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To: Mayor and Village Council

Date: July 2, 2012

From: Eve A. Boutsis, Village Attorney

Re: Ballot Questions -  
Charter Revision Commission

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**A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO AMENDING SECTIONS 2.3, 2.5, 3.3, 4.2, 5.1, 6.2, AND CREATING SECTIONS 10.2 AND 10.3, OF THE VILLAGE OF PALMETTO BAY'S CHARTER; PROVIDING REQUISITE BALLOT LANGUAGE FOR SUBMISSION TO ELECTORS OF THE PROPOSED AMENDMENTS TO THE VILLAGE CHARTER; PROVIDING FOR COPIES OF THE CHARTER AMENDMENTS BE AVAILABLE FOR PUBLIC INSPECTION; PROVIDING FOR THE VILLAGE CLERK TO UTILIZE THE SERVICES OF MIAMI-DADE COUNTY SUPERVISOR OF ELECTIONS TO PLACE THE CHARTER AMENDMENTS ON THE BALLOT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**BACKGROUND:**

The Mayor and Village Council of the Village of Palmetto Bay appointed a Charter Revision Commission to review the Village Charter and to provide recommendations to the Village Council. Over the past fourteen (14) months, beginning on March 21, 2011, since the Charter Revision Commission has been meeting, they have held one public workshop, have obtained public input, and provided several recommendations for amendment of the Village Charter to the Village Council. Each proposed ballot title must be under 15 words, and each proposed ballot summary, including the question must be less than 75 words.

The Mayor and Village Council are to review the proposed ballot questions and amendments to the charter, and select those items for submission to electors. Copies of the proposed charter amendments shall be made available for public inspection. The resolution authorizes the Village Clerk to utilize the services of Miami-Dade County Supervisor of Elections to administer the special election as it relates to the ballot questions. Once finalized, the Elections Department shall translate the ballot questions into Spanish.

## **PROPOSED BALLOT QUESTIONS:**

### **1. NEIGHBORHOOD PROTECTION [Section 10.2].**

Creating a provision<sup>1</sup> called Neighborhood Protection whereby: 1) single-family-residential zoned properties shall be protected from the negative impacts of adjacent or nearby non-single-family-residential uses and 2) four affirmative votes of the Council shall be required to approve a zoning change, conditional use, or special exception in any single-family-residential district. Excluded are all commercial, business, and multi-family residential districts.

### **2. NONPARTISAN ELECTIONS - DEFINED. [Section 5.1(B)].**

The Charter currently requires that elections be nonpartisan. The Charter Revision Commission suggests an amendment to the Charter to define nonpartisan consistent with state law. A judicial finding of guilt would preclude campaigning or qualifying for election or retention in office.

### **3 ENFORCEMENT OF NONPARTISAN PROVISION OF CHARTER BY STATE ATTORNEY - [Section 5.1(B)].**

The Charter Revision Commission suggests an amendment of the Charter to provide enforcement of Section 5.1(B) of the Charter, relating to nonpartisan elections, through the office of the State Attorney. A judicial determination of a willful violation of Section 5.1(B) shall be grounds for removal from elected office and subject the individual to a fine up to \$1,000, per violation, but not to exceed a total of \$10,000.

### **4. CHANGING TERM LIMITS. [Section 2.3(E)].**

The Village Charter currently limits the length of service of the Mayor, Vice-Mayor, and Council Persons to no more than two consecutive terms. The Charter Revision Commission suggests an amendment to the Charter to limit the length of service of the Mayor, Vice-Mayor, and Council Persons to two terms in any one position, with no more than a total of three consecutive terms regardless of position.

### **5. INTERACTION WITH ADMINISTRATION - VILLAGE COUNCIL TO CONTACT STAFF DIRECTLY WITHOUT PENALTY. [Section 4.2(B)(1) and (2)].**

The Charter currently reflects that the Village Council is to enact a resolution in order to investigate or inquire on a topic directly with staff. A finding of interference with administration could be a basis for removal from office. The Charter Revision Commission suggests an amendment to the Charter to remove the penalty, and authorizes the Village Council to make direct inquiries of staff, and to change the title of the provision from "Interference" to "Interaction" with Administration.

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<sup>1</sup> The language was modified slightly by Council after Charter Revision Commission vote to reflect "Creating a". This change is stylistic. Counsel informed the Commission of the edit.

**6. DEPARTMENT HEAD SELECTION TO BE AFFIRMED BY VILLAGE COUNCIL [Section 3.3(1)].**

The Village Manager currently hires all department heads. The Charter Revision Commission suggests an amendment to the Charter to reflect the Village Manager may not appoint any department director without first obtaining approval of a majority of the Village Council.

**7. TWO YEAR PROHIBITION ON VILLAGE EMPLOYMENT AFTER LEAVING OFFICE [Section 4.2(c)].**

The Charter currently provides a one year prohibition after leaving office from being hired by the Village. The Charter Revision Commission suggests an amendment to the Charter to increase the prohibition to two years.

**8. REQUIRING CANDIDATES TO RUN INDEPENDENTLY [Section 2.3(D)].**

The Charter Revision Commission suggests an amendment to the Charter to require each person running for elected office to run independently of any other Village candidate.

**9. FILLING OF VACANCIES BY REMAINING COUNCIL WITH OR WITHOUT A QUORUM [Section 2.5(C)(7)].**

The Charter currently provides that if there is less than a quorum remaining in office, the remaining elected officials may appoint the interim vacant seats. The Charter is silent as to appointments when Mayor and Vice Mayor seats are vacant, and there is a quorum. The Charter Revision Commission suggests an amendment to the Charter to allow the remaining elected officials, with, or without a quorum to appoint members, and then for the full Council to select an interim Mayor and Vice Mayor.

**10. ANNEXATION. [Section 103].**

The Charter Revision Commission suggests an amendment to the Charter to include a detailed annexation process: requiring a supermajority vote of the Village Council to proceed with annexation process; thereafter, requiring a vote of the Village residents on whether to entertain annexation; and then, adherence to County annexation vote process.

**11. COMPOSITION OF CHARTER REVISION COMMISSION. [Section 6.2(b)].**

The Charter currently provides for the appointment of Commission members by the Village Council. The Charter Revision Commission suggests an amendment to the Charter to clarify the Charter Commission membership appointment process, to require each District Council Person to appoint a person from his/her district, and for the Mayor and Vice-Mayor, to appoint, at large.

**12. TECHNICAL AND STYLISTIC AMENDMENTS.**

The Charter Revision Commission suggests an amendment to the Charter to reflect non-substantive stylistic and technical changes made for clarity, including: titles, typographical, grammatical errors, and renumbering of sections.

**ANALYSIS:**

The Charter Revision Commission requested the Village Attorney review two particular items in anticipation of the March 27, 2012 meeting: (1) Language in other charters as to "Neighborhood Protection" and "Compatibility", as well, as propose language that could be utilized; and (2) opine as to whether the Village Council may amend, modify, remove, add, charter amendments to ballot. Ultimately, on May 30, 2012, the Charter Revision Commission approved ballot language that had been revised after discussion with Mr. W. Tucker Gibbs and Mrs. Leanne Tellam, who is the resident proponent of the ballot language. The Village Attorney was directed to meet with Mrs. Tellam and Mr. Gibbs. On or about March 12, 2012, the Village Attorney prepared a memorandum relating to the proposed Neighborhood Protection ballot question. For the purposes of full disclosure and to ensure that the Village Council is as informed as the Charter Revision Commission, below is a synopsis of the analysis provided by the Village Attorney.

**(1) Supermajority or Unanimous voting requirement on land use decisions.**

**The proposed ballot question relating to the creation of section 10.2 entitled "Neighborhood Protection" includes a subsection 10.2.2 relating to requiring a supermajority vote. The proposed amendment is written as follows:**

**10.2.2 Four affirmative votes of the Village Council shall be required to approve a zoning change, conditional use, or special exception in any single-family residential district.**

As to that part of the Charter Amendment regarding the proposed requirement of a supermajority vote (4/5 vote) as to certain land use determinations, the Village Attorney conducted research as to whether a 4/5 voting requirement would be upheld. Please note, that the original language proposed was to provide for a 5/0, unanimous vote, of the Council. The 5/0 vote request was modified to the supermajority, 4/5 vote language contained in 10.2.2.

The City South Miami's charter requires a 5-0 vote to liberalize land use or development regulations in any manner to make them less restrictive. This provision was enacted in 2010. To date, the Village attorney is unaware of any challenge to South Miami's charter. The City of Saint Pete Beach also has a 5/0 vote requirement in its charter as it pertained to comprehensive plan amendments. Though the City of St. Pete Beach's provision was upheld, the City ultimately repealed the charter amendment owing, in part, to at least 12 separate lawsuits. *Citizens for Responsible Growth v. City of St. Pete Beach*, 940 So.2d 1144 (Fla. 2nd DCA 2006). The litigation itself did not analyze City of St. Pete Beach's 5/0 requirement, rather it upheld the overall ballot language. The Courts have upheld a 4/5's majority vote, rather than a simple majority vote, for approval of a rezoning application. *Banana River Properties v. City of Cocoa Beach*, 287 So.2d 377, 378 (Fla. 4th DCA 1973). However, the Court had ruled that those actions were legislative, not quasi-judicial. Two decades later, the Courts ruled similarly for quasi-judicial proceedings. [*Board of County Commissioners v. Snyder*, 627 So.2d 469 (Fla. 1993)]. Municipal lawyers believe, that although this decision was not directly overturned by Snyder, "the very nature of quasi-judicial decision makes it likely that such decisions would survive judicial review." *Working with Planning & Zoning Staff - A view from the Inside and Streamlining the Bureaucracy*, Issued by the City of Tampa for the 34th Annual Local Government Law in Florida - Course for the Florida Bar Continuing Legal Education Committee and the City, County and Local Government Law Section (May 5, 2011). In 2006, the City of St. Pete Beach charter was modified to require a referendum for certain upzoning actions and Comprehensive Plan Amendments. This resulted in nine very expensive lawsuits, a settlement, and lawsuits over the settlement. Ultimately, the elected officials were replaced, and the amendments were repealed. The City spent more on legal fees than its annual budget. See *Hometown Democracy: the St. Pete Beach Experience*, Michael S. Davis, and Nicole C. Armstrong, 38 Stetson Law Review 3 (Spring 2009), and subsequent articles.

During the Charter Revision Commission meetings the Village Attorney advised the Commission that the use of a 4/5 or 5/0 voting requirement was a policy decision. Ultimately, as a policy, a 5/0 vote requirement would provide a minority position to veto something a supermajority of the council wanted. Such voting policy could potentially stop all matters due to the strength of one person's vote, versus a majority of voters. The Charter Revision Commission voted to proceed with the 4/5 vote as delineated in proposed section 10.2.2.

As an aside, it is important to be aware, that the Florida Legislature during the 2012 session heard a bill sponsored by Representative Bogdanoff that would have precluded any charter amendments requiring a supermajority vote to amend a comprehensive land use plan. The item was ruled out of order and was not enacted. It is important to note that similar legislation may be proposed in the future.

**(2) Review of Other Charters as to proposed 10.2:**

The Remainder of the provisions of proposed charter amendment, creating section 10.2 states as follows:

\* \* \*

All Single-family residential properties shall be protected from the negative impacts of adjacent or nearby non-single-family-residential uses.

**10.2.1** All non-single-family-residential developments, structures, or use (that is/are a direct or indirect result of that development, structure, or use) in, adjacent to, or nearby any single-family zoned properties shall not disrupt or degrade the health, safety, tranquility, character, and overall welfare of the adjacent or nearby single-family residential properties by creating negative impacts on those properties such as density, intensity, noise, light, glare, dust, odor, vibration, traffic or run off that exceeds that of adjacent single-family properties. Nothing herein should be construed or applied to abrogate the vested rights of a property owner.

\* \* \*

This provision shall not apply to properties as of the date of approval of this charter amendment within the following Zoning Districts:

- B-1 - Limited Business Districts
- B-2 - Business Districts
- R-5 - Office District
- FT&I - Franjo Triangle and U.S. 1 Island District except for the Live Work-Residential sub-district as it relates to the FT&I District
- VMU - Village Mixed Use District
- All multi-family residential districts (R-2, R-TH, R-3, R-3M, R-4L, R-4H)

The Village shall enact an ordinance to implement Section 10.2.

\* \* \*

Please note, the Charter Revision Commission had asked the Village Attorney to review other charters to see if there is a similar provision in other cities as to that proposed by the resident, Mrs. Tellam, as it relates to "Neighborhood Protection." The Village Attorney reviewed over 30 different charters within Miami-Dade County, and the state, at large. The charters reviewed, included, but were not limited to: Miami Lakes, Doral, Pinecrest, Coral Gables, South Miami, Key Biscayne, Biscayne Park, Homestead, Cutler Bay, Miami-Dade County, Golden Beach, Miami Springs, St. Petersburg, Tampa, St Pete Beach, Orlando, Broward County, Ft. Lauderdale, Sarasota, St. Augustine, and Jacksonville. To date, the proponent of the ballot language, Mrs. Tellam and Mr.

Gibbs, the land use lawyer working with Mrs. Tellam, have not provided any language from a charter that is similar to the language being proposed for insertion in the Village's charter at the proposed new section 10.2. Rather, in doing research, the Village Attorney determined that Broward County has a provision that talks about vested rights, and if there is a regulation that is "in any way adverse to [a person's interest], then nothing in the Charter authorizes any governmental agency to abridge those rights." It further states "a governmental agency shall not adopt a rule or regulation or issue any order that is unduly restrictive or constitutes a taking of property without the payment of full compensation, in violation of the Constitution of the State of Florida or of the United States." Section 8.06(A) and (B), Broward County Charter. After further discussion with Mr. Gibbs and Mrs. Tellam, the Village Attorney was able to ascertain that there were no charters that have utilized similar "Neighborhood Protection" language. Nor was any documentation provided to the Village Attorney on behalf of the requesters to support the presence thereof.

### **(3) Implementation Matters**

In implementation of the charter amendment, a challenge to the language could arise relating to consistency with the Comprehensive Plan and to its clarity. Florida Courts have held that the standards for a property owner to comply with should be delineated in its duly enacted land use regulations. *Windward Marina, L.L.C v. City of Destin*, 743 So. 2d 635 (Fla. 1st DCA 1999). See *Alachua County v. Eagle's Nest Farms, Inc.*, 473 So. 2d 257, 259 (Fla. 1st DCA 1985). See also "*Powell v. City of Delray Beach*, 711 So. 2d 1307, 1310 (Fla. 4th DCA 1998). While a local government may deny a development order based on a determination that a proposed development would be inconsistent with the stated goals of the locality's comprehensive plan, see *Franklin County v. S.G.I. Ltd.*, 728 So. 2d 1210 (Fla. 1st DCA 1999), a local government may not deny a development order based on criteria that are not specifically enumerated in its land use regulations. See *Drexel v. City of Miami Beach*, 64 So. 2d 317 (Fla. 1953). See also *Effie, Inc. v. City of Ocala*, 438 So. 2d 506 (Fla. 5th DCA 1983); *ABC Liquors, Inc. v. City of Ocala*, 366 So. 2d 146 (Fla. 1st DCA 1979). If enacted, the Village will have to review the Comprehensive Plan to ensure there are no conflicts and to ensure that the Land Development Code is clear, defined, and that it delineates the obligations imposed on property owners. The Village needs to ensure that the language is to be evenly enforced with understandable and definable criteria. Further, there needs to be a review to ensure that there is no selective enforcement, as to what "affects" the single family home. [*Florida Mining & Materials Corp. v. City of Port Orange*, 518 So. 2d 311, 314 (Fla. 5th DCA 1987) (granting certiorari and reversing circuit court's decision upholding city's denial of special exception,) saying "if the city wants to limit the use of large trucks on the nearby residential streets, it must utilize some uniform restriction applicable to all."].

