

City of Coral Gables City Commission Meeting
Agenda Item E-3
June 26, 2008
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Donald D. Slesnick, II
Vice Mayor William H. Kerdyk, Jr.
Commissioner Maria Anderson
Commissioner Rafael "Ralph" Cabrera, Jr.
Commissioner Wayne "Chip" Withers

City Staff

City Manager, David Brown
City Attorney, Elizabeth Hernandez
City Clerk, Walter J. Foeman
City Clerk Staff, Billy Urquia
Development Director, Cathy Swanson

Public Speaker(s)

Dr. Carol Damian, Chairperson, Cultural Development Board
George Volsky
Paul Posnak, Coral Gables Resident
Mark Trowbridge, President, Coral Gables Chamber of Commerce

E-3 [Start: 10:05:07 a.m.]

An Ordinance authorizing the City Manager to execute a Lease Agreement for a ten-year period, plus options, with Coral Gables Cinemateque, Inc., for 3,858 sq. ft. plus 1,922 sq. ft. of a private mezzanine, in the westernmost 60 linear feet of the City of Coral Gables Parking Garage located at 250 Aragon Avenue, known as the Museum Garage, with the legal description of Coral Gables Section K PB 8-33 Lots 10 thru 20, Block 37. The space will have a retail address of 260 Aragon Avenue and will be used as a non-profit art cinema and cultural facility. (Passed on First Reading March 11, 2008).

Vice Mayor Kerdyk: I'll go ahead and make a motion, I know we are going to discuss it, but I want to make a motion for approval; get the thing moving.

Mayor Slesnick: Been moved, is there a second?

Vice Mayor Kerdyk: Hear the presentation first, alright.

Ms. Swanson: This is on Second Reading and we came in to give you a very detailed presentation on all aspects of the lease agreement at the First Reading. You'll recall, it's a ten year lease, two five year options, fifteen thousand dollars a year rent, plus at year seven it begins

CPI bumps, and the option is twenty thousand dollars (\$20,000) and then twenty-five thousand dollars (\$25,000) a year. The rent seemed a little low to some people, and so when we did an investigation as to what other cinemateques are being charged in City-owned or government owned, we found Cinema Peridiso has no rent in Fort Lauderdale, wonderful venue; Hippodrown at the City of Gainesville pays two hundred and fifty thousand dollars and then gets a check back from Gainesville for two hundred and fifty thousand dollars; Sarasota Film Festival actually bought their own building through a generous endowment; and so they are operating under free rent, so we thought that a fifteen thousand while its low is not irresponsible for the City. We went over certain reporting requirements that both you and the Property Advisory Board asked for so that every year they would submit their 990 to the Cultural Board; the Cultural Board reviews 990's on a regular basis they know what to look for; that they would also submit their programming. You are buying into a concept that you believe will benefit the residents through good programming and the Board will help you review that, and then they will bring those recommendations up to you; so there are reporting mechanisms in place. There were two issues that were important for you that we promised to bring back the next time, one was how much is this going to cost the City? - because you wanted to make sure that there was not the money pit of an opportunity here, so that you were limited in your cost, because you had set aside in your CIP two hundred and fifty thousand dollars, and you wanted to make sure that that two hundred and fifty was the limit. The second was the issue of a business plan, and we have the business plan in front of you, and I wanted to go over that. Alberto will go through and Ernie Pino, who was very instrumental in value engineering the project to bring it into a budget that would work will also be here for comment. The third aspect of this financing -- two hundred and fifty thousand dollars from the City and then the Coral Gables Community Foundation through a designated fund the Harry and Mary Perrin Fund would be giving a very generous donation of two hundred and fifty thousand dollars (\$250,000). There is a condition to that gift that we actually encouraged and that would be in honor of the donor that we would recommend that the plaza, already built plaza, in front of the art cinema space be renamed the Harry and Mary Perrin Plaza, or Perrin Plaza for short. We went through the Cultural Board and the Parks and Recreation Board because those are the two Boards that you've appointed to recommend naming of open spaces and parks, and they both unanimously recommended yes. So while I'm going to first deal with the business plan, or I can go over the lease in detail if you like, those of the issue of the awarded bids, and the issue of the renaming of the plaza are joined as a part of this. There are three separate votes but there are important elements of each. Would you like me to go over the business plan, or would you like me to go over the lease, whichever?

Mayor Slesnick: I think we went over the lease once so the business plan was the missing link; Commissioner Withers asked to review before....

Ms. Swanson: And I made copies for the public if they want to follow us, and also if anybody is watching on television and they'd like us to pop it in the mail to them we are happy to do that. They can call the Development Department at 305-460-5311.

Commissioner Cabrera: Can you e-mail it?

Ms. Swanson: It's not an e-mailable document, but we can probably scan it and PDF it; we generated the business plan out of a software and you don't get to e-mail that software, for some

