To: The Honorable Mayor and Village Council

Date: January 7, 2013

From: Eve A. Boutsis, Village Attorney

Re: Village Attorney Update

A. Ordinances –

1. 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.

2. 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.

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

4. 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.

5. 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.

6. 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.

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

8. 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).

9. 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].

10. 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.

11. An ordinance updating Building Code fee schedule consistent with proposal of Building and Permitting Committee. First reading proposed in February 2013.

12. 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 February or March 2013.

13. Several council persons have inquired into correcting the Paradise Point zoning to reflect height provision under prior County Code so that variances would not be required should the structures require re-building. Discussed during the December 2012 council meeting. First reading anticipated for the February Council meeting relating to changing the definition of residential height to be consistent with Miami-Dade County.

B. Contracts and Pending Items

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

2. Attention to charter school statutory amendments enacted by Legislature. Attended meetings with the City of Coral Gables, Pinecrest, Miami, Miami-Dade County, and School Board relating to the legislation and application of same.

3. Reviewed pending RFQs and RFPs for services.

4. Attention to concession contractor agreement.

5. Attention to Interlocal relating to Lobbyist training - and possible change in Village Lobbying Code due to updates in Miami-Dade Code dealing with same.

6. Attention to Quality Paving Contract.

7. Attention to Charter School Check List with School Board.

8. Attention to Quality Paving.

9. Attention to Parks Master Plan amendments.

10. Attention to assignment of contract by C3TS.

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 – three law suits – the 2008 original action, the 2010 declaratory action and the 2010 petition for certiorari. The Village held the remand hearing on the special exception and site plan modification on June 19, 2011, at Christ Fellowship Church. The Village took action and the resolution has issued. Palmer Trinity has indicated that it will probably appeal and may seek sanctions against the Village. Please do not discuss with third parties as litigation remains pending. The hearing on the Motion to Dismiss was held, waiting on Order. A hearing was held on July 17, 2012, to hear Palmer Trinity's motion to strike the Village's motion under 57.105, Florida Statutes. On August 8, 2012, Judge Langer issued an order dispensing with pending motions, agreeing to dismiss, in part, a portion of Palmer Trinity's fourth amended complaint and providing 20 days for the Village to file an answer. Palmer Trinity filed its 5th Amended Complaint. The Village filed a motion to dismiss as to certain counts and has scheduled hearing on same. The remainder of the 5th Amended Complaint has been answered and affirmative defenses pled.

4. A series of public records have been received relating to the "shade", attorney-client sessions held in the various Palmer Trinity litigation matters. As the lawsuits and appeals are intertwined, I have issued a request of the Florida Attorney General to provide direction to the office of the Village Attorney. On December 13, 2012, the Attorney General issued an opinion regarding the public records. The Attorney General reiterated existing law and did not answer the question of mixed law and fact as it relates to the confidentiality of the transcripts during the pending original action.

5. Held meetings with newly elected Council Persons and provided some guidance and memoranda to the Council relating to procedures affecting elected officials - including public records laws, sunshine, lobbying and quasi-judicial proceedings.

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.

