PENDING LITIGATION – INTERIM REPORT – February 24, 2009
PREPARED BY THE CITY ATTORNEY

CHURCH OF THE LUKUMI BABALU, AYI, INC. V. CITY OF CORAL GABLES
Circuit Court – General Jurisdiction Division – Case No. 08-38294 CA 02

Petition for Writ of Mandamus was filed with the City in connection with the public records request served on the City, stating that the City's responses have been overwhelmingly incomplete**. Discovery is proceeding.**

CITY OF CORAL GABLES V. A.D.P.T., AND ROBERT RUGILO, INDIVIDUALLY

Circuit Court – General Jurisdiction Division – Case No. 07-33733 CA 01

The City filed a Complaint for Injunctive Relief against the City's former provider of microfilming, digitizing and storing of plans and other documents for the City's Building and Zoning Department, and other departments, seeking an order compelling ADPT to return to the City's custody and control the index to the records which ADPT claims to be proprietary in nature. An Evidentiary Hearing took place December 6, 2007 before the Honorable David C. Miller, Judge Miller ordered a continuation of the hearing wherein the following was to occur: (1) a site visit at the ADPT warehouse before December 24, 2007, with Mr. Rugilo, Mr. Ruck, Dona Lubin and Lourdes Alfonsin Ruiz. This site visit took place on December 12, 2007; (2) a site visit at the Certified Records Management (CRM) warehouse before January 15, 2008, with Mr. Rugilo, Mr. Ruck, Dona Lubin and Lourdes Alfonsin Ruiz; and (3) a presentation by ADPT of its document retrieval process at the City of Coral Gables City Hall. The CRM site visit took place January 11, 2008, at their Tampa warehouse and the ADPT demonstration will be scheduled for late January. **The City's claim for breach of professional services agreement for failing to provide the City with an index and failure to microfilm and digitize the City's plans and documents are now merged with this action.**

CITY OF CORAL GABLES V. AMERICAN LEGION POST 98
Circuit Court – General Jurisdiction Division – Case No. 05-15674 CA 06; 3rd District Court of Appeal Case No. 3D09-360

The City filed a complaint for declaratory relief to determine the City's rights and remedies alleging Post 98's abandonment and/or violation(s) of the reverter clauses on the property at 303-305 Alhambra Circle. The Court granted the Post 98's Motion for Summary Judgment The City's Motion for Rehearing was denied. **The City has filed a Notice of Appeal with the Third District Court of Appeal.**

PINON V. CITY OF CORAL GABLES, UNITED STATES SOUTHERN DISTRICT OF FLORIDA CASE NO. 08-22132

Plaintiff in this case is a former employee of the City. He separated from his employment as chief building inspector on July 1, 2007. In June 2007 he filed a complaint in Florida Circuit Court alleging, generally, that he had been promised by the head of the Building and Zoning Department that he would be compensated for all hours he worked in excess of eight hours per day. He claimed this promise was made in or before 1999. He claimed that the promised compensation would come either in the form of so-called "in-house compensatory hours," that is, time off to match the hours in excess of eight per day, or in an equivalent amount of money, based on his hourly rate at the time. He amended his complaint twice. His legal theories have included: breach of oral or written contract, promissory estoppel, unjust enrichment, quantum merit, violation of the Fair Labor Standards Act for failure to pay overtime, and a claim for attorney's fees under Florida Statutes Section 440.08. The City removed the case to federal court on federal question jurisdiction grounds when Plaintiff added the FSLA count. Trial is scheduled for the period commencing May 11, 2009. During the course of the litigation so far, Plaintiff's counsel has made numerous allegations and or innuendoes regarding alleged wrongdoing that he implies he intends somehow to incorporate into this litigation. These include allegations or implications of spoliation of evidence, perjury, conflicts of interest, and others. Plaintiff's counsel has indicated he will try to use the discovery process to search for evidence of any and all manner of wrongdoing, including criminal wrongdoing and has implied he will attempt to convert this action into a class or collective action if possible.