reason it blocks it. But we can scan it; it would just be a large document. Page 2 – it opens with an executive summary, but the highlights of that summary are actually included on page 2. The rent that would be charged for other groups, because not only is the key to have a lot of great programming from the cinemateque people, but also from other groups, not-for-profit groups that would love to have access to the space at affordable rates. The non-profits would be charged two hundred and fifty dollars (\$250); and the other groups perhaps for profit when we deal with that in the business plan, marketing firms, advertising firms that want to show pre-commercials, film crews that want to show dailies would be four hundred and fifty dollars (\$450) a time; and if they wanted technical, the house manager, the projectionist, the technical staff, there'd be an additional charge. And in the business plan they are estimating twenty thousand dollars (\$20,000) in 2009 would be generated through those outside expenses. They are not so driven by the revenue generation, but by the more and more programming that would come to the site. The Coral Gables demographics, as you know we are forty-two thousand people, and we have a day time population of sixty thousand. They looked at the key market segments, the seniors, the ages 45 – 65, ages 25 – I'm sorry there is a typo there, ages 25-45, the school age children, and the visitors, they looked at those elements that would be driving the programming and they enlarge the circle to the whole Coral Gables retail trade area; and there is a very interesting chart there. Some changes were made to it though, the Conventions and Visitors Bureau says that the City has about 650,000 visitors each year; they may not be staying just in the hotels, they are staying with family and friends, but it's a large number of visitors. That number was adjusted to just be five percent (5%), otherwise it would take over the personality of the market segment, and we really wanted it resident driven. There was a SWOT analysis, the location is phenomenal, the access to the equipment; as you recall Magna Tech will be donating four hundred thousand dollars (\$400,000) in equipment as a part of this project. Affordable space – we talked about the rent. Weaknesses – there is a low seat count, it's only 144 seats, so to spread over all of the cost to that few number of seats does make it a challenge, and that's the public sector monies is so critical in this. Lack of way-faring signage, its not always easy to get to Aragon, but when you get there, there are a lot of things that are offered that make it very special and we'll talk about that later. The lack of organizational history, this is a new group, and so when they go out for grant funding people are going to say you are new, you have no track record, and so the budget has been adjusted to reflect that. Weaknesses and opportunities – opportunities great strategic alliances, not only the University of Miami and Miami-Dade and the Film Festival and a great cadre of local groups, but also Universal, Sony, Columbia, Walt Disney, National Archives, the Metropolitan Museum of Art Film Archives; there are fabulous lists of groups that are going to be able to help, not only in relationship but also in titles. The weakness – we did put down energy dependent. The electric bill can be like forty thousand dollars a year, and they've adjusted it to increase over time. In home viewing – fabulous home theaters are being created, but as we said earlier, you can't smell the popcorn of a theater type of setting when you are watching it on your ipod, you are watching it on your computer, or you are just watching it at home. Competing demands for patrons such as cost and time; people are busy, they have a lot to do, so we put that on the table in terms of the weaknesses so that it has to be planned for. General admission tickets – we frequently been asked the question, what are you going to charge for a ticket? \$7.50 per ticket with \$5 for seniors, \$5 for students, \$5 for members; and memberships will range from \$50 to \$2,500, with discounts to Coral Gables residents, Coral Gables Chamber members and BID members. Outside grant revenues have been estimated low first year -- \$14,000; then increasing to \$35,000 in 2010, and \$50,000 in 2011. There are several groups that fund for

operating that this group would be positioned for, and that is indicated by the types of what current film festivals are already getting in grants. So that's a very realistic grant estimate; and then the three year annual budget; \$389,400 in 2009, \$413,100 in 2010, \$480,500 in 2011, and the revenues as required with not-for-profits, the revenues and expenses equal in each of the three years. We've listed out some objectives; I'll touch on them briefly. To open the cinema in a manner that excites the public; maintains positive media coverage; achieves realistic first year attendance, and captures enthusiastic community attention. It touches on the need to generate \$30,000 a month is the nut that needs to be covered in this estimate, whether it's coming from grants, whether it's coming from donations, whether it's coming from admissions. The ability to develop a cost effective and reliable public information program; this is every week programming, so people have to remember that the cinema is a choice, so the program has been budgeted for that. There are some other highlights here that I'm happy to discuss. We talked in the business plan on admissions, keys to success, an organizational summary. As noted, previously Magna Tech and Steve Krams would provide an interest-free loan of a hundred thousand dollars (\$100,000), and then that would be paid back; and so we've budgeted that loan as a revenue, and then we charged that loan as a pay back beginning 2010, and that's shown. The total cost – the City is going to be providing two hundred and fifty thousand, we mentioned, the Community Foundation with another \$250, but the bids came back at 535; and that's taking away all of the [inaudible]...the \$35,000, the \$36,000 would be coming from Steve Krams and Magna Tech as a part of that contribution; and then the rest of it, the other things that we took out in that bid that would still need to be happening, they would raise through fundraising; and there are some naming opportunities and we've listed that on page 4, we've had some good interest already.

Commissioner Cabrera: Madam Director, and I read that part; I'm curious, what happens in the event of overages in the renovation or changes in the work causing for additional expenses, you intend to pay for those through fundraising as well?

Ms. Swanson: Yeah. It would not be the City's responsibility; the City's responsibility stops at the 500, the 250, plus the 250, plus the 35; the Perrin money and the ...[inaudible]...would already begin. So your agreement with the contractor would be for that 535 only; of which \$250,000 you actually pay for. Any change orders, any overages would be thrown to the phase two of the build out, and I said to Alberto that if there are any change orders within that first..., the 535, that I wanted to know.

Commissioner Cabrera: And that means that you are going to have oversight over that process then?

Ms. Swanson: We are in conjunction with Public Works; we've had a very good relationship on this project, they understand how firm the budget is, how tight the economy is, and is given excellent attention to it.

Commissioner Cabrera: I'm not sure you answered my question.

Ms. Swanson: Yes, I will have oversight.

Commissioner Cabrera: OK. Thank you.

