D/L 11-29-10

IN THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT,
IN AND FOR MONROE COUNTY, FLORIDA

CASE NO. 10-CA-334-P

JAMES BELLIZZI, DONNA BELLIZZI, and MONROE COUNTY LAND TRUST, INC.,

Plaintiffs,

v.

ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, a Florida municipal corporation,

Defendant.

_____/

AMENDED VERIFIED COMPLAINT

COMES NOW, Plaintiffs, JAMES BELLIZZI and DONNA BELLIZZI, a married couple, (hereafter collectively referred to as "BELLIZZI") and MONROE COUNTY LAND TRUST, INC. (hereafter "MONROE COUNTY LAND TRUST"), by and through undersigned counsel, and files this their Amended Verified Complaint against Defendant, ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA (hereafter "VILLAGE"), and all others claiming by, through or under them, and in support thereof state the following:

1. This is an action to quiet title, for declaratory judgment and inverse condemnation related to the ownership of certain roads and canals located in the Venetian Shores subdivision, Islamorada, Monroe County, Florida. The real property at issue exceeds $15,000 in value.

2. Plaintiff, JAMES BELLIZZI, is a resident of Monroe County, Florida, and is

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otherwise *sui juris*.

3. Plaintiff, DONNA BELLIZZI, is a resident of Monroe County, Florida, and is otherwise *sui juris*.

4. Plaintiffs, BELLIZZI, own certain real property in the Venetian Shores Subdivision located at 155 Severino, Islamorada, Florida 33036, and more particularly described as follows:

> *Lot 15, Block 30, VENETIAN SHORES, Plat No. 3, according to the Plat thereof as recorded in Plat Book 5, at Page 48, of the Public Records of Monroe County, Florida.*

A copy of the deed conveying BELLIZZI their interest in the aforementioned real property is attached hereto as **Exhibit "A"**.

5. Plaintiff, MONROE COUNTY LAND TRUST, is a duly formed Florida corporation and is otherwise *sui juris*.

6. Plaintiff, MONROE COUNTY LAND TRUST, owns numerous separate and distinct parcels of real property in the Venetian Shores Subdivision more particularly described as follows:

A. Lots 1 and 2, Block 19, Venetian Shores, Plat No. 2, according to the plat thereof, as recorded in Plat Book 4, Page 33, of the Public Records of Monroe County, Florida by Warranty Deed recorded in OR Book 2470 at page 901 of the Public Records of Monroe County, Florida.

The aforementioned warranty deed was corrected by virtue of a corrective deed, attached hereto as **Exhibit "B"** as recorded in the official records book 2479, Page 816, Public Records of Monroe County, Florida.

B. A portion of the unexcavated canal area contiguous to said Lots 1 and 2,

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Block 19, Venetian Shores Plat No. 2, according to the plat thereof, as recorded in Plat Book 4, Page 33, of the Public Records of Monroe County, Florida, being more particularly described on Exhibit "A" attached to the quit claim deed conveying MONROE COUNTY LAND TRUST their interest in the aforementioned real property as recorded in the official records book 2470, Page 903, Public Records of Monroe County, Florida.

The aforementioned quit claim deed was corrected by virtue of a corrective deed, attached hereto as **Exhibit "C"** as recorded in the official records book 2479, Page 817, Public Records of Monroe County, Florida.

C. Lots 6, 7 and 8, Block 23, Lots 1, 2, 3, 4, Block 22, Lots 1, 2, 3, 4, Block 21, Lots 1, 2, 3, 4, Block 20 and Lots 3 and 4, Block 19, all of Venetian Shores, Plat #2, as recorded in Plat Book 4, Page 33, of the Public Records of Monroe County, Florida.

A copy of the warranty deed conveying MONROE COUNTY LAND TRUST their interest in the aforementioned real property is attached hereto as **Exhibit "D"** as recorded in the official records book 2473, Page 1757, Public Records of Monroe County, Florida.

D. Canals and lakes lying between and adjacent to Lots 6, 7 and 8, Block 23, Lots 1, 2, 3, 4, Block 22, Lots 1, 2, 3, 4, Block 21, Lots 1, 2, 3, 4, Block 20 and Lots 3 and 4, Block 19, all of Venetian Shores, Plat #2, as recorded in Plat Book 4, Page 33, of the Public Records of Monroe County, Florida, including all of Grantors interest in lands adjacent to any property conveyed to Grantee to the centerline of the adjacent roadways.

