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November 16, 2005

Luis Figueredo, Village Attorney
Village of Palmetto Bay
18001 Old Cutler Road, Suite 556
Miami, FL 33157

Via First Class Mail and e-mail at eboutsis@ngf-law.com

RE: REQUEST FOR ADVISORY OPINION
Voting Conflicts of Interest
RQO 05-119

Dear Mr. Figueredo:

On November 15, 2005, the Commission on Ethics & Public Trust considered your request and rendered its opinion at a public meeting, based on facts stated in your letter of September 30, 2005.

You requested an opinion regarding any ethical constraints that might prohibit the Village of Palmetto Bay from entering into a real estate contract with a corporation that is likely to be asking the Village to change its future land-use map and/or applying for zoning variances.

THE APPLICABLE SECTION of the Conflict of Interest and Code of Ethics Ordinance is Section 2-11.1 (e)(3), *Gift exemptions*, which prohibits anyone to influence government officials with gifts and for government officials to solicit gifts because of—

- (a) an official public action taken or to be taken, or which could be taken;
- (b) a legal duty performed or to be performed, or which could be performed; or
- (c) a legal duty violated or to be violated, or which could be violated by [elected officials].

THE FACTS as presented by you state that the newly incorporated Village of Palmetto Bay is interested in purchasing a Village Hall and Village Chambers. A property identified as Building "C," located on a portion of the former Burger King World Headquarters, is particularly well suited to the needs of the Village and is also the most affordable.

The former Burger King World Headquarters, now known as the Palmetto Bay Village Center (PBVC), is owned by a corporation represented by Scott Silver. Mr. Silver sought to sell Building "C" to the Village previously, under certain conditions, and has lobbied the Village Council on several occasions to modify the mixed-use designation of the former Burger King property. The Village's newly approved comprehensive plan includes one, but not all, of the modifications Mr. Silver had been seeking.

Mr. Silver is now offering Building "C" to the Village at a cost of \$3 to \$9 million less than other comparable properties. The current offer does not include any conditions. However, Mr. Silver is very likely to be coming before the Village Council in the near future on several matters, including the same future land-use requests he has raised in the past.

You state that each Village Council member has indicated that s/he could vote fairly and without bias on applications presented by Mr. Silver, irrespective of any real estate transactions the Village might enter into with him. Additionally, other safeguards are in place to ensure fairness. First, deed restrictions require that 75% of the neighbors approve future land-use changes to the PBVC. And subsequent requests for zoning changes would trigger a number of procedural steps, including public hearings.

OUR ANALYSIS under the Section 2-11.1 (e)(3) finds that gifts to the Village for a public purpose are not prohibited, as long as no *quid pro quo* activity takes place or is anticipated in the transaction.

IN CONCLUSION, as long as no *quid pro quo* activity has occurred or is planned and all future exchanges take place at arm's length, no voting conflict of interest exists under the circumstances described by you regarding the purchase of Building "C" by the Village of Palmetto Bay.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics Ordinance only and is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

If you wish to discuss this opinion in greater detail, please call me at (305) 579-2594 or Victoria Frigo at (305) 350-0601.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert Meyers", with a long horizontal line extending to the right.

ROBERT MEYERS
Executive Director

Copy: Eve Boutsis, Esq.