If enacted, the charter provision would necessitate a hearing on the activity that is perceived to violate the charter to determine if there is a violation of the provision in question. As the Village Council is the decision maker, there would need to be a hearing, and all the criteria must be defined and delineated in the Code. "[A] zoning ordinance must prescribe definite standards for the guidance and control of the building inspector, the zoning officials and indeed the municipal council, where by the ordinance reserves to itself various administrative zoning powers." *North Bay Village v. Blackwell*, 88 So. 2d 524, 526 (Fla. 1956) (emphasis supplied). "The right of the [property owner]

should be determined, and the infringement upon them gauged, by the language of the ordinance itself." *Drexel v. City of Miami Beach*, 64 So. 2d 317, 319 (Fla. 1953). The Council will need to ensure that the enabling zoning ordinances are not unconstitutionally vague, so as to not result in a "capricious application." See, e.g., *Henry v. Board of County Comm'rs of Putnam County*, 509 So. 2d 1221 (Fla. 5th DCA 1987). See also *Effie*; *ABC Liquors*; *City of Homestead v. Schild*, 227 So. 2d 540, 542 (Fla. 3d DCA 1969) holding the language "as it deems necessary and essential to preserve and protect the health, safety and welfare of the citizens" to be unconstitutionally vague.

The Charter Amendment does propose the creation of an ordinance to "flush out" or to further delineate the requirements of the charter amendment, if enacted. Implementation and review will be critical in ensuring that any enabling ordinances are not unconstitutionally vague.

### **(3) Additional Matters.**

The Village Attorney is not tasked with creating policy. Rather, the Village Attorney is tasked with review of form and legal sufficiency. The Village Attorney's review of the ballot questions and amendments to the charter is based upon facial legal sufficiency. As to a facial challenge, it appears that facially, all the proposed amendments are facially constitutional. There is no obvious facial issue and none has been raised during the public input process.

The Village Attorney cannot, at this time, address any possible "as applied" challenge, in particular, as it relates to the Neighborhood Protection ballot question. As with any legislation and action of the Council, litigation may ensue. This statement can apply as to any of the charter amendments. However, as the Village is creating a charter amendment that is unlike any other charter amendment provided for in Miami-Dade County, or elsewhere in the Florida, and as residents have raised concerns and raised the specter of litigation, the Village Attorney, in an abundance of caution provides the Village Council with a delineation of possible claims.

**A. Bert J. Harris Act.** A complainant could possibly assert a Bert J. Harris Act challenge. A Court could rule, based upon an "as applied challenge" that "the charter amendment imposes an inordinate burden, or restriction or limit to private property rights, and would inordinately burden an existing use of real property or a vested right to a specific use of real property." Fla. Stat. 70.001. It could result in a substantial damage claim being filed against the Village.

Enclosed below are the provisions of the Bert J. Harris Act. In short, there is no statutory limit on liability, as with most other claims, as would otherwise be provided under section 768.28, F.S. This act provides:

#### **§ 70.001. Private property rights protection:**

(1) This act may be cited as the "Bert J. Harris, Jr., Private Property Rights Protection Act." The Legislature recognizes that some laws, regulations, and ordinances of the state and political entities in the state, as applied, may inordinately burden, restrict, or limit private property rights without amounting to a taking under the State

Constitution or the United States Constitution. The Legislature determines that there is an important state interest in protecting the interests of private property owners from such inordinate burdens. Therefore, it is the intent of the Legislature that, as a separate and distinct cause of action from the law of takings, the Legislature herein provides for relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state, as applied, unfairly affects real property.

(2) When a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief, which may include compensation for the actual loss to the fair market value of the real property caused by the action of government, as provided in this section.

(3) For purposes of this section: (a) The existence of a "vested right" is to be determined by applying the principles of equitable estoppel or substantive due process under the common law or by applying the statutory law of this state.

(b) The term "existing use" means:

1. An actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use; or
2. Activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.

\* \* \*

(e) The terms "inordinate burden" and "inordinately burdened":

1. Mean that an action of one or more governmental entities has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.
2. Do not include temporary impacts to real property; impacts to real property occasioned by governmental abatement, prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property; or impacts to real property caused by an action of a governmental entity taken to grant relief to a

property owner under this section. However, a temporary impact on development, as defined in s. 380.04, that is in effect for longer than 1 year may, depending upon the circumstances, constitute an "inordinate burden" as provided in this paragraph.

In determining whether reasonable, investment-backed expectations are inordinately burdened, consideration may be given to the factual circumstances leading to the time elapsed between enactment of the law or regulation and its first application to the subject property.

(f) The term "property owner" means the person who holds legal title to the real property at issue. The term does not include a governmental entity.

(g) The term "real property" means land and includes any appurtenances and improvements to the land, including any other relevant real property in which the property owner had a relevant interest.

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**B. A religious institution could raise a RELIUPA claim or the Florida version of RELUIPA.**

**RELIUPA**

As the Florida Supreme Court has analyzed federal law, the history of religious protection under federal law, rather than try to summarize the Florida Supreme Court, below is an excerpt from a decision of the Florida Supreme Court from *Warner v. City of Boca Raton*, 887 So. 2d 1023, (Florida 2004), which explains Federal law as it relates to religious expression.

Over the past hundred plus years, the United States Supreme Court has vacillated on the standard applicable to laws which in some way infringe on an individual's right to the free exercise of religion. Initially, the Supreme Court held that the *Free Exercise Clause* did not excuse an individual from the obligation to comply with neutral laws of general applicability. See, e.g., *Minersville Sch. Dist. v. Gobitis*, 310 U.S. 586, 594<sup>2</sup> (1940), overruled by *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Reynolds v. United States*, 98 U.S. 145, 166-67 (1878). Thus, it appeared that if a neutral law of general applicability was rationally related to a matter of governmental interest, it would not violate the *Free Exercise Clause*.

However, in 1963 the Supreme Court expanded the protection given to religious freedom. In *Sherbert v. Verner*, 374 U.S. 398, 406 (1963), the Supreme Court expressly rejected the use of the rational basis standard when evaluating religious

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<sup>2</sup> Full string citations on all cases removed from blocked quote.

freedom claims when it said, "It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, 'only the gravest abuses, endangering paramount [compelling] interests, give occasion for permissible limitation.'" (quoting *Thomas v. Collins*, 323 U.S. 516, 530 (1945)); see also *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972) ("A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief."). [\*\*11]

Later, the Supreme Court modified the *Sherbert* "compelling interest" test by creating exceptions to its application. The Supreme Court found that the compelling interest test was inapplicable to Free Exercise claims in military and prison situations. See *Goldman v. Weinberger*, 475 U.S. 503, 508 (1986) (holding that the *First Amendment* did not prevent the Air Force from passing regulations which prohibited the wearing of headgear required by a person's religion). See also *Turner v. Safley*, 482 U.S. 78, 87 (1987) (holding that a court examining prison regulations must only inquire as whether the regulation is "reasonably related" to legitimate penological objectives, or whether it represents an "exaggerated response" to those concerns). The Supreme Court also began to retreat from the compelling interest test in cases involving [\*1028] Free Exercise challenges to a neutral law of general application. See *Bowen v. Roy*, 476 U.S. 693, 707-08 (1986) ("Absent proof of an intent to discriminate against particular religious beliefs or against religion in general, the Government meets its burden [\*\*12] when it demonstrates that a challenged requirement for governmental benefits, neutral and uniform in its application, is a reasonable means of promoting a legitimate public interest.") (plurality opinion); *Lyng v. Northwest Indian Cemetery Prot. Ass'n*, 485 U.S. 439, 450 (1988) ("Incidental effects of government programs, which may make it more difficult to practice certain religions but which have no tendency to coerce individuals into acting contrary to their religious beliefs, [do not] require government to bring forward a compelling justification.").

The Supreme Court further receded from *Sherbert* and the compelling interest test in *Employment Division, Department of Human Resources v. Smith*, 494 U.S. 872 (1990), which involved whether the *Free Exercise Clause of the First Amendment* permits the State of Oregon to include religiously inspired peyote use within the reach of its general criminal prohibition on use of that drug, and thus permits the State to deny unemployment benefits to persons dismissed from their jobs because of such religiously inspired use. *Id.* at 874.

The Supreme Court held that the *Free Exercise Clause* analysis articulated in *Sherbert* was inapplicable because the law was not aimed at promoting or restricting religious beliefs.<sup>3</sup> Noting that it had never invalidated any governmental

action on the basis of the *Sherbert* test except for the denial of unemployment compensation, the Supreme Court stated its reasons for refusing to apply the test in the context of the *Smith* case:

We conclude today that the sounder approach, and the approach in accord with the vast majority of our precedents, is to hold the [compelling state interest] test inapplicable to such challenges. The government's ability to enforce generally applicable prohibitions of socially harmful conduct, like its ability to carry out other aspects of public policy, "cannot depend on measuring the effects of a governmental action on a religious objector's spiritual development." To make an individual's obligation to obey such a law contingent upon the law's coincidence with his religious beliefs, except where the State's interest is "compelling"--permitting him, by virtue of his beliefs, "to become a law unto himself"--contradicts both constitutional tradition and common sense. *Id. at 885* (citations omitted). The Supreme Court rejected the argument advanced by the respondents in *Smith* that the compelling interest test should be used when the conduct prohibited [\*1029] by the State is central to the individual's religion. The Supreme Court opined: "What principle of law or logic can be brought to bear to contradict a believer's assertion that a particular act is 'central' to his personal faith? Judging the centrality of different religious practices is akin to the unacceptable 'business of evaluating the relative merits of differing religious claims.'" *Id. at 887* (quoting *United States v. Lee*, 455 U.S. 252, 263 n.2 (1982) (Stevens, J., concurring in the judgment)). The Court stated that an inquiry into the centrality of particular beliefs to a faith was not within the "judicial ken" and thus, improper. *Id. at 887* (quoting *Hernandez v. Commissioner*, 490 U.S. 680, 699 (1989)).

3. In *Smith*, The United States Supreme Court defined the Free Exercise of religion as the right to believe and profess whatever religious doctrine one desires. Thus, the *First Amendment* obviously excludes all "governmental regulation of religious *beliefs* as such." The government may not compel affirmation of religious belief, punish the expression of religious doctrines it believes to be false, impose special disabilities on the basis of religious views or religious status, or lend its power to one or the other side on controversies over religious authority or dogma.

But the "exercise of religion" often involves not only belief and profession but the performance of (or abstention from) physical acts . . . *Smith*, 494 U.S. at 877 (citations omitted).

Thereafter, in 1993, the United States Congress passed the Religious Freedom Restoration Act (RFRA). RFRA was intended to essentially overrule the Supreme Court's decision in *Smith* and restore the compelling state interest test set forth in

*Sherbert* as the standard for free exercise challenges to laws of general applicability. See 42 U.S.C. § 2000bb (2000). Accordingly, RFRA prohibited the government from substantially burdening a person's free exercise of religion unless the government showed that the burden: "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(b) (2000). Prior to 2000, RFRA defined the "exercise of religion" as "the exercise of religion under the *First Amendment to the Constitution*." Religious Freedom Restoration Act, P.L. 103-141, § 5(4), 107 Stat. 1488, 1489 (1993). Now, RFRA defines the "exercise of religion" as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." *Id.* (adopting definition in 42 U.S.C. § 2000cc-5 (7)(A) (2000)).

Initially, RFRA applied to any governmental entity, whether state or federal. See P.L. 103-141, §§ 5-6, 107 Stat. 1488, 1489 (1993) (defining government as including "a branch, department, agency, instrumentality, and official . . . of the United States, a State, or a subdivision of a State" and providing that "this Act applies to all Federal and State law"). The constitutionality of RFRA as applied to the states was challenged in *City of Boerne v. Flores*, 521 U.S. 507 (1997). In arguing that RFRA could be constitutionally applied to the states, the respondent argued that RFRA was a proper exercise of Congress's remedial and enforcement power under the *Fourteenth Amendment*. *Id.* at 517, 529. According to the respondent in *Flores*, RFRA was a reasonable means of protecting the free exercise of religion as defined by *Smith*. *Id.* at 529.

The Supreme Court rejected this argument, concluding that the scope and reach of RFRA distinguished it from other remedial and enforcement measures passed by Congress. Rather, the Court determined that RFRA was substantive in nature because it imposed a more stringent test for determining the constitutionality of laws burdening religion than that demanded by the United States Constitution as interpreted by the Supreme Court in *Smith*. According to the Court, state "laws valid under *Smith* would fall under RFRA." *Id.* at 534. Noting that under the *Fourteenth Amendment* the federal government did not have the power to substantively alter constitutional rights, *id.* at 529, the Supreme Court invalidated RFRA as applied to the states. [\*1030] *Id.* at 536. "Therefore, the standard articulated by the Supreme Court in *Smith* remains the threshold of protection for religiously based activities afforded by the *Free Exercise Clause* contained in the United States Constitution.

Once the US Supreme Court invalidated a portion of RFRA, the US Congress created RELUIPA as the cure to RFRA and in opposition to the US Supreme Court action.

The general rule on Religious Land Use and Institutionalized Person Act RELUIPA, 42 U.S.C. § 2000cc et seq., provides that: "No government shall impose or implement a land use regulation

in a manner than imposes a *substantial burden* on *religious exercise*, unless the government demonstrates a *compelling governmental interest* that is the *least restrictive means* of furthering that interest."

The Religious Land Use and Institutionalized Person Act (RLUIPA) itself does not expressly define what constitutes a "substantial burden," but the Seventh Circuit has stated that, a substantial burden on religious exercise is one that necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise effectively impracticable. More importantly, RLUIPA requires a compelling governmental interest to justify a practice or policy that creates a substantial burden on an individual's religious exercise. Please note, that in judicial review, the standard of "compelling governmental interest" requires the most stringent review of a governmental act. An example of such an "interest" would be life-safety the laws found in the Fire Code or the Florida Building Code. This is more than the reasonable relation to a legitimate penological interest required under current First Amendment precedent. In addition, RLUIPA requires government agents to demonstrate that the policy they adopted is the least restrictive means of furthering the compelling governmental interest. *Young v. Ericksen*, 758 F. Supp. 2d 777 (ED WI 2010)

"The term 'religious exercise' includes any exercise of religion, ***whether or not compelled by, or central to, a system of religious belief.***" "The use, building, or conversions of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose." *Id.*

A person filing a RELUIPA claim could seek Declaratory Judgment relief, remand, injunctive relief damages, and attorney's fees. There has been over a decade of litigation in RELUIPA claims. City of Hollywood was subject to a RELUIPA claim and settled the litigation for over \$4,000,000. As part of the settlement, the City was subject to oversight by the Department of Justice and a consent decree requiring full compliance with RULIPA. In that matter the principal claim related to a challenge of the City's zoning regulations, and a challenge to the individual decision in applying the zoning regulations to a property. The consent decree also provided for individual liability, if a violation of RELUIPA was found during the enforcement time period required under the agreement.

It is important to note that the term "substantial burden" is not defined. The case law appears to reflect that a financial hardship, alone, is not enough. There must be a showing that the existing facilities of the applicant are adequate. Moreover, the Court looks to determine whether there are other suitable propert(ies), as a "mere inconvenience" is not sufficient for raising a claim. The cases appear to reflect that the action of the governmental body as it relates to a religious institution, is whether the action is fair.

The cases interpreting RELUIPA try to determine what is a "compelling governmental interest" that warrants a substantial burden on religious exercise? It is clear that a party's failure or refusal of religious institutions to file land use applications would make the claim not ripe. –

*Congregation Anshei Roosevelt v. Borough of Roosevelt*, 2009 U.S. Dist. LEXIS 1632 (3d Cir.2009).

