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RESOLUTION NO. 04-88

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO LOBBYING THE FLORIDA LEGISLATURE TO AMEND THE FLORIDA HURRICANE CATASTROPHE LEGISLATION TO PROVIDE FURTHER PROTECTION TO FLORIDA RESIDENTS AND PROPERTY OWNERS; AND SEEKING SUPPORT FROM ALL NEIGHBORING COMMUNITIES WITH THIS INITIATIVE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, after Hurricane Andrew and the aftermath of damage insurance claims due to that catastrophic event, which resulted in over \$20 million dollars in insurance claims, many insurance carriers sought to leave the Florida market, thus creating a difficult and costly situation for Florida residents seeking insurance; and

WHEREAS, the Florida Legislature found a compelling state interest in maintaining a viable and orderly private sector market for property insurance in the state. To the extent that the private sector was unable to maintain a viable and orderly market for property insurance in the state, the legislature took action to maintain the market under the state's inherent police powers; and

WHEREAS, due to the unprecedented levels of catastrophic insured losses in recent years, and especially due to Hurricane Andrew, numerous insurers determined that in order to protect their solvency, it was necessary for them to reduce their exposure to hurricane losses. Directly related to these events, world reinsurance capacity was severely contracted and as a result, local insurers felt increased pressure from the industry to reduce the industry's risk from catastrophic exposure claims; and

WHEREAS, mortgages require reliable property insurance, and based upon the insurance industry's attempt to leave the Florida market, Florida homeowners were faced with the real danger that they would not be able to obtain reliable property insurance, which would have made real estate transactions impossible, and as a result, the Florida legislature decided to intervene to protect the health, safety, and property of Florida residents; and

1 WHEREAS, the Florida legislature additionally found that the public health,
2 safety, and welfare demand that structures damaged or destroyed in a catastrophe
3 be repaired or reconstructed as soon as possible; and
4

5 WHEREAS, based upon the foregoing, the legislature, concerned with the
6 inability of the private sector insurance and reinsurance markets to maintain
7 sufficient capacity to enable residents of Florida to obtain property insurance
8 coverage enacted legislation to prevent the endangerment of Florida's economy,
9 public health, safety and welfare, and sought to correct the inability of the private
10 sector to provide reliable property insurance; and
11

12 WHEREAS, the legislature sought to create a fund which would protect the
13 public from the private insurer's unwillingness or inability to maintain sufficient
14 reserves, surplus, and reinsurance; and
15

16 WHEREAS, the legislature has created a state program to provide a stable
17 and ongoing source of reimbursement to insurers for a portion of their catastrophic
18 hurricane losses, which would create additional insurance capacity sufficient to
19 ameliorate the current dangers to the state's economy and to the public health,
20 safety and welfare; and
21

22 WHEREAS, The Florida Legislature in November 1993 created the Florida
23 Hurricane Catastrophe Fund and enacted section 215.555, Florida Statutes, as part
24 of a series of laws affecting the availability and affordability of homeowners
25 insurance; and
26

27 WHEREAS, the fund provides a formula for reimbursement to insurers of a
28 portion of their hurricane losses, in exchange for a premium paid to the fund; and
29

30 WHEREAS, the fund acts as a catastrophic event reserve fund for Florida
31 residents and the fund has bonding capacity up to an additional \$10 billion dollars;
32 and
33

34 WHEREAS, since its creation the fund has accumulated \$5.6 billion dollars
35 in reserve to assist Florida residents with hurricane disaster relief; and
36

1 WHEREAS, to date, the reserve from the Florida Catastrophe Fund, has
2 assisted the residents and property owners of this state by ensuring that all
3 properties can obtain windstorm insurance, and that the insurance industry can
4 continue to supply insurance to the market; and
5

6 WHEREAS, due to the four hurricane events this year, Hurricane Charley,
7 Frances, Ivan, and Jeanne, the payout from the \$5.6 billion reserve is estimated to
8 be \$3.1 billion dollars; and
9

10 WHEREAS, it would benefit the residents and property owners of the state
11 of Florida and, particularly, the residents of the Village of Palmetto Bay, if the
12 Florida Catastrophe Fund were increased, to ensure that there will be sufficient
13 funds in the future to pay out claims should another series of windstorm
14 catastrophic events take place; and
15

16 WHEREAS, the Florida Hurricane Catastrophe Fund provides the reserve
17 needed to meet the needs of Florida's hurricane related damage claims, and has
18 assisted in preventing private insurers from again attempting to leave the Florida
19 insurance market place, it is the desire and intent of the mayor and village council
20 to encourage the Florida legislature to amend 215.55, Florida Statutes, to provide
21 for an increase in the fund's reserve and funding capacity; and
22

23 WHEREAS, in 2000, Miami Dade County Consumer Advocate participated
24 in a class action lawsuit, under the action entitled *Zimmerman v. Florida*
25 *Windstorm Underwriting Association*, 2004 WL 832790 (Fla. 1st DCA April 20,
26 2004), against Florida's Insurance Commissioner seeking a repeal of the staggering
27 rate increase of Florida Windstorm Underwriters Association premium, which
28 insurance was created under the fund legislation; and
29

