judgment locating a statutory way of necessity over and across Sawmill Trail Road and Bonnett Creek Road to Old Bombing Range Road or alternatively to Thomas Road, for the purposes permitted in Section 704.01(2), Florida Statutes, and determining the compensation to be paid to Defendants for diminution in value, if any, and awarding attorneys fees and costs to Heartland as against any Defendants held to have unreasonably refused to comply with Florida Statute 704.01(2).

**COUNT III – PRESCRIPTIVE EASEMENT**  
**(Against all Parties)**

72. This is an action against all Parties pursuant to Chapter 86, Florida Statutes for declaratory judgment and supplement relief establishing a prescriptive easement and is pled in the alternative to Count I and Count II.

73. Heartland realleges paragraphs 1 through 42 as if set forth herein.

74. Heartland and its predecessors in title have used the roads named Sawmill Trail Road and Bonnett Creek Road to reach Old Bombing Range Road for more than twenty years.



75. The use of Sawmill Trail Road and Bonnett Creek Road by Heartland and its predecessors in title has been actual, open and notorious, continuous, uninterrupted and adverse to the rights of the true owners.

76. Heartland contends that a prescriptive easement has been established along Sawmill Trail Road and Bonnett Creek Road across the Defendants properties and that Heartland has the right to the continued use of Sawmill Trail Road and Bonnett Creek Road for access to and from Old Bombing Range Road.

77. Slicker contends that Heartland has no right to ingress and egress across her property. Heartland is unaware as to whether any other Defendant objects to its use of Sawmill Trail Road and Bonnett Creek Road to reach Old Bombing Range Road.

78. Heartland is in doubt as to the existence or non-existence of its rights and privileges and is entitled to have such doubt removed. There is a bona fide, actual, present and practical need for a declaration of the rights of the parties.

79. Heartland lacks an adequate remedy at law and will suffer irreparable harm in the absence of an injunction from this court prohibiting Defendants from interfering with Heartlands use of its prescriptive easement.

WHEREFORE, Plaintiff, HEARTLAND NATIONAL BANK, a National Banking Association, prays for a declaratory judgment confirming the existence of a prescriptive easement in favor of Parcel 1 across the properties of the Parties where Sawmill Trail Road and Bonnett Creek Road crosses to reach Old Bombing Range Road. Additionally Heartland prays for supplemental relief by the granting of an injunction prohibiting any Party from interfering with Heartlands use of Sawmill Trail Road and Bonnett Creek Road.

**COUNT IV – DECLARATORY JUDGMENT**  
**(Against all Parties)**

80. This is an action pursuant to Chapter 86, Florida Statutes for declaratory judgment and supplemental relief as to all Defendants.

81. Heartland realleges paragraphs 1 through 42 as if set forth herein.

82. Roger D. Gurganus and Susan G. Gurganus purchased the Rhymes parcel with the intention of subdividing it and selling the subdivided parcels.

83. On or about January 3, 1990, Roger D. Gurganus and Susan G. Gurganus attempted to create an easement in favor of all of the parcels within the Rhymes parcel by executing that certain grant of easement which is recorded at O.R. Book 1099, Page 324 of the Public Records of Highlands County, Florida. A copy of this Grant of Easement is attached hereto as **Exhibit “KK”**.

84. Gurganus intended create an easement 50 feet wide lying along the Eastern 25 feet of Section 5, Township 33 South, Range 29 East and the Western 25 feet of Section 4, Township 33 South, Range 29 East in the approximate location of Bonnett Creek Road to extend from Old Bombing Range Road to the Northern boundary line of the Rhymes parcel.

85. Slicker contends that the Grant of Easement document attached as Exhibit “KK” did not validly create an easement along the 50 foot path described in Exhibit “B” to the Grant of Easement.

86. Heartland is in doubt as to the existence or non-existence of its rights of ingress and egress by virtue of the Grant of Easement attached as Exhibit “KK” and Heartland is entitled to have such doubt removed.

87. K. Grice, S. Grice and Sheretz contend that an easement was created along Bonnett Creek Road by the Grant of Easement recorded at O.R. Book 1157, page 1303 of the Public Records of Highlands County, Florida and the Plat recorded at O.R. Book 1110 page 1818 of the Public Records of Highlands County, Florida. Copies of the Grant of Easement and Plat are attached hereto as **Exhibits "LL" and "MM"**.

88. There is a bona fide, actual, present and practical need for a declaration of the rights of the parties.

WHEREFORE, Plaintiff, HEARTLAND NATIONAL BANK, a National Banking Association, prays for a declaratory judgment determining and confirming that Exhibits LL, MM and NN validly created an easement along the 50 foot strip of land along the boundary line between Section 4 and Section 5 between the northern boundary of the Rhymes parcel and Old Bombing Range Road, or that these instruments can be reformed to effectuate the intent of the parties and their successors in interest.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy has been furnished by U.S. Mail to David F. Schumacher, 129 South Commerce Avenue, Sebring, FL 33870 and Pamela T. Karlson, 301 Dal Hall Blvd., Lake Placid, FL 33852 this \_\_\_\_ day of June, 2012.

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By: \_\_\_\_\_  
David L. Boyette  
Florida Bar No. 0813140