

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 08-28977 CA 30

PALMER TRINITY PRIVATE SCHOOL, INC.,  
a Florida not for profit corporation,

Plaintiff,

v.

VILLAGE OF PALMETTO BAY,  
FLORIDA, a Florida municipal corporation,  
CONCERNED CITIZENS OF OLD CUTLER,  
INC., JOAN LINDSAY, individually,  
PETTY PEGRAM, individually.

Defendants.

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**DEFENDANT, VILLAGE OF PALMETTO BAY'S,  
ANSWER AND DEFENSES TO FIFTH AMENDED COMPLAINT**

Defendant, VILLAGE OF PALMETTO BAY ("Village"), by and its through undersigned counsel, files its Answer and Defenses to the Fifth Amended Complaint filed by the Plaintiff, PALMER TRINITY PRIVATE SCHOOL, INC. ("Palmer Trinity"), and states as follows:

**I. ANSWER**

1. As to paragraph 1, the Village admits that Exhibit A is a copy of the Third District's opinion in Palmer Trinity Private School, Inc. vs. Village of Palmetto Bay, 31 So.3d 260 (Fla. 3d DCA 2010) ("Palmer Trinity I"), submits Palmer Trinity I speaks for itself, denies all remaining allegations, and demands strict proof thereof.

2. As to paragraph 2, the Village denies the allegations contained therein.

3. As to paragraph 3, the Village admits that Palmer Trinity is a not-for-profit corporation existing under the laws of the State of Florida, but is without knowledge of the remaining allegations, therefore denies the same, and demands strict proof thereof.

4. As to paragraph 4, the Village admits the allegations contained therein.

5. As to paragraph 5, the Village admits the allegations contained therein.

6. As to paragraph 6, the Village denies the allegations contained therein.

7. As to paragraph 7, the Village admits the allegations contained therein.

8. As to paragraph 8, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.

9. As to paragraph 9, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.

10. As to paragraph 10, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.

11. As to paragraph 11, the Village admits that Concerned Citizens of Old Cutler Bay, Inc. ("CCOCI") and Joan Lindsay voluntarily intervened in this proceeding and that CCOCI and Lindsay's unopposed motion to intervene is attached to the complaint as Exhibit BB, but submits that the unopposed motion speaks for itself, denies all remaining allegations, and demands strict proof thereof.

12. As to paragraph 12, the Village admits that Chapters 86 and 119 of the Florida Statutes and 42 U.S.C. §1983 provide this Court with jurisdiction, denies all remaining allegations, and demands strict proof thereof.

13. As to paragraph 13, the Village admits the allegations contained therein.

14. As to paragraph 14, the Village denies the allegations contained therein.

15. As to paragraph 15, the Village admits the allegations contained therein.

16. As to paragraph 16, the Village admits the allegations contained therein.

17. As to paragraph 17, the Village admits the allegations contained therein.

18. As to paragraph 18, the Village admits that the Plaintiff previously filed an application seeking to re-zone a portion of its property and expand the existing school, but is without knowledge as to the remaining allegations, therefore denies the same, and demands strict proof thereof.

19. As to paragraph 19, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.

20. As to paragraph 20, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.

21. As to paragraph 21, the Village admits that it enacted Ordinance No. 08-06, a copy of which is attached to the Fourth Amended Complaint as Exhibit B, submits that Exhibit B speaks for itself, is without knowledge as to the allegations, therefore denies the same, and demands strict proof thereof.

22. As to paragraph 22, the Village denies the allegations contained therein.

23. As to paragraph 23, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.

24. As to paragraph 24, the Village denies the allegations contained therein.

25. As to paragraph 25, the Village admits that Palmer Trinity filed a Petition for Writ of Certiorari to the Circuit Court, Appellate Division, challenging the Village's denial of the rezoning, denies all remaining allegations, and demands strict proof thereof.

26. As to paragraph 26, the Village admits the allegations contained therein.

27. As to paragraph 27, the Village admits the allegations contained therein

28. As to paragraph 28, the Village submits that Palmer Trinity I, speaks for itself with respect to its form and content and therefore denies the allegations contained therein of paragraph 28 to the extent they contradict the Third District's holding in Palmer Trinity I.

29. As to paragraph 29, the Village submits that Palmer Trinity I speaks for itself with respect to its form and content and therefore denies the allegations contained therein of paragraph 29 to the extent they contradict the Third District's holding in Palmer Trinity I.

30. As to paragraph 30, the Village submits that Palmer Trinity I speaks for itself with respect to its form and content and therefore denies the allegations contained therein of paragraph 30 to the extent they contradict the Third District's holding in Palmer Trinity I.

31. As to paragraph 31, the Village submits that Palmer Trinity I speaks for itself with respect to its form and content and therefore denies the allegations contained therein of paragraph 31 to the extent they contradict the Third District's holding in Palmer Trinity I.

32. As to paragraph 32, the Village submits that Palmer Trinity I speaks for itself with respect to its form and content and therefore denies the allegations contained therein of paragraph 32 to the extent they contradict the Third District's holding in Palmer Trinity I.

33. As to paragraph 33, the Village submits that Palmer Trinity I speaks for itself with respect to its form and content and therefore denies the allegations contained therein of paragraph 33 to the extent they contradict the Third District's holding in Palmer Trinity I.

34. As to paragraph 34, the Village submits that the Village of Palmetto Bay's official zoning agenda for meeting of Monday, April 14, 2008, which is attached to the Complaint as Exhibit D, speaks for itself with respect to its form and content, denies all other allegations, and demands strict proof thereof.