## FLORIDA RELUIPA

Florida's *Free Exercise Clause* is found in the Florida Constitution's Declaration of Rights and provides:

There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution. *Art. I, § 3, Fla. Const.*

The Florida Supreme Court interpreted this provision of the Florida Constitution in *Warner v. City of Boca Raton*, 887 So. 2d 1023, (Florida 2004) and stated:

In interpreting the scope of constitutional rights, this Court [Florida Supreme Court] has stated that in any state issue, the federal constitution represents the "floor" for basic freedoms, and the state constitution represents the "ceiling." *See Traylor v. State*, 596 So. 2d 957, 962 (Fla. 1992). The [Florida Supreme] Court has not squarely addressed the parameters of Florida's *free exercise clause*, but other Florida courts have "treated the protection afforded under the state constitutional provision as coequal to the federal [provision], and have measured government regulations against it accordingly." *Toca v. State*, 834 So. 2d 204, 208 (Fla. 2d DCA 2002) (applying *Smith* to conclude that rule of judicial administration requiring the signing of pleadings did not violate petitioner's rights under *article I, section 3 of the Florida Constitution*); *see also Allen v. Allen*, 622 So. 2d 1369 (Fla. 1st DCA 1993) (finding that post-dissolution order prohibiting wife from attending church attended by husband was prohibited under *free exercise clause* of both the Florida Constitution and the *First Amendment*). Indeed, a commentary on the 1968 revision of this provision explains that the language of the Florida section "parallels the *First Amendment of the U.S. Constitution*" and that "cases under the *First Amendment of the United States Constitution* are of great value in evaluating the status of religious freedoms." Talbot "Sandy" D'Alemberte, *Commentary to 1968 Revision, Art. I, § 3, Fla. Const.*, 25A Fla. Stat. Ann. 106-07 (West 2004).

To further protect religious exercise, the Florida legislature first enacted FRFA (Florida version of the federal FRFA act). Due to the US Supreme Court decision invalidating a portion of the

federal FRFA, the US Congress enacted RELUIPA. Thereafter, Florida enacted its own statutory version of RELUIPA, which is found at § 761.03, Florida Statutes, and is entitled "Free exercise of religion protected," and states:

- (1) The government shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, except that government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person:
  - (a) Is in furtherance of a compelling governmental interest; and
  - (b) Is the least restrictive means of furthering that compelling governmental interest.
- (2) A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief.

The statute provides for attorney's fees. It is modeled after the federal law, but appears more expansive.

Please note that the Third District Court of Appeal in *First Baptist Church of Perrine v. Miami-Dade County*, 68 So.2d 1114 (Fla. 3rd DCA 2000), in analyzing the predecessor statute to Florida's FRFA (the prior statute discussed above which was modeled after the federal FRFA) held that the Miami-Dade County special exception process for reviewing religious institutions, including their ancillary use (school) did not violate Florida law. The Court found that the record did not demonstrate "that the County's zoning ordinances are aimed at impeding religion, that they are based on a disagreement with religious beliefs or practices, or that they negatively influence the pursuit of religious activity or expression of religious belief." The Court went on to state:

Further, the burden on the County of altering the enforcement of its zoning ordinances to accommodate the Church's requests would be much greater than any burden placed on the Church's religious activity by requiring that it comply with the Zoning Board's decision in this matter. In *First Assembly of God v. Collier Co.*, 775 F. Supp. 383, 386 (M.D. Fla. 1991), the court recognized as a significant interest the preservation of a government's ability to regulate zoning. To impose on the County's zoning ordinances an exception based on religion could result in the breakdown of a community's zoning scheme and increase non-conforming uses each time religion is asserted as a basis for zoning requests. Even though the Church argues that religious education is central to its religion, the burden on the Church of conducting this activity elsewhere is less than the burden which would be placed on the County if it is forced to routinely grant exceptions

to its zoning schemes for primarily residential neighborhoods when requested to do so for allegedly religious purposes.

Application of the County's zoning ordinances to preclude expansion of First Baptist Church of Perrine's school does not prevent or seriously inhibit the Church's ability to provide a religious education. There are other less-traffic-sensitive locations within Miami-Dade County for the Church to expand in order to teach seventh and eighth grades, if its religion so requires. It is not absolutely precluded from providing seventh and eighth grade classes by the Zoning Board's decision. [\*1118] But, even assuming that the Church has demonstrated a substantial burden on its free exercise of religion, the County clearly has a compelling interest in enacting and enforcing fair and reasonable zoning regulations. *See Daytona Rescue Mission, Inc. v. City of Daytona Beach*, 885 F. Supp. 1554, 1560 (M.D. Fla. 1995). For these reasons, the circuit court, appellate division also properly rejected the Church's contention that the Zoning Board's denial of its zoning request violated the Act.

The Village Attorney cannot advise whether a Florida or Federal RELUIPA claim would be successful in advance of the Village implementing an ordinance as imposed by the charter amendment. Any challenge would be based upon application of the charter amendment and associated ordinance, and would be dependent upon the facts presented in that particular challenge. Moreover, there would be a need for the complainant to demonstrate the substantial burden on the exercise of religion. Any impacts to ancillary matters or uses may not raise an effective state or federal RLUIPA claim.

### **C. Charter Schools.**

The State Legislature enacted several laws that provide charter schools with greater discretion in construction and location than is provided for "traditional" public schools. Further, the Legislature has imposed limits on municipal review of charter school facility applications. The State Legislature has defined "charter school" as public school. [Section 1002.31, Florida Statutes]. Florida Statute Section 1013.33(13), provides, that once a public school facility is determined consistent with the Village's Comprehensive Plan Land use policies, the application may not be denied. However, the municipality may impose reasonable conditions on the development. The municipality "may consider the site plan and its adequacy as it relates to environmental concerns, health, safety and welfare, and effects on adjacent property. Standards and conditions may not be imposed which conflict with those established under Chapter 1013.33[, entitled "Educational Facilities,] or the Florida Building Code, unless mutually agreed and consistent with the [Educational Facility] Interlocal Agreement." Start-up Charter Schools are to comply with the Florida Building Code but are not required to comply with the State Requirements for Educational Facilities. [Section 1002.33(18), Florida Statutes].

More recently during the 2011 Legislative session, the Legislature modified Section 1002.33(18)(a), Florida Statutes, entitled "Facilities," to provide the following restrictions on municipal review of an application:

The local governing authority shall not adopt or impose any local building requirement or site development restrictions, such as parking and site size criteria, that are addressed by and more stringent than those found in the State Requirements for Educational Facilities of the Florida Building Code. Beginning July 1, 2011, a local governing authority must treat charter schools equitably in comparison to similar requirements, restrictions, and processes imposed upon public schools that are not charter schools.

The Shores at Palmetto Bay, LLC., filed a lawsuit as to interpretation of this statute as it relates to the Village's application of its land development code. The ruling in that matter could impact application of the charter amendment.

#### **4. Additional Issues Addressed - Language of Charter Revision Commission Authority.**

There was significant discussion among the Charter Review Commission as several of its members believed the Village Council had to accept ALL amendments they proffered. The following is the analysis of the arguments and my formal opinion as to this issue.

Section 6.2 of the charter at subsection (C) states:

(C) If the Commission determines that an amendment or revision is needed, it shall submit the same to the Council no later than the deadline established by the County Commission on Elections, so that the amendments or revisions can make the ballot of the next regularly scheduled election of the Village. Alternative proposals may be submitted. The Council shall submit suggested amendments and revisions to the electors of the Village in accordance with the provisions of Section 6.1, at the next regularly schedule election.

Section 6.1 requires the Village Charter to be revised consistent with section 6.03 of the County's Home Rule Charter:

A. Except as provided in Section 5.04, any municipality in the county may adopt, amend, or revoke a charter for its own government or abolish its existence in the following manner. Its governing body shall, within 120 days after adopting a resolution or after the certification of a petition of ten percent of the qualified electors of the municipality, draft or have drafted by a method determined by municipal ordinance a proposed charter amendment, revocation, or abolition which shall be submitted to the electors of the municipalities. Unless an election occurs not less than 60 nor more than 120 days after the draft is submitted, the proposal shall be submitted at a special election within that time. The governing body shall

make copies of the proposal available to the electors not less than 30 days before the election. Alternative proposals may be submitted. Each proposal approved by a majority of the electors voting on such proposal shall become effective at the time fixed in the proposal.

**B.** All municipal charters, amendments thereto, and repeals thereof shall be filed with the Clerk of the Circuit Court.

The language of the Village Charter, at Section 6.2, does not clearly delineate that the Commission has ultimate authority on the form of ballot questions, or what questions should be placed on the ballot. The word "shall" is used in reference to the Commission submitting the amendment or revision to the Council. It does not say the Council shall place those questions on the ballot. The charter provision additionally indicates that alternative proposals may be submitted, and that the Council "shall submit suggested amendments and revision to the electors of the Village." The Charter provision does not specifically delineate that the Council must use the charter amendments proposed by the Commission.

As the Village Charter was not created in a vacuum, the Village Attorney contacted other municipalities with similar and/or identical charter amendment language to see how municipalities have handled the issue. The municipal lawyers contacted are split on the issue. Pinecrest and Doral hold that the municipal elected officials are to pass through the amendments, as proposed, by the applicable charter revision commission. It is their position that there can be no modification of the questions by the elected body. Other cities, including Cutler Bay and Miami Lakes have opined that the elected officials may delete, add, modify, provide alternatives, etc., to the Charter Revision Commission recommendations.

As the Village Council is elected by the voters, the Village Attorney finds it contrary to the democratic election process, that the Charter Revision Commission, which is an appointed body, should have more authority than the elected officials - elected to represent the community. From that perspective, it is the Village Attorney's opinion that the Village Council has the authority to review, revise, amend, delete, or provide alternate questions to those proposed by the Charter Revision Commission. Also, as the Village Council will hold a public hearing on the ballot questions prior to placement on the ballot, there would be no point in having a public hearing, if the Village Council had no authority to modify the proposed ballot language. Further, the existing Charter does not require public input, or a public hearing, as to the Charter Revision Commission actions. Please note, that this year the Village Council voted to require public comments during the Charter Revision Commission meetings, and also now require public comments during all board and committee meetings. If the alternate position were taken, as with Doral and Pinecrest, then there would be no reason to seek public input at the Village Council meeting - as no revision, edits, etc., of any charter amendment could be made by the Village Council. Such a position requiring adoption by the elected officials, who are voted into office, by a Board appointed by the Council, seems contrary to the public hearing process, and contrary to the electorate process that selected the elected officials. The Charter Review Commission would have carte blanche authority and could place questions on the ballot that could violate US or State law.

Previously, during the last Charter Revision process, the Village Council, after public hearing, debated each question and subsequently approved the recommended language proposed by the prior Charter Revision Commission. However, the Council exercised their authority to review, comment, and debated the individual ballot questions. The Village Council's action in 2006 was consistent with my reading of the Charter language.

The Village Attorney was advised of a concern relating to the Miami-Dade County Commission and their rejection of several ballot questions issued by the County's Charter Revision Commission. Because of this concern, and the ambiguity of the charter provision, it is the recommendation of staff, that the language be clarified to clearly delineate which path the Village would like to adhere to in future.

**FISCAL/BUDGETARY IMPACT:**

The cost of the election.

**RECOMMENDATION:**

Decision of the Village Council.

1  
2 RESOLUTION NO. \_\_\_\_\_  
3

4 A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE  
5 VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO  
6 AMENDING SECTIONS 2.3, 2.5, 3.3, 4.2, 5.1, 6.2, AND CREATING  
7 SECTIONS 10.2 AND 10.3, OF THE VILLAGE OF PALMETTO BAY'S  
8 CHARTER; PROVIDING REQUISITE BALLOT LANGUAGE FOR  
9 SUBMISSION TO ELECTORS OF THE PROPOSED AMENDMENTS  
10 TO THE VILLAGE CHARTER; PROVIDING FOR COPIES OF THE  
11 CHARTER AMENDMENTS BE AVAILABLE FOR PUBLIC  
12 INSPECTION; PROVIDING FOR THE VILLAGE CLERK TO UTILIZE  
13 THE SERVICES OF MIAMI-DADE COUNTY SUPERVISOR OF  
14 ELECTIONS TO PLACE THE CHARTER AMENDMENTS ON THE  
15 BALLOT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE  
16 DATE.  
17

18 WHEREAS, the Mayor and Village Council of the Village of Palmetto Bay appointed a  
19 Charter Revision Commission to review the Village charter and to provide recommendations to the  
20 Village council; and,  
21

22 WHEREAS, the Charter Revision Commission met since March 21, 2011 for 14 months,  
23 held one public workshop, obtained public input, and provided several recommendations for  
24 amendment of the Village Charter to the Village Council; and,  
25

26 WHEREAS, based upon the foregoing, the Mayor and Village Council would like to amend  
27 several sections of the charter of the Village of Palmetto Bay; and,  
28

29 WHEREAS, the Village Council may, by resolution, propose amendments to the Charter  
30 subject to approval by the electorate at the next general election or at a special election called for  
31 such purpose; and,  
32

33 WHEREAS, the Village Council has determined to submit certain proposed charter  
34 amendments for approval or disapproval by the electors; and,  
35

36 WHEREAS, the Mayor and Village Council desire to amend several sections of the Charter  
37 of the Village of Palmetto Bay to provide requisite ballot language for submission to electors,  
38 providing for copies of this charter amendment be available for public inspection and providing for  
39 the Village Clerk to utilize the services of Miami-Dade County Supervisor of Elections.  
40

41 BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE  
42 OF PALMETTO BAY, FLORIDA, AS FOLLOWS:  
43  
44

1 **Section 1.** *Whereas clauses.* The above whereas clauses are incorporated by reference into this  
2 Resolution.

3  
4 **Section 2.** *Proposed Revisions or Amendments to the Village Charter.* The Charter Revision  
5 Commission proposes certain amendments to the Village Charter, and shall be voted upon by the  
6 Village electorate. Those proposed amendments are commonly referred to by the following ballot  
7 titles:

- 8
- 9 1. Neighborhood Protection. [Section 10.2]
- 10 2. Non-Partisan Elections - Defined. [Section 5.1(B)].
- 11 3. Enforcement of Non-Partisan Provision of Charter by the State Attorney[Section 5.1(B)].
- 12 4. Changing Term Limits [Section 2.3(E)].
- 13 5. Interaction with Administration - Village Council to Contact Staff Directly without Penalty  
14 [Section 4.2(B)(1) and (2)].
- 15 6. Department Head Selection to Be Affirmed by Village Council [Section 3.3(1)].
- 16 7. Two year Prohibition on Village Employment After Leaving Office [Section 4.2(C)].
- 17 8. Requiring Candidates to Run Independently [Section 2.3(D)].
- 18 9. Filling of Vacancies by Remaining Council When there is a Quorum, or Less than a  
19 Quorum [Section 2.5(C)(7)].
- 20 10. Annexation Process [Section 10.3].
- 21 11. Composition of Charter Revision Commission [Section 6.2(B)].
- 22 12. Technical and Stylistic Amendments.
- 23

24 **Section 3.** *Form of Ballot.* The form of ballot of the Charter amendments provided for in this  
25 Ordinance shall be as follows:

26  
27 \* \* \*

28 **1. NEIGHBORHOOD PROTECTION [Section 10.2].**

29  
30 Creating a provision called Neighborhood Protection whereby: 1) single-family-  
31 residential zoned properties shall be protected from the negative impacts of adjacent or  
32 nearby non-single-family-residential uses and 2) four affirmative votes of the Council  
33 shall be required to approve a zoning change conditional use, or special exception in any  
34 single-family-residential district. Excluded are all commercial, business, and multi-family  
35 residential districts.

36  
37 Shall the above described amendment be adopted?

38  
39 YES [ ]

40 NO [ ]

1    **2.   NONPARTISAN ELECTIONS - DEFINED. [Section 5.1(B)].**

2  
3           The Charter currently requires that elections be nonpartisan. The Charter Revision  
4 Commission suggests an amendment to the Charter to define nonpartisan consistent with state law.  
5 A judicial finding of guilt would preclude campaigning or qualifying for election or retention in  
6 office.