CITY OF CORAL GABLES RETIREMENT BOARD, ET AL, V. PINON

Third District Court of Appeal Case No. 3D08-1114; Circuit Court – Appellate Division – Case No. 07-442 AP;

A Petition for Certiorari Review has been filed with the Third District Court of Appeal to review the Circuit Court Appellate Division's decision regarding Pinon's request for equitable relief, modification and/or revocation of his DROP election, on the grounds that the decision is not supported by case law. The Retirement Board filed its own Petition for certiorari review. **The Court denied the City's and the Board's petitions, granted Pinon's Motion for appellate costs, and remanded the case to the Retirement Board for further proceedings consistent with the decision of the Circuit Court. Pinon has filed a motion for with the Board seeking an adjusted remedy, costs, and attorney's fees. The City has responded. The Board has not yet announced what form its further proceedings will take and has not yet scheduled further proceedings.**

CITY OF CORAL GABLES RETIREMENT SYSTEM v. UBS FINANCIAL SERVICES, INC., F/K/A PAINE WEBBER, INC., ALDO BUSOT AND FLORENCIO OTTO BUSOT

United States District Court – Southern District of Florida – Case No. 04-22539-CIV-Martinez - Circuit Court – General Jurisdiction Division – Case No. 04-19496 CA 10

The City's Retirement System filed a Complaint for Breach of Contract and Demand for Jury Trial alleging that UBS, as asset managers for the City's Retirement System under a Consulting Services Agreement, breached its contract and fiduciary duty to the System, causing substantial losses to the System in excess of $50 million, and demanded an entry of judgment awarding compensatory damages, interest and costs. Judge Margarita Esquiroz recently denied UBS' Motion for Summary Judgment. Depositions of several Retirement Board Members have been obtained. The deposition of the UBS representative with the most knowledge as to the asset allocation plans was taken. Depositions of several Retirement Board Members and City officers have been obtained. The Defendant, UBS, has filed a Third Party Complaint against former members of the Retirement Board alleging that any alleged losses were caused by the Third Party Defendants, that any liability attributable to UBS is only derivative, technical or vicarious to theirs and seeking common law indemnification against them. Discovery is ongoing. UBS has voluntarily dismissed the Third Party Complaint. A mediation conference was held, and an impasse was reached. At the pre-trial conference held December 12, 2008, **the court gave the parties five months to complete discovery and to certify that the case is ready for trial. It is anticipated the case would, therefore, be scheduled for trial in the Fall, 2009. Discovery is proceeding.**

CITY OF TAMPA v. MICHAEL C. ADDISON and RICHARD T. PETITT

13th Judicial Circuit in and for Hillsborough County – Case No. 03-5425; Florida Supreme Court – Case No. SC 07-2198; Second District Court of Appeal – Case No. 06-3168

The Second District Court of Appeal certified a defendant class of all cities and counties in the State with an occupational license tax. Tampa filed an appeal challenging the certification of the defendant class on the basis that significant differences between different cities' and counties' occupational license fee ordinances make it inappropriate for a court to treat all ordinances alike. The Florida League of Cities put together a consortium of cities and retained an appellate attorney, with Coral Gables participating as a named party in the filing of an amicus brief to insure that the City's interests are properly represented in this case. The amicus brief was filed October 9, 2006. Oral Argument was heard April 10. 2007. An opinion was rendered by the 2nd

District Court of Appeal affirming the order of class certification. Tampa sought further review from the Florida Supreme Court on the class certification. Since the Florida Supreme Court refused to hear the appeal, the matter is back at the trial court level. The City will continue to defend Coral Gables' interests and support the on-going litigation along with the League and other municipalities which stand to be adversely affected in this decision. **Hearing was held on June 13, 2008 in the 13th Judicial Circuit on Defendant, City of Tampa's Motion to Amend Answer and Affirmative Defenses on behalf of Tampa, individually, and the Defendant Class. After Plaintiffs filed a Motion to Disqualify the Judge on the basis that he had made several disclosures over a period of time about being in the class, he disqualified himself. The Chief Judge is to reassign the matter to another trial judge.**

CITY OF CORAL GABLES V. ZBA
Circuit Court – General Jurisdiction Division – Case No. 08-42519 CA 01