Ms. Swanson: Programming is listed on page 5 and 6, very interesting programming; took the seniors; took both seniors in English speaking programming, and Spanish speaking programming, school age children, took different groups and built a program; it goes on further in the market segmentation that's on page 7 which talks about who our target area is, and then later how we design some programming to meet that. Perfect example is the downtown employees; you have a phenomenal set of downtown employees in a great working environment, so one of the suggestions was a program called "Quick flick and a coke," here at lunch time you can see a series of the shorts; the independent shorts have gotten phenomenal attention at the Academy award level, so they may be five minutes, they may be ten minutes, but they are fun and they are quick and they are going to be working on a program like that doing several programs with Books and Books, its just very exciting the level of programming that they are proposing, not only local interest but also with the Consulate Corp. The different consulates – the Argentine Consulate has already said he wants to do a film festival. Page 8 is a pie chart that talks about, that indicates your market for programming, and when the Board reviews this for you, they are going to look again what was the programming that was promised, what was the market sectors they said they would go after, and did they comply with that. Web plan summary – you are going to be able to buy your tickets on line, or you can buy them at the kiosk, it's up to you. Two web sites were reserved, www.coralgablescinematique.org that's kind of hard to spell, and another one www.gablescinema.com and also org and net was reserved so nobody else would take it. Key part of the marketing would be working with E-Blast with marketing partners; Books and Books has twenty thousand people on their E-Blast site; they wanted to approach the City also whether to purchase, or to provide some programming information, shopcoralgables has already said they would help, gableschamber has already said they would help and miamidadearts. There will also be a link on the Convention and Visitors Bureau's site, you saw George Neary come before speaking very positively about the project, he thinks that kind of project is really important to the visitor community, so they would be helpful with that. SWOT analysis, we talked a little bit about the good, the bad, and the ugly, and that's shown on page 10 and 11, but all of it is really quite pretty. The competitive edge – what makes this work when so many other cinematiques or art cinemas can fail, and it's the public/private relationship; it is the City providing beautiful space in the base of a garage and providing significant build-out, it is the Community Foundation, the parent fund providing equally significant build-out; and then it's the expertise of the private sector operating as a not-for-profit. We've outlined tools for a marketing strategy, but we don't get that marketing strategy. If the Commission approves the project and the lease is signed then they will ramp up with building a visual logo identity and a marketing program, but it wasn't important to do that at that point because the lease hadn't been signed yet. Page 14 is the funding forecast, shows 2009, 2010, 2011, with all of the revenues that will contribute to funding and also all the cost that would take that funding away, and as required for any non-for-profit the revenues balance. If for some reason revenues do not, if revenues go over, then it will go into an operating endowment. You have a graph that charts that by year and also by element. Put in some milestones – if the City authorizes the manager to execute the lease then assume the first or second week of July that would done. They need to finish their Board of Directors and citizen council, they are going to have a community council, as a part of this; they want to form that and finalize their 501(c) 3. They'll launch their fundraising campaign, hire and train staff; they will have three people: they'll have administrative, they'll have technical and

they'll have artistic; and then they will call on interns formal programs with the local colleges and universities for interns; they will be getting credits, they will be getting experience, but they won't be getting dollars, and also volunteers; volunteers are a huge part of this program. Then they will go out launching the marketing plan, contacting the film festivals, they've already contacted – the film festivals have already contacted them wanting to see when will it open, how can they get some of their showings in. So we listed out what the milestones are and we posted for an opening in the beginning of January of 2009. Some assumptions that were made in doing the revenue forecast; you get a forty percent (40%) mark-up on all concessions, the occupancy was based on fifty percent (50%) or seventy-two (72) seats, with nine showings a week; the revenues were assumed that every ticket was a discount ticket, although \$7.50 is still below the for profit cinemas, the revenue assumption was one that wanted to take a hard line on estimating on what the revenues would be. Cost of insurances – reasonable two-fold, one is based on the number of seats for a cinema, and also the coverage can be guided through the...added to the Magna Tech coverage so that its even more affordable. Assumptions that government grants and fundraising opportunities will continue, but we've been conservative in that estimate; that the strategic alliances will continue; loaded on more money for marketing at the beginning because it's a launch; and then the monies still continue but not as aggressive a level; that the hospitality for red carpet VIP's will be in-kind or at a reduced cost, the Westin, the Hyatt, the hotels are already interested in this project coming forward; that the dailies market, the for profit market for advertising dailies and film dailies will be a constant one, and that the community itself will be very enthusiastic and maintain that enthusiasm. We showed surplus monthly; you'll see some of that is drawing off of the hundred thousand dollar loan, but there is always a positive cash balance in the proformas. The project detail or the budget detail is included as the appendix, and I'm happy to answer any questions related to the business plan.

Mayor Slesnick: Questions?

Commissioner Withers: I have a couple for Cathy, Mr. Mayor. Cathy, let's say and let's hope they do, and by the way thank you, it's a nicely done business plan. I haven't had a whole lot of time to review it, but it seems like its pretty comprehensive. After five years they've done extremely well, they've built up several hundred thousand dollars in endowment, they have not spent their hundred thousand dollars a year in reserve for replacement of equipment, so they have a half a million dollars in cash sitting there, and they say thank you, its been a nice ride, but our five year lease is up; and we no longer want to redo our five year lease, who owns that five-six-seven hundred thousand dollars?

Ms. Swanson: I can clear it with the City Attorney, but this a lease agreement, this is not a management agreement, so at the end of the lease they are obligated to deliver cinema equipment to make sure that the place is properly refurbished and refreshed to continue even if they might not, but the Coral Gables Cinemateque 501(c) 3 is not linked exclusively to that, so they leave the building then the CPC funding goes with them.

Commissioner Withers: So they take the endowment and the reserve and whatever they have accumulated over the five years.

Ms. Swanson: They need to meet the need of the lease, which is to make sure that all of the equipment, the HVAC, there are lots of things that we've loaded into meeting their requirements, that needs to be satisfied otherwise the City would suggest they are in default of their lease.

Commissioner Withers: It seems that the lease and the – everything is tied to a not-for-profit organization; if they lose that status, what happens to the lease, what happens to the agreement?

Ms. Swanson: I am not your attorney, but...

Commissioner Withers: Well then Liz, what happens to the agreement if they lose their not-for-profit status?

City Attorney Hernandez: In the for cause provisions, we provided general conditions that we would be able to go against, but we can specifically add in there that for cause would include if they lost their funding, we can just add that.

Ms. Swanson: I think it's in there; I think that they have to...

Commissioner Withers: I was looking for that and I didn't know where that was in the agreement, can you...

City Attorney Hernandez: It would be in the termination for cause.