7  
8           Shall the above described amendment be adopted?

9  
10          YES   [        ]

11          NO    [        ]

12  
13    **3    ENFORCEMENT OF NONPARTISAN PROVISION OF CHARTER BY STATE**  
14 **ATTORNEY - [Section 5.1(B)].**

15  
16           The Charter Revision Commission suggests an amendment of the Charter to provide  
17 enforcement of Section 5.1(B) of the Charter, relating to nonpartisan elections, through the office of  
18 the State Attorney. A judicial determination of a willful violation of Section 5.1(B) shall be grounds  
19 for removal from elected office and subject the individual to a fine up to \$1,000, per violation, but  
20 not to exceed a total of \$10,000.

21  
22           Shall the above described amendment be adopted?

23  
24          YES   [        ]

25          NO    [        ]

26  
27    **4.   CHANGING TERM LIMITS. [Section 2.3(E)].**

28  
29           The Village Charter currently limits the length of service of the Mayor, Vice-Mayor, and  
30 Council Persons to no more than two consecutive terms. The Charter Revision Commission  
31 suggests an amendment to the Charter to limit the length of service of the Mayor, Vice-Mayor, and  
32 Council Persons to two terms in any one position, with no more than a total of three consecutive  
33 terms regardless of position.

34  
35           Shall the above described amendment be adopted?

36  
37          YES   [        ]

38          NO    [        ]

1 **5. INTERACTION WITH ADMINISTRATION - VILLAGE COUNCIL TO**  
2 **CONTACT STAFF DIRECTLY WITHOUT PENALTY. [Section 4.2(B)(1) and (2)].**  
3

4 The Charter currently reflects that the Village Council is to enact a resolution in order to  
5 investigate or inquiry on a topic directly with staff. A finding of interference with administration  
6 could be a basis for removal from office. The Charter Revision Commission suggests an  
7 amendment to the Charter to remove the penalty, and authorizes the Village Council to make direct  
8 inquiries of staff, and to change the title of the provision from "Interference" to "Interaction" with  
9 Administration.

10  
11 Shall the above described amendment be adopted?

12  
13 YES [ ]

14 NO [ ]  
15

16 **6. DEPARTMENT HEAD SELECTION TO BE AFFIRMED BY VILLAGE**  
17 **COUNCIL [Section 3.3(1)].**  
18

19 The Village Manager currently hires all department heads. The Charter Revision Commission  
20 suggests an amendment to the Charter to reflect the Village Manager may not appoint any  
21 department director without first obtaining approval of a majority of the Village Council.  
22

23 Shall the above described amendment be adopted?

24  
25 YES [ ]

26 NO [ ]  
27

28 **7. TWO YEAR PROHIBITION ON VILLAGE EMPLOYMENT AFTER LEAVING**  
29 **OFFICE [Section 4.2(c)].**  
30

31 The Charter currently provides a one year prohibition after leaving office from being hired  
32 by the Village. The Charter Revision Commission suggests an amendment to the Charter to increase  
33 the prohibition to two years.  
34

35 Shall the above described amendment be adopted?

36  
37 YES [ ]

38 NO [ ]  
39  
40

1 **8. REQUIRING CANDIDATES TO RUN INDEPENDENTLY [Section 2.3(D)].**

2  
3 The Charter Revision Commission suggests an amendment to the Charter to require each  
4 person running for elected office to run independently of any other Village candidate.

5  
6 Shall the above described amendment be adopted?

7  
8 YES [ ]

9 NO [ ]

10  
11 **9. FILLING OF VACANCIES BY REMAINING COUNCIL WITH OR WITHOUT**  
12 **A QUORUM [Section 2.5(C)(7)].**

13  
14 The Charter currently provides that if there is less than a quorum remaining in office, the  
15 remaining elected officials may appoint the interim vacant seats. The Charter is silent as to  
16 appointments when Mayor and Vice Mayor seats are vacant, and there is a quorum. The Charter  
17 Revision Commission suggests an amendment to the Charter to allow the remaining elected officials,  
18 with, or without a quorum to appoint members, and then for the full Council to select an interim  
19 Mayor and Vice Mayor.

20  
21 Shall the above described amendment be adopted?

22  
23 YES [ ]

24 NO [ ]

25  
26 **10. ANNEXATION. [Section 10.3].**

27  
28 The Charter Revision Commission suggests an amendment to the Charter to include a  
29 detailed annexation process: requiring a supermajority vote of the Village Council to proceed with  
30 annexation process; thereafter, requiring a vote of the Village residents on whether to entertain  
31 annexation; and then, adherence to County annexation vote process.

32  
33 Shall the above described amendment be adopted?

34  
35 YES [ ]

36 NO [ ]

1 **11. COMPOSITION OF CHARTER REVISION COMMISSION. [Section 6.2(b)].**

2  
3 The Charter currently provides for the appointment of Commission members by the Village  
4 Council. The Charter Revision Commission suggests an amendment to the Charter to clarify the  
5 Charter Commission membership appointment process, to require each District Council Person to  
6 appoint a person from his/her district, and for the Mayor and Vice-Mayor, to appoint, at large.

7  
8 Shall the above described amendment be adopted?

9  
10 YES [ ]

11 NO [ ]

12 **12. TECHNICAL AND STYLISTIC AMENDMENTS.**

13  
14  
15 The Charter Revision Commission suggests an amendment to the Charter to reflect non-  
16 substantive stylistic and technical changes made for clarity, including: titles, typographical,  
17 grammatical errors, and renumbering of sections.

18  
19 Shall the above described amendment be adopted?

20  
21 YES [ ]

22 NO [ ]

23  
24 \* \* \*

25  
26 **Section 4.** The Full text of the proposed amendments to the Village Charter are  
27 attached hereto as exhibit 1, and are incorporated by reference into this resolution. The proposed  
28 amendments to the Village Charter are reflected by underlying in the text, and strikethroughs reflect  
29 items to be deleted from the charter.

30  
31 **Section 5.** *Charter Amendment to be Available for Public Inspection, and for the Village Clerk to*  
32 *Utilize the Services of Miami-Dade County Supervisor of Elections.* The place, information and the full text  
33 of the proposed Village Charter amendments are available at the office of the Village Clerk located  
34 at 9705 East Hibiscus Street, Palmetto Bay, Florida 33157. Copies of this resolution providing the  
35 charter amendments subject to this referendum approval is on file in the office of the Village Clerk  
36 and available for public inspection during regular business hours. The Village Clerk is authorized to  
37 utilize the services of Miami-Dade County Supervisor of Elections for any assistance required in the  
38 administration of the election.

39  
40 **Section 6.** *Providing for Inclusion in the Charter.* It is the intention of the Village Council  
41 and it is hereby ordained that the provisions of this resolution shall become and made a part of the  
42 charter of the Village of Palmetto Bay, Florida, as to each charter amendment measure approved by  
43 a majority of voters on such measure in such election; that the sections of this resolution may be  
44 renumbered or relettered to accomplish such intentions; and the word "resolution" shall be changed  
45 to "section" or other appropriate word.

1  
2 **Section 7.** *Providing for Adoption of Enabling Resolution.* The Village Council shall enable  
3 the submittal of the proposed amendments to the electorate pursuant to section 6.03 of the Miami-  
4 Dade County Charter.  
5

6 **Section 8.** *Effective Date.* This resolution shall become effective upon adoption, and  
7 each of the charter amendment measures provided herein shall be effective only upon approval of a  
8 majority of electors voting on the measure, effective upon certification of the election results. If  
9 conflicting amendments are adopted at the same election, the one receiving the greatest number of  
10 affirmative votes shall prevail to the extent of such conflict.  
11

12 **Section 9.** If any section, clause, sentence, or phrase of this resolution is for any reason  
13 held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the  
14 validity of the remaining portions of this resolution.  
15

16 **Section 10.** This resolution shall take effect immediately upon enactment.  
17

18  
19 PASSED AND RESOLVED this \_\_\_\_ day of \_\_\_\_\_, 2012.  
20

21 Attest: \_\_\_\_\_  
22 Meighan Alexander Shelley Stanczyk  
23 Village Clerk Mayor  
24

25 APPROVED AS TO FORM:  
26

27 \_\_\_\_\_  
28 Eve A. Boutsis  
29 Village Attorney  
30

31 FINAL VOTE AT ADOPTION:  
32

33 Council Member Patrick Fiore \_\_\_\_\_  
34

35 Council Member Howard Tendrich \_\_\_\_\_  
36

37 Council Member Joan Lindsay \_\_\_\_\_  
38

39 Vice-Mayor Brian W. Patiser \_\_\_\_\_  
40

41 Mayor Shelley Stanczyk \_\_\_\_\_  
42

**VILLAGE OF PALMETTO BAY  
VILLAGE CHARTER**

**Preamble**

**Citizens' Bill of Rights**

**Article I. Corporate Existence, Form of Government, Boundary and Powers**

- Sec. 1.1 Corporate Existence.
- Sec. 1.2 Form of Government.
- Sec. 1.3 Corporate Boundary.
- Sec. 1.4 Powers.
- Sec. 1.5 Construction.

**Article II. Mayor, Vice-Mayor and Village Council**

- Sec. 2.1 Mayor and Vice-Mayor.
- Sec. 2.2 Village Council.
- Sec. 2.3 Election and Term of Office.
- Sec. 2.4 Qualifications.
- Sec. 2.5 Vacancies; Forfeiture of Office; Filling of Vacancies.
- Sec. 2.6 Compensation; Reimbursement for Expenses.
- Sec. 2.7 Recall.

**Article III. Administrative**

- Sec. 3.1 Village Manager.
- Sec. 3.2 Village Manager; Appointment, Removal.
- Sec. 3.3 Powers and Duties of the Village Manager.
- Sec. 3.4 Acting Village Manager.
- Sec. 3.5 Bond of Village Manager.
- Sec. 3.6 Village Clerk.
- Sec. 3.7 Village Attorney.
- Sec. 3.8 Expenditure of Village Funds.
- Sec. 3.9 Village Boards and Agencies.
- Sec. 3.10 Competitive Bid Requirement/Purchasing.

**Article IV. Legislative**

- Sec. 4.1 Council Meeting Procedure.
- Sec. 4.2 Prohibitions.
- Sec. 4.3 Ordinances.
- Sec. 4.4 Emergency Ordinances.
- Sec. 4.5 Annual Budget Adoption.
- Sec. 4.6 Fiscal Year.
- Sec. 4.7 Appropriation Amendments During the Fiscal Year.
- Sec. 4.8 Authentication, Recording and Disposition of Ordinances; Resolutions and Charter Amendments.

- Sec. 4.9 Tax Levy, Assessments and Fees.
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**Article V. Elections**

- Sec. 5.1 Elections.
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- ~~Sec. 9.3 Specialized Law Enforcement Services.~~
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- Sec. 9.7 Continuing Obligations as to County Bonds.
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## VILLAGE OF PALMETTO BAY

### MUNICIPAL CHARTER

**Charter Commission Note** - The following is the Charter of the Village, as adopted by referendum and effective on September 10, 2002.

On February 26, 2002, the Miami-Dade County Board of County Commissioners appointed the following residents as members of the Palmetto Bay Charter Commission: Edward P. Ludovici, as Chairman, Thomas Ringel, as Vice Chairman, Mary T. Cagle, Stephen Yenser and Paul J. Schwiep. The Charter Commission met during the months of March, April and May 2002 to draft the Charter for the Village.

On December 5, 2005, via ~~village~~ Village resolution 05-107, the ~~M~~mayor and ~~V~~village council appointed the following residents as members of the Palmetto Bay Charter Revision Commission: Thomas Ringel, Brian Pariser, Barnett Greenberg; Stanley Kowlessar, Susan Ludovici and non-voting council liaison member Paul Neidhart. The Charter Revision Commission selected Mr. Ringel as Chair and Mrs. Ludovici as the vice-chair. The Commission met during the months of February, March, and April, 2006 to draft proposed revisions to the Charter for the Village.

On June 25, 2009, a Special Election was called to present Charter amendments via mail-in ballot. ~~The results are noted by either additions (being underlined) or deletions (overstricken.)~~

On February 7, 2011, via Village resolution 2011-06, the mayor and Village council appointed the following residents as members of the Palmetto Bay Charter Revision Commission: Beverly Gerald, Warren Lovely, Betty Pegram, Tom Ringel, David Zisman and non-voting council liaison member Vice Mayor Brian W. Pariser. The Charter Revision Commission selected Beverly Gerald as Chair. The Commission started meeting in March 2011 to draft proposed revisions to the Charter for the Village.

## **PREAMBLE**

We, the people of the Village of Palmetto Bay, in order to secure for ourselves the benefits and responsibilities of home rule, in order to provide a municipal government to serve our present and future needs, do hereby adopt this Charter.

## **CITIZENS' BILL OF RIGHTS**

(A) This government has been created to protect the governed, not the governing. In order to provide the public with full and accurate information, to promote efficient administration management, to make government more accountable, and to insure to all persons fair and equitable treatment, the following rights are guaranteed:

(1) *Convenient Access.* Every person has the right to transact Village business with a minimum of personal inconvenience. It shall be the duty of the Mayor, the Village Council and the Village Manager to provide, within budget limitations, reasonably convenient times and places for registration and voting, for required inspections, and for transacting business with the Village.

(2) *Truth in Government.* No municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public.

(3) *Public Records.* All audits, reports, minutes, documents and other public records of the Village and its boards, agencies, departments and authorities shall be open for inspection at reasonable times and places convenient to the public.

(4) *Minutes and Ordinance Register.* The Village Clerk shall maintain and make available for public inspection an ordinance register separate from the minutes showing the votes of each member on all ordinances and resolutions listed by descriptive title. Written minutes of all meetings and the ordinance register shall be available for public inspection not later than 30 days after the conclusion of the meeting.

(5) *Right to be Heard.* As long as the orderly conduct of public business may be maintained, any interested person has the right to appear before the Village Council or Village agency, board or department for the presentation, adjustment or determination of an issue, request, or controversy within the jurisdiction of the Village. Matters shall be scheduled for the convenience of the public. The Village Council shall adopt agenda procedure and schedule hearings in a manner that will enhance the opportunity for public participation. Nothing herein shall prohibit any governmental entity or agency from imposing reasonable time limits and procedures for the presentation of a matter.

(6) *Right to Notice.* Persons entitled to notice of a Village hearing shall be timely informed as to the time, place and nature of the hearing and the legal authority pursuant to which the hearing is to be held. Failure by an individual to receive such notice shall not constitute mandatory grounds for canceling the hearing or rendering invalid any determination made at such hearing. Copies of proposed ordinances or resolutions shall be made available at a reasonable time prior to the hearing, unless the matter involves an emergency ordinance or resolution.

(7) *No Unreasonable Postponements.* No matter, once having been placed on a formal agenda by the Village, shall be postponed to another day except for good cause shown in the opinion of the Mayor, Village Council, board or agency conducting such meeting, and then only on condition that the affected person shall, upon written request, receive mailed notice of the new date of any postponed meeting. Failure by an individual to receive such notice shall not constitute mandatory grounds for canceling the hearing or rendering invalid any determination made at such hearing.

(8) *Right to Public Hearing.* Upon a timely written request from any interested party, and after presentation of the facts to and approval by the Council, a public hearing shall be held by any Village agency, board, department or authority upon any significant policy decision to be issued by it which is not subject to subsequent administrative or legislative review and hearing. This provision shall not apply to the Law Department of the Village nor to any person whose duties and responsibilities are solely advisory.

At any zoning or other hearing in which review is exclusively by certiorari, a party or his/her counsel shall be entitled to present his/her case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts. The decision of such agency, board, department or authority must be based upon the facts in the record. Procedural rules establishing reasonable time and other limitations may be promulgated and amended from time to time.