A copy of the quit claim deed conveying MONROE COUNTY LAND TRUST their interest in the aforementioned real property is attached hereto as **Exhibit "E"** as recorded in the official records book 2473, Page 1759, Public Records of Monroe County, Florida.

E. Lot 1, Block 17, Venetian Shores Plat No. 2, according to the plat thereof,

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as recorded in Plat Book 4, Page 33, of the Public Records of Monroe County, Florida AND Lot 1, Block 18, Venetian Shores, Plat No. 2, according to the plat thereof, as recorded in Plat Book 4, Page 33, of the Public Records of Monroe County, Florida.

A copy of the warranty deed conveying MONROE COUNTY LAND TRUST their interest in the aforementioned real property is attached hereto as **Exhibit "F"** as recorded in the official records book 2480, Page 2252, Public Records of Monroe County, Florida.

7. Defendant, VILLAGE, is a Florida municipal corporation existing in Monroe County, Florida.

8. The real property which is the subject matter of this action are the roads, to their midpoint, directly adjacent and abutting the real property owned by BELLIZZI and MONROE COUNTY LAND TRUST, to wit : Severino Drive, Capri Drive, Genoa Drive, Napoli Drive, Venetian Way, Venetian Boulevard located within the Venetian Shores subdivision (hereafter referred to as "Roads at Issue").

9. The layout of the Venetian Shores subdivision and the roads and canals contained therein are depicted in the following Plats:

a) Amended and Extended Plat of Venetian Shores Plat No. 1, as recorded in Plat Book 3, Page 157, of the Public Records of Monroe County, Florida.

b) Venetian Shores Plat No. 2, as recorded in Plat Book 4, Page 33, of the Public Records of Monroe County, Florida.

c) Venetian Shores Plat No. 3, as recorded in Plat Book 5, Page 48,

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of the Public Records of Monroe County, Florida.

d) Venetian Shores Plat No. 4, as recorded in Plat Book 6, Page 26,

of the Public Records of Monroe County, Florida.

e) Venetian Shores Plat No. 5, as recorded in Plat Book 6, Page 58,

of the Public Records of Monroe County, Florida.

f) Venetian Shores Amended Plat No. 6, as recorded in Plat Book 7,

Page 18, of the Public Records of Monroe County, Florida.

A copy of the aforementioned Plats 1-6 are attached hereto as **Composite Exhibit "G".**

10. Venue is proper in Monroe County, Florida because the real property at issue and the parties to this suit are located herein.

FACTUAL ALLEGATIONS

11. The Venetian Shores subdivision (hereafter "Subdivision) is comprised of approximately 425 homes and is located on the bayside of US1 in Islamorada, Florida.

12. The Subdivision was developed by certain corporate developers, with construction of the Subdivision commencing in the 1950's.

13. The Subdivision, in part, was first platted in May of 1956 by Peninsula Land Development Company. See Plat 1 attached hereto as part of Composite Exhibit "G".

14. At the time the Subdivision was created and platted, it was the intent of the developers that the Subdivision remain private in nature, to wit: the developers reserved within the dedication of the plat that all roads within the subdivision were to remain

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private for the exclusive use of owners of property within the Subdivision (with the exception of three roads, Palermo Drive, Porto Salvo Drive, and a southerly portion of Venetian Blvd., all of which existed south of a certain guardhouse constructed at the entrance of the Subdivision).

15. As shown on Plat 1, it was the intent of the developer that all roads north of the first 460 feet of Venetian Blvd. upon entering the Subdivision were to remain private in character. See Plat 1 attached hereto as part of Composite Exhibit "G".

16. As shown on Plat 1, San Remo Drive and the Northern portion of Venetian Blvd. (North of the 460' Southern portion of Venetian Blvd.) were "reserved for the exclusive use of owners of property in the subdvision." See Plat 1 attached hereto as part of Composite Exhibit "G".

17. On or about October 11, 1956, Peninsula Land Development Company conveyed its interest in the Subdivision to Daroe Development, Inc. by virtue a warranty deed recorded in the official records book in Plat Book 78, Page 329, Public Records of Monroe County, Florida.

18. On or about October 8, 1957, Daroe Development, Inc. recorded Plat 2 (containing Monroe County Land Trusts' lots) in the public records of Monroe County, Florida. See Plat 2 attached hereto as part of Composite Exhibit "G".