35. As to paragraph 35, the Village submits that Palmer Trinity I speaks for itself with respect to its form and content and therefore denies the allegations contained therein of paragraph 35 to the extent they contradict the Third District's holding in Palmer Trinity I.

36. As to paragraph 36, the Village submits that Palmer Trinity I speaks for itself with respect to its form and content and therefore denies the allegations contained therein of paragraph 36 to the extent they contradict the Third District's holding in Palmer Trinity I.

37. As to paragraph 37, the Village submits that Palmer Trinity I speaks for itself with respect to its form and content and therefore denies the allegations contained therein of paragraph 37 to the extent they contradict the Third District's holding in Palmer Trinity I.

38. As to paragraph 38, the Village submits that Palmer Trinity I speaks for itself with respect to its form and content and therefore denies the allegations contained therein of paragraph 38 to the extent they contradict the Third District's holding in Palmer Trinity I.

39. As to paragraph 39, the Village denies the allegations contained therein.

40. As to paragraph 40, the Village denies the allegations contained therein.

41. As to paragraph 41, the Village denies the allegations contained therein.
42. As to paragraph 42, the Village denies the allegations contained therein.
43. As to paragraph 43, the Village admits that Section 2-106 of its Code of Ordinance is accurately quoted, denies all remaining allegations, and demands strict proof thereof.
44. As to paragraph 44, the Village denies the allegations contained therein.
45. As to paragraph 45, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.
46. As to paragraph 46, the Village admits the allegations contained therein.
47. As to paragraph 47, the Village admits that a public hearing was held on May 4, 2010, regarding Palmer Trinity's application to rezone the property and its application for a special exception, denies all remaining allegations, and demands strict proof thereof.
48. As to paragraph 48, the Village admits that Exhibit R is a copy of a motion for recusal dated May 4, 2010, but is without sufficient knowledge to admit or deny the remaining allegations, therefore denies the same, and demands strict proof thereof.
49. As to paragraph 49, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.
50. As to paragraph 50, the Village admits that Exhibit S is an excerpt from a March 11, 1999, hearing before the Community Zoning Appeals Board, submits that Exhibit S speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.
51. As to paragraph 51, the Village denies the allegations contains therein.

52. As to paragraph 52, the Village admits that Exhibit KK are excerpts from the September 8, 2011, deposition of Joan Lindsay, submits that Exhibit KK speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

53. As to paragraph 53, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.

54. As to paragraph 54, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.

55. As to paragraph 55, the Village admits that Exhibit H is a copy of an Order dated February 11, 2011, from the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Appellate Division, submits that Exhibit H speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

56. As to paragraph 56, the Village admits that Exhibit H is a copy of an Order dated February 11, 2011, from the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Appellate Division, submits that Exhibit H speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

57. As to paragraph 57, the Village admits that Exhibit H is a copy of an Order dated February 11, 2011, from the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Appellate Division, submits that Exhibit H speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

58. As to paragraph 58, the Village admits that Exhibit H is a copy of an Order dated February 11, 2011, from the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade

County, Appellate Division, submits that Exhibit H speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

59. As to paragraph 59, the Village admits that Exhibit H is a copy of an Order dated February 11, 2011, from the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Appellate Division, submits that Exhibit H speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

60. As to paragraph 60, the Village admits that Exhibit H is a copy of an Order dated February 11, 2011, from the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Appellate Division, submits that Exhibit H speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

61. As to paragraph 61, the Village admits that Exhibit H is a copy of an Order dated February 11, 2011, from the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Appellate Division, submits that Exhibit H speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

62. As to paragraph 62, the Village admits the allegations contained therein.

63. As to paragraph 63, the Village admits that George Knox, Esquire, addressed the Village Council at the May 4, 2010, hearing, denies all remaining allegations, and demands strict proof thereof.

64. As to paragraph 64, the Village admits that Exhibit T is an excerpt from the transcript of the May 4, 2010, hearing, submits that Exhibit T speaks for itself with respect to its form and content, denies all remaining allegations, and demands strict proof thereof.

65. As to paragraph 65, the Village admits that the Village Council began deliberations at the public hearing, denies all remaining allegations, and demands strict proof thereof.

66. As to paragraph 66, the Village denies the allegations contained therein.

67. As to paragraph 67, the Village admits that Exhibit H is a copy of an Order dated February 11, 2011, from the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Appellate Division, submits that Exhibit H speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

68. As to paragraph 68, the Village admits that Exhibit U is an excerpt from the transcript of the May 4, 2010, public hearing, submits that it speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

69. As to paragraph 69, the Village admits that Exhibit U is an excerpt from the transcript of the May 4, 2010, public hearing, submits that it speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

70. As to paragraph 70, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.

71. As to paragraph 71, the Village admits that Exhibit G is a copy of Ordinance No. 2010-09 and Exhibit H is a copy of the February 11, 2011, opinion of the Appellate Division of the Eleventh Judicial Circuit, submits that Exhibits G and H speak for themselves in terms of their form and content, denies all remaining allegations, and demands strict proof thereof.