(9) *Notice of Action and Reasons.* Prompt notice shall be given of the denial in whole or in part of a request of an interested person made in connection with any Village administrative decision or proceeding when the decision is reserved at the conclusion of the hearing. The notice shall be accompanied by a statement of the grounds for denial.

(10) *Manager's and Attorney's Reports.* The Village Manager and Village Attorney shall periodically make a public status report on all major matters pending or concluded within their respective areas of concern.

(11) *Budgeting.* In addition to any budget required by state statute, the Village Manager at the direction of the Mayor shall prepare a budget showing the cost of each department for each budget year. Prior to the Village Council's first public

hearing on the proposed budget required by state law, the Village Manager shall make public a budget summary setting forth the proposed cost of each individual department and reflecting the personnel for each department, the purposes thereof, the estimated millage cost of each department and the amount of any contingency and carryover funds for each department.

(12) *Quarterly Budget Comparisons.* The Village Manager shall make public a quarterly report showing the actual expenditures during the quarter just ended against one quarter of the proposed annual expenditures set forth in the budget. Such report shall also reflect the same cumulative information for whatever portion of the fiscal year that has elapsed.

(13) *Representation of Public.* The Mayor shall endeavor to designate one or more individuals to represent the Village at all proceedings before County, State and Federal regulatory bodies ~~wh~~ whose actions may significantly affect the Village and its residents.

(B) The foregoing enumeration of citizens' rights vests large and pervasive powers in the citizenry of the Village. Such power necessarily carries with it responsibility of equal magnitude for the successful operation of government in the Village. The orderly, efficient and fair operation of government requires the participation of individual citizens exercising their rights with dignity and restraint so as to avoid any sweeping acceleration in the cost of government because of the exercise of individual prerogatives, and for individual citizens to grant respect for the dignity of public office.

(C) All provisions of this Bill of Rights shall be construed to be supplementary to and not in conflict with the general laws of Florida. If any part of this Bill of Rights shall be declared invalid, it shall not affect the validity of the remaining provisions.

# ARTICLE I. CORPORATE EXISTENCE, FORM OF GOVERNMENT, BOUNDARY AND POWERS

## Section 1.1 Corporate Existence.

A municipal corporation resulting from the election authorized by Resolution R-1296-01 adopted on November 20, 2001 by the Miami-Dade County Board of County Commissioners, which permitted the continuing process of incorporation of the area described in Section 1.3 below, originally known as the Village of Palmetto Bay, and which shall hereafter be known by the name selected for the Village (the "Village") is hereby created pursuant to the Constitution of the State of Florida (the "State") and the Home Rule Charter of Miami-Dade County (the "County"). The corporate existence of the Village shall commence September 10, 2002 or such other date as this charter is approved by election.

## Section 1.2 Form of Government.

The Village shall have a "Council-Manager" form of government.

## Section 1.3 Corporate Boundary.

The corporate boundaries of the Village are generally described as follows and shown on the map on page 5. In case of a conflict between the Legal Description and the Map, the Legal Description shall govern.

- Northern Boundary: The center line of S.W. 136 Street and the City of Coral Gables and the Village of Pinecrest
- Eastern Boundary: City of Coral Gables and Biscayne Bay
- Southern Boundary: The center line of S.W. 184 Street and the Town of Cutler Bay
- Western Boundary: The center line of U.S. 1 from S.W. 136 Street, southwesterly to S.W. 160 Street, then to the centerline of southbound U.S. 1 from S.W. 160 Street to S.W. 184 Street.

The Legal Description for the Village is as follows: See Appendix A



(B) The only limitation concerning alienability of Village owned property is that there shall be no sale, exchange or lease in excess of five (5) years of any park property while it is being used for public purpose unless such sale, exchange or lease is approved by a majority vote at the next regularly scheduled election of the voters of the Village. This provision shall not apply to any valid written contractual obligations entered into prior to the effective incorporation date of this Village nor shall it apply to any Village owned educational facility, library property or parking facility not located in a park or any utility or access easements or rights-of-way. This provision is intended to restrict sales, exchanges or leases and shall not be applicable to any operating, management or other agreements.

**Section 1.5 Construction.**

This Charter and the powers of the Village shall be construed liberally in favor of the Village.

**ARTICLE II. MAYOR, VICE-MAYOR AND VILLAGE COUNCIL**

**Section 2.1 Mayor and Vice-Mayor.**

(A) *Powers of the Mayor.* The Mayor shall preside at meetings of the Council and be a voting member of the Council. In addition, the Mayor shall have the following specific responsibilities:

- (1) The Mayor shall present a State of the Village address annually.
- (2) The Mayor may create and appoint subject to Council approval, committees of the Council which may include non-Council members. The members of each committee shall select a chair.
- (3) The Mayor shall be recognized as head of the Village government for all ceremonial purposes, for purposes of military law, and for service of process.
- (4) The Mayor shall be the official designated to represent the Village in all dealings with other governmental entities.
- (5) The Mayor shall execute contracts, deeds and other documents on behalf of the Village as authorized by the Council.

(B) *Vice-Mayor.* During the absence or incapacity of the Mayor, the Vice-Mayor shall have all the powers, authority, duties and responsibilities of the Mayor.

**Section 2.2 Village Council.**

There shall be a Village Council (the "Council") vested with all legislative powers of the Village. The Council shall consist of the Mayor, Vice-Mayor, and three Residential Council members ("Council members"). References in this Charter to the Council and/or Council members shall include the Mayor and Vice-Mayor unless the context dictates otherwise.

**Section 2.3 Election and Term of Office.**

(A) *Election and Term of Office.* The Mayor, Vice-Mayor and each Council member shall be elected at-large for four year terms by the electors of the Village in the manner provided in Article V of this Charter. Said term shall end upon the swearing in of his/her successor.

(B) *Seats.* Council members shall serve in seats numbered 1-3 described below, collectively "Seats." Individually each is a "Seat." One Council member shall be elected to each Seat.

(C) *Residential Areas. Seats 1-3.* The Village shall be divided into three residential areas. Individually each is a "Residential Area" collectively "Residential Areas." One Council member shall be elected to a Seat from each Residential Area. Council members from Residential Areas are collectively the "Residential Area Council members." Individually each is a "Residential Area Council member." The Residential Areas corresponding to each Seat are formally set forth below:

Seat 1	Northern Boundary:	S.W. 136 Street and the City of Coral Gables
	Eastern Boundary:	City of Coral Gables and Biscayne Bay
	Southern Boundary:	S.W. 152 Street and all of Royal Harbor Yacht Club and Paradise Point
	Western Boundary:	Center line of U.S. 1
Seat 2	Northern Boundary:	S.W. 152 Street excluding all of Royal Harbor Yacht Club and Paradise Point
	Eastern Boundary:	Biscayne Bay
	Southern Boundary:	S.W. 168 Street
	Western Boundary:	Center line of U.S. 1 from S.W. 152 Street southwesterly to S.W. 160 Street, then the centerline of

southbound U.S. 1 from S.W. 160 Street to S.W. 168 Street

Seat 3	Northern Boundary:	S.W. 168 Street
	Eastern Boundary:	Biscayne Bay
	Southern Boundary:	S.W. 184 Street
	Western Boundary:	Center line of southbound U.S. 1

(D) *Affiliations.* Pursuant to Section 5.1 of the Charter, ~~e~~ Each person running for elected office shall run independently of any other Village candidate.

(E) *Limitations on Lengths of Service.* No person shall serve as Mayor, ~~or Vice-Mayor,~~ or ~~e~~Council ~~p~~Person for more than two consecutive terms. ~~No person may serve on the Council for more than two consecutive terms.~~ No person may serve as a combination of Mayor, Vice-Mayor and Council member for more than three consecutive terms ~~eight consecutive years.~~

#### **Section 2.4 Qualifications.**

Candidates for Mayor, Vice-Mayor or Council member shall qualify for election by the filing of a written notice of candidacy with the Village Clerk at such time and in such manner as may be prescribed by ordinance ("Qualifying Date") and paying to the Village Clerk a qualifying fee of \$100.00, in addition to any fees required by Florida Statutes. A person may not be a candidate for more than one office in the same election. Only electors of the Village, as defined by Section 5.1(a), who have resided continuously in the Village for at least two years preceding their Qualifying Date shall be eligible to hold the Office of Mayor, Vice-Mayor or Council member. In addition, a person may not be a candidate for an open Residential Council member Seat ("Open Seat") unless that person has resided in the Residential Area s/he seeks to represent continuously for a period of one year preceding his/her Qualifying Date. If at the conclusion of the qualifying period no elector has filed or qualified for an Open Seat, then the qualifying period for that Open Seat shall be reopened for a period of five business days and any qualified elector who resides in the relevant Residential Area and has resided continuously in the Village for at least two years may file a written notice of candidacy for the Open Seat in accordance with the provisions of this Section.

**Section 2.5 Vacancies; Forfeiture of Office; Filling of Vacancies.**

(A) *Vacancies.* The office of a Council member shall become vacant upon his/her death, resignation, disability, suspension or removal from office in any manner authorized by law, or by forfeiture of his/her office.

(B) *Forfeiture of Office*

(1) *Forfeiture by disqualification.* The Mayor, Vice-Mayor or Council member, shall forfeit his/her office if at any time during his/her term s/he:

(a) ceases to maintain his/her permanent residence in the Village.

(b) in the case of a Residential Area Council member, upon his/her ceasing to reside in his/her respective Residential Area; a Residential Area Council member shall not forfeit his/her office under this paragraph if, in the process of relocating within a Residential Area, s/he lives outside of his/her Residential Area but within the Village for a period of no more than 90 calendar days.

(c) otherwise ceases to be a qualified elector of the Village.

(2) *Forfeiture by absence.* The Mayor, Vice-Mayor or Council member shall be subject to forfeiture of his/her office, in the discretion of the remaining Council members, if s/he is absent without good cause from any three regular meetings of the Council during any calendar year or if s/he is absent without good cause from any three consecutive regular meetings of the Council, whether or not during the same calendar year.

(3) *Procedures.* The Council shall be the sole judge of all questions relating to forfeiture of a Council member's office, including whether or not good cause for absence has been or may be established. The burden of establishing good cause shall be on the Council member in question; provided, however, that any Council member may at any time during any duly held meeting move to establish good cause for the absence of him/herself or the absence of any other Council member, from any past, present or future meeting(s), which motion, if carried, shall be conclusive. A Council member who is subject to forfeiture of his/her office, shall not vote on any such matters. The Council member in question shall be entitled to a public hearing upon request regarding an alleged forfeiture of office. If a public hearing is requested, notice thereof shall be published in one or more newspapers of general circulation in the Village at least one week in advance of the hearing. Any final determination by the Council that a Council member has forfeited his/her office shall be made by a majority of the Council by resolution. All votes and other acts of the Council member in question prior

to the effective date of such resolution shall be valid regardless of the grounds of forfeiture.

(C) *Filling of vacancies.* A vacancy on the Council shall be filled as follows

- (1) If less than six months remain in the unexpired term, the vacancy shall be filled by a nomination of the Mayor made within 30 calendar days following the occurrence of the vacancy, subject to confirmation by the Council.
- (2) If six months or more remain in the unexpired term, the vacancy shall be filled by a nomination of the Mayor made within 30 calendar days following the occurrence of the vacancy, subject to confirmation by the Council. The nominee shall fill the vacancy until the next regularly scheduled election in Miami-Dade County at which time an election shall be held to fill the vacancy for the balance of the term. However, if the Council is unable to confirm a nominee, a special election to fill that vacancy shall be held no later than 90 calendar days following the occurrence of the vacancy.
- (3) If the Mayor's position becomes vacant, the Vice-Mayor shall complete the term of Mayor, even if said complete term shall cause the Vice-Mayor to exceed the term limits as specified in Section 2.3 (E). The vacancy of Vice-Mayor thus created shall be filled in the manner that the vacancy of a Council member is generally filled under this Article. If the elected Mayor shall be returned to office, s/he shall automatically resume the duties of the office for the remainder of the term for which elected, and the Vice-Mayor shall be returned to complete the balance of his/her term. The appointment of the person to complete the term of the Vice-Mayor shall be automatically rescinded.
- (4) A vacancy in Seats 1-3 shall be filled by a qualified elector residing in the respective Residential Area. A vacancy for Vice-Mayor shall be filled by any qualified elector of the Village.
- (5) Persons filling vacancies shall meet the qualifications specified in this Article.
- (6) If no candidate for a vacancy meets the qualifications under this Article for that vacancy, the Council shall appoint a person qualified under this Article to fill the vacancy.
- (7) Notwithstanding any quorum requirements established in this Charter, if at any time the full membership of the Council is reduced to a quorum or less than a quorum, the remaining members may, by majority vote, confirm additional members to the extent otherwise permitted or required under this subsection (c), and nominate one of the Council as Mayor and Vice Mayor, if applicable.

- (8) In the event that all members of the Council are removed by death, disability, recall, forfeiture of office and/or resignation, the Governor of the State of Florida shall appoint interim Council members who shall call a special election within not less than 30 calendar days or more than 60 calendar days after such appointment. The election shall be held as provided for in Article V, provided however, in order to ensure staggered terms, council member elected to Seat 2 or Vice-Mayor shall ~~service~~serve for two years during their initial term. However, that if there are less than six months remaining in any of the unexpired terms, such interim Council appointee(s) by the Governor shall serve out the unexpired terms. Appointees must meet all requirements for candidates provided for in this Article.

### **Section 2.6 Compensation; Reimbursement for Expenses.**

Council members and the Vice-Mayor shall receive compensation in the amount of \$1,000.00 per month and the Mayor shall receive compensation in the amount of \$2,000.00 per month. These payments shall be increased or decreased solely by amendment of this Charter. Furthermore elected officials and authorized employees of the Village shall receive reimbursement in accordance with applicable law, or as may be otherwise provided by ordinance, for authorized expenses incurred in the performance of their official duties.

### **Section 2.7 Recall**

The electors of the Village shall have the power to recall and to remove from office any elected official of the Village to the extent permitted by the Constitution and the laws of the State of Florida. The minimum number of electors of the Village which shall be required to initiate a recall petition shall be ten (10) percent of the total number of electors registered to vote at the last regular Village election.

## **ARTICLE III. ADMINISTRATIVE**

### **Section 3.1 Village Manager.**

There shall be a Village Manager (the "Village Manager") who shall be the chief administrative officer of the Village. The Village Manager shall be responsible to the Council for the administration of all Village affairs and for carrying out policies adopted by the Council. The term, conditions and compensation of the Village Manager shall be established by the Council.

### **Section 3.2 Village Manager; Appointment, Removal.**

The Village Manager shall be appointed by a majority vote of the Council. The Village Manager shall be removed by a majority vote of the Council.

### **Section 3.3 Powers and Duties of the Village Manager.**

The Manager shall:

- (1) Be responsible for the appointing, hiring, promoting, supervising and removing of all Village employees, except the Village Attorney and ~~the Village Clerk~~ ~~all employees of the Office of the Village Attorney~~. However, the Village Manager may not appoint any department director without first obtaining majority approval of the Council.
- (2) Direct and supervise the administration of all departments and offices but not Village boards or committees, unless so directed by the Council from time to time;
- (3) Attend Council meetings and have the right to take part in discussion but not the right to vote;
- (4) Ensure that all laws, provisions of this Charter and directives of the Council, subject to enforcement and/or administration by him/her or by employees subject to his/her direction and supervision, are faithfully executed;
- (5) Prepare and submit to the Council a proposed annual budget and capital program;
- (6) Submit to the Council and make available to the public an annual report on the finances and administrative activities of the Village as of the end of each fiscal year;
- (7) Prepare such other reports as the Council may require concerning the operations of Village departments, offices, boards and agencies;
- (8) Keep the Council fully advised as to the financial condition and future needs of the Village and make such recommendations to the Council concerning the affairs of the Village as s/he deems to be in the best interests of the Village;

(9) Execute contracts and other documents on behalf of the Village as authorized by the Council;

(10) Perform such other duties as are specified in this Charter or as may be required by the Council; and

(11) Pursue the collection of all allowable fees and taxes and maximize financial reserves as is necessary to sustain the Village and the service levels requested by the citizenry. Periodically compare fee structure to similarly sized municipalities to ensure fair and appropriate pricing.