19. As stated on Plat 2 (containing Monroe County Land Trusts' lots) all roads shown thereon are "reserved for the exclusive use of owners of property in the subdivision", with the exception of Port Salvo Drive which was dedicated to the Public.

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See Plat 2 attached hereto as part of Composite Exhibit "G".

20. Beginning in or about 1957, Daroe Development, Inc. began deeding individual parcels to private owners. A sample of said deeds can be found in the Official Record books of Monroe County Florida at: Book 88, Page 111; Book 106, Page 262; Book 109, Page 505; Book 114, Page 63; Book 116, Page 527; Book 130, Page 60; and Book 142, Page 141.

21. In some or all of deeds mentioned in the foregoing paragraph, the deeds stated that the conveyance was subject to, the "Declaration Concerning Restrictions and Improvements" (hereafter "Declaration") which was recorded in Official Record Book 98, Page 385, Public Records of Monroe County, Florida. A copy of the Declaration is attached hereto as **Exhibit "H".**

22. On or about June 16, 1961, the Venetian Shores Homeowner's Association, Inc. ("Association"), a not for profit Florida corporation, was created for the benefit of the property owners within the Subdivision.

23. On July 14, 1961, a warranty deed from Daroe Development, Inc. to the Association was recorded in the public records conveying ownership to the Association of a certain guardhouse at the entrance of the Subdivision. The warranty deed is recorded in official record book 22, page 523 of Monroe County, Florida.

24. Also, on July 14, 1961, an Assignment from Daroe Development, Inc. to the Association was recorded in the public records effectively transferring the developers rights to operate and manage the Subdivision. The Assignment is recorded in official

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record book 222, page 525 of Monroe County, Florida.

25. As evidenced by the Declaration and Assignment, there was a guardhouse that was to be maintained, by the Association., near the entrance of the Subdivision to "insure the privacy and security of all residents" within the Subdivision.

26. Further, the Declaration set forth the parameters upon which the Association was to operate and manage the Subdivision. The Declaration bound the entire subdivision until January 1, 1975, thereafter the Declaration could be either abrogated, rescinded or annulled in whole or in part, if the Association obtained approval of 65% of property owners and duly recorded any such amendments in the public record, however, in the absence of duly recorded amendment by the Association the Declaration automatically renews and continues in force every 10 years from January 1, 1975 into perpetuity. There is nothing in the public record that reflects that the Declaration has ever became ineffective, amended, rescinded or annulled.

27. Sometime between July of 1961 and October of 1961, the property previously owned by developer, Daroe Development, Inc., somehow may have become owned and/or controlled by North Shore Bank of Miami Beach ("North Shore Bank") as Trustee for the Owner/Developer Frank Martin. There is nothing apparently in the public record reflecting said transfer. However, on or about February 7, 1962, North Shore Bank recorded Plat 3 (containing BELLIZZIS' lot) in the official records of Monroe County, Florida. See Plat 3 attached hereto as part of Composite Exhibit "G".

28. Plat 3 (containing BELLIZZIS' lot) states that:

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"the Boulevard, Drives, and Canals as shown hereon are not dedicated to the public, but are reserved for the exclusive use of owners of property in the subdivision."

Plat 3 is consistent with prior dedications (Plat 2) and continues the trend of a private subdivision. See Plat 2 and 3 attached hereto as part of Composite Exhibit "G".

29. The foregoing information reveals that for a period of over 6 years: (a) three different developers intended that the Subdivision be recognized asa private community, having private roadways and canals within; (b) that up until 1962, there were not any roads dedicated to the public other than Porto Salvo Drive, Palermo Drive, and the first 460' of Venetian Blvd.

30. By virtue of County Resolution #11-1964, dated March 18, 1964, Monroe County sought to convey certain roadways in the Subdivision over to the State of Florida (to wit: Valencia Drive, Leoni Drive, and San Remo Drive). However, the County did not have title to convey. Title to said roads remained with the property owners within the Subdivision. Further, the Declaration would have prohibited the developer from deeding away the privately dedicated roads to the County without also obtaining deeds from the individual lot owners, which was not done.

31. In the absence of the County acquiring legal title to the roads within the Subdivision (which is not supported by the public record) the County had no right or authority to convey said roads to the State of Florida. Further, the County can only convey what it owns.