On July 23, 2008, the City filed its Complaint for Unlawful Detention and Summary Procedure to recover possession of the property leased by the City to the Defendant, ZBA, LLC, located at 2325 Galiano Street, Coral Gables, Florida. **Defendant filed a Motion to Dismiss.**

DETOURNAY, RANDOL and RIVIERA NEIGHBORHOOD ASS'N v. CITY OF CORAL GABLES and Intervenor, AMACE PROPERTIES

Circuit Court – General Jurisdiction Division – Case No. 07-29458 CA 13

On September 7, 2007, Plaintiffs filed their complaint for declaratory and injunctive relief against the City of Coral Gables seeking to have the Court declare the yacht basin operating at the base of the Mahi Waterway illegal and issue an injunction closing the yacht basin. Amace Properties, Inc., the abutting property owner, moved to intervene in the case. Both the City and Amace have moved to dismiss the complaint. Amace has served discovery request on Plaintiffs. After a Motion to Compel these responses, the Court ruled that Plaintiff must respond no later than February 25, 2008. Plaintiffs have served a public records request on the City. **Hearing on City's and Amace's respective Motions to Dismiss held October 21, 2008. Motion approved in part and denied in part. Plaintiff has filed an amended complaint and Amace has filed Motion for Summary Judgment. Intervenor, Amace Properties' hearing on Intervenor's Motion for Summary Judgment to be heard February 20, 2009.**

GRANADA LLC v. CITY OF CORAL GABLES

Circuit Court – General Jurisdiction Division – Case No. 07-23410 CA 40

Following the City's Notice of Default letter, Granada LLC, the operator of the Country Club of Coral Gables, filed an action for damages including lost profits, prejudgment interest and cost of action, alleging that the City breached its obligations under the Management Agreement and the Operating Agreement to fully fund the capital improvements to the property and that its failure to do so has led the Plaintiff to be exposed to threatened and actual liability from certain vendors including the General Contractor who performed a portion of the capital improvement work, and seeking to recover the loans allegedly made by Plaintiff to City, and the deferred Operator Fees, which Plaintiff contends were used to fund capital improvements. The City filed a Motion to Dismiss Granada's Complaint as it is an unlawful attempt by Granada to force the City to pay for Granada's obligations. The Motion to Dismiss further states that the City, as a sovereign entity, is immune from the claims of implied contractual liability as the City does not have a contractual relationship with Granada. Finally, the motion states that Granada's claims are barred by the Statute of Frauds as there is no memorialized agreement between Granada and the City. On April 14, 2008, Judge Gill S. Freeman denied the City's Motion to Dismiss without oral argument. The City has filed its Answer and Affirmative Defenses and has requested extension to file its counterclaims and third party claims on or about May 24, 2008. The City Attorney's Office was authorized to file a counterclaim against Granada LLC for failure to fulfill its obligations under the operative agreement and for breach of the settlement agreement entered into with Courtelis Construction Company, and a third party complaint against Stuart Bornstein, individually, and breach of the operative agreements, and breach of the settlement agreement entered into with Courtelis Construction Company, and to take all action necessary to represent the interests of the City. **Discovery is proceeding.**

IN THE MATTER OF COMCAST CABLE COMMUNICATIONS, LLC, on behalf of its subsidiaries and affiliates

Federal Communications Commission – CSR 6046-E, CSR 6047-E, CSR 6048-E, CSR 6409-E, CSR 6010-E

Comcast has filed a Petition for Special Relief with the FCC. It is seeking a determination that it is subject to effective competition in Coral Gables, along with 14 other franchise areas in Miami Dade County. The City filed its opposition December 3, 2004. To show effective competition, Comcast must demonstrate that more than 15% of the City's households subscribe to DBS service and not to Comcast's service. If granted, it will allow Comcast to raise rates whenever it

