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Not Suitable for Imaging

IN THE CIRCUIT COURT OF THE  
EIGHTEENTH JUDICIAL CIRCUIT IN  
AND FOR BREVARD COUNTY,  
FLORIDA

OLD SOUTH REAL ESTATE  
INVESTMENT GROUP, INC.,  
a Florida corporation,

CASE NO.: 05-2011-CA-10118-XXXX-  
XX

Plaintiff,

vs.

**CLOSED**

MARY VIRGINIA SMITH  
HEMINGWAY a/k/a MARY  
VIRGINIA HEMINGWAY  
BOSHART; BETTY SWEET  
SIMMONS LADSON; CARON SUE  
SWENSON MATERNA; RONALD  
STANLEY MATIC; SHERRY  
SMEESTER; CHARLES SMITH  
SIMMONS; WILLIAM PICKNEY  
SIMMONS; CHARLES SWEET  
SMITH, IV; WYNNE THOMAS  
a/k/a WYNNE CATON; and JULIA  
SWEET SWENSON WICKER,

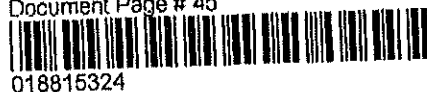
FILED IN VIERA-B  
CLERK OF CIR. CT.  
BREVARD CO. FL.  
2012 FEB -6 A 11:01  
MITCH NEEDELMAN

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Defendants.

**FINAL JUDGMENT**

THIS CAUSE having come before the Court on the 6th day of February, 2012,  
upon the Plaintiff's Motion For Entry of Final Judgment After Default, the Court  
having reviewed the record, having considered the evidence, having heard arguments



of counsel, and being otherwise fully advised in the premises,

THE COURT MAKES THE FOLLOWING FINDINGS:

a. This is an action brought by Plaintiff against Defendants to establish Plaintiff's right of access from the Plaintiff's real property that is described in Exhibit "A", attached hereto and incorporated herein by reference (the "Plaintiff's Property"), to State Road 520 ("King Street"), over that portion of the Defendants' property that lies between King Street and Plaintiff's Property which is described in Exhibit "B" attached hereto and incorporated herein by reference (the "Easement Area").

b. In Count I of the Complaint, Plaintiff brought an action against Defendants to establish an implied grant of a right-of-way of necessity across the Easement Area, pursuant to Section 704.01(1), Florida Statutes.<sup>1</sup>

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<sup>1</sup>Section 704.01(1), Florida Statutes (2011), provides:

IMPLIED GRANT OF WAY OF NECESSITY. - The common-law rule of an implied grant of a way of necessity is hereby recognized, specifically adopted, and clarified. Such an implied grant exists where a person has heretofore granted or hereafter grants lands to which there is no accessible right-of-way except over her or his land, or has heretofore retained or hereafter retains land which is inaccessible except over the land which the person conveys. In such instances a right-of-way is presumed to have been granted or reserved. Such an implied grant or easement in lands or estates exists where there is no other reasonable and practicable way of egress, or ingress and same is reasonably necessary for the beneficial use or enjoyment of the part granted or reserved. An implied grant arises only where a unity of title exists from a common source other than the original grant from the state or United States; provided, however, that where there is a common source of title subsequent to the original grant from the state or United States, the right of the dominant tenement shall not be terminated if title of either the dominant or servient tenement has been or should be transferred for nonpayment of taxes either by foreclosure, reversion, or otherwise.