32. On February 27, 1964, approximately 1 month prior to the aforementioned

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County Resolution calling for a deed of conveyance from the County to the State, the State indicates on it's right-of-way map numbered #90504-2601 that 12 homes had already been constructed within the Subdivision, as depicted on Plat 1. This would suggest that not only would these homeowners have to consent to the transfer of roads from private to public, but so would any lot owners who purchased lots prior to the requested deed of conveyance of the developer. No such record could be located in the public records.

33. At sometime between 1964 and 1966, developer, North Shore Bank changed its name to City National Bank.

34. In 1966, City National Bank sought to convey certain roads within Venetian Shores to Monroe County via County Resolution #93-1966, which is supported by a deed of conveyance dated December 9, 1966. The roadways involved were as follows; Giardino, Milano, Severino (the street abutting BELLIZZIS' lot), Vilabella, and a portion of Venetian Boulevard. A quit-claim deed from the City National Bank to the County was recorded in public records in official record book 384, page1013, of Monroe County, Florida. However, all lot owners within the subdivision would have had to approve of such a transfer from private to public roads and provide their own deeds. No such deeds exist in the public records to support that this was legally authorized.

35. In 1969, County Resolution #36-1969 requested a deed be executed conveying certain roads, to wit: Severino (the street abutting BELLIZZIS' lot), Milano, Giardino and a portion of Venetian Boulevard from the County to the State for the purpose of grading and

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paving.

36. In 1970, County Resolution #14-1970 requested the State to grade and pave certain roads in the Subdivision, to wit: Severino (the street abutting BELLIZZIS' lot), Milano, Giardino and a portion of Venetian Boulevard.

37. In or about 1971, City National Bank presented Plats 4 and 5 for approval to the County Commission, which were ultimately approved. See Plat 4 and 5 attached hereto as part of Composite Exhibit "G".

38. Plat 5, for the first time, dedicated certain roads, within the Subdivision, north of guardhouse, to the public, to wit: Bayview Isle and a portion of Ventian Blvd.. See Plat 5 attached hereto as part of Composite Exhibit "G".

39. County Resolution #28-1971, dated April 13, 1971, made the approval of Plat 5 expressly conditional upon City National Bank posting a bond for construction of roads within the Subdivision. However, in lieu of that bond and prior to approval of the plat 5, lots 30 and 31 within the Subdivision were to be pledged by City National Bank to the County as security for the grading and paving of streets in the Subdivision. This clearly indicates that the developer, City National Bank, paid for the grading and paving of the roads within the Subdivision and not the County or State.

40. On or about April 24, 1974, City National Bank presented Plat 6 for approval before the County Commission which was duly approved. Plat 6 states that "San Marco Drive, Venetian Way and the Lakes as shown hereon are not dedicated to the public, but are reserved for the exclusive use of owners of property in the subdivision".

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This language is consistent with the language on Plats 1,2,3, and 4 approved earlier. Only Plat 5 dedicates a road in the interior of the Subdivision to public, and as stated above the developer paid for those roadways to be paved.

41. On or about December 31, 1976, City National Bank deeded to Frank Martin and Virginia Martin, as individuals, City National Bank's remaining interest in the Subdivision as recorded in official records book 707, page 719 of the public records of Monroe County, Florida. In total there were approximately 183 individual lots transferred in that conveyance.

42. On or about May 1, 1978 the Subdivision property was sold again, this time to Tirrell Bruni, Inc., as recorded in the official record book 761, page 1264 of the public records of Monroe County, Florida.

43. Seven years after the Plat 6 was approved, the new developer, Tirrell Bruni, Inc. sought to amend Plat 6 which was duly approved. Amended Plat 6 states, "The lakes shown on the plat are not dedicated to the public but are for the non-exclusive use of owners of property within the subdivision... Property access easements as shown on the plat are not dedicated to the public, but are reserved for the non-exclusive use of owners of property within the subdivision..." So as late as 1981 it is clear that the roadways and character of the Subdivision was intended to be private.

44. On July 27,1984, the County Commission held a meeting on Plantation Key and a Mr. Smithers addressed the Commission stating he represented Venetian Shores HOA and requested the County to maintain the roads within the Subdivision. A motion

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was made and seconded and the County agreed to accept for maintenance "all publicly dedicated roads in the Venetian Shores Subdivision. A subsequent motion was made and seconded to go on record that the County "will not maintain any roads which are not dedicated to public use in the subdivision." Both motions carried. There are no publicly dedicated roads within the Subdivision, with the exception of Palermo, Porto Salvo, Bayview Isle and the first 460' of Venetian Blvd.