72. As to paragraph 72, the Village admits that Exhibit H is a copy of an Order dated February 11, 2011, from the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade

County, Appellate Division, submits that Exhibit H speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

73. As to paragraph 73, the Village denies the allegations contained therein.

74. As to paragraph 74, the Village admits that Exhibit H is a copy of an Order dated February 11, 2011, from the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Appellate Division, submits that Exhibit H speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

75. As to paragraph 75, the Village admits that Exhibit H is a copy of an Order dated February 11, 2011, from the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Appellate Division, submits that Exhibit H speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

76. As to paragraph 76, the Village admits that Exhibit H is a copy of an Order dated February 11, 2011, from the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Appellate Division, submits that Exhibit H speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

77. As to paragraph 77, the Village admits that Exhibit H is a copy of an Order dated February 11, 2011, from the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Appellate Division, submits that Exhibit H speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

78. As to paragraph 78, the Village admits that Exhibit H is a copy of an Order dated February 11, 2011, from the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade

County, Appellate Division, submits that Exhibit H speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

79. As to paragraph 79, the Village admits that Exhibit H is a copy of an Order dated February 11, 2011, from the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Appellate Division, submits that Exhibit H speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

80. As to paragraph 80, the Village admits that Exhibit H is a copy of an Order dated February 11, 2011, from the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Appellate Division, submits that Exhibit H speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

81. As to paragraph 81, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.

82. As to paragraph 82, the Village admits the allegations contained therein.

83. As to paragraph 83, the Village admits that a public hearing was held on July 19, 2011, that Palmer Trinity moved to recuse Joan Lindsay from the hearing, and that Joan Lindsay participated in and voted at the July 19, 2011, hearing in her capacity as a Village Councilman, denies all remaining allegations, and demands strict proof thereof.

84. As to paragraph 84, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.

85. As to paragraph 85, the Village admits that Exhibit Z are excerpts from the transcript of the February 25, 2008, hearing on the Plaintiff's rezoning application, submits that Exhibit Z

speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

86. As to paragraph 86, the Village admits that Exhibit AA are excerpts from the May 4, 2011, hearing on Palmer Trinity's rezoning and special exception applications, submits that Exhibit AA speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

87. As to paragraph 87, the Village admits that Palmer Trinity moved to recuse Joan Lindsay prior to the July 19, 2011, hearing, denies all remaining allegations, and demands strict proof thereof.

88. As to paragraph 88, the Village denies the allegations contained therein.

89. As to paragraph 89, the Village denies the allegations contained therein.

90. As to paragraph 90, the Village admits that Exhibit DD is a copy of correspondence sent from the Village attorney to the State of Florida Commission on Ethics dated January 31, 2011, submits that Exhibit DD speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

91. As to paragraph 91, the Village denies the allegations contained therein.

92. As to paragraph 92, the Village admits that Exhibit CC are excerpts from the transcript of the July 19, 2011, hearing, submits that Exhibit CC speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

93. As to paragraph 93, the Village denies the allegations contained therein.

94. As to paragraph 94, the Village admits that Exhibit CC are excerpts from the transcript of the July 19, 2011, hearing, submits that Exhibit CC speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

95. As to paragraph 95, the Village admits that Exhibit CC are excerpts from the transcript of the July 19, 2011, hearing, submits that Exhibit CC speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

96. As to paragraph 96, the Village admits that the Plaintiff has accurately quoted Section 112.3143(3)(a) of the Florida Statutes, denies all remaining allegations, and demands strict proof thereof, the Village admits that Exhibit CC are excerpts from the transcript of the July 19, 2011, hearing, submits that Exhibit CC speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

97. As to paragraph 97, the Village admits that Exhibit EE is a copy of correspondence from the State of Florida Commission on Ethics dated February 21, 2011, submits that Exhibit EE speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

98. As to paragraph 98, the Village denies the allegations contained therein.

99. As to paragraph 99, the Village denies the allegations contained therein.

100. As to paragraph 100, the Village denies the allegations contained therein.

101. As to paragraph 101, the Village denies the allegations contained therein.

102. As to paragraph 102, the Village admits that Exhibit II is a copy of a Motion to Enforce Mandate or, in the Alternative, for extraordinary relief filed by the Plaintiff in the Appellate

Division of the Eleventh Judicial Circuit, submits that Exhibit II speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

103. As to paragraph 103, the Village denies the allegations contained therein.

104. As to paragraph 104, the Village denies the allegations contained therein.

105. As to paragraph 105, the Village denies the allegations contained therein.

106. As to paragraph 106, the Village denies the allegations contained therein.

107. As to paragraph 107, the Village admits that Exhibit I is a copy of a request for production propounded by the Plaintiff, submits it speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

108. As to paragraph 108, the Village admits that Exhibit J is a copy of a request for production propounded by the Plaintiff, submits it speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

109. As to paragraph 109, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.

110. As to paragraph 110, the Village denies the allegations contained therein.

111. As to paragraph 111, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.

112. As to paragraph 112, the Village denies the allegations contained therein.

113. As to paragraph 113, the Village admits that Exhibit K is a copy of a subpoena duces tecum served by the Plaintiff on Joan Lindsay, submits that it speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

114. As to paragraph 114, the Village admits the allegations contained therein.

115. As to paragraph 115, the Village admits that Exhibit L are excerpts from the deposition of Joan Lindsay, submits it speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

116. As to paragraph 116, the Village admits that Exhibit L are excerpts from the deposition of Joan Lindsay, submits it speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