Ms. Swanson: Throughout this document it refers to a non profit, just one quick line, the tenant will use and occupy the premises for the following use or purpose and for no other use or purpose, a non profit art cinema presenting top quality...each time we are going in with, we are having this relationship with a non profit cinema, and that's what it is.

Commissioner Withers: I understand that, and all throughout the assignment provisions, and all throughout it talks about...go ahead Liz.

City Attorney Hernandez: Page 18 we put at F (3) that if at any time they cease to function as they've been approved for fifteen days, they are in default, but we can also include in there Chip, that if they lose their non-for-profit standing and then in that way includes that provision specifically.

Commissioner Withers: I would feel a little more comfortable with that, if that's OK...

City Attorney Hernandez: Not a problem

Commissioner Withers: Just because the assignments and everything is tied to a not-for-profit company.

Mayor Slesnick: That changes part of the proposal.

Commissioner Withers: Let me ask you about insurance for a second; probably this is to Liz and also to the City Manager. If we had an issue with our garage and we force them to shut down, or close down or cease operation, what is our responsibility as a City to them as a tenant?

City Attorney Hernandez: That would not be necessarily under the insurance, although they will probably go against our insurance policy for cessation of operation or interruption of operation.

Commissioner Withers: You know Liz, this is a bigger question for all of our garage leases, and maybe another day for discussion, but in all of our public garages where we have tenants, if we have an issue where we cause our tenant to be out of business or their business interrupted, as a result of a car fire in one of our garages or whatever the reason.

City Attorney Hernandez: They would have a valid claim against the City, for any business interruption that was a result of anything other than Acts of God. We require them to insure, self-insure for their content and their business and everything for Acts of God, but if there's a car that catches fire in the building and we have to shut it down as a result of other third party or even City action, they would have a valid claim against the City.

City Manager Brown: I would encourage Dave then that we maybe look and make sure that we are insured. Now carrying that in the other direction, if something happens to their space and they cause damage beyond just their space in the garage...

City Attorney Hernandez: Right.

Commissioner Withers: ...what obligation do they have as a tenant for work done to our garage structure itself, as opposed to just their structure?

City Attorney Hernandez: We would have a valid claim both against them and their insurance policy, and we have additional insured requirements, so we would be able to go immediately against their property insurance and their insurance policy as an additional insured.

Commissioner Withers: In looking at their five thousand dollar (\$5,000) line item for liability insurance...

City Attorney Hernandez: What page are you at? I'm sorry.

Commissioner Withers: This is on the business plan.

Ms. Swanson: Page 14 of the business plan.

Commissioner Withers: Does that cover...that's liability, but does that cover property insurance and damage to our garage?

Ms. Swanson: The lease agreement has very specific provisions that are...the City has developed a standard, so if it is not properly budgeted here what the business plan says doesn't get them off the hook for what the City... requires.

City Attorney Hernandez: We apply the requirements for insurance equally and across the board Chip, everybody who...

Commissioner Withers: I understand that; let me cut to the chase here. They budgeted five thousand dollars; let's say they find out that now their insurance is forty thousand dollars...

City Attorney Hernandez: It's their responsibility.

Commissioner Withers: Well I know that, but we are setting them up to fail if that's the case.

Ms. Swanson: No, we asked them, I'm sorry Commissioner.

Commissioner Withers: No, go ahead.

Ms. Swanson: I asked them specifically when they provided those numbers, I asked them specifically on the insurance question on how much it cost and how is that calculated?- because it seems low to me and its calculated based on the 144 seats.

Commissioner Withers: Well, I guess on page 13, the City Manager showed me...

Ms. Swanson: I'm sorry; there are so many pages, 13 on the lease or 13 on the business plan?

Commissioner Withers: On the lease. Does this hold them responsible for the entire garage?- Section seventeen? Do they know that?

Ms. Swanson: They've reviewed and agreed to this lease...

Commissioner Withers: Do they know they are responsible for the entire garage in case they have an issue with...

City Attorney Hernandez: If you read it, it's for specific issues that may occur and...I mean, it's not for everything guys, its for specific things that are outside the control of the City that would be a third party cause.

Commissioner Anderson: Like a fire, things like that maybe damage if the garage itself.

City Attorney Hernandez: Right.

Commissioner Withers: So that does not hold them responsible for the entire garage?

City Attorney Hernandez: That does not hold them responsible for the entire garage.

Commissioner Withers: And the only other thing, Cathy, in the lease, I understand they can sub-lease, we can't withhold unreasonable...

City Attorney Hernandez: We can withhold consent but just not unreasonable.

Commissioner Withers: And we have the right to adjust the lease?

Ms. Swanson: Yes.

Commissioner Withers: And I think it says we have the right to use local non-profit lease.

Ms. Swanson: You can renegotiate the lease with the new sub-tenant, if you approve the sub-tenant with market; I think we have non-profit rates elsewhere in the area.

Commissioner Withers: Now, I don't know what our rent agreement is with our only other non-profit rent in the area, but I think Barbara has a pretty nice deal, so would that cause an issue if they did sub-lease that they use the Miracle Theater as the basis to calculate a rate adjustment.

Ms. Swanson: We weren't linking it to operations that the City has arrangements with; if you want we can revise that so that they have the right to renegotiate the lease.

Commissioner Withers: Well, I just don't want them to come in with a fifteen thousand dollar a year lease rent, which I think is a great deal, sub-lease it to someone else and do the arbitrage you know, them make money because the City has given them a favorable lease rate.

Ms. Swanson: You are talking under Section 20 the assignment.

Commissioner Withers: On page 14, right.

City Attorney Hernandez: I don't have a problem adding language to that that basically says because of the unique nature of this agreement, which is intended to bring a not-for-profit of this nature, they cannot assign period. Let them come back and try and renegotiate it, but the bottom line is, we can put it in if the City is taking a hit in order to attract another tenant, or what we could do is we can always put in unless it's a tenant, a similar tenant, with similar goals as those that the City Commission has expressed in extending this lease, we could do that.