45. County Resolution #360-1084, dated November 30, 1984, asked the State of Florida to convey back to the County certain roadways that purportedly had formerly been conveyed to the State. Within this request, the County asked for the following roads be conveyed back to them: Valencia, Leoni, and San Remo Drive. Subsequent thereto, a quit claim purportedly conveyed the State's interest in said roadways back to the County. The quit claim deed was recorded in the public records in official records book 937, page 1177 of Monroe County, Florida. No other such recorded documents exist in the public record subsequent to the aforementioned quit claim deed which would have purportedly deeded back any other roads within the Subdivision.

46. Valencia, Leoni, and San Remo Drive were the same roads that were to have purportedly been deeded by the developer to the County on March 18, 1964. However, there is nothing in the public record evidencing that the conveyance from the developer to the County ever occurred.

47. In or about 1985, a lawsuit was filed by the Venetian Shores HOA against the County resulting from lack of road maintenance. At a County Commission Meeting, on

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September 5, 1986, the County Attorney presented a Settlement Agreement between the County and the Venetian Shores HOA. The Settlement Agreement is dated Sept. 24, 1986 and reads as follows;

> "1. That the street located in the Venetian Shores subdivision and described on the plat thereof as Venetian Boulevard will be reconstructed and paved by Monroe County in accordance with it's standards.
>
> 2. That all the feeder roads into Venetian Boulevard from the westerly side of the subdivision shall be maintained by Monroe County with the exception of Palo de Oro which, it is understood, shall be the duty and obligation of the property owners in said subdivision to reconstruct and pave in accordance with Monroe County Standards.
>
> 3. That the area to the east of Venetian Boulevard is within a nonprofit corporation known as the Venetian Shores Yachting Association, Inc.. The parties hereto, therefore, agree that the Plaintiff will use its best efforts to induce the aforesaid Venetian Shores Yachting Association, Inc. to enter into an agreement with Monroe County wherein they officially disclaim and forever forego any requirement by Monroe County to maintain, repair, or in any way engage in the

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upkeep of any roads on the easterly side of Venetian Boulevard.

4. That a certain quit claim deed has been rendered to Monroe County from the former developer of said subdivision, Frank Martin. That there are certain discrepancies and problems with said quit claim deed, and the Plaintiff does hereby agree to use its best efforts to induce the aforesaid Frank Martin to execute a corrective quit claim deed which will take into account such discrepancies and corrections.

5. That the guard house located at the entrance to Venetian Shores Subdivision, at the discretion of the County, will either be turned over to the County for the use thereof, or else the County has the prerogative to advise the Plaintiff that such guard house should be removed. Plaintiff agrees under these circumstances to remove said guard house at its expense.

6. That the parties hereto do move this Honorable Court to enter an Order approving this stipulation for Settlement.

7. That each party shall be responsible for its own fees and costs, and each party shall release the other from such fees and costs.

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8. That the Court shall retain jurisdiction to enter such further Orders as may be required."

**********END**********

A copy of the Settlement Agreement is attached hereto as **Exhibit "I".**

48. Neither the settlement agreement nor the order approving same (attached hereto as **Exhibit "J")** rendered a conclusion of law as to ownership of the roads within the Subdivision. It clearly indicates that the residents on the closed canal side of the Subdivision were not included in this agreement.

49. On January 20,1987, the County passed ordinance 001-1987 which declared an emergency existed and Palo De Oro Drive was in serious need of reconstruction, repair and repaving. It also called for a municipal service taxing unit ("MSTU") to be created by waiving the county requirement of a 4/5th's vote of the commission. This ordinance became effective on January 29, 1987.

50. Also, on January 20, 1987, the County also passed a resolution directing the supervisor of elections to conduct a special referendum vote to be held on March 3, 1987 to create the MSTU. The language contained therein states that the MSTU will collect taxes as outlined in the ordinance, however it will be limited to collecting an amount not to exceed $45,000.00.

51. On February 3,1987, the County passed Ordinance 092-1987, which created a priority work program for roads and bridges. Within this ordinance it discusses the following roads;

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Venetian Blvd	950′	Correct drainage to gatehouse
Palermo Drive	1478′	Overlay with Asphalt
Palo De Oro	1478′	Overlay with Asphalt
Valencia		Overlay with Asphalt
Leoni		Overlay with Asphalt
San Remo		Overlay with Asphalt
Bay View Isle		Overlay with Asphalt
Venetian Blvd.	1855′	Correct pavement failure

Severino Drive was not listed.