117. As to paragraph 117, the Village denies the allegations contained therein.

118. As to paragraph 118, the Village denies the allegations contained therein.

119. As to paragraph 119, the Village denies the allegations contained therein.

120. As to paragraph 120, the Village denies the allegations contained therein.

121. As to paragraph 121, the Village denies the allegations contained therein.

122. As to paragraph 122, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.

123. As to paragraph 123, the Village admits that Exhibit O is a copy of an Order dated October 18, 2010, granting the Plaintiff's Motion to Compel Inspection of Hard Drive of Joan Lindsay, submits that Exhibit O speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

124. As to paragraph 124, the Village denies the allegations contained therein

125. As to paragraph 125, the Village denies the allegations contained therein.

126. As to paragraph 126, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.

127. As to paragraph 127, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.

128. As to paragraph 128, the Village denies the allegations contained therein.

129. As to paragraph 129, the Village denies the allegations contained therein.

130. As to paragraph 130, the Village denies the allegations contained therein.

131. As to paragraph 131, the Village denies the allegations contained therein.

132. As to paragraph 132, the Village denies the allegations contained therein.

133. As to paragraph 133, the Village denies the allegations contained therein.

134. As to paragraph 134, the Village denies the allegations contained therein.

135. As to paragraph 135, the Village denies the allegations contained therein.

136. As to paragraph 136, the Village denies the allegations contained therein.

137. As to paragraph 137, the Village denies the allegations contained therein.

138. As to paragraph 138, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.

139. As to paragraph 139, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.

140. As to paragraph 140, the Village denies the allegations contained therein.

141. As to paragraph 141, the Village denies the allegations contained therein.

142. As to paragraph 142, the Village denies the allegations contained therein.

143. As to paragraph 143, the Village denies the allegations contained therein.

**Count I**

144. As to paragraph 144, the Village reincorporates and realleges its response to Paragraphs 1 through 143.

145. As to paragraph 145, the Village denies the allegations contained therein.

146. As to paragraph 146, the Village denies the allegations contained therein.

147. As to paragraph 147, the Village denies the allegations contained therein.

148. As to paragraph 148, the Village denies the allegations contained therein.

149. As to paragraph 149, the Village denies the allegations contained therein.

150. As to paragraph 150, the Village submits that Section 2-106 speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

151. As to paragraph 151, the Village denies the allegations contained therein.

152. As to paragraph 152, the Village denies the allegations contained therein.

153. As to paragraph 153, the Village admits that Exhibit HH is a copy of the July 29, 2011, Order from the Southern District of Florida, submits that it speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

154. As to paragraph 154, the Village denies the allegations contained therein.

**Count II**

155. As to paragraph 155, the Village reincorporates and realleges its responses to paragraphs 1 through 143.

156. As to paragraph 156, the Village submits that Section 2-106 speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

157. As to paragraph 157, the Village denies the allegations contained therein.

158. As to paragraph 158, the Village denies the allegations contained therein.

159. As to paragraph 159, the Village denies the allegations contained therein.

160. As to paragraph 160, the Village denies the allegations contained therein.

161. As to paragraph 161, the Village denies the allegations contained therein.

162. As to paragraph 162, the Village denies the allegations contained therein.

163. As to paragraph 163, the Village denies the allegations contained therein.

164. As to paragraph 164, the Village denies the allegations contained therein.

165. As to paragraph 165, the Village denies the allegations contained therein.

#### **Counts III and IV**

166. Paragraphs 166 through 179 pertain to counts which have been dismissed with prejudice by the Court. See Court's Order, dated June 12, 2013.

#### **Count V**

180. As to paragraph 180, the Village reincorporates and realleges its responses to paragraphs 1 through 143.

181. As to paragraph 181, the Village is without sufficient knowledge to admit or deny the allegations contained therein, therefore denies the same, and demands strict proof thereof.

182. As to paragraph 182, the Village denies the allegations contained therein.

183. As to paragraph 183, the Village denies the allegations contained therein.

184. As to paragraph 184, the Village denies the allegations contained therein.
185. As to paragraph 185, the Village denies the allegations contained therein.
186. As to paragraph 186, the Village denies the allegations contained therein.
187. As to paragraph 187, the Village denies the allegations contained therein.
188. As to paragraph 188, the Village denies the allegations contained therein.
189. As to paragraph 189, the Village denies the allegations contained therein.
190. As to paragraph 190, the Village denies the allegations contained therein.
191. As to paragraph 191, the Village denies the allegations contained therein.
192. As to paragraph 192, the Village denies the allegations contained therein.
193. As to paragraph 193, the Village denies the allegations contained therein.
194. As to paragraph 194, the Village denies the allegations contained therein.
195. As to paragraph 195, the Village denies the allegations contained therein.
196. As to paragraph 196, the Village submits that the Third District Court of Appeal's

March 24, 2010, opinion, attached to the Complaint as Exhibit A, speaks for itself in terms of its form and content, denies the remaining allegations, and demands strict proof thereof.

197. As to paragraph 197, the Village denies the allegations contained therein.

#### **Count VI**

198. As to paragraph 198, the Village reincorporates and realleges its responses to paragraphs 1 through 143.

199. As to paragraph 199, the Village submits that the Miami-Dade County Home Rule Charter Citizens' Bill of Rights speaks for itself in terms of its form and content, denies the remaining allegations, and demands strict proof thereof.

200. As to paragraph 200, the Village submits that the Village of Palmetto Bay Municipal Charter Citizens' Bill of Rights speaks for itself in terms of its form and content, denies the remaining allegations, and demands strict proof thereof.

