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To: The Honorable Mayor and Village Council

Date: May 6, 2013

From: Eve A. Boutsis, Village Attorney

Re: Village Attorney Update

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**A. Ordinances –**

1. Staff has been directed to work on the draft driveway ordinance presented by CP Tim Schaffer and to bring the matter to the May Council meeting for first reading of the Ordinance. The matter was first raised during the April council meeting under "Other Business." The matter was further discussed during the April COW meeting. First reading is scheduled for the May council meeting.

2. Staff has been directed to work on the "NPO" ordinance as it relates to "grandfathering." This matter was raised under "Other Business" during the April Council meeting. The matter had been raised, in various forms by Council Person Patrick Fiore, Council Person Tim Schaffer and Vice Mayor John DuBois. Staff is starting their analysis of this request.

3. An ordinance relating to a Code of Conduct for all public meetings. This is an ordinance for future good governance and is modeled after South Miami and Doral's ordinance. Seeking direction from the Village Council whether to bring this item to a COW meeting.

4. Upon receipt of go-ahead, drafting regulations, within one-year moratorium period, relating to pre-annexation procedures.

5. An ordinance relating to special event process ordinance. Heard on first reading November 1, 2008. Item tabled at first reading. Further discussion had at November 19, 2008 COW meeting and direction provided to staff regarding same. Council held discussion regarding special events during their June council meeting.

6. In reviewing the enacted Land Development Code and Village's general code of Ordinances it has come to staff's attention that certain edits are required, including certain "scrivener's errors" type items, and certain edits staff recommends. For example, between 2002-2007 P&Z was known as "Community Development." All the code provisions dating prior to 2008 need to be modified to reflect Planning & Zoning Department and not Community Development. Additionally, any code provisions, outside of the LDC that reference a County zoning map designation needs to be modified to reflect the current Village zoning map designation. Staff is not planning to bring this item to a COW as it truly is a scrivener's error type ordinance, due to the 2.5 year review and adoption of the LDC. Staff anticipates bringing the item to the Village Council in December 2012. The Ordinance for first reading and cover memorandum has been prepared.

7. A resident requested a modification to the Village's Land Development Code. The Miami-Dade Board of County Commissioners has amended the Ordinance Relating to Zoning

Regulations of Awnings, Canopies and Tents by amending Sections 33-64, 33-65, 33-69, 33-71 and 33-77; and deleting Sections 33-72 and 33-81 of the Code of Miami-Dade County. This amendment, among other things, changed the backyard setback requirement for awnings from twenty-five feet to ten feet. No action has been taken on the request to mirror the Village's Code to the modification requested to mirror the County Code. This item will be brought to a COW for direction.

8. Creation of ordinances relating to filming on private property. Sponsored by Mayor Shelley Stanczyk.

9. Modification of the Village's Noise Ordinance. Requested by Council Person Lindsay. Discussed during June COW meeting. Will be working with CP Lindsay on this item. Some modifications were made to noise ordinance as part of item 2, above, relating to NPO. Second reading of the revisions enacted during the November 2012 council meeting. Residential dBa modified to 60 (day time hours) and 55 (evening hours).

10. Staff has received Village Council authorization to draft an ordinance to create the process for implementing the citizen initiative relating to increase of student population at private schools. A draft has been reviewed by Planning and Zoning and the Clerk's office. The draft is being distributed to the Miami-Dade County Elections Department, as the Elections Department shall have to coordinate with the Village on scheduling an election/ballot and the procedures for calculating the 2,000 foot radius from a private school, along with registered voters. A meeting was held with the MDC Elections Department. This item was discussed during the January COW meeting and staff will begin drafting and review to bring this item to the Council. Sponsored by Council Person Joan Lindsay. Staff will bring this forward to a future COW and is anticipated to be presented at an upcoming Council meeting.

11. An ordinance amending section 2-49 of the Village's Code of Ordinances, relating to Village Council meeting procedures - requiring the silencing of all electronic devices during council meetings by audience, staff, and council; and providing for the Police Commander to act as "Sergeant at Arms". Discussed during the July 2011 COW. This item has not proceeded to a First Reading. Awaiting further direction from the Council. [Sponsored by Mayor Shelley Stanczyk].