52. The aforementioned work program is presumably the result of the lawsuit and the settlement agreement whereby the County agreed to repair a number of roads in the Subdivision. Important to note here is that the 460′ of Venetian Blvd. is factually a public road as is Palermo Drive from the standpoint of public dedication from the 1950's. Palo-de-Oro is also included, however for this road a MSTU was created. From the 1950's until 1987, it is evident that neither the State, nor the County, maintained these roads. Over a course of thirty years these roads were only tended to on one occasion. It is also important to note that there are a total of 24 roads in the Subdivision and apparently only 7 roads were ever maintained as shown above.

53. On July 19, 1988, the County Commission held a meeting at the Elks Club in Tavernier and voted to award a contract to General Asphalt in the amount of $199,101.00

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for the paving of Venetian Blvd.

54. On December 6, 1988, the County passed Resolution # 659-1988 and placed $44,658.00 into the Venetian Shores Special Taxing District Fund. It appears that $43,658.00 of those same funds were directed into another account for Road Construction and $1,000.00 was placed into the Commissioners account for fee's.

55. On October 8, 1991, the County Commission adopted Ordinance 028-1991 which abolished the MSTU set up for the Subdivision. This ordinance also called for any funds remaining within the MSTU after payment of outstanding debts and obligations to be distributed to property owners within the boundaries of the former MSTU. The method however to notify those individuals of any refunds due is not mentioned, it only states that the taxpayer must make application to the clerk.

56. On January 29, 1992, the County Commission passed Resolution #080-1992 which shows that the Venetian Shores MSTU fund had increased by $55,476.54 and it appears that $33,911.04 of those dollars were directed back to the taxpayers as refunds.

57. On July 14, 1992, the County Commission passed Ordinance 022-1992 which amended earlier ordinance 028-1991, the effective changes were to allow for an additional 1 year time period for persons to apply for a refund upon adoption of the ordinance and it also stated that persons needed to apply for the refund to the Tax Collectors Office and not the Clerk of the Court as did the earlier ordinance. This ordinance also failed to provide a mechanism for notification to the taxpayer that refunds were available.

58. On September 23, 1992, the County Commission passed Resolution #445-

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1992 which states that the County conducted a public hearing to amend and adopt the final budget for FY1993. The Resolution states that the Venetian Shores Taxing District Fund #149 has $38,311.00., which was one year after the MSTU was abolished and almost 9 months after refunds from the MSTU were to have been distributed. It unclear what happened to these funds.

59. On or about December 31, 1997, the VILLAGE was created as a municipal corporation.

60. By virtue of a Road Transfer Agreement between Monroe County and the VILLAGE, found in Monroe County Official Record Book 1690, Page 1006, dated December 9, 1998, (a little over a month after the Bellizzi's purchased their home) the County conveyed all of its rights to certain roads within the boundaries of the VILLAGE. Among those roads, were all roads within the Venetian Shores Subdivision. It is worth noting that the Road Transfer Agreement was not recorded until February 5, 1999 almost two months after its alleged execution, and it was further not made an Official Public Record until April 23, 2001, two and half years after the Bellizzi's purchased their home.

61. Despite the foregoing, over time certain questions have arisen as to the ownership of the roads and canals within the Subdivision.

62. Based on information and belief, the VILLAGE is asserting ownership of all roads within the Subdivision. Plaintiff is uncertain as to the VILLAGE'S position with respect to the canals in the Subdivision, but is of the belief that the VILLAGE claims no interest in the canals.

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63. Plaintiffs asserts that the right of ways known as Severino Drive, Capri Drive, Genoa Drive, Napoli Drive, Venetian Way, Venetian Boulevard, to their midpoints, directly adjacent and abutting Plaintiffs' respective properties and the canal, to theirs midpoints, directly adjacent and abutting Plaintiffs' respective properties are privately owned by Plaintiffs.

64. As property owners within the Subdivision, Plaintiffs have standing to address and enforce their interest in the private right of ways known as Severino Drive, Capri Drive, Genoa Drive, Napoli Drive, Venetian Way, Venetian Boulevard, adjacent and abutting their respective properties.

65. Despite the VILLAGE'S assertions of ownership, the VILLAGE has failed to obtain valid legal title to any of the roads within the Subdivision (the public only has a right to use the following roads: Palermo, Porto Salvo, and portion of Venetian Blvd., as set forth in the Plats attached hereto as Exhibit "G").