201. As to paragraph 201, the Village denies the allegations contained therein.

202. As to paragraph 201, the Village denies the allegations contained therein.

203. As to paragraph 201, the Village denies the allegations contained therein.

204. As to paragraph 201, the Village denies the allegations contained therein.

205. As to paragraph 201, the Village submits that the Third District Court of Appeal's March 24, 2010, opinion, attached to the Complaint as Exhibit A, speaks for itself in terms of its form and content, denies the remaining allegations, and demands strict proof thereof.

206. As to paragraph 206, the Village denies the allegations contained therein.

#### **Count VII**

207. As to paragraph 207, the Village reincorporates and realleges its responses to paragraphs 1 through 143.

208. As to paragraph 208, the Village submits that Article I, Section 24, of the Florida Constitution speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

209. As to paragraph 209, the Village submits that Chapter 119 of the Florida Statutes speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

210. As to paragraph 210, the Village submits that Chapter 119 of the Florida Statutes speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

211. As to paragraph 211, the Village submits that Chapter 119 of the Florida Statutes speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

212. As to paragraph 212, the Village submits that Chapter 119 of the Florida Statutes speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

213. As to paragraph 213, the Village admits that Exhibit Q are copies of correspondence from the Plaintiff to the Village regarding public records, submits that Exhibit Q speaks for itself in terms of its form and content, denies the remaining allegations, and demands strict proof thereof.

214. As to paragraph 214, the Village denies the allegations contained therein.

215. As to paragraph 215, the Village denies the allegations contained therein.

216. As to paragraph 216, the Village denies the allegations contained therein.

217. As to paragraph 217, the Village denies the allegations contained therein.

218. As to paragraph 218, the Village denies the allegations contained therein.

219. As to paragraph 219, the Village denies the allegations contained therein.

**Count VIII**

220. As to paragraph 220, the Village reincorporates and realleges its responses to paragraphs 1 through 143.

221. As to paragraph 221, the Village denies the allegations contained therein.

222. As to paragraph 222, the Village denies the allegations contained therein.

223. As to paragraph 223, the Village denies the allegations contained therein.

224. As to paragraph 224, the Village denies the allegations contained therein.

225. As to paragraph 225, the Village denies the allegations contained therein.

226. As to paragraph 226, the Village denies the allegations contained therein.

227. As to paragraph 227, the Village denies the allegations contained therein.

**Count IX**

228. As to paragraph 228, the Village reincorporates and realleges its responses through paragraphs 1 through 143.

229. As to paragraph 229, the Village denies the allegations contained therein.

230. As to paragraph 230, the Village submits that Exhibit A speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

231. As to paragraph 231, the Village submits that Exhibit A speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

232. As to paragraph 232, the Village denies the allegations contained therein.

233. As to paragraph 233, the Village submits that Exhibit A speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

234. As to paragraph 234, the Village denies the allegations contained therein.
235. As to paragraph 235, the Village denies the allegations contained therein.
236. As to paragraph 236, the Village submits that the referenced opinion speaks for itself in terms of its form and content, denies all remaining allegations, and demands strict proof thereof.

237. As to paragraph 237, the Village denies the allegations contained therein.
238. As to paragraph 238, the Village denies the allegations contained therein.
239. As to paragraph 239, the Village denies the allegations contained therein.
240. As to paragraph 240, the Village denies the allegations contained therein.
241. As to paragraph 241, the Village denies the allegations contained therein.
242. As to paragraph 242, the Village denies the allegations contained therein.
243. As to paragraph 243, the Village denies the allegations contained therein.
244. As to paragraph 244, the Village denies the allegations contained therein.

**Count X**

245. As to paragraph 245, the Village reincorporates and realleges its responses to paragraphs 1 through 143.
246. As to paragraph 246, the Village denies the allegations contained therein.
247. As to paragraph 247, the Village denies the allegations contained therein.
248. As to paragraph 248, the Village denies the allegations contained therein.
249. As to paragraph 249, the Village denies the allegations contained therein.
250. As to paragraph 250, the Village denies the allegations contained therein.
251. As to paragraph 251, the Village denies the allegations contained therein.

252. As to paragraph 252, the Village denies the allegations contained therein.

253. As to paragraph 253, the Village denies the allegations contained therein.

**Count XI**

254. Paragraphs 254 through 263 pertain to a claim not asserted against the Village. To the extent these paragraphs necessitate a response by the Village, it denies the allegations contained therein and demands strict proof thereof.

**Count XII**

271. Paragraphs 271 through 284 pertain to a claim not asserted against the Village. To the extent these paragraphs necessitate a response by the Village, it denies the allegations contained therein and demands strict proof thereof.

**Count XIII**

285. As to paragraph 285, the Village reincorporates and realleges its responses to paragraphs 1 through 143.

286. As to paragraph 286, the Village denies the allegations contained therein.

287. As to paragraph 287, the Village denies the allegations contained therein.

288. As to paragraph 288, the Village denies the allegations contained therein.

289. As to paragraph 289, the Village denies the allegations contained therein.

290. As to paragraph 290, the Village denies the allegations contained therein.

291. The Village denies each allegation, assertion, claim, demand, paragraph, un-numbered paragraph, subparagraph, statement, prayer, and request, including each framed in any "Wherefore," provision, which is not specifically admitted herein, denies that Plaintiff is entitled to any remedy,

denies that statements, items, and documents attached to or referenced in the Fifth Amended Complaint are relevant, authentic, or otherwise admissible in evidence, and demands strict proof of all facts, statements, and legal conclusions.