### **Section 3.4 Acting Village Manager.**

To perform his/her duties during his/her temporary absence or disability, the Village Manager may designate, by letter filed with the Council, a qualified employee of the Village. In the event of failure of the Village Manager to make such designation or should the Council be dissatisfied with performance of the person designated, the Council may appoint another employee to serve as Acting Village Manager.

### **Section 3.5 Bond of Village Manager.**

The Village Manager shall furnish a surety bond to be approved by the Council, and in such amount as the Council may fix, said bond to be conditioned on the faithful performance of his/her duties. The premium of the bond shall be paid by the Village.

### **Section 3.6 Village Clerk.**

The Village Council shall appoint the Village Clerk (the "Village Clerk"). The Village Clerk shall give notice of all Council meetings to its members and the public, and shall keep minutes of the Council's proceedings. The Village Clerk shall perform such other duties as the Village Council may prescribe from time to time. The Village Clerk shall report to the Village Council. The Village Clerk may be removed by a majority vote of the Village Council. The Village Clerk shall maintain the seal of the Village and attest the Mayor's or Manager's signature, as the case may be, on all documents if needed.

### **Section 3.7 Village Attorney.**

The Council shall hire an individual attorney or law firm to act as the Village Attorney under such terms, conditions, and compensation as may be established by the Council. The Village Attorney shall report to the Council and may be removed by majority vote of the Council.

### **Section 3.8 Expenditure of Village Funds.**

No funds of the Village shall be expended except pursuant to duly approved appropriations.

### **Section 3.9 Village Boards and Agencies.**

The Council shall establish or terminate such boards and agencies as it may deem advisable from time to time. The boards and agencies shall report to the Council.

### **Section 3.10 Competitive Procurement Requirements/Purchasing.**

(A) Except as otherwise provided by law, contracts for public improvements and purchases of supplies, materials or services shall be awarded or made on the basis of clearly drawn specifications and competitive procurement, except in cases where the Council, based on the written recommendation of the Village Manager, specifically determines by affirmative vote of four Council members that it is impracticable or not advantageous for the Village to do so. The Village Council shall have the power to reject all responses to competitive procurement and advertise again.

(B) No contract or order shall be issued to any vendor unless or until the Village Manager or his/her designee certifies that there is to the credit of such office, department or agency a sufficient unencumbered budget appropriation to pay for the supplies, materials, equipment or contractual services for which the contract or order is to be issued.

## **ARTICLE IV. LEGISLATIVE**

### **Section 4.1 Council Meeting Procedure.**

(A) *Meetings.* The Council shall hold at least 11 regular monthly meetings in each calendar year, at such times and places as the Council may prescribe. Special meetings may be held on the call of the Mayor or upon the call of three Council members upon no less than 48 hours notice to the public or such shorter time as a majority of the Council deems necessary in case of an emergency affecting life, health, property or the public peace.

(B) *Rules and Minutes.* The Council shall determine its own rules of procedure and order of business and shall keep minutes open for public inspection.

(C) *Quorum and Voting.* A majority of the Council shall constitute a quorum but a smaller number may in absence of quorum make a motion to compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the Council. Voting on ordinances shall be by roll call on final reading. Voting on all other matters shall be by voice vote unless a Council member or the Village Clerk requests otherwise. In the event that three or more Council members are unavailable to vote on a particular matter due to required abstention pursuant to State law, then the remaining members of the Council may vote and approve such matter by unanimous vote.

(D) *Meeting Time Limits.* No meeting of the Council shall extend later than midnight except upon the affirmative vote of a majority of members present at the meeting.

### **Section 4.2 Prohibitions.**

(A) *Appointment and Removals.* Neither the Council nor any of its individual members shall in any manner dictate the appointment or removal of any Village employees, whom the Village Manager or any of his/her subordinates are empowered to appoint. The Council may express its views and fully and freely discuss with the Village Manager anything pertaining to appointment and removal of such officers and employees.

(B) *Interference Interaction With Administration.*

~~(1) Except for the purpose of inquiries and investigations made in good faith and in accordance with a resolution adopted by the Council, the Council and any of its individual members shall deal with Village employees who are subject to the direction and supervision of the Village Manager solely through the Village Manager, and neither the Council nor its members shall give orders to any such employee, except the Village Manager and the Village Attorney, either publicly or privately. It is the express intent of this Charter that recommendations for improvement in Village government operations by individual Council members are made solely to and through the Village Manager. Council members may discuss with the Village Manager any matter of Village business; however, no individual Council member shall give orders to the Village Manager.~~

~~(2) Any willful violation of this Section by the Mayor or any Council member shall be grounds for his/her removal from office by an action brought in the Circuit Court by the State Attorney of Miami-Dade County.~~

Except for the purpose of inquiries and investigations, the Village Council and its members shall deal with the Village employees who are subject to the direction and supervision of the Village Manager solely through the Village Manager, and neither the Council nor its members shall give orders to any such officer or employees, either publicly or privately. Nothing in the foregoing is to be construed to prohibit individual members of the Council from doing research and making inquiries, as to all aspects of Village government operation so as to obtain independent information to assist the members in the formation of sound policies to be considered by the Council. It is the express intent of this provision, however, that such inquiry shall not interfere directly with the ordinary operations of the Village, and that individual Council inquiries be discussed with the Village Manager that recommendations for change or improvement in Village government operations by individual Council Members be made solely through the Village Manager, and any action taken by a majority of the Council as to modification of policy direction.

(C) *Holding Other Office.* No elected Village official shall hold any appointed Village office or Village employment while in office, or any other county, state or federal elected office. No former elected Village official shall hold any compensated appointive Village office or Village employment until two (2) years ~~one (1) year~~ after the expiration of his/her term.

**Section 4.3 Ordinances.**

(A) *Actions Requiring an Ordinance.* In addition to other acts required by law or by specific provision of this Charter to be effected or authorized by ordinance, those acts of the Village Council shall be by ordinance which:

- (1) Adopt or amend an administrative regulation or establish, alter or abolish any Village office, department, board or agency;

- (2) Establish a rule or regulation the violation of which carries a penalty;
- (3) Levy taxes or appropriate funds;
- (4) Grant, renew or extend a franchise;
- (5) Set service or user charges for municipal services or grant administrative authority to set such charges;
- (6) Authorize the borrowing of money in accordance with section 4.11;
- (7) Convey or lease or authorize by administrative action the conveyance or lease of any lands of the Village; or
- (8) Amend or repeal any ordinance previously adopted, except as otherwise provided in this Charter.

#### **Section 4.4 Emergency Ordinances.**

To meet a public emergency affecting life, health, property or the public peace, the Council may adopt, in the manner provided in this Section, one or more emergency ordinances, but emergency ordinances may not: levy taxes, grant, renew or extend any municipal franchise; set service or user charges for any municipal services; or authorize the borrowing of money except as provided under the emergency appropriations provisions of this Charter if applicable.

(1) *Form.* An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated in a preamble as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms.

(2) *Procedure.* An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced and shall be enacted by no less than four members of the Council. After its adoption, the ordinance shall be published and printed as prescribed for other ordinances.

(3) *Effective Date.* An emergency ordinance shall become effective upon adoption or at such other date as may be specified in the ordinance.

(4) *Repeal.* Every emergency ordinance except emergency appropriation ordinances shall automatically be repealed as of the 61st calendar day following its effective date, but this shall not prevent reenactment of the ordinance under regular procedures, or if the emergency still exists, in the manner specified in this Section. An emergency

ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this Section for adoption of emergency ordinances.

(5) *Emergency Appropriations.* The Council may make emergency appropriations in the manner provided in this Section. Notwithstanding the provisions of Section 4.11 to the extent that there are no available unappropriated revenues to meet such appropriations, the Council may authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes, including renewals thereof, shall be payable no later than the last day of the fiscal year next succeeding the fiscal year in which the emergency appropriation ordinance was originally adopted.

#### **Section 4.5 Annual Budget Adoption.**

(A) *Balanced Budget.* Each annual budget adopted by the Council shall be a balanced budget and adopted in accordance with Florida law.

(B) *Budget Adoption.* The Council shall by ordinance adopt the annual budget on or before the thirtieth (30th) day of September of each year in accordance with applicable Florida law.

(C) *Specific Appropriation.* The budget shall be specific as to the nature of each category of appropriations therein. Reasonable appropriations may be made for contingencies, but only within defined spending categories.

#### **Section 4.6 Fiscal Year.**

The fiscal year of the Village government shall begin on the first day of October and shall end on the last day of September of the following calendar year. Such fiscal year shall also constitute the annual budget and accounting year.

#### **Section 4.7 Appropriation Amendments During the Fiscal Year.**

(A) *Supplemental Appropriations.* If, during any fiscal year, revenues in excess of those estimated in the annual budget are available for appropriation, the Council may by ordinance make supplemental appropriations for the fiscal year up to the amount of such excess.

(B) *Reduction of Appropriations.* If, at any time during the fiscal year, it appears probable to the Village Manager that the revenues available will be insufficient to meet the amount appropriated, s/he shall report in writing to the Council without delay, indicating the estimated amount of the deficit, and his/her recommendations as to the remedial action to be taken. The Council shall then take such action as it deems appropriate to prevent any deficit spending.

**Section 4.8 Authentication, Recording and Disposition of Ordinances; Resolutions and Charter Amendments.**

(A) *Authentication.* The Mayor and the Village Clerk shall authenticate by their signature all ordinances and resolutions adopted by the Council. In addition, when Charter amendments have been approved by the electors, the Mayor and the Village Clerk shall authenticate by their signatures the Charter amendment, such authentication to reflect the approval of the Charter amendment by the electorate.

(B) *Recording.* The Village Clerk shall keep properly indexed books in which shall be recorded, in full, all ordinances and resolutions passed by the Council. Ordinances shall, at the direction of the Council, be periodically codified. The Village Clerk shall also maintain the Charter in current form including all Charter amendments.

(C) *Availability of Enactments.* The Council shall establish procedures for making all resolutions, ordinances, technical codes adopted by reference, and this Charter available for public inspection and available for purchase at a reasonable price.

**Section 4.9 Tax Levy, Assessments and Fees.**

The Village, by majority of the Council, shall have the right to levy, assess and collect all such taxes, assessments and fees as are permitted by law, including without limitation, fines, ad valorem taxes, special assessments and fees, excise, franchise or privilege taxes and taxes on services and utilities.

**Section 4.10 Independent Audit.**

The Council shall provide for an annual independent audit of all Village accounts and may provide more frequent audits as it deems necessary. Audits shall be made in accordance with generally accepted auditing standards by a certified public accountant or firm of such accountants who have no personal interest direct or indirect in the fiscal affairs of the Village government, its employees or officers. Residency, per se, shall not constitute a direct or indirect interest. A summary of the results, including any deficiencies found, shall be made public. A written response to any noted deficiencies shall be the responsibility of the Village Manager. The response shall be made public no more than 90 calendar days from delivery of the independent auditor's report.

**Section 4.11 Borrowing.**

The Village shall incur no debt unless the incurrence of such debt is approved by a majority of the council.

## ARTICLE V. ELECTIONS

### Section 5.1 Elections.

(A) *Electors.* Any person who is a resident of the Village, has qualified as an elector of the State, and registers to vote in the manner prescribed by law, shall be an elector of the Village.

(B) *Nonpartisan Elections.* All elections for the Council, Vice-Mayor and Mayor shall be conducted on a nonpartisan basis. Neither the ballot nor any campaign literature shall show the party designation of any candidate. Nonpartisan office means an office for which a candidate is prohibited from campaigning or qualifying for election or retention in office based on party affiliation. A willful violation of this provision shall be enforced by the State Attorney. A judicial determination of a violation shall be grounds for removal from elected office and subject the individual to a fine up to \$1000, per willful violation, and not to exceed a total of \$10,000.

(C) *Election Dates.* A general election shall be held in each even-numbered year, on the first Tuesday following the first Monday in November of that year. A runoff election, if necessary, shall be held by the Village as provided by ordinance, which ordinance shall schedule and authorize the runoff date, in compliance with state law. The Council shall hold no meetings between the general election and the swearing in of those newly elected or re-elected Council members except in the case of an emergency affecting life, health, property or the public peace.

(D) *General Election.* The ballot for the general election shall contain the names of all qualified candidates for Mayor, if the Mayor's term is expiring, and for each of the seats which are to be filled as a result of members' terms expiring. The ballot shall instruct electors to cast one vote for Mayor or Vice-Mayor, if applicable, and one vote for each Council Seat, with a maximum of one vote per candidate. If any candidate for Mayor receives a number of votes greater than 50% of the total number of ballots cast, such candidate shall be the duly elected Mayor and no run-off election for Mayor shall be required. If any candidate for Vice-Mayor receives a number of votes greater than 50% of the total number of ballots cast, such candidate shall be the duly elected Vice-Mayor and no run-off election for Vice-Mayor shall be required. If any candidate for a Council Seat receives a number of votes greater than 50 percent of the total number of ballots cast, such candidate(s) shall be duly elected to the Council and no run-off election for that Seat(s) shall be required.

(E) *Run-off Election.* If necessary, the ballot for the runoff election shall contain the names of the two candidates for Mayor, the two candidates for Vice-Mayor, and the names of the two candidates for each Council Seat, who received the most votes in the general election. The ballot shall instruct electors to cast one vote for Mayor, one vote for Vice-Mayor, and one vote for each Council Seat, with a maximum of one vote per candidate. The candidate for Mayor receiving the most votes shall be duly elected Mayor. The candidate for Vice-Mayor receiving the most votes shall be duly elected

Vice-Mayor. The candidate for each Council Seat receiving the most votes shall be duly elected to that Council Seat.

(F) *Special Elections.* Special elections, when required, shall be scheduled by the Council at such times and in such a manner as shall be consistent with this Charter and State law.

(G) *Single Candidates.* No election for Mayor or Vice-Mayor or any Council Seat shall be required in any election if there is only one duly qualified candidate for Mayor, Vice-Mayor or for any Council Seat. That candidate shall be considered elected by operation of law.

(H) *Commencement of Terms.* The term of office of all elected officials will commence at the next regularly scheduled council meeting following the day of the run-off election or, if there is no run-off election for Mayor, Vice-Mayor or Council Seat, at the next regularly scheduled council meeting after the general election.

## **Section 5.2 Initiative and Referendum.**

(A) *Power to Initiate and Reconsider Ordinances.*

(1) *Initiative.* The electors of the Village shall have the power to propose ordinances to the Council and, if the Council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a Village election, provided that such power shall not extend to the annual budget or capital program or any ordinance appropriating money, levying taxes or setting salaries of Village officers or employees.

(2) *Referendum.* The electors of the Village shall have power to require reconsideration by the Council of any adopted ordinance and, if the Council fails to repeal an ordinance so reconsidered, to approve or reject it at a Village election, provided that such power shall not extend to the annual budget or capital program or any ordinance appropriating money, levying taxes or setting salaries of Village officers or employees.

(B) *Commencement of Proceedings.* A minimum of ten electors may commence initiative or referendum proceedings by filing with the Village Clerk an affidavit (the "Affidavit") stating they will constitute the petitioners' committee (the "Committee") and be responsible for circulating the petition (the "Petition") and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the Committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered. Promptly after the Affidavit of the Committee is filed, the Village Clerk shall, at the Committee's request, issue the appropriate Petition blanks to the Committee at the Committee's expense. Petitioners' proposed ordinance shall be approved as to legal sufficiency by the Village Attorney prior to circulation.