66. There has never been an amendment to Plats 1 -6 which changes the reservation of the roads from exclusive use of the property owners to public and Plaintiff has had the right to rely on plats as public records at the time of acquisition.

67. The parties are in need of an adjudication from this Court resolving the parties rights to the Roads at Issue, to their midpoints, and the canals, to their midpoints, adjacent and abutting Plaintiffs' respective properties.

68. Although Plaintiffs are uncertain as to the VILLAGE'S position with

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respect to the ownership interest in the canals adjacent and abutting Plaintiffs' respective properties, the Village has failed to establish any right of ownership to said canals.

69. Plaintiffs have retained the undersigned counsel to represent them in this matter and have agreed to pay them a reasonable fee for their services.

70. All conditions precedent to bringing this action have occurred or been waived.

Count I - Declaratory Judgment with Respect to the Roads at Issue within Subdvision

71. Plaintiffs reallege and reincorporate paragraphs 1 through 70 as if fully alleged herein.

72. This is an action for declaratory relief seeking a declaration that the right of way known as Severino Drive, Capri Drive, Genoa Drive, Napoli Drive, Venetian Way, Venetian Boulevard, to their midpoints, directly adjacent and abutting Plaintiffs' respective properties are privately owned by Plaintiffs.

73. Plaintiffs have a bona fide, actual, present practical need for a declaration because Plaintiffs are uncertain as to their rights to the Roads at Issue which are adjacent and abutting Plaintiffs' respective properties.

74. The declaration sought by Plaintiffs pertains to a present controversy based on the aforementioned set of facts.

75. Plaintiffs and Defendant have antagonistic interests in the subject matter and are before this Court by proper process.

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76. Plaintiffs are not merely seeking legal advice or propounding questions from this Court for the purpose of satisfying Plaintiffs' curiosity.

77. Plaintiffs have been damaged by Defendant's actions and request a declaration of their rights.

WHEREFORE, Plaintiffs requests a declaration from this Court declaring the right of ways known as Severino Drive, Capri Drive, Genoa Drive, Napoli Drive, Venetian Way, Venetian Boulevard, to their midpoints, directly adjacent and abutting Plaintiffs' respective properties are privately owned by Plaintiffs, award Plaintiff attorney's fees and costs, and grant any other further relief deemed just and proper.

Count II -Quiet Title

78. Plaintiffs reallege and reincorporate paragraphs 1 through 70 as if fully alleged herein.

79. This is an action to quiet title in Plaintiffs with respect to their ownership interest in the right of way known as Severino Drive, Capri Drive, Genoa Drive, Napoli Drive, Venetian Way, Venetian Boulevard, to their midpoints, directly adjacent and abutting Plaintiffs' respective properties.

80. The VILLAGE is asserting ownership and claiming title to all roads within the Subdivision despite having failed to perfect legal title in the roads.

81. Plaintiffs have been damaged by Defendant's assertions of ownership and

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requests this Court to quiet title to the right of ways known as Severino Drive, Capri Drive, Genoa Drive, Napoli Drive, Venetian Way, Venetian Boulevard, to their midpoints, directly adjacent and abutting Plaintiffs' respective properties.

WHEREFORE, Plaintiffs request this Court to quiet title to the right of ways known as Severino Drive, Capri Drive, Genoa Drive, Napoli Drive, Venetian Way, Venetian Boulevard, to their midpoints, directly adjacent and abutting Plaintiffs' respective properties, award Plaintiffs' attorney's fees and costs, and grant any other further relief deemed just and proper.

Count III – Inverse Condemnation

82. Plaintiffs reallege and reincorporate paragraphs 1 through 70 as if fully alleged herein.

83. In the event, that the VILLAGE asserts ownership of the roads within the Subdivision and the Court decides that the VILLAGE is the legal owner of said roads, then the VILLAGE has exercised dominion and control over and appropriated Plaintiffs' property, to wit: the right of ways known as Severino Drive, Capri Drive, Genoa Drive, Napoli Drive, Venetian Way, Venetian Boulevard, to their midpoints, directly adjacent and abutting Plaintiffs' respective properties, to the VILLAGE'S use without just compensation.

84. The VILLAGE has not paid Plaintiffs any compensation for the appropriation of the Roads at Issue.

85. The appropriation of Plaintiff's property constitutes a continual trespass so that Plaintiffs are irreparably injured and have no adequate remedy at law.