Commissioner Withers: Well, I would just like it to say that if they do assign or sub-lease that this Commission has the right to readjust the rent without any comparisons to not-for-profits, we have the right to do it without tying us to a specific.

City Attorney Hernandez: OK, that's a very valid concern and that should be included.

Ms. Swanson: Chip, if I can show you how it can script out. In order for them to assign, it has to be a non-for-profit cultural entity, they have to have a net worth and financial strength, they have to...there are certain measurements in order to prove that they are acceptable, and then, the City has the right to review and accept. If you'd like, in the section that you are talking about it says, in improving an assignment the Landlord many at its sole option apply a new rent schedule that is more consistent with non-profit rental rates in the surrounding area. If you'd like we can just take, if the Commission wants, we'll just take out that last clause so it says, in improving the assignment the Landlord may at its sole option apply a new rent schedule.

Commissioner Withers: That's it.

Ms. Swanson: OK, so we'll...

Commissioner Withers: And finally, again I'm comfortable with the business plan, the only discomfort I have is in the build-out of the space. We cut basically almost forty percent (40%) off the original estimates; I think they were up over eight hundred thousand dollars originally, and now they are down to five hundred thousand dollars; and I think its great that the Perrin – I don't know if its the Foundation, has stepped up to the plate, I think that's great; the City has budgeted the two hundred and fifty thousand; is there any reason why we cannot just write them a check for two hundred and fifty thousand dollars and let them do the construction on their own as opposed to have the City use its staff time, its resources to oversee one more capital improvement project and just let them do the build-out on their own, and in that way there is no question; they get the check, they build it on their own, they get the two hundred and fifty thousand for the Coral Gables Foundation through the Perrin, they put in their own thirty-five thousand and they are on their own, as opposed to us having to manage a capital improvement project.

Ms. Swanson: If the Commission...

Commissioner Withers: I'm just throwing...

Ms. Swanson:...we're almost done; the bids have been lead twice, the City did, and Ernest Pino is here, I kid you not, Public Works has been phenomenal in this project; and even though the budget was five hundred thousand and the bids came in way high, they did the value engineering that was important to bring the numbers down without impacting the quality; so they have the bid, you know, ten bidders went through the process; they went through and judged the most responsive so that the heavy lifting is done on it, and they can speak to what they've included on it, but if the Commission says, you know what, we don't want to issue this bid and we want to do it that way, I...

Commissioner Cabrera: I wouldn't support that, Madam Director; I wouldn't support Commissioner Withers recommendation. Its our building, we should have ultimate responsibility for any work that is done to it, I don't want to give that to somebody else, I don't want to abdicate that responsibility, I don't know how the rest of my colleagues feel, but I would not support that.

Ms. Swanson: However you all decide.

Commissioner Withers: Thank you Cathy.

Ms. Swanson: Are there questions about the lease?- questions about the business plan?

Commissioner Cabrera: I would just like to take the opportunity to thank you for the business plan; and I just wish, and I mean this sincerely without pointing any fingers, that more of our

public-private initiatives had business plans half as good as the one that you have developed, and I was fortunate enough to get a copy of it yesterday, just by coincidence, so I read through it last night, and I was very impressed after a number of years of having to draft business plans in the private sector, I was very impressed with the work you did. So my congratulations go to you and your members or your staff member that assisted with this process.

Ms. Swanson: Well, Commissioner Withers put the challenge, and it was really good because we asked our other cultural groups to do business plans; we deal with businesses all the time and we say where is your business plan, so it was a very valid request.

Commissioner Cabrera: Great lesson learned; I will take that one with me until I leave office and be sure that the next public-private opportunity that comes before us includes a business plan, not necessarily your responsibility to redraft, but that, that group do it, because we could have avoided a lot of problems if we'd gotten a real legitimate business plan.

Ms. Swanson: It was a good process, I'm glad it was suggested.

Commissioner Cabrera: Yes, it was. Nice spin.

Mayor Slesnick: We have several public commentors who have signed up to speak, we'll come back.

Ms. Swanson: Yes, it's your time; we also have Dr. Damian is actually wearing three different hats today, so when she speaks on that she'll also want to speak on some other issues so she stay around.

Mayor Slesnick: Well, we can recognize Dr. Damian first as Chair of the Cultural Affairs Advisory Board. Dr. Damian, depending on your time, you can either speak to all three issues now or speak to this and then move on, we will take your other issues before anything else after we vote on this one.

Dr. Damian: Thank you. I'm Carol Damian and I am the Chairperson of the Cultural Development Board, and I am here on this issue; first to state our recommendation for approval of the cinemateque. We have been involved in this for many years, and feel that it is a wonderful addition to the Coral Gables cultural community. So I am here to voice the approval of our Board on this issue.

Mayor Slesnick: Thank you very much. We have Mr. Rip Holmes who had assigned to speak. We have Mr. George Volsky.

Mr. Volsky: Good morning. We've been talking about the business plan, so I just got it today so I'm not in a position to make any comments, but I think it all depends on attendance or market place. We know that Comcast which exist here is very aggressively promoting rent a movie, so I simply don't know how it's going to work out, so we'll see. I'm in favor of the plan, I wish you would approve it because it is an addition to the cultural life and more important, most important perhaps is that its another venue, cultural venue, which understand is a part of this whole thing.