- c. The Plaintiff's Property and the Defendant' property are contiguous.
- d. King Street is a public road.
- e. The Easement Area lies between King Street and Plaintiff's Property .
- f. King Street is the nearest public road to the Plaintiff's Property.
- g. The Plaintiff's Property does not reach or abut King Street.
- h. Plaintiff's only reasonable and practical route of ingress and egress to King Street is across the Easement Area.
- i. A unity of title exists from an original common source or grantor to Plaintiff's Property and Defendants' property.
- j. Such common source originated with C. Sweet Smith and Grace H. Smith (collectively, the "Smiths"), who formerly held title to real property described in the deed recorded in Deed Book 287, at Page 297 of the Public Records of Brevard County, Florida (such property is hereinafter referred to as the "Smith Property").
- k. The Smith property included all of both Plaintiff's Property and Defendants' property.
- l. The parties' remote grantors, the Smiths, could not have intended that a portion of the lands they sold be without legal access to and from such property, and the actions by the Smiths to sell smaller portions of their land imply their intent to

convey a route of access.

m. A practical and reasonable way of access across the Defendants' property is necessary for the beneficial use and enjoyment by Plaintiff of Plaintiff's Property, as conveyed by the parties' remote grantor, the Smiths.

n. Plaintiff is entitled to the entry of a final judgment establishing an implied grant of a way of necessity across the Easement Area.

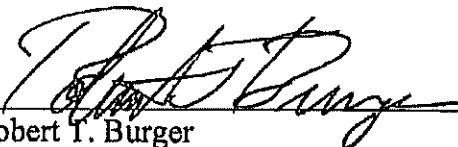
IT IS THEREUPON ORDERED AND ADJUDGED AS FOLLOWS:

1. Plaintiff, Old South Real Estate Investment Group, Inc., a Florida corporation, has an implied grant of a way of necessity across the Easement Area.

2. Plaintiff has the right to use the Easement Area to access Plaintiff's Property from King Street.

3. The easement or right-of-way established herein shall run with the Plaintiff's Property.

DONE AND ORDERED in Viera, Brevard County, Florida, this 6<sup>TH</sup> day of February, 2012.

  
Robert T. Burger  
Circuit Judge

Copies to:

M. Bradley Luczak

Julia Sweet Swenson Wicker

Caron Sue Swenson Materna

Wynne Thomas a/k/a Wynne Caton

William Pickney Simmons

Sherry Smeester

Ronald Stanley Matic

Charles Smith Simmons

Mary Virginia Smith Hemingway a/k/a Mary Virginia Hemingway Boshart

Betty Sweet Simmons Ladson

INDEX OF EXHIBITS

Exhibit "A" - Plaintiff's Property

Exhibit "B" - Easement Area

The West 80 feet of the East 120 feet of the North 150 feet of Block 18, PINE GROVE PARK, according to the plat thereof as recorded in Plat Book 9, Page 21, of the Public Records of Alameda County, California.

AND

The South 1/2 of the West 75 feet of the East 100 feet of the North 200 feet of Block 18, PINE GROVE SUBDIVISION, according to the plat thereof as recorded in Plat Book 9, Page 21, of the Public Records of Alameda County, California.

AND

The North 1/2 of the West 75 feet of the East 100 feet of the North 200 feet of Block 18, PINE GROVE SUBDIVISION, according to the plat thereof as recorded in Plat Book 9, Page 21, of the Public Records of Alameda County, California.

EXHIBIT A

**SKETCH OF DESCRIPTION****EASEMENT AREA**SECTION 32, TOWNSHIP 24 SOUTH, RANGE 36 EAST  
BREVARD COUNTY, FLORIDA

(Parcel I.D. # 24-36-32-00-00276.0)

**LEGAL DESCRIPTION (Easement Area) - Prepared by DRMP, Inc.**

A 125 foot by 72.50 foot parcel of land located in Section 32, Township 24 South, Range 36 East, Brevard County, Florida, being more particularly described as follows:

COMMENCE at the Northeast corner of Block 5, PINE GROVE PARK, as recorded in Plat Book 9, Page 24, of the Public Records of Brevard County, Florida, thence run North 89°42'30" West 125.00 feet along the north line of said Block 5 to the northeast corner of that certain parcel as described in Official Records Book 5412, Page 4926, of the Public Records of Brevard County, Florida, for a POINT OF BEGINNING; thence continue North 89°42'30" West along the North line of said parcel and said Block 5, 125.00 feet to the northwest corner of said parcel; thence departing said north line run North 00°00'00" West along the northerly extension of the westerly line of said parcel, a distance of 72.50 feet to the southerly right of way line of W. King Street (State Road 520) as recorded in Deed Book 254, Page 294, of said Public Records; thence departing said northerly extension, run South 89°42'30" East along said southerly right of way line, a distance of 125.00 feet to an intersection with the northerly extension of the easterly line of said parcel; thence departing said southerly right of way line run South 00°00'00" East along the northerly extension of the easterly line of said parcel, 72.50 feet to the POINT OF BEGINNING.

Said easement area containing 9063 square feet, more or less.

**SURVEYOR'S NOTES:**

1. No underground installations or improvements, including, but not limited to, buried cables, sub-surface utilities, foundations/footers or burial sites were located, except as shown.
2. This property is subject to recorded or unrecorded agreements, assessments, exceptions, easements, reservations, and restrictions, if any, which may or may not appear in the Public Records of Orange County, Florida.
3. No instruments of record reflecting ownership or encumbrances were provided, except as noted, nor did this Surveyor abstract these lands.
4. This Sketch of Description does not constitute a boundary survey, as such.
5. The bearings shown hereon are based on the Southerly Right of Way Line of W. King Street (S.R. 520), per Deed recorded in Deed Book 254, Page 294, of the Public Records of Brevard County, Florida, as being South 89°42'30" East.
6. All references to officially recorded documents hereon (OR, DB & PB) refer to the Public Records of Brevard County, Florida.
7. Additions or deletions to survey maps or reports by other than the signing party or parties is prohibited without written consent of the signing party or parties.
8. This is a two sheet set. This description is not valid unless accompanied by the sketch.

**THIS IS NOT A SURVEY****SKETCH ON SHEET 2 OF 2**

...02-0832.000...\\Survey\\33-08-Survey\\Boundary\\OLD\_SOUTH-20080111.dwg

**PREPARED FOR:**

TICOR TITLE

**DATE:** 02/09/10**SCALE:** N/A**PROJECT #:** 09-0832.000**DESIGN:** FMH**CHECKED:** DWH

This sketch and description or the copies thereof are not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.

FAUN M. HOFFMEIER, P.S.M.