30 WHEREAS, the plaintiffs in the class action suit were residential property
31 owners in Florida who were insured against hurricane and windstorm damage by
32 the Florida Windstorm Underwriting Association (FWUA); and
33

34 WHEREAS, the FWUA is an association of private insurers, created under
35 Florida law, section 627.351(2), Florida Statutes, to provide hurricane and
36 windstorm insurance to Florida residents who could not obtain an offer for
37 coverage from another insurer; and

1
2 WHEREAS, the FWUA is the only available source of hurricane and
3 windstorm insurance for thousands of residential property owners in Florida,
4 including the residents of the Village of Palmetto Bay, who are not able to obtain
5 an offer of coverage in the voluntary market; and
6

7 WHEREAS, the plaintiffs in the lawsuit sought to invalidate premium rate
8 increases, rate structure changes, and policy amendments implemented pursuant to
9 the April 30, 1999 FWUA's rate filing, which increased premium rates and
10 coverage limitations, with an average rate increase of 96% over FWUA's existing
11 premium rates; and
12

13 WHEREAS, as a direct result of the class action, the plaintiffs were able to
14 cap and restrict the rate increase as well as reform much of the legislation, which
15 was argued as anti-consumer. The changes resulted in a name change of the
16 insurance to Citizens Property Insurance Corporation; and
17

18 WHEREAS, the First District Court of Appeals overruled a lower court
19 decision in the underlying litigation and found that the rate increase (as much as
20 268% in Dade County) was invalid. The court instructed the Office of Insurance
21 Regulation to issue appropriate refunds. The court decision was not challenged and
22 the state is currently trying to determine the formula for refunds. To date, the
23 refund has yet to issue; and
24

25 WHEREAS, recently, the Florida Legislature eliminated an insurance credit
26 for those property owners insured by the Citizens Property Insurance Corporation,
27 which credit was provided to those homeowners that availed themselves of damage
28 preventive measures like storm shutters and other securing measures; and
29

30 WHEREAS, the Mayor and Village Council desire to encourage the Florida
31 Legislature to amend the Florida Hurricane Catastrophe Fund legislation to
32 provide: (1) a refund as required under the action *Zimmerman v. Florida*
33 *Windstorm Underwriting Association*, 2004 WL 832790 (Fla. 1st DCA April 20,
34 2004); (2) provide an insurance credit to those homeowners that avail themselves
35 of damage preventive measure like storm shutters and other property securing
36 measures; and (3) to increase the reserve and funding capacity of the Florida
37 Hurricane Catastrophe Fund.

1
2 NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND
3 VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS
4 FOLLOWS:
5

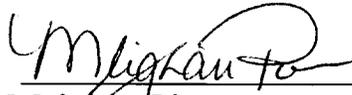
6 Section 1. The above whereas clauses are incorporated by reference.
7

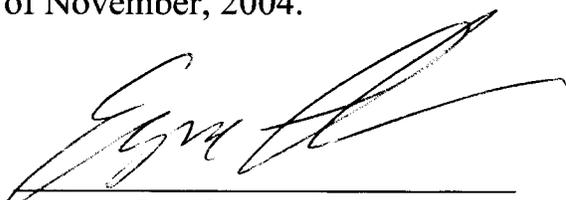
8 Section 2. The village council seeks the support of all neighboring
9 communities in Miami-Dade County, Broward County, Palm Beach County and all
10 other affected communities within Florida to support the Florida Legislature
11 amending the Florida Hurricane Catastrophe Fund legislation so that the interests
12 of all Florida residents are further protected and ensure that all residents can obtain
13 affordable hurricane property damage insurance and that the state maintains
14 adequate resources within the Fund in the event of a catastrophic hurricane event in
15 the future.
16

17 Section 3. This resolution shall take effect immediately upon approval.

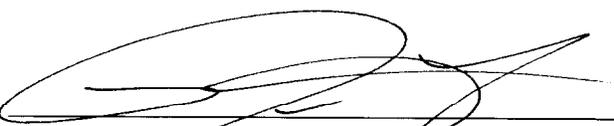
18 PASSED and ADOPTED this 1st day of November, 2004.

19
20
21 Attest:

22 
23 Meighan Pier
24 Village Clerk
25

26 
27 Eugene P. Flinn, Jr.
28 Mayor
29

30 APPROVED AS TO FORM:
31

32 
33 Eve A. Boutsis, Office of
34 Village Attorney
35

1 FINAL VOTE AT ADOPTION:
2
3 Council Member Ed Feller YES
4
5 Council Member Paul Neidhart YES
6
7 Council Member John Breder YES
8
9 Vice-Mayor Linda Robinson YES
10
11 Mayor Eugene P. Flinn, Jr. YES
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