(C) *Petitions.*

- (1) *Number of Signatures.* Initiative and referendum petitions must be signed by at least five (5) percent of the total number of electors registered to vote at the last regular Village election.
- (2) *Form and Content.* All pages of a Petition shall be assembled as one instrument of filing. Each signature shall be executed in ink and shall be followed by the printed name and address of the person signing. Petitions shall contain or have attached throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.
- (3) *Affidavit of Circulator.* Each page of a Petition shall have attached to it, when filed, an affidavit executed by the circulator stating that s/he personally circulated the page, the number of signatures contained, that all the signatures were affixed in his/her presence that s/he believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.
- (4) *Filing Deadline.* All Petitions must be filed within 60 calendar days of the date a proper Affidavit is filed pursuant to subsection (B) of this section.

(D) *Procedure for Filing.*

- (1) *Certificate of Clerk; Amendment.* Within 20 calendar days after an initiative Petition is filed or within five business days after a referendum Petition is filed, the Village Clerk shall complete a certificate as to its sufficiency ("the Certificate"). If insufficient the Certificate shall specify the particulars of the deficiency. A copy of the Certificate shall be promptly sent to the Committee by registered mail. Grounds for insufficiency are only those specified in subsection (C) of this Section. A Petition certified insufficient for lack of the required number of valid signatures may be amended once if the Committee files a notice of intention to amend it with the Village Clerk within two calendar days after receiving the copy of the Certificate and files a Supplementary Petition ("Supplementary Petition") with the Village Clerk with additional valid signatures within ten calendar days after receiving the copy of such Certificate. Such Supplementary Petition shall comply with the requirements of subsection (C) of this Section. Within five business days after a Supplementary Petition is filed, the Village Clerk shall complete a Certificate as to the sufficiency of the Petition as amended ("Amended Petition") and promptly send a copy of such Certificate to the Committee by registered mail.
- (2) *Council Review.* If a Petition or Amended Petition is certified sufficient, the Village Clerk shall promptly present his/her certificate to the Council and such

Certificate shall then be a final determination as to the sufficiency of the petition. If a petition has been certified insufficient and the Committee does not file notice of intention to amend it or if an Amended Petition has been certified insufficient, the Committee may, within two calendar days after receiving the copy of such Certificate, file a request with the Village Clerk that it be reviewed by the Council. The Council shall review the Certificate at its next regularly scheduled meeting following the filing of such request and approve or disapprove it. The Council's determination shall then be a final determination as to the sufficiency of the Petition.

(E) *Action on Petitions.*

- (1) *Action by Council.* When an initiative or referendum Petition has been finally determined sufficient, the Council shall promptly consider the proposed initiative ordinance or reconsider the referred ordinance by voting its repeal. If the Council fails to adopt a proposed initiative ordinance without any change in substance within 45 calendar days or fails to repeal the referred ordinance within 30 calendar days, it shall submit the proposed or referred ordinance to the electors of the Village. If the Council fails to act on a proposed initiative ordinance or a referred ordinance within the time period contained in this paragraph, the Council shall be deemed to have failed to adopt the proposed initiative ordinance or failed to repeal the referred ordinance on the last day that the Council was authorized to act on such matter.
- (2) *Submission to Electors.* The vote of the Village on a proposed or referred ordinance shall be held not less than 30 calendar days or more than 60 calendar days from the date the Council acted or was deemed to have acted pursuant to paragraph (1) of this subsection. If no regular election is to be held within the period described in this paragraph, the Council shall provide for a special election, except that the Council may, in its discretion, provide for a special election at an earlier date within the described period. Copies of the proposed or referred ordinance shall be made available at the polls.
- (3) *Withdrawal of Petitions.* An initiative or referendum Petition may be withdrawn at any time prior to the 15th calendar day preceding the day scheduled for a vote by the Village by filing with the Village Clerk a request for withdrawal signed by at least eight/tenths of the Committee. Upon the filing of such a request, the Petition shall have no further force or effect and all proceedings shall be terminated.

(F) *Results of Election.*

- (1) *Initiative.* If a majority of the qualified electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall

prevail to the extent of such conflict. If the proposed initiative ordinance fails, it or any ordinance that is substantially similar may not be submitted in accordance with this Article for at least one year from the date of the election.

- (2) *Referendum.* If a majority of the qualified electors voting on a referred ordinance vote for repeal, the repealed ordinance shall be considered repealed upon certification of the election results.

## ARTICLE VI. CHARTER AMENDMENTS

### Section 6.1 Procedure to Amend.

(A) The Charter may be amended in accordance with the provisions of Section ~~56~~.03 of the Home Rule Charter of Miami-Dade County. The Village shall enact an ordinance to implement this Article.

(B) If conflicting amendments are adopted at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

### Section 6.2 Charter Revision.

(A) At its first regular meeting in December 2005, and thereafter every fifth year, the Council shall appoint and fund a Charter Revision Commission (the "Commission").

(B) The Commission shall consist of five ~~persons~~ electors including one from each of the three Residential Areas. ~~One appointment shall be made by the Mayor and~~, Vice-Mayor shall make an at-large appointment. ~~and e~~Each Council District Person member shall make an appointment from their respective Districts. In addition, the Mayor shall appoint one person to the Commission who is the Vice-Mayor or Council member who is serving a second consecutive term, who shall serve as a non-voting Commission member. In the event a second term Vice-Mayor or Council member is not serving, the Mayor may appoint a sitting Vice Mayor or Council member. The Mayor shall not be eligible for appointment to the Commission. The Commission shall commence its proceedings within 45 calendar days after appointment by the Council.

(C) If the Commission determines that an amendment or revision is needed, it shall submit the same to the Council no later than the deadline established by the County Commission on Elections, so that the amendments or revisions can make the ballot of the next regularly scheduled election of the ~~village~~ Village. Alternative proposals may be submitted. The Council shall submit suggested amendments and revisions to the electors of the Village in accordance with the provisions of Section 6.1, at the next regularly scheduled election.

## **ARTICLE VII. GENERAL PROVISIONS**

### **Section 7.1 Severability.**

If any article, section or part of a section of this Charter shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this Charter or the context in which such article, section or part of section so held invalid may appear, except to the extent that an entire article, section or part of section may be inseparably connected in meaning and effect with the section or part of section to which such holding shall directly apply.

### **Section 7.2 Conflicts of Interest; Ethical Standards.**

(A) All Council members, officials and employees of the Village shall be subject to the standards of conduct for public officers and employees set by law. The Council may, by ordinance, adopt additional standards of conduct and Code of ethics, but in no case inconsistent with law.

(B) All elected officials, employees and appointed board or committee members shall disclose any interest in real estate or other business(es) upon entering office or being hired and shall re-disclose annually thereafter, except as otherwise provided by law.

(C) Without in any way limiting the generality of the foregoing, no Council member shall have a financial interest, direct or indirect, or by reason of ownership of stock or other equity ownership in any corporation or entity, in any contract or in the sale to the Village or to a contractor supplying the Village of any land or rights or interests in any land, materials, supplies, or services unless, after full disclosure to the Council of the nature and extent of such interest, the same is authorized by the Council before the event or accepted and ratified by the Council after the event. No member of the Council who possesses such a financial interest shall vote on, or participate in the Council deliberations concerning, any such contract or sale. Any violation of this Section with the knowledge of the person or entity contracting with the Village shall render the contract voidable by the Council.

### **Section 7.3 Village Personnel System.**

All new employment, appointments and promotions of Village employees shall be made pursuant to personnel procedures to be established by the Manager from time to time.

### **Section 7.4 Variation of Pronouns.**

All pronouns and any variation thereof used in this Charter shall be deemed to refer to masculine, feminine, neutral, singular or plural as the identity of the person or persons shall require and are not intended to describe, interpret, define or limit the scope, extent, or intent of this Charter.

### **Section 7.5 No Discrimination.**

The Village shall not adopt any ordinance or policy that discriminates against any person due to race, religion, color, national origin, physical or mental disability, creed, age, sexual preference or gender.

### **Section 7.6 Lobbyists**

(A) No person or firm who directly or through a member of the person's immediate family or through a political action committee or through any other person makes a contribution to a candidate who is elected Mayor, Vice-Mayor or Council member, shall be permitted to lobby on behalf of another, any elected official, employee or appointed board or committee member for a period of four (4) years following the swearing in of the subject elected official.

(B) The Village Council shall pass, maintain and enforce an ordinance, which requires all lobbyists as may be defined by the Miami-Dade County Code and/or as may be made more stringent by the Village Council to:

- (1) Register with the Village Clerk prior to lobbying any Village government official, ie: Village Council member, employee, board or committee member.
- (2) Disclose in writing all persons and/or entities the lobbyist is representing and submit a letter of permission from said person or entity.
- (3) Submit a full disclosure of the comprehensive terms of all compensation or consideration the lobbyist is being paid for such activities.
- (4) Disclose in writing all Village government officials directly contacted by the lobbyist, any expenditures involved, any fundraising or campaign contributions made directly or indirectly by the lobbyist to any Village government officials or on their behalf.
- (5) Direct the Village Clerk to disseminate to the Village Council, prior to any public hearing, on the event or matter for which such lobbyist may appear all disclosures required herein or as otherwise required by State or County law.

| Any violation of this section shall render the issue being lobbied voidable.

### **Section 7.7 Precedence over Related Laws.**

In case of a conflict between the provisions of this Charter and the provisions of the Code to be adopted pursuant thereto, the Charter terms shall control. Moreover, nothing in this Charter shall be construed to alter, abolish, affect or amend the general laws of this State, now in force, or which hereinafter may be enacted relative to or affecting this Village, except where such laws are in direct conflict in which case the

provisions of this Charter or Code adopted pursuant thereto shall supersede and be in full force and effect.

## **ARTICLE VIII. TRANSITION PROVISIONS**

### **Section 8.1 Interim Adoption of Codes and Ordinances.**

Until otherwise modified or replaced by this Charter or the Village Council, all Codes, ordinances and resolutions in effect on the date of adoption of this Charter shall, to the extent applicable to the Village, remain in full force and effect as municipal Codes, ordinances and resolutions of the Village. Until otherwise determined by the Village Council, said codes, ordinances and resolutions shall be applied, interpreted and implemented by the Village in a manner consistent with established policies of Miami-Dade County on the date of this Charter.

## **ARTICLE IX. SPECIAL CONDITIONS**

### **Section 9.1 Interlocal Agreements.**

Within one hundred eighty (180) days after the election of a municipal council, the Village will enter into an interlocal agreement ("Interlocal Agreement") with Miami-Dade County to set forth contractual provisions establishing the municipality's relationship with Miami-Dade County to the extent required by the Charter.

### **Section 9.2 County Services.**

The Village shall remain a part of and receive services at a minimum service level equal to the service level as of the date of approval of this Charter by the electors of the Village, in perpetuity, from the:

- (1) Miami-Dade Fire Rescue District,
- (2) Miami-Dade Library System, and
- (3) Miami-Dade Solid Waste Collection Service Area.

Provided that the County shall not have the right or ability to impair or infringe upon the functions and powers assumed by the ~~village~~Village upon incorporation.

### **Section 9.3 Reserved.**

### **Section 9.4 Local Patrol Police Services.**

The Village shall exclusively utilize the Miami-Dade Police Department for a specific level of patrol staffing for an initial period of three years. The utilization of the Miami-Dade Police Department for local patrol services may only be terminated for cause during this initial three (3) year period. Payment amounts and other pertinent items

relating to the provision of local patrol services shall be set forth in a contract between the Village and Miami-Dade County. Such contract shall also provide that “the initial three-year period” shall commence upon the execution of the Local Patrol Contract by all parties. At the end of the three (3) year period the Village may elect not to renew the Local Patrol Contract at which point a transition period of no less than twelve (12) months will begin.

**Section 9.5 Reserved.**

**Section 9.6 Regulatory Control.**

The local government comprehensive plan adopted by the Village of Palmetto Bay pursuant to Chapter 163, Part II, Florida Statutes, shall be consistent with the adopted Miami-Dade County Comprehensive Development Master Plan (the CDMP) as it may be amended from time to time, as applied to the site of the Florida Power and Light Cutler Ridge Electric Power Generating Plant, a facility of countywide significance delineated by the plat dated December 28, 1949 (Cutler Ridge Plant Site). Any use or activity allowed by the CDMP in a land use classification which allows an electric power generating plant shall be allowed at the Cutler Ridge Plant Site and may not be limited or impeded in any way by the local government comprehensive plan adopted by the Village of Palmetto Bay. Jurisdiction over the Cutler Ridge Plant Site for purposes of zoning and building approvals (including but not limited to site plan approvals, issuance of building permits, building inspections, compliance with the South Florida Building Code or other applicable building code, issuance of certificates of occupancy, zoning applications, special exceptions, variances, building and/or zoning moratoria, and all other types of functions typically performed by Building and/or Zoning Departments) water and sewer installations, compliance with environmental regulations, street maintenance (including sidewalks, if applicable) and utility regulation shall be and is hereby vested in Miami-Dade County regardless of any Village of Palmetto Bay code, charter, or ordinance provision to the contrary.

This provision shall not alter or affect the legal rights of any person residing or owning real property within the Village. The Village shall not institute, intervene or otherwise participate in, in opposition to Miami-Dade County or FPL, any judicial or formal administrative proceeding regarding land use or development of the Cutler Ridge Plant Site, or Miami-Dade County’s planning or regulatory requirements for any electrical power generating facility of county-wide significance. This section shall be null and void upon an official determination by the Board of County Commissioners of Miami-Dade County that the Cutler Ridge Plant Site is not in use for an electrical power generating facility of county-wide significance and will not be used for such a facility in the future.

This Charter provision shall be deemed self-executing.

## **Section 9.7 Continuing Obligations as to County Bonds.**

The County has heretofore issued \$41,580,000.00 Stormwater Utility Revenue Bond Series 1999 (the "Stormwater Bond") of which \$ 38,805,000.00 remains outstanding as of May 1<sup>st</sup>, 2002, payable from stormwater utility fees collected in the unincorporated area and within a limited number of cities. The County assesses and collects the stormwater utility fee pursuant to Sections 24-61 through 24-61.5 of the County Code, as amended from time to time and Section 403.0893, Florida Statutes, as amended from time to time (the "Stormwater Utility Fees).

The County has issued \$77,640,000 Public Service Tax Revenue Bonds (UMSA Public Improvements) Series 1999 (the "Series 1999 Public Service Bonds") currently outstanding in the principal amount of \$71,295,000 and will issue an additional series of bonds in an amount not to exceed \$60,000,000 (the "Series 2002 Public Service Bonds") prior to the Village's incorporation payable from Public Service Taxes (defined below) collected in the unincorporated area. The County receives a public service tax pursuant to Section 166.231, Florida Statutes, as amended from time to time, and as of October 1, 2001, from a discretionary communications tax assessed pursuant to Chapter 202, Florida Statutes and Section 29 of the County Code (collectively, "The Public Service Tax). If required by the County the Village agrees to enact an ordinance, pursuant to Section 202.19, Florida Statutes, authorizing the levy of the discretionary services tax a rate no less than the rate established by the County for communications services prior to the incorporation of the Village.

The Stormwater Bonds, the Series 1996 Public Service Bonds, the Series 1999 Public Service Bonds, the Series 2002 Public Service Bonds, and any bonds issued in the future, provided that the Village remains a part of the Stormwater utility system, that are secured either through Stormwater Utility Fees or Public Service Taxes are referred to collectively in this Section as the "Bonds".