likes for basic tier service and equipment without being subject to FCC rules. It will also eliminate some federal consumer protections such as uniform rates (allowing Comcast to charge different rates in different areas of the city) and anti buy through (allowing Comcast to require subscribers to purchase advanced products such as digital) to obtain premium services (i.e. HBO). On Jan. 31, 2007, the Federal Communications Commission's ("FCC") Media Bureau issued a Memorandum Opinion and Order granting Comcast's Petition for Effective Competition. The City has 30 days, until March 5, 2007, to appeal by filing a Petition for Review with the full FCC. If no appeal is filed, Comcast's rates will be deregulated in the City and Comcast will be able to raise rates whenever and to whatever level it wants, and will be able to charge different rates to different residents in the City. Comcast will also be able to require residents to subscribe to premium and other higher level services if they want to obtain basic service. The City filed its Application for Review of the Media bureau's Order granting Petition, to which Comcast filed its opposition. **The matter remains pending at the Commission.**

IN RE. AMENDMENTS TO FLORIDA RULES OF APPELLATE PROCEDURE
Florida Supreme Court Case No. SC08-147

The Triennial Cycle Report of the Appellate Court Rules Committee (the "Report") proposes to an amendment to the "automatic stay" provision of Florida Rule of Appellate Procedure 9.310(b)(2), thereby eliminating the automatic stay now afforded to governmental entities when they appeal orders issued by state agencies in administrative proceedings governed by the Administrative Procedure Act ("APA"). At the City Commission's direction, the City Attorney has requested leave of the Florida Supreme Court to file written comments and/or oral argument in opposition to the Rule, as have other governmental entities and interested parties. The City, together with several cities and counties, including the League of Cities, the Association of Counties and the Local Government Section of the Florida Bar submitted written comments to the Florida Supreme Court in opposition to the proposed rule amendment. Oral Arguments were heard on June 10, 2008 at the Florida Supreme Court and a decision is pending. **The court handed down its ruling on November 13, 2008 amending the automatic stay provisions of the Rule. The City is joining with the other governmental entities and interested parties in filing a Motion for Rehearing and Clarification.**

IN RE. PETITION OF TEAMSTERS LOCAL UNION 769 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, TO AMEND CERT. NO. 428
State of Florida, Public Employees Relations Commission("PERC") Case No. AC 2008 016

The Petitioner, Teamsters Local 769 of the International Brotherhood of Teamsters, has filed a Petition to Amend Certification No. 428 to reflect a merger with the Coral Gables Employees Association ("Association") whereby Local 769 would assume all of the Association's rights and obligations. A member of the Association's Board intervened in the case to oppose the merger. The City also filed a response to the Petition. On January 29, 2009, the Hearing Officer issued her recommended order dismissing the petition. The Teamsters filed exceptions to the recommended order with PERC. The City will file a timely response.

KEARNS, et al v. CITY OF CORAL GABLES

United States District Court – Southern District of Florida – Case No. 07-22310 CIV JORDAN

Plaintiff filed a class action complaint on behalf of himself and those similarly situated seeking damages and injunctive relief from Code Enforcement Citations for violating the pick-up truck ordinance of the City. The City moved to dismiss on various grounds. On March 3, 2008, federal district court Judge Adalberto Jordan issued a ruling on the City's Motion to Dismiss. Judge Jordan first noted that the Plaintiff had admitted that two of his claims--for violation of privacy and for a "taking"--failed to state causes of action. The judge ordered that those claims be dismissed. Judge Jordan denied the City's motion to dismiss the two other claims, which are based on equal protection and the right to freedom of association. The judge's rulings concluded that based on the pleadings alone, he could not rule that the City was entitled to prevail. The judge concluded that he could not rule on the merits of these issues without further information, including "the City's passage and rationale for the ordinance, and the personal situation of the Plaintiff and his father (who the Plaintiff sought to visit)". Plaintiff was given an opportunity to amend his complaint on the two counts which were dismissed, but choose to go forward without those two claims. The City filed its answer on April 8, 2008. **On March 28, 2008, the Plaintiff and the City filed a joint scheduling report. The report sets a deadline of December 1, 2008 for the filing and hearing of motions. The matter has been set for two week trial calendar starting March 2, 2009. Kuvin has rejected the City's amendments to the ordinance which were proposed at mediation. On January 15, 2009, the City filed a motion for summary judgment, and a motion arguing the Plaintiff lacks standing to prosecute his lawsuit**.