## II. AFFIRMATIVE DEFENSES

### Count I

292. The Plaintiff is unable to state a viable federal procedural due process claim in Count I because it has affirmatively alleged and, in fact, received adequate state remedies. See Villas of Lake Jackson, Ltd. v. Leon County, 121 F.3d 610, 615 (11th Cir. 1997); Zipperer v. City of Fort Myers, 41 F.3d 619, 623 (11th Cir. 1995); Tinney v. Shores, 77 F.3d 378, 382 (11th Cir. 1996) (per curiam).

293. Section 286.0115, Florida Statutes, provides that ex parte communications are expressly permitted in connection with quasi-judicial proceedings and that the disclosure of ex parte communications is not required.

294. Section 286.0115, Florida Statutes, has superseded the holding of Jennings v. Dade County, 589 So. 2d 1337 (Fla. 3d DCA 1991).

295. Section 2-106 of the Village Code is constitutional under both the U.S. and Florida Constitutions.

296. The Village, as a municipality, is entitled to the rights, privileges, and protections afforded under § 768.28, Florida Statutes.

297. The Plaintiff cannot establish that it is entitled to declaratory relief in Count I as there is no bona fide, actual, present practical need for the declaration.

298. The Plaintiff cannot establish that it is entitled to declaratory relief in Count I as the declaration would not deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts.

299. The Plaintiff cannot establish that it is entitled to declaratory relief Count I as there is no immunity, power, privilege or right of it that is dependent upon the facts or the law applicable to the facts.

300. Count I fails to allege an actual controversy between the Plaintiff and the Village as to section 2-106 of the Village's Code of Ordinances.

301. The Plaintiff cannot establish that it is entitled to declaratory relief Count I as all the antagonistic and adverse interests are not before the court and that the relief sought is merely the giving of legal advice by the Court or the answer to questions propounded from curiosity.

302. To the extent Count I seeks damages, the Village is entitled to sovereign immunity for such purely economic torts since those claims do not involve a personal injury or some property damage. See County of Brevard v. Miorelli Engineering, Inc., 677 So. 2d 32, 34 (Fla. 5<sup>th</sup> DCA 1996), quashed on other grounds, 703 So. 2d 1049 (Fla. 1997).

303. To the extent Count I seeks damages, Florida does not recognize a cause of action for money damages for a violation of a state constitutional right such as those alleged in Counts I. Garcia v. Reyes, 697 So. 2d 549 (Fla. 4th DCA 1997); Ferenz v. Calabrese, 760 So. 2d 1144 (Fla. 5th DCA 2000).

**Count II**

304. The Plaintiff is unable to state a viable federal substantive due process claim because land use disputes involving the delay in the issuance of a permit or a development order do not give rise to federal substantive due process claims. Mandelstam v. City of Miami, 685 So. 2d 868, 869-70 (Fla. 3d DCA 1996); Boatman v. Town of Oakland, 76 F.3d 341, 346 (11th Cir.1996); Corn v. City of Lauderdale Lakes, 95 F.3d 1066 (11th Cir. 1996).

305. The Plaintiff is unable to state a viable federal substantive due process claim because state-created property rights such as those alleged in Count II are not “fundamental” for substantive due process purposes. See Greenbriar Village, L.L.C. v. Mountain Brook, City, 345 F.3d 1258, 1262 (11th Cir. 2003) (per curiam); Boatman, 76 F.3d at 346; Corn, 95 F.3d 1066.

306. The Plaintiff is unable to state a viable federal procedural due process claim in Count II because it has affirmatively alleged and, in fact, received adequate state remedies. See Villas of Lake Jackson, 121 F.3d at 615; Zipperer, 41 F.3d at 623; Tinney, 77 F.3d at 382.

307. § 286.0115, Florida Statutes, provides that ex parte communications are expressly permitted in connection with quasi-judicial proceedings and that the disclosure of ex parte communications is not required.

308. § 286.0115, Florida Statutes, has superseded the holding of Jennings, 589 So. 2d 1337.

309. The Village, as a municipality, is entitled to the rights, privileges, and protections afforded under § 768.28, Florida Statutes.

310. The Village is entitled to sovereign immunity for such purely economic torts sought Count II since the claim does not involve a personal injury or some property damage. See Miorelli Engineering, 677 So. 2d at 34.

311. Florida does not recognize a cause of action for money damages for a violation of a state constitutional right such as those alleged in Counts II. Garcia, 697 So. 2d 549; Ferenz, 760 So. 2d 1144.

312. Section 2-106 of the Village's Code of Ordinances does not provide a cause of action for monetary damages.

#### Count V

313. Count V fails to allege an actual controversy between the Plaintiff and the Village as to the Village's Code of Ordinances.

314. Count V fails to state a federal cause of action upon which relief can be granted. The Plaintiff fails to allege that it has been deprived of a federally protected right or property interest or that the deprivation was caused by a municipal policy or custom.

315. The Plaintiff is not entitled to relief because it cannot identify a similarly situated individual or entity that was treated differently.

316. The Plaintiff is not entitled to relief because it cannot establish any difference in treatment that was motivated by intentional discrimination.

317. Any differential treatment in the Village's Code of Ordinance of private and public schools is rationally related to legitimate government purposes. Amour, 132 S. Ct 2073.

318. The Village, as a municipality, is entitled to the rights, privileges, and protections afforded under § 768.28, Florida Statutes.