12. An ordinance relating to RLUIPA review procedures to require an administrative review process of any allegation of violation of RLUIPA, through a quasi-judicial hearing process, prior to file of a lawsuit relating to same. Proposed for a future first reading.

13. An ordinance updating Building Code fee schedule consistent with proposal of Building and Permitting Committee. First reading held during the March 2013 council meeting. Second reading during the April Council meeting saw enactment of the ordinance.

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14. An ordinance relating to procurement - providing clarification of certain procurement procedures relating to State Statutes on competitive negotiation. Proposed by Building Department. First reading anticipated for April 2013.

15. An ordinance relating to business licensing; making the provisions of chapter 6 relating to licensure; to comply with chapter 205, Florida Statutes; providing state exemption for real estate brokers; broker and sales associates. To be brought to a COW for discussion. Staff request revisions to the enacted code relating to business licensing to provide additional clarity to the chapter.

16. Section 10.1 of the Charter entitled "Neighborhood Protection" requires the development of an implementing ordinance. Staff waiting for direction to proceed in developing same.

### **B. Contracts and Pending Items**

1. Attention to pending county ordinances that may affect the Village with a county-wide application.

2. Attention to Parks Master Plan amendments and Government Use approvals for CRP, Thalatta, and PBP.

3. Attention to various public records requests.

4. Pursuant to direction provided during the March 4, 2013 council meeting the Village Attorney issued two Attorney General opinion requests relating to public records, the first related to the database download inquiry of Mr. Singer; the second related to the auditor exemption of work papers. The Village Attorney received direction for the Village Council to proceed with the AG requests, after receiving the request of the Attorney General to obtain the council's direction on this matter. The Village Attorney awaits direction of the Attorney General as to clear direction as to the requests. The Attorney General advised that the use of a private database to access Village records would not be acceptable. The Attorney General has not opined as the second request relating to the auditor work papers.

Discussions with Mr. Jerry Proctor counsel for the Alexander Montessori School - regarding possible election to increase student population, consistent with Charter. Mr. Proctor has requested that the resolution authorizing the special election be placed on the May council agenda. The hearing is being tentatively scheduled for June 25, 2013. Mr. Proctor has reviewed the proposed ballot language. The application for increase in student population and site plan modification was filed on March 20, 2013. Mr. Proctor, although proceeding with the Village's procedures, as outlined in the Village Charter, has put the Village on notice of a "reservation of rights" due to a recent Attorney General Opinion. The Attorney General issued an opinion, AGO 2012-32, to Clay County stating that the county should not adopt an ordinance containing other landowner consent

to rezoning applications. This opinion does not address the power of referendum, the power of the charter, and the opinions relating to referenda, as protected by the State Constitution. An important distinguishing factor between the ordinance the AG reviewed and the charter - is the simple fact that the AG was reviewing a legislative action of "rezoning", via an ordinance. There have been cases in Florida that support citizen vote due to referendum action. The concept of referenda is found in the Fla. Constitution- Article I, Section 1 "All political power is inherent in the people. The enunciation herein of certain rights shall not be construed to deny or impair others retained by the people." Article VI, Section 5 of the Constitution specifically references referenda, as provided by law. The Courts have held that a referendum is a basic instrument of democratic government, does not, in itself, violate the due process clause of the 14th Amendment when applied to a rezoning ordinance.

5. Discussions with Mr. Simon Ferro counsel for BMW regarding possible zoning application and process regarding same.

6. Finalized KLA and Westminster resolutions, covenants in lieu of unity of title and declarations of restrictions. The Westminster resolution has been recorded. The KLA resolution is in the process of recording.

7. Analyzed charter relating to lobbying code and application as it relates to pending litigation - Shores at Palmetto Bay LLC and Palmer Trinity v. Village of Palmetto Bay. Obtained opinion regarding same.

**C. Special report.**

1. Continued to work with Fire Rescue on finalizing site plan and County approval process for the PBVC location.

2. Attention to FPL litigation.

3. Please continue to refrain from community contact on the Palmer Trinity matter as the Village is in litigation – two law suits – the 2008 original action, the 2010 declaratory action and the 2010 petition for certiorari.

4. The Village Attorney is seeking dates to hold workshops on Ethics, Sunshine, and Robert's Rules of Order as applied to the Village. Please provide availability dates of the Council to the Village Clerk. The Village Attorney issued a memorandum on Roberts Rules in anticipation of the workshops.