DATE

FLORIDA REGISTRATION No.: LS 8552

**DRMP**

SURVEYORS • ENGINEERS • PLANNERS • CONSULTANTS

Phone: (407) 896-0594

L.B. #2648

941 Lake Baldwin Lane • Orlando, Florida 32814

**SHEET 1 OF 2****EXHIBIT B**

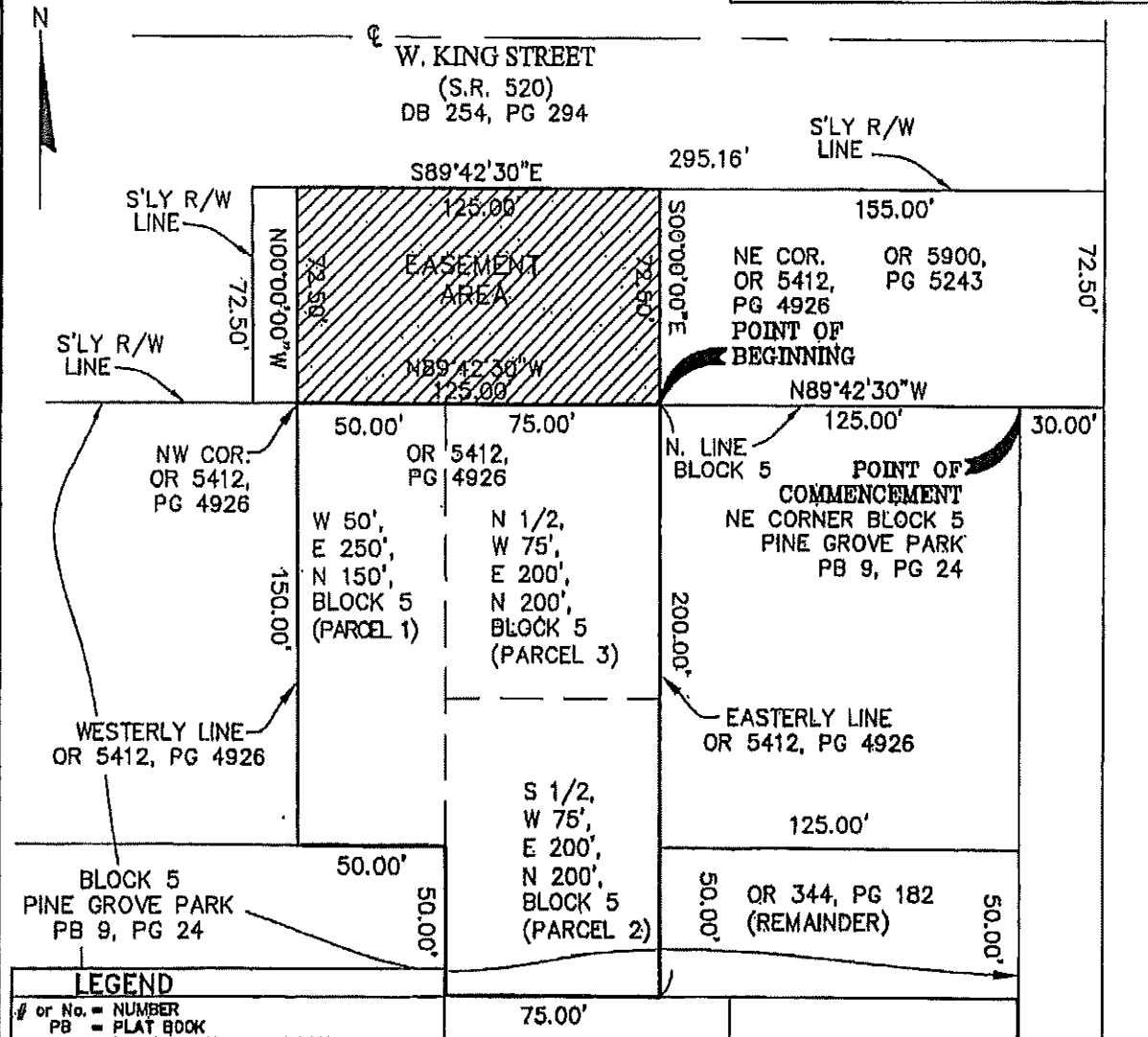


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# SKETCH OF DESCRIPTION

## EASEMENT AREA

SECTION 32, TOWNSHIP 24 SOUTH, RANGE 36 EAST  
BREVARD COUNTY, FLORIDA



### LEGEND

# or No. = NUMBER  
PB = PLAT BOOK  
L.B. = LICENSED SURVEY BUSINESS  
O.R. = OFFICIAL RECORDS (BOOK)  
PG = PAGE(S)  
P.S.M. = PROFESSIONAL SURVEYOR AND MAPPER  
LS = LAND SURVEYOR  
CL = CENTERLINE  
R/W = RIGHT OF WAY  
S.R. = STATE ROAD  
DB = DEED BOOK

Note:  
This is a two sheet set. This sketch  
is not valid unless accompanied by  
the description..

**THIS IS NOT A SURVEY**

**DESCRIPTION ON SHEET 1 OF 2**

**SHEET 2 OF 2**

PREPARED FOR:

TICOR TITLE

DATE: 02/09/10

SCALE: 1"=50'

PROJECT #: 09-0832.000

DESIGN: FMH

CHECKED: DWH

DATE

REVISIONS



Phone: (407) 896-0594

L.B. #2648

941 Lake Delwood Lane - Orlando, Florida 32814