But I'm here actually to talk about something that happened on March 11th. I have a brief statement, when you discussed this plan, including the donation of the two hundred and fifty thousand dollars from the Coral Gables Committee Foundation from a bequest left by the Perrin Estate. In lieu of the two hundred and fifty thousand dollars the City would name the plaza in front of the cinema the Perrin Plaza, the donor of the money. The estate's representative is Mayor Don Slesnick. The estate...[inaudible]...under State law are being paid prior to March 11th. I privately suggested that perhaps the Mayor should not vote on this because it would be improper, because it would be a perception of conflict of interest. If he had done so, the project would have been approved anyhow, and he would have received proper accolades for giving a quarter million dollars to a worthy project. In deed there have been articles praising Mr. Slesnick for his action which as a lawyer, I believe is manner in disguise, but the Mayor choose not to abstain. On March 11th he had City Attorney ask him several questions, principle were, *Ms. Hernandez: Do you and your spouse, Chairman of the Foundation, receive any pecuniary interest or stand to have any private gain as a result of the vote as about to occur today? Mayor Slesnick: Absolutely not. Ms. Hernandez: OK, through the foundation, or this is important, through any other entity would you stand to gain any income or private gain?- which means would you be paid? Mayor Slesnick: Absolutely not. Ms. Hernandez: Is the naming of the plaza for anyone by whom you have been retained and you are directly or indirectly receiving any financial gain? Mayor Slesnick: No, by order of the court the money from the State was given to the foundation into a donor directed fund in which I was named as the Director of the Donor's Monies and I do not receive any compensation for doing that, none whatsoever. Ms. Hernandez: You do not have an identifiable conflict of interest that would preclude you from voting.* Since Ms. Hernandez' rulings are not always correct, and perhaps she did not have all the information, I asked the Commission on Ethics and Public Trust for his opinion. On May 19, 2008, that office investigator, Manuel Diaz, the same one who had found Mayor Slesnick to be totally truthful if notorious with the JCI Building case, concurred with Ms. Hernandez and that Mayor Slesnick did not have any conflict of interest in voting in the Perrin Plaza. But buried in the Diaz opinion, I found a brief note on which he failed to elaborate, even though it was vital to the case. I quote, "Donald Slesnick was compensated". When I inquired about the amount of Mr. Slesnick's compensation, and when he was paid, the co-worker, Mr. Diaz co-worker, Virginia [inaudible], an attorney to boot, who interviewed the Mayor by phone, said she didn't know. When I remarked that it was the key question that the Mayor testified he had not been paid, she said she had not time to find out. All that Ms. Frigo had to do was to look into her own file as I did on May 29th. What I saw first was Mr. Slesnick's invoice, very short in details, attached to his petition to Circuit Judge Maria C [inaudible] to be discharged as personal representative. She did it March 11th by accident or not, hours before the Commission vote. It turns out that the Mayor asked and received a total of fifty six thousand nine hundred twenty dollars four cents (56,920.04) for his personal representative job. According to state law a personal representative gets three percent of the estate, and the estate total seven hundred and seventy five thousand seventy nine dollars fifty nine cents (\$775,079.59), which included two hundred and fifty thousand now offered to the cinema; the Mayor's fee should have been twenty-three thousand dollars two hundred fifty-two thirty seven cents (\$23,252.37), well maybe Mr. Slesnick has higher expenses, which is fine, he is entitled to his pay. Neither Mr. Diaz nor Ms. Frigo and certainly not Ms. Hernandez choose to know even...[inaudible]...that Mr. Slesnick offered one hundred fifty thousand dollars of the Perrin money to the cinema in late November 2007 when he was earning his fees as Perrin's personal representative. He'd also been paid for the work in

transporting all of the Perrin money to the Coral Gables Foundation, including two hundred and fifty thousand dollars. In conclusion, Mayor Slesnick was paid for the Perrin estate when he offered the fund to the Coral Gables Art Cinema. Whatever he did with the Perrin money he was...[inaudible]...he was not truthful saying absolutely not when asked about his renumeration for the Foundation, and I quote, "any other entity would withstand to gain any income or private gain". Like any lawyer, he gained income on private gain by representing a client; lawyers are paid, clients either win or lose. This is gaining – this is not a matter of gaining, just simply a salary. As the benefactor of the...[inaudible]...directly profiting from the donation, and laudable it is; I have nothing against it, seems the two hundred and fifty thousand dollars was offered on condition that the City profit be made by the donor; there is nothing wrong with that either; request benefits for his employer. Whatever his answer to clearly incomplete questions by Ms. Hernandez, the facts remain that Mr. Slesnick did gain almost fifty seven thousand dollars for his Perrin work including the donation. Finally, also under the millennia old, Ceasar's wife premise, the Mayor should have abstained from voting on the Perrin issue, he did not. Thank you.

Mr. Volsky: [Inaudible – off mike]

Mayor Slesnick: I have no intention. We have Mr. Paul Posnak.

Mr. Posnak: Hi everybody, I am thrilled that this is going forward; I think it is going to be wonderful for the City, for all of us, and for a lot of people outside the City as well. My only concern now from an enthusiast's point of view is having set appropriate priorities so that it isn't too kaleidoscopic in its offerings, and so that it is really well advertised in a meaningful way; I suggest that we include this as part of the City Beautiful E-News with a link, to have its own...so that we can have a schedule broadcast to everyone; we have our own just as little tiny Miami Beach cinema, have our own e-mail list – e-mail blast that we could generate, so that we develop our own audience as a concert presenter, and as a long time – a life long victim of great art cinema in New York, the Thalia, the New Yorker, and the Astor. If I calculated how many hours I spent there it would probably be a good portion of my youth, but in the process I realized what makes a great theater work. We have the opportunity to work with our Consulates to have film festivals, great classics – Italian film, French film, Spanish film, of Mexican film, its just extraordinary, because here we are this wonderful international City, and we can do this in a very efficient and meaningful way; we can bring some of the directors, the actors, experts and these things, we can coordinate it with Books and Books. My concern is that its not too scatter shot, that we don't get, you know, to have a rental situation and worry about making more dimes and nickels; and I was talking a little bit with Cathy; by the way I can't get over this beautiful presentation, this is quite something, this business plan. When I was thinking of this I didn't realize it was going to generate such an extraordinary amount of work to make this work. For example the weekly present program of past presentations of the best hundred years of American Cinema, what a great idea, and the trick is to get the right people to organize it; and I think that for example the Film Department at UM our new Dean of Communications, is a film buff, a film presenter, a film historian, and he just got this extraordinary collection by Ray Regis, of original prints of American film; this is the kind of connection we would want to have in charge of that, to delegate just the right priorities and right people to do these things, then we are going to have something wonderful, because ultimately its what's presented and how its presented. The catering for example, we should have Biscotti and wine, we shouldn't have Coke and Doritos,