**E. Litigation report.** Each council person should avoid discussions with the Community about this possible project to ensure compliance with the Jennings Rule and due to attorney-client privilege. Please maintain all records relating to any communications from third persons on this property – record the time, date, location, subject matter. Please advise the community to refrain

from contacting you. As this information is privileged, an update will be provided individually and/or at an appropriately designated attorney-client meeting.

1. Palmer Trinity v. Village of Palmetto Bay: The Applicant has filed two civil suits against the Village: the 2008 litigation seeks damages, while the 2010 litigation seeks to find our quasi-judicial ordinance unconstitutional. The 2010 case was consolidated with the 2008 case, for discovery purposes. The 2010 matter has been amended five times. The Village has a renewed motion to dismiss scheduled for hearing in March, 2013. A new judge has been appointed to the matter, Judge Norman Lindsay, as Judge Langer has retired. The judge wound up recusing herself from the matter as she was part of the appellate panel reviewing the last Palmer Trinity petition for certiorari. A new judge has yet to be assigned. Jeff Hochman of the Johnson Anselmo firm, hired by the Village's self-insurance fund, shall now be representing the Village in the 2008 litigation. As indicated the two civil actions incorporate by reference the appellate matters and claims that the appeals contribute to damages for the plaintiff.

2. Victor Garcia v. Village of Palmetto Bay, Case no.: 10-61452 CA 11 (Fla. Cir. Ct). The Village has received a notice of claim as required under state law of a possible lawsuit relating to the Village's Dog Park. The matter has been referred to the Florida League of Cities, the Village's Self-Insurance Agent, and Mr. Chris Stearns of the Johnson Anselmo firm is handling the claim. The Claimant's personal property, a young canine, allegedly died at Perrine Wayside Dog Park. An investigation is under way. On December 6, 2010, the Village was served with the complaint alleging damages for conversion, battery, assault, negligent infliction of emotional distress, false imprisonment, negligence per se, and negligence. Mr. Stearns is preparing an answer on the Village's behalf. This claim shall be covered by the Village's self-insurance provider and insurance counsel. Our office is monitoring the litigation. All counts, other than the simple negligence count have been dismissed.

3. Anctil v. Village of Palmetto Bay, Case no.: 11-14303 CA (02) (Fla. Cir. Ct). Plaintiff, parents of minor child, sued Village on May 11, 2011. Matter transferred to League for representation. Child allegedly hurt his arm during summer day camp. Any additional information beyond representation in complaint will be provided during any necessary shade sessions. Counsel for Anctil withdrew. No new counsel has placed a notice of appearance in the file. This matter may be dismissed.

4. Shores at Palmetto Bay LLC v. Village of Palmetto Bay. Appellate action (certiorari petition filed) after denial of application by the Village Council on December 12, 2012. The Court is to issue a scheduling order to hear the item. The applicant's request was denied due to an incomplete application amongst other things. Please refrain from speaking to anyone about this matter until after the appeal period expires. The Village filed its answer brief on February 27, 2012. The reply brief has been filed. Oral Argument held on February 13, 2013. The presiding Judges were Korvick, Hogan-Scola, and Cynnamon. Shores has filed a motion for a 60 day stay of proceedings. The Village did not object. The Village Attorney held a shade session on March 4,

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2013, at 6:00 p.m. on this matter to discuss strategy and settlement. The matter has been stayed through the end of April, per the request of the Appellant.

5. Recall Palmetto Bay PAC v. Village of Palmetto Bay, Case no.: 12-33876 CA 02. Complaint served on Village on September 4, 2012. Emergency Hearing on temporary injunction and temporary restraining order held on same day. After hearing, an agreed order was entered dismissing 3 of the 4 counts of the complaint. Relating to advertising within Village events and print material by political action committee. No advertising allowed in Village event or publications. However, the site, Palmetto Bay Village Center, with consent of property owner, could provide a "booth" for Recall group, consistent with First Amendment law, including *Parkland Republican Club v. City of Parkland*, 268 F. Supp. 2d 1349 (S.D. Fla. 2003). Village filed a motion to dismiss on the remaining count on September 17, 2012.