The Village agrees that until the Bonds are retired the County shall have the right to receive and apply to debt service on the Bonds all of the Stormwater Utility Fees and the Public Service Taxes collected within the unincorporated area and within the boundaries of the Village. After the County has paid or satisfied the debt service requirements on the Bonds, the County shall make a payment to the Village, equal to its share of the remaining Stormwater Utility Fees and Public Services Taxes on deposit with the County. Its share shall be determined as follows: the County will distribute to the Village the net proceeds available from these taxes. The net proceeds will be calculated by taking the gross taxes attributable to the Village and the subtracting the Village "share" of the debt service payments. The Village's "share" will be determine by calculating the cost of the projects funded by this bonds conducted within the Village boundaries as percentage of the total bond expenditures, an then applying this percentage to the annual bond payments made by the County. The Village may prepay its proportionate share of the aforementioned bonds at any time during the life of the bonds with out penalty.

## **Section 9.8 Favored Nation Status**

### *County Services*

If a subsequent incorporation is approved without the newly incorporated area being required to remain in the Miami-Dade Fire Rescue District, Miami-Dade Library System, Miami-Dade Solid Waste collection service area, or without contracting with the Miami-Dade Police Department for local patrol police services, the Village will be entitled to modify its relationship with the County consistent in the manner that each of the aforementioned services is provided to the new municipality. Both parties also agree that if a subsequent incorporation of any area is approved, without conditions outlined in this agreement, and those terms would be beneficial to the Village of Palmetto Bay, the terms under this Charter will immediately be replaced with the terms granted to the subsequent, new, municipality (the "Most Favored Nation Status"). It is provided however that the Most Favored Nation Status shall not apply to mitigation payments into the Municipal Services Trust Fund, nor apply to any requirement to separately contract or pay for the provision of specialized police services.

## **Section 9.9 Rights of the Village.**

The ~~village~~Village will be granted all rights powers and privileges afforded to all municipalities and provided under the general laws of the State of Florida subject only to the restrictions placed upon it by this Charter. The ~~village~~Village will receive all other municipal revenue sources such as utility taxes including those that the County by right or may otherwise retain, such as the franchise fees, and will continue to receive all services that are provided to cities under the countywide budget.

## **Section 9.10 Modifications.**

Any modifications to Article IX will require:

- (A) All approvals normally required by the municipal charter, and
- (B) Approval by 2/3rds of the total membership of the Miami-Dade County Board of County Commissioners

## ARTICLE X. MISCELLANEOUS PROVISIONS

### Section 10.1 Private School Expansion.

The number of enrolled students of any private school within the Village of Palmetto Bay shall not be increased without prior approval by a fourth-fifths (4/5) vote of the Village Council. No such approval shall be adopted by the Village Council until the request to increase enrolled students is submitted to a vote of Village of Palmetto Bay electors living within a 2,000 foot radius of the applicant school property by referendum, and 75 percent of the electors voting approve of such increase in enrolled students.

A list of Village of Palmetto Bay registered voters within the 2,000-foot radius of the school property shall be prepared by the Village Clerk. Any elector who resides on property or a portion of property that is within the 2,000 foot radius of the school seeking to increase the number of its enrolled students shall be eligible to vote in the election required under this provision. The cost of the election (including reimbursement to the city for all costs relating to the preparation of the list of eligible electors) required under this provision shall be borne by the school seeking to increase the number of its enrolled students.

### Section 10.2 Neighborhood Protection.

All Single-family residential properties shall be protected from the negative impacts of adjacent or nearby non-single-family-residential uses.

10.2.1 All non-single-family-residential developments, structures, or use (that is/are a direct or indirect result of that development, structure, or use) in, adjacent to, or nearby any single-family zoned properties shall not disrupt or degrade the health, safety, tranquility, character, and overall welfare of the adjacent or nearby single-family residential properties by creating negative impacts on those properties such as density, intensity, noise, light, glare, dust, odor, vibration, traffic or run off that exceeds that of adjacent single-family properties. Nothing herein should be construed or applied to abrogate the vested rights of a property owner.

10.2.2 Four affirmative votes of the Village Council shall be required to approve a zoning change, conditional use, or special exception in any single-family residential district.

This provision shall not apply to properties as of the date of approval of this charter amendment within the following Zoning Districts:

- B-1 - Limited Business Districts
- B-2 - Business Districts

- R-5 - Office District
- FT&I - Franjo Triangle and U.S. 1 Island District except for the Live Work-Residential sub-district as it relates to the FT&I District
- VMU - Village Mixed Use District
- All multi-family residential districts (R-2, R-TH, R-3, R-3M, R-4L, R-4H)

The Village shall enact an ordinance to implement Section 10.2.

**Section 10.3. Annexation**

The Village Council, presented with a petition in accordance with County requirements for annexation of an area, shall vote on the concept of annexation of the area. A four-fifths vote of the Council shall be required in order to proceed with the annexation process. Immediately thereafter, the Village Council will coordinate an election of Village residents to determine whether a plurality of the Village desires to proceed with annexation. If a plurality votes affirmatively, the Village Council would then proceed with a resolution, consistent with the County Annexation procedures, to request initiation of the annexation process, which would provide for the scheduling of an election by the area to be annexed.

\* \* \*

**Appendix A**

Legal Description of the Area Currently Known as Palmetto Bay  
Proposed Municipal Boundaries  
June 2002

A PORTION OF MIAMI-DADE COUNTY, FLORIDA, generally bounded on the North by Howard Drive (SW 136th Street); bounded on the East by the City of Coral Gables, by the Waters of Biscayne Bay and by Biscayne National Park; bounded on the South by Eureka Drive (SW 184th Street); and bounded on the West by the South bound lane of State Road 5 (U.S. Highway No. 1) and by State Road 5, as said portion is more particularly described as follows:

**BEGINNING** at the Northwest corner of Section 22, Township 55 South, Range 40 East, run Easterly along the North line of said Section 22 and along the North section lines of Sections 23 and 24 of Township 55 South Range 40 East (centerline of Howard Drive) to a corner in the boundary of the City of Coral Gables according to Coral Gables Ordinance No. 3548, said corner being a U.S. Land Office Monument (U.S.L.O.) on the North line of said Section 24, lying 2336.54 feet Westerly of the Northeast corner of said Section 24 as measured along said North line;

thence Southerly, following said boundary of the City of Coral Gables for a distance of 576.43 feet, more or less, along the boundary described in Deed Book 3221, at Page 377, of the Public Records of Miami-Dade County, Florida to a point;

thence Southeasterly along said boundary of the City of Coral Gables for a distance of 553.00 feet, more or less, according to said Deed Book 3221, Page 377 to a point;

thence Southwesterly along said boundary of the City of Coral Gables for a distance of 861.00, feet more or less, to a U.S.L.O. monument according to said Deed Book 3221, Page 377;

thence continuing Southwesterly along said boundary of the City of Coral Gables for a distance of 893.21 feet to a U.S.L.O. monument according to said Deed Book 3221, Page 377;

thence Westerly, along said boundary of the City of Coral Gables, for a distance of 1324.66 feet, more or less, to a U.S.L.O. monument marking the Southwest corner of a 95 acre tract transferred from the War Department to the Department of Agriculture, June 23, 1925, according to said Deed Book 3221, Page 377 [USDA PROPERTY];

thence continue along the Westerly extension of the previous described line and along said boundary of the City of Coral Gables, for a distance of 130.00 feet, more or less, according to said Deed Book 3221, Page 377;

thence Southwesterly along said boundary of the City Coral Gables for a distance of 222.00 feet, more or less, to the Northwest corner of Tract D-6 as shown on the plat of DEERING BAY as recorded in Plat Book 139 at Page 60 of the Public Records of Miami-Dade County, Florida;

thence Southwesterly, following said boundary of the City of Coral Gables along the Westernmost line of said Tract D-6 of said plat of DEERING BAY to the Southwest corner of said Tract D-6, this point being on the North right-of-way line of Mitchell Drive (S.W. 144th Street);

thence South, at right angles to the North line of the Southwest Quarter (SW 1/4) of said Section 24, Township 55 South, Range 40 East, along said boundary of the City of Coral Gables, for a distance of 15 feet to a point on said North line of the Southwest Quarter (SW 1/4) of said Section 24;

thence East, following said boundary of the City of Coral Gables along the North line of said Southwest Quarter (SW 1/4) of said Section 24, this line being also the centerline of Mitchell Drive (S.W. 144th Street), to the Northeast corner of said Southwest Quarter;

thence South, following said boundary of the City of Coral Gables along the East line of said Southwest 1/4 of said Section 24, this line being also the centerline of S.W. 62 Avenue, to its intersection with the Easterly extension of the South line of Lot 95 of the

Plat of KING'S BAY SUBDIVISION, as recorded in Plat Book 57 at Page 45, of the Public Records of Miami-Dade County, Florida;

thence Westerly, following said boundary of the City of Coral Gables along the South line of Lots 95, 94, 93, 92, 91, 90, and 89 inclusive, to the Southwest corner of said Lot 89, this point also being the Northeasterly corner of Lot 88, of said KING'S BAY SUBDIVISION;

thence Southerly, following said boundary of the City of Coral Gables along the East line of Lots 88, 87, 86, 85, 84, and 83 inclusive, to the Southeasterly corner of said Lot 83, this point being also the Northernmost corner of Lot 82, on said KING'S BAY SUBDIVISION;

thence Southeasterly, following said boundary of the City of Coral Gables, along the Northeast line of said Lot 82 to the Northwest corner of Lot 81 of said KING'S BAY SUBDIVISION;

thence easterly, following said boundary of the City of Coral Gables along the North line of Lots 81, 80, and 79 inclusive, to the Northeast corner of said Lot 79 of said KINGS BAY SUBDIVISION;

thence Southeasterly, following said boundary of the City of Coral Gables along the Northeast line of Lots 78, 77, 76 and 75 inclusive, to the Northeast corner of Lot 75 of said KINGS BAY SUBDIVISION on the East line of the Southwest quarter (SW 1/4) of said Section 24, Township 55 South, Range 40 East;

thence South, following said boundary of the City of Coral Gables along the East line of said Southwest quarter (SW 1/4) of said Section 24 to its intersection with the South line of said Section 24 which is the also the North line of Section 25, Township 55 South Range 40 East;

thence Easterly, following said boundary of the City of Coral Gables along said North line of said Section 25, for 1267.67 feet, more or less, to a point at the intersection of said North line of Section 25 with the Northerly extension of the West line of Lot 1, in Block 1 of PARADISE POINT FIRST AMENDMENT as recorded in Plat Book 156 at Page 33 of the Public Records of Miami-Dade County, Florida, said point lying in Paradise Point Inlet, 37.88 feet North of the Northwest corner of said Lot 1;

thence, from said point of intersection, continue Easterly following said boundary of the City of Coral Gables along the North line of Section 25, for a distance of 400 feet to the point of curvature of a 100 foot radius curve, concave Southwesterly as it appears on said plat of PLAT OF PARADISE POINT FIRST AMENDMENT, (said point of curvature being near the Easternmost end of the dock on the South bank at the mouth of said Paradise Point Inlet);

thence departing from said boundary of the City of Coral Gables, run Southerly, perpendicular to the North line of said Section 25, along a line radial to said curve, to the point of intersection of said radial line with the Mean High Waterline on the Southern bank at the mouth of said Paradise Point Inlet;

thence Southeasterly and Southerly along said Mean High Waterline, around Paradise Point, and continuing Westerly, and Southwesterly, and Southerly following said Mean High Water Line along the Western shore of Biscayne Bay, and across the mouth of any streams or inlets to a point on the North right-of-way line of a 135 foot wide right-of-way for Canal C-100 in fractional Section 35, Township 55 South, Range 40 East;

thence East along said North right of way line of said C-100 Canal for 50.00 feet to a point;

thence southerly, perpendicular to said North right-of-way line, across the mouth of said 135 foot wide canal right-of-way to a point on the South right-of-way line of said Canal C-100;

thence due South to the northern boundary of Biscayne National Park according to the dedication thereof recorded in Official Record Book 12823 at Page 3043 of the Public Records of Miami-Dade County, Florida, said northern boundary being the eastward extension of the centerline of SW 176th Street which is also the eastward extension of the North line of the fractional Southwest quarter (SW 1/4) of Section 35, Township 55 South, Range 40 East;

thence Westerly following said boundary of Biscayne National Park along said Eastward extension of the North line of said fractional Southwest quarter (SW 1/4) of said Section 35 to the Mean High Water line on the Western shore of Biscayne Bay;

thence Southerly following said boundary of Biscayne National Park along said Mean High Water line to a point on a line 187.5 feet South of the South Boundary of the TOWN OF CUTLER according to the Map thereof recorded in Plat Book B at Page 17 of the Public Records of Miami-Dade County, Florida, said South Boundary of the Town of Cutler being also the North line of said fractional Southwest quarter (SW 1/4) of said Section 35;

thence Westerly following said boundary of Biscayne National Park along the South line of the North 187.5 feet of said fractional Southwest quarter (SW 1/4) of said Section 35 for a distance of 169 feet, more or less, to a point 750 feet East of the Easterly right-of-way line of Old Cutler Road according to Warranty Deed in Official Record Book 19723, Page 2794 of the Public Records of Miami-Dade County, Florida;

thence Southwesterly along said boundary of Biscayne National Park for 152.71 feet, more or less, to a point on the South line of Tract 2 of DAUGHERTY'S SUBDIVISION as recorded in Plat Book 1, at Page 1 of the Public Records of Miami-Dade County, said

point being 815 feet distant from the Southwest corner of said Tract 2 according to the description of said Park boundary in Official Record Book 15202, Page 1856;

thence Westerly following said boundary of Biscayne National Park along said South line of Tract 2 of DAUGHERTY'S SUBDIVISION to the Northeast corner of Tract "A" of BURGER KING WORLD HEADQUARTERS according to the Plat thereof recorded in Plat Book 127, at Page 86 of the Public Records of Miami-Dade County, Florida;

thence southerly following said boundary of Biscayne National Park along the Eastern boundary of said Tract "A" to a corner of Tract "B" of said BURGER KING WORLD HEADQUARTERS;

thence continue Southerly following said boundary of Biscayne National Park along the Eastern boundary of said Tract "B" to a corner of said Tract "A" of said BURGER KING WORLD HEADQUARTERS;

thence continue Southerly, Westerly and Southerly following said boundary of Biscayne National Park along the Eastern boundary of said Tract "A" of said BURGER KING WORLD HEADQUARTERS to the South line of said Section 35 and Southeast corner of said Tract "A";

thence, departing from said boundary of Biscayne National Park, run Westerly along said South line of said fractional Section 35, Township 55 South, Range 40 East, for 1880 feet to the Southwest corner of said Section 35;

thence along the South Section lines of Sections 34 and 33 of Township 55 South, Range 40 East (centerline of Eureka Drive) to the Southwest corner of said Section 33;

thence continue Westerly along the South line of the Southeast quarter (SE 1/4) of Section 32, Township 55 South, Range 40 East (centerline of Eureka Drive) for 2047.42 feet, more or less, to the centerline of the Southbound lane of State Road 5 according to the Florida Department of Transportation Right-of-Way Map thereof recorded in Plat Book 124 at Page 57 of the Public Records of Miami-Dade County, Florida;

thence Northeasterly along said centerline of Southbound State Road 5 as shown on said Right-of-Way Map (P.B. 124, Page 57) to its intersection with the Northwesterly extension of the centerline of SW 164th Street Road;

thence Southeasterly along said Northwesterly extension of said centerline of SW 164th Street Road for 25 feet to the (united) centerline of State Road 5 according to said Right-of-Way Map (P.B. 124, Page 57);

thence Northeasterly, along said centerline of State Road 5 according to Florida State Road Department Right-of-Way Map Section 87020-2512, recorded in Road Plat Book 83 at Page 51 of the Public Records of Miami-Dade County, Florida to the intersection

of said centerline with the North line of the Northeast 1/4 of Section 21, Township 55 South Range 40 East;

thence Easterly, along said North line of said Section 21, for 8.60 feet to the Northeast corner of said Section 21, the same being the Northwest corner of Section 22, Township 55 South Range 40 East, and the **POINT OF BEGINNING**.