319. The Plaintiff cannot establish that it is entitled to declaratory relief in Count V as there is no bona fide, actual, present practical need for the declaration.

320. The Plaintiff cannot establish that it is entitled to declaratory relief in Count V as the declaration would not deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts.

321. The Plaintiff cannot establish that it is entitled to declaratory relief Count V as there is no immunity, power, privilege or right of it that is dependent upon the facts or the law applicable to the facts.

322. Count V fails to allege an actual controversy between the Plaintiff and the Village.

323. The Plaintiff cannot establish that it is entitled to declaratory relief Count V as all the antagonistic and adverse interests are not before the court and that the relief sought is merely the giving of legal advice by the Court or the answer to questions propounded from curiosity.

324. To the extent Count V seeks damages under state law, the Village is entitled to sovereign immunity for such purely economic torts since those claims do not involve a personal injury or some property damage. See Miorelli Engineering, 677 So. 2d at 34.

325. To the extent Count V seeks damages, Florida does not recognize a cause of action for money damages for a violation of a state constitutional right such as those alleged in Counts V. Garcia, 697 So. 2d 549; Ferenz, 760 So. 2d 1144.

**Count VI**

326. Sovereign immunity has not been waived for purely economic torts against a municipality since those claims do not involve a personal injury or some property damage. See County of Brevard v. Miorelli Engineering, Inc., 677 So. 2d 32, 34 (Fla. 5<sup>th</sup> DCA 1996), quashed on other grounds, 703 So. 2d 1049 (Fla. 1997).

327. A violation of the Village's Citizens' Bill of Rights does not give rise to a claim for damages.

328. Count VI fails to allege any justiciable controversy.

329. The Plaintiff has failed to state a viable claim under the Village's Citizens' Bill of Rights.

**Count VII**

330. The Plaintiff has failed to state a viable claim under Florida's Public Records Act.

331. The Plaintiff has waived any right to relief under Florida's Public Records Act including any claim to attorneys fees and costs by failing to diligently pursue its public records claim and to seek an "immediate hearing" under § 119.11, Florida Statutes.

332. The Plaintiff has received all appropriate records which were subject to disclosure.

**Count VIII**

333. The Plaintiff is unable to state a viable federal substantive due process claim in Count VIII because land use disputes involving the delay in the issuance of a permit or a development order do not give rise to federal substantive due process claims. Mandelstam, 685 So. 2d at 869-70; Boatman, 76 F.3d at 346; Corn, 95 F.3d 1066.

334. The Plaintiff is unable to state a viable federal substantive due process claim because state-created property rights such as those alleged in Count VIII are not “fundamental” for substantive due process purposes. See Greenbriar Village, 345 F.3d at 1262; Boatman, 76 F.3d at 346; Corn, 95 F.3d 1066.

335. The Plaintiff is unable to state a viable federal procedural due process claim in Count VIII because it has affirmatively alleged and, in fact, received adequate state remedies. See Villas of Lake Jackson, 121 F.3d at 615; Zipperer, 41 F.3d at 623; Tinney, 77 F.3d at 382.

336. Count V fails to state a federal cause of action upon which relief can be granted. The Plaintiff fails to allege that it has been deprived of a federally protected right or property interest or that the deprivation was caused by a municipal policy or custom.

337. The Plaintiff cannot state a viable equal protection claim because it cannot identify a similarly situated individual or entity that was treated differently.

338. The Plaintiff cannot state a viable equal protection claim because it cannot establish any difference in treatment that was motivated by intentional discrimination.

339. The Plaintiff cannot state a viable equal protection claim because any differential treatment in the Village’s Code of Ordinance of private and public schools is rationally related to legitimate government purposes. Amour, 132 S. Ct 2073.

340. The Village, as a municipality, is entitled to the rights, privileges, and protections afforded under § 768.28, Florida Statutes.

341. To the extent Count VIII seeks damages for violations of Florida's Constitution, the Village is entitled to sovereign immunity for such purely economic torts since those claims do not involve a personal injury or some property damage. See Miorelli Engineering, 677 So. 2d at 34.

342. To the extent Count VIII seeks damages for violations of Florida's Constitution, Florida does not recognize a cause of action for money damages for a violation of a state constitutional right such as those alleged in Counts VIII. Garcia, 697 So. 2d 549; Ferenz, 760 So. 2d 1144.

343. To the extent Count VIII seeks damages under state law, the Village is entitled to sovereign immunity for such purely economic torts since those claims do not involve a personal injury or some property damage. See Miorelli Engineering, 677 So. 2d at 34.

#### **Count IX**

344. The Plaintiff cannot establish that the Village made an illegal, improper, or perverted use of any process.

345. The Plaintiff cannot establish that the Village had ulterior motives or purposes in exercising such illegal, improper, or perverted use of process.

346. The Plaintiff cannot establish that, as a result of such action on the part of the Village, the Plaintiff suffered damage.

347. The Village, as a municipality, is entitled to the rights, privileges, and protections afforded under § 768.28, Florida Statutes.

348. To the extent Count IX seeks damages under state law, the Village is entitled to sovereign immunity for such purely economic torts since those claims do not involve a personal injury or some property damage. See Miorelli Engineering, 677 So. 2d at 34.

#### Count X

349. The Plaintiff's civil conspiracy claim fails because it does not allege an underlying tort. An actionable conspiracy requires an actionable underlying tort or wrong. Raimi v. Furlong, 702 So. 2d 1273, 1284 (Fla. 3d DCA 1997).