KUVIN v. CITY OF CORAL GABLES

Third District Court of Appeal – Case No. 3D05-2845
Circuit Court – Appellate Division – Case No. 03-8911-AP;

Petitioner filed a Petition for Writ of Certiorari seeking a permanent injunction and damages to prohibit the City from enforcing the provisions of its code, arising from a citation which Petitioner received for parking his truck in violation of the Coral Gables Zoning Code Section 8-11 and 8-12. The Court, in a ruling rendered October 14, 2005, granted the City's motion for summary judgment and upheld the constitutionality of the City's truck ordinance. The Plaintiff filed a Notice of Appeal with the Third District Court of Appeal, and the City has filed a Motion to Dismiss. The Court dismissed the appeal for failure of Kuvin to comply with the court's November 10, 2005 order. Upon payment of the filing fee, the appeal was reinstated. Kuvin has filed his initial brief in the district court of appeal, and the City filed its answer brief on Sept. 28th. Kuvin has to file his reply brief. The court heard oral argument on Tuesday, November 14th, 2006 before JJ. Schwartz, Cortinas and Rothenberg. Decision entered August 22, 2007, reversing with directions to enter declaratory judgment for appellant and to vacate the guilty determination of the hearing officer, with J. Rothenberg dissenting with a comprehensive separate opinion. The City has filed with the Third District Court of Appeal a Motion for Rehearing En Banc and a Motion requesting the Court to certify this case to the Florida Supreme Court as a matter of great public importance. **The City has filed with the Third District Court of Appeal a Motion for Rehearing en Banc and Motion for Certification to the Florida Supreme Court as a matter of great public importance. Decision on City's motion is pending.**

NAVARRO, MARILYN and HERNANDEZ, JOE v. CITY OF CORAL GABLES

Circuit Court – General Jurisdiction Division – Case No. 05-18262 (T009835)

Plaintiffs seek a temporary injunction, declaratory relief, and incidental damages arising from a citation which Plaintiffs received for parking a truck in violation of the Coral Gables Zoning Code Section 8-11 and 8-12. As this case challenges the same ordinance on essentially the same grounds as Kuvin, the case is awaiting resolution of the Kuvin appeal. **Plaintiffs filed Motion for Relief from Stay for Final Summary Judgment.**

NAVARRO, MARILYN and HERNANDEZ, JOE v. CITY OF CORAL GABLES

Circuit Court – Appellate Division – Case No. 05-357 (T009646)

Petitioners filed a Petition for Writ of Certiorari Appellate Division seeking review of the citation which was issued for parking a truck in violation of the Coral Gables Zoning Code Section 8-11 and 8-12. Meanwhile, the Court granted the City's request to consolidate this case with Case No. 05-422 AP Martinez v. City of Coral Gables. Upon consideration of the Petitioner's Request for Temporary Injunction, the Court denied the request on February 8, 2006. The three-judge panel on March 2, 2006 granted City's Motion to Dismiss petitions for certiorari and to transfer the case to the trial court. **As this case challenges the same ordinance on essentially the same grounds as Kuvin, the case is awaiting resolution of the Kuvin appeal.**

NOA, PERAZA AND PEREZ SIAM v. CITY OF CORAL GABLES

Circuit Court - Appellate Division – Case No. 06-249 AP

Petitioners filed a Notice of Appeal with the Appellate Division seeking review of the citation which was issued for parking a truck in violation of the Coral Gables Zoning Code Section 8-11 and 8-12. The parties agree to abate the action pending final decision in Kuvin. Appellant's counsel will file the motion and agreed order with the court. **As this case challenges the same ordinance on essentially the same grounds as Kuvin, the case is awaiting resolution of the Kuvin appeal.**

SALONE CONSULTING GROUP, INC. v. CITY OF CORAL GABLES

Circuit Court – General Jurisdiction Division – Case No. 09-8439CA 15

Plaintiff in this case is a corporation providing services to the City, under a Professional Services Agreement, to provide functionality to the City Clerk for the effective and secure management of official city records or evidence, claiming monies owed to them under the agreement.