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

Palmer Trinity v. Village of Palmetto Bay: (a) Oral argument was held on the Palmer Trinity v. Palmetto Bay, certiorari action (appellate matter) on Monday, February 22, 2010 before the Third District Court of Appeals. The Appellate Court reversed and remanded the litigation. First hearing on the rezoning ordinance was held on April 29, 2010. Second reading of the ordinance was held on May 4, 2010, along with the remainder of the original application. (b) The Applicant has filed two new suits against the Village: a new petition for certiorari (an appeal) and an original action. Village's response to the School's petition for certiorari has been filed. Palmer Trinity's response is due in mid-September. The Interveners have adopted our brief as their own. (c) The Village has filed an opposition to Plaintiff's motion to amend its pending 2008 original action. The Court granted Plaintiff's motion to amend. The Village has filed a motion to dismiss that is scheduled for hearing in 2011 (due to Judge's calendar). Discovery is ongoing. There may be a substitution of counsel in the two litigation matters (2008 and 2010) of Mr. Sean Cleary in place of the Bilzin firm. 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. In the 2008 litigation with Palmer Trinity the Village has filed its motion for attorney's fees pursuant to 57.105, Florida Statutes and prepared its motion to dismiss. Palmer Trinity has filed a third amended complaint with federal claims. The matter was removed to federal court by the Village. All discovery was stayed pending a discovery order from the federal court. On July 29, 2011, Senior Judge Lawrence King remanded the litigation back to state court. Discovery is now ongoing and depositions are being scheduled. A new hearing on Palmer Trinity's motion for sanctions was heard on December 20, 2011 by Judge Lester Langer. Judge Langer has reserved ruling. Palmer Trinity is trying to schedule a hearing on its motion to strike the Village's motion for 57.105, F.S., attorney's fees. On August 8, 2012, Judge Langer issued an order dispensing with pending motions, agreeing to dismiss, in part, a portion of Palmer Trinity's fourth amended complaint and providing 20 days for the Village to file an answer. Palmer Trinity was granted a rehearing of the motion to dismiss. Same ruling issued by Judge Langer. Palmer Trinity was provided the opportunity to file a 5th Amended Complaint, which was filed on October 15, 2012. The Village filed a motion to dismiss and is scheduling same for hearing.

2. Palmer Trinity v. Village of Palmetto Bay - Appeal/Certiorari Petition from the May 4, 2010 hearings – Oral argument was held on December 1, 2010. On February 10, 2011, the 11th Judicial Circuit Appellate Panel ruled in Palmer Trinity's favor on the appeal of the May 4, 2010

decision as to the site plan application. The Court in a *Per Curiam* decision, ruled and remanded by to the Village for action. See above, update as to July 19, 2011 remand hearing at Christ Fellowship Church. Resolution issued. See Section 3 for additional information.

In the 2008 litigation, the Village removed the action to federal court. Senior Judge Lawrence King remanded the matter back to state court to Judge Lester Langer. Hearings on Village's motion to dismiss was heard November 9, 2011. Judge reserved ruling and we are waiting for his final order. Discovery is on-going. Status Conference held on February 2, 2012. The Village filed a motion for 57.105, Florida Statutes, fees relating to a "frivolous claim."

3. Palmer Trinity v. Village of Palmetto Bay - Appeal/Certiorari Petition/Motion to Enforce Mandate. Palmer Trinity, on August 26, 2011 filed its motion to enforce mandate or in alternative motion for certiorari (appeal) based upon the July 19th hearing after remand. Litigation is on-going. The Firm of White & Case, Justice Raoul Cantero has been retained to assist in the appeal. Answer brief filed on October 14, 2011, by both the Village and CCOCI. Decision on motion to enforce mandate issued on December 22, 2011. The court is reviewing a renewed motion for attorney's fees. Village responded to same. The Court issued ruling on November 6, 2012, denying Palmer Trinity's request for fees. This matter is now "closed" as an appellate matter. Underlying facts remain part of the 2008 original action.

4. Village of Palmetto Bay v. Palmer Trinity. - Certiorari Petition to Third District Court of Appeal. Village petition filed by 1/21/2011. The Third District issued a scheduling order on February 28, 2012, and provided Palmer Trinity until March 28, 2012, to file an answer brief. The Village's reply brief was filed. Palmer Trinity also filed a motion for attorney's fees, which the Village responded to. Oral Argument was held on June 12, 2012. Justice Raoul Cantero shall represent the Village at oral argument. The Third District Ruled in favor of Palmer Trinity. The Third District granted Palmer Trinity's motion for attorney's fees. The Village has requested reconsideration of the motion for fees. The Third District reversed its order granting attorney's fees. The Village has received the mandate and held the public hearing consistent with the Court ruling on August 29, 2012. This matter is now "closed" as an appellate matter. Underlying facts remain part of the 2008 original action.

5. 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.

6. 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.

7. 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 scheduled for February 13, 2013.

8. 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.