you know, there are ways of attracting people, the kind of crowd that really wants this, away from their home theaters and so on; including pre and post lectures and talks by people who really know about film, it's like going to a museum, you can look, and look, and look, and stare at a painting, when an artist comes or a docent comes and shows you what to look at, and gives you a little bit of the history or what an imposter really is or how....you know, it's a whole different world that opens up to us. I'd like to suggest that maybe we have a subcommittee of the Cultural Development Board; I'd love to be a member of that if I could be so bold to suggest it, and we develop a programming plan so that it isn't too much kaleidoscopic.

Commissioner Withers: Why don't you get on their Board of Directors of the theater, they are forming a Board.

Mr. Posnak: OK.

Mayor Slesnick: Thank you very much Paul.

Mr. Posnak: Thank you all for your time and help; I'm thrilled. Thank you.

Mayor Slesnick: Any further questions or comments?

Commissioner Withers: I just have one last question and it has to do with the gift from Perrin. If we accept a gift and we start building it out and they run into financial issues and they don't complete the project, what is our responsibility to Perrin?- as far as refunding the money, or how does that work?

City Attorney Hernandez: The....I'm sorry.

Mayor Slesnick: I was going to say, this is being made as a gift pure and simple.

City Attorney Hernandez: Right.

Commissioner Withers: But it's based on delivering, I'm assuming, so if we get half way into the project and we've accepted their money, and CGC whatever it is pulls out, and we can't finish the project...

City Attorney Hernandez: No conditions were placed on the gift, and typically when a condition is placed on the gift then you are required to meet the conditions of the gift, if not, it is used for the intended purpose and if it doesn't pan out...

Commissioner Withers: We still name the Plaza though.

Mayor Slesnick: That would be the only thing.

Commissioner Withers: That would be the only thing, OK.

Mayor Slesnick: I was giving the courtesy, Mr. Trowbridge just showed up, and he went out to get a speakers card, if Mr. Trowbridge can come back in we'll let him complete filling it out, after he speaks. Mr. Trowbridge....Mr. Trowbridge we are at the end of the presentations.

Mr. Trowbridge: My apologies for my tardiness. Thank you very much Mr. Mayor, Mr. Vice Mayor, Commissioners; I know that the last time we were here, I read to you a resolution of support on behalf of the Chamber, and our Board of Directors. Notwithstanding the contribution issue that Commissioner Cabrera suggested that we consider, I hope that you'll once again be reminded of our Chamber support of the cinemateque on various levels very excited about the opportunity to have this gathering space be available to not only organizations like the Chamber, but to other non-profit organizations, cultural and arts groups. We believe that the theater in conjunction with Books and Books and the pending museum project would be a tremendous cultural epicenter for Coral Gables and one that the Chamber will be excited about participating in and helping support from a programmatic standpoint, and be engaged in what we think makes both Coral Gables and South Florida a real cultural iconic community. So I'm here to remind you of that and reiterate our support. Thank you as always for our Chamber and many of you are participatory in our goals conference this past weekend, and we are very appreciative of that, and welcome back Mr. Vice Mayor, great to see you.

Vice Mayor Kerdyk: Thank you very much.

Mr. Trowbridge: I'm glad to answer any questions about that, but we are here to support that. Please forgive my tardiness in being here at the end.

Mayor Slesnick: Thank you.

Commissioner Cabrera: Mr. Manager...

City Manager Brown: Yes sir.

Commissioner Cabrera:...could you make sure that the Property Advisory Board be given a copy of the business plan...

City Manager Brown: Yes sir.

Commissioner Cabrera:...and I want to make sure that they at least, even though it's retrospective, I would still like for them to have a copy of it, and maybe have a presentation from Ms. Swanson on it.

City Manager Brown: Be glad to.

Commissioner Cabrera: Just don't want to leave them out of the picture. Thank you sir.

Mayor Slesnick: Any other questions for Ms. Swanson? – comments?

Vice Mayor Kerdyk: Good job.

Mayor Slesnick: Do I have a motion?

Vice Mayor Kerdyk: Let me try this again, I'll make a motion for approval.

Mayor Slesnick: I have a second? Well, I'm going to second the motion.

Commissioner Withers: You do the naming of the plaza.

Vice Mayor Kerdyk: What's that?

Commissioner Withers: There are three different motions, right?

All: Yes.

Commissioner Withers: Are they all tied together?

Vice Mayor Kerdyk: No.

Mayor Slesnick: This is the ten year lease.

Vice Mayor Kerdyk: Right.