#### Count XIV

350. The Plaintiff cannot state a viable claim for injunctive relief because it cannot establish a likelihood of irreparable harm in the absence of the requested injunction.

351. The Plaintiff cannot state a viable claim for injunctive relief because it cannot show the unavailability of an adequate remedy at law. To the contrary, the Plaintiff is seeking adequate remedies at law in the other counts in the Fifth Amended Complaint.

352. The Plaintiff cannot state a viable claim for injunctive relief because it cannot show a substantial likelihood of or actual success on the merits.

353. The Plaintiff cannot state a viable claim for injunctive relief because it cannot establish that its threatened injury outweighs the possible harm to the Village.

354. The Plaintiff cannot state a viable claim for injunctive relief because it cannot establish that the granting of the injunction will not disserve the public interest.

355. The Village, as a municipality, is entitled to the rights, privileges, and protections afforded under § 768.28, Florida Statutes.

**Defense Common To All Claims**

356. The Plaintiff has failed to satisfy the conditions precedent to bringing suit and failed to provide valid notice pursuant to § 768.28(6)(c) of the Florida Statutes.

357. Any alleged notice sent by the Plaintiff failed to meet the requirements of § 768.28 of the Florida Statutes.

358. The Village has not waived its right to assert the protections of § 768.28 of the Florida Statutes.

359. The Village is not estopped from asserting its rights under § 768.28 of the Florida Statutes.

360. The doctrine of collateral estoppel bars the Plaintiff from challenging or relitigating any issue addressed by the 11th Judicial Circuit in and for Miami-Dade County and the Third District Court of Appeal pertaining to these same parties.

361. The doctrine of judicial estoppel bars the Plaintiff from taking any factual position contrary to the factual position it took any previous proceeding between these parties the 11th Judicial Circuit in and for Miami-Dade County and the Third District Court of Appeal.

362. The Plaintiff has failed to establish any right, privilege, immunity, or property interest subject to protection under federal law or the deprivation of any such right, privilege, immunity, or property interest.

363. The Plaintiff received all required process and all process that was due. All further claims are now barred by the operation of law and the doctrines of merger, estoppel, and issue

preclusion. To the extent the Plaintiff now seeks independent relief, such claims amount to an improper splitting of causes of action.

364. The Plaintiff has previously elected its remedies and is now barred from seeking additional relief in this proceeding.

365. Some or all of the Plaintiff's claims are barred by the doctrine of laches.

366. Some or all of the Plaintiff's claims are barred by the doctrine of waiver.

367. Some or all of the Plaintiff's claims are barred by the doctrines of res judicata, issue preclusion, and law of the case.

368. The Plaintiff has failed to mitigate its damages.

#### **DEMAND FOR ATTORNEYS' FEES**

369. The Plaintiff has sued the Village pursuant to 42 U.S.C. §1983.

370. The Village has been required to retain the undersigned attorneys to represent it in this matter and to pay a reasonable fee.

371. The Plaintiff's federal claims are frivolous, unreasonable, and without foundation.

372. Pursuant to 42 U.S.C. §1988, the Village is entitled to recover its reasonable attorneys' fees in this action.

#### **DEMAND FOR JURY TRIAL**

373. Defendant, VILLAGE OF PALMETTO BAY, demands a trial by jury on all issues so triable as a matter of right.

**WHEREFORE**, Defendant, VILLAGE OF PALMETTO BAY, hereby demands entry of a judgment in its favor, entry of an order allowing it to go hence without day, entry of an award of costs, attorney's fees, and such other and further relief as this Court deems just and proper.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was furnished to: **Stanley B. Price, Esq.**, ([sprice@bilzin.com](mailto:sprice@bilzin.com), [mwidom@bilzin.com](mailto:mwidom@bilzin.com), [eservice@bilzin.com](mailto:eservice@bilzin.com)) Bilzin, Sumberg, Baena, Price & Axelrod, LLP, Attorneys for the Plaintiff, 1450 Brickell Avenue, Suite 2300, Miami, FL 33131, **Sean M. Cleary, Esq.**, ([sean@clearypa.com](mailto:sean@clearypa.com), [amanda@clearypa.com](mailto:amanda@clearypa.com), [kisha@clearypa.com](mailto:kisha@clearypa.com)), Law Offices of Sean M. Cleary, P.A., 19 West Flagler Street, Suite 618, Miami, FL 33130, co-counsel for Plaintiff, **Eve Boutsis, Esq.**, ([eboutsis@fbm-law.com](mailto:eboutsis@fbm-law.com)) Figueredo & Boutsis, P.A., Attorneys for Defendant, 18001 Old Cutler Road, Suite 533, Miami, FL 33157; **W. Tucker Gibbs, Esq.**, ([tucker@wtgibbs.com](mailto:tucker@wtgibbs.com), [wtglawoffice@att.net](mailto:wtglawoffice@att.net)), W. Tucker Gibbs, P.A., Attorneys for Defendant, P.O. Box 1050, Coconut Grove, FL 33133; and **Benedict P. Kuehne, Esq.**, ([ben.kuehne@kuehnelaw.com](mailto:ben.kuehne@kuehnelaw.com), [bkuehne@bellsouth.net](mailto:bkuehne@bellsouth.net)), Law Office of Benedict P. Kuehne, P.A., Miami Tower, Suite 3550, 100 S.E. 2<sup>nd</sup> Street, Miami, FL 33131, on this 27<sup>th</sup> day of June 2013, via E-mail.



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