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WHEREFORE, Plaintiff demands judgment for damages against the VILLAGE and that VILLAGE be required to pay Plaintiffs just compensation for the property taken, that the VILLAGE be enjoined from any further trespass and enjoined from asserting ownership of the right of ways known as Severino Drive, Capri Drive, Genoa Drive, Napoli Drive, Venetian Way, Venetian Boulevard, to their midpoints, directly adjacent and abutting Plaintiffs' respective properties, award Plaintiffs' attorney's fees and costs, and grant any further relief deemed just and proper.

Count IV – Declaratory Judgment with Respect to Canals within Subdivision

86. Plaintiffs reallege and reincorporate paragraphs 1 through 70 as if fully alleged herein.

87. This is an action for declaratory relief seeking a declaration that the canals, to their midpoints, directly adjacent and abutting Plaintiffs' respective properties are privately owned by Plaintiffs.

88. Plaintiffs have a bona fide, actual, present practical need for a declaration because Plaintiffs are uncertain as to their rights to the canals, to their midpoints, directly adjacent and abutting Plaintiffs' respective properties.

89. The declaration sought by Plaintiffs pertains to a present controversy based on the aforementioned set of facts.

90. Plaintiffs and Defendant have antagonistic interests in the subject matter and are before this Court by proper process.

91. Plaintiffs are not merely seeking legal advice or propounding questions from

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this Court for the purpose of satisfying Plaintiffs' curiosity.

92. Plaintiffs have been damaged by Defendant's actions and requests a declaration of their rights.

WHEREFORE, Plaintiffs requests a declaration from this Court declaring the canals, to their midpoints, directly adjacent and abutting Plaintiffs' respective properties are privately owned by Plaintiffs, award Plaintiffs' attorney's fees and costs, and grant any other further relief deemed just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. mail and facsimile this 18th day of November, 2010 to: **Jeffrey L. Hochman, Esq.**, Johnson Anselmo Murdoch Burke Piper & Hochman, P.A., Attorneys for Islamorada, Village of Islands, 2455 E. Sunrise Blvd., Suite 1000, Ft. Lauderdale, FL 33304.

Respectfully submitted,

HERSHOFF, LUPINO & YAGEL, LLP
Attorneys for Plaintiffs
90130 Old Highway
Tavernier, FL 33070
(305) 852-8440 - Telephone
(305) 852-8848 - Facsimile

By: _____ FBN: 77032
FOR JAMES S. LUPINO, ESQUIRE
Florida Bar No.: 244481
DUSTIN T. NICHOLS, ESQUIRE
Florida Bar No.: 52771

I HEREBY CERTIFY that I have read the foregoing complaint and the facts

alleged therein are true correct and based upon my personal knowledge.

JAMES BELLIZZI

STATE OF FLORIDA :
: SS
COUNTY OF MONROE :

BEFORE ME, the undersigned authority, personally appeared JAMES BELLIZZI, who, being duly sworn, deposes and says that the Amended Complaint attached hereto is true to the best of his knowledge, information and belief.

Notary Public

MELISSA A. VAN HEUSEN
Commission # EE 021598
Expires August 29, 2014
Bonded Thru Troy Fain Insurance 800-385-7019

I HEREBY CERTIFY that I have read the foregoing complaint and the facts alleged therein are true correct and based upon my personal knowledge.

DONNA BELLIZZI

STATE OF FLORIDA :
: SS
COUNTY OF MONROE :

BEFORE ME, the undersigned authority, personally appeared DONNA BELLIZZI, who, being duly sworn, deposes and says that the Amended Complaint attached hereto is true to the best of her knowledge, information and belief.

Notary Public

MELISSA A. VAN HEUSEN
Commission # EE 021598
Expires August 29, 2014
Bonded Thru Troy Fain Insurance 800-385-7019

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I HEREBY CERTIFY that I have read the foregoing complaint and the facts alleged therein are true correct and based upon my personal knowledge.

MONROE COUNTY LAND TRUST, INC.

By:_____
JAMES BELLIZZI, as Vice President

STATE OF FLORIDA :
: SS
COUNTY OF MONROE :

BEFORE ME, the undersigned authority, personally appeared JAMES BELLIZZI, as Vice President of Monroe County Land Trust, Inc., who, being duly sworn, deposes and says that the Amended Complaint attached hereto is true to the best of his knowledge, information and belief.

Notary Public

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