Mayor Slesnick: OK. We have a motion on the ten year lease, this is on E-3, no further questions or comments, we'll move to a vote, but I will be for voting, for the benefit of my fellow Commission members, say to you that I will be voting on this, if its your desire that I not vote on the naming of the plaza, I certainly don't mind not doing that, but let me respond that in so many cases as the person who spoke to us and who writes a local column gets his facts wrong as usual, and uses half truths and mistruths to smear people's good names. Yes, as a lawyer I was paid to represent the Perrin estate, which was a multi-million dollar estate by the way, seven hundred and fifty thousand dollars represents a piece of the estate, my representation was over about a five year period, and as part of that estate and in consultation with their consultants and representatives they did leave seven hundred and fifty thousand dollars thereabouts, to the Community Foundation, to be used for good works for the community; and I was asked to be the person who would be the donor advisor of the Community Foundation, for which I get no compensation. I got no compensation for the bequest to the Foundation, and I get no compensation for my ongoing, and as long as that money lasts and of course Mr. Withers and I have talked about some of the money going to the museum and so forth, but as long as that representation last and as long as that money is directed I will receive none, and have received no compensation for that; and my fee was probably well under the allotted fee for the total amount of the estate; and the estate was in fact disbanded-ended, closed before the votes were taken; but even had it not been, I was getting no compensation for the seven hundred and fifty thousand dollars which we are now speaking; and I find it amazing that someone wants to raise an issue of conflict of interest to someone who wants to contribute to an idea, contribute to the City, and to the people of Coral Gables, but anyways that's the whole story.

Commissioner Anderson: I'd like to make a comment actually.

Mayor Slesnick: Yes.

Commissioner Anderson: I've always been supportive of this project and I continue to support it, but I'm not going to be able to vote on it positively on it. Between – it's budgetary for me; the two hundred and fifty thousand of the taxpayer dollars that are going to this project is well needed somewhere else. We are going to have layoffs, we are going to have shortages in other areas, and the general community may do without other things that we really need. I love this project, but in the category of need to haves and nice to haves, this is a nice to have, and my priority is first protection and services, zoning, and the recreation at the end of the line, if there is. If I apply the same standard, I apply the July 4th celebration, then I apply the same standard for this, and it doesn't take away from the good work that was done, and I applaud you for that, and I'm sorry I'm not able to do that. It just became very apparent to me that if there is so much need within our own budget as a result of the tax amendment that passed in January. So I just want to make it up front.

Commissioner Cabrera: I'm just curious, I'm just curious, I'm sorry sir...

Vice Mayor Kerdyk: I was just going to ask a question, the two hundred and fifty thousand dollars, I thought, was already budgeted for that?

Commissioner Cabrera: Earmarked – earmarked.

Commissioner Anderson: You know that's fine, but you know two hundred and fifty thousand dollars can do a lot of stuff.

Vice Mayor Kerdyk: I just want to clarify, its not for the upcoming...it's earmarked.

Commissioner Anderson: No, I'm perfectly aware of that.

Commissioner Cabrera: Mr. Manager, this is my question, no one else's, so until I'm done I have the floor. Just curious, we earmarked the monies, and because the monies are earmarked for this particular project, I know a little bit about how government budgeting works, if in fact you didn't use the monies where would the monies go?

City Manager Brown: The money would stay right where it is until the Commission gave me authorization to do otherwise; this is part of the four million dollar (\$4M) borrow, and they were set aside for capital improvement projects, of which two hundred and fifty thousand was highlighted for this project. The Commission then instructed me at that time and has reminded me throughout the years that those monies can't go unless you all tell me.

Commissioner Cabrera: That's exactly the answer I was looking for. I don't have anything more to say; I'm prepared to vote on this item.

Mayor Slesnick: Mr. Clerk.

Vice Mayor Kerdyk: Yes

Commissioner Withers: Yes

Commissioner Anderson: No

Commissioner Cabrera: Yes

Mayor Slesnick: Yes

(Vote: 4-1)

Mayor Slesnick: Thank you all. The next item for the...

Vice Mayor Kerdyk: Thank you again Cathy, you did a great job on the presentation.

Commissioner Cabrera: Outstanding.

Ms. Swanson: You want to take up the related items or do you want to bring that back later?

Vice Mayor Kerdyk: I think we should.

Mayor Slesnick: Let's go right to the next related.

H-4 and H-5 are related

Ms. Swanson: Then I'm also going to ask Ernie Pino to come up just in case there are specific questions. This is a resolution recommending the City Commission award the construction contract for the improvement of the existing space to the house for the art cinema at the Museum Garage, to Solution Construction, and Ernie can explain the bid process, it was quite extensive. They had a wonderful presentation with ten bidders; they went through a process called deductive alternates, which allowed them to do the base bid and also allowed individuals specific components to be removed if the City chose to do so. So I cannot kid you, he put a phenomenal amount of quality time into that, and that's what brought these good numbers forward.

Mr. Pino: Essentially what we did – good morning first of all – this is the second bid, the first bid was just basically the same thing, but what we tried to do with the rebid of the project was basically to cut all the fat out and make it leaner; and in doing that we maintained the same quality that we originally had in the first project, but we were able to reduce...for an example, some of the secondary support rooms we were able to eliminate the flooring, the ceilings, even the dividing walls, still have the same amenities, still the same function, but just with less fat. We value engineered the air conditioning system, we did study the duct work, finding better routing to do, the chill water system, just all the mechanical systems – electrical, plumbing, and air conditioning, for restudy and that's how we were able to bring the budget on the project down to where it came at.

Vice Mayor Kerdyk: So it's not going to affect the overall quality of the project whatsoever.

Mr. Pino: No, no, it's the same project as before basically, without the fat.

Vice Mayor Kerdyk: Alright. Good job.

Commissioner Withers: How much of the pricing is for permits and fees from the City?

Mr. Pino: Permits and fees are waived.

Commissioner Withers: Oh, they are waived.

Mr. Pino: Permits and fees are waived, that doesn't apply to the contractor; contractors don't pay any of the permit fees of the City fees.

Commissioner Withers: Did we waive those?

City Attorney Hernandez: For City projects.

City Manager Brown: For City projects we normally do.

Mr. Pino: For other permitting the contractor pays; County fees, DERM fees and stuff like that they do pay, but in this case it's all City fees which are waived.

Vice Mayor Kerdyk: I think it should be noted that in the private sector that construction in general, the contractors are much more aggressive now than they were a year ago, and that's probably affected the overall bid too.

Mr. Pino: No question about it. We had a good turn-out, and as you can see that was part of the factor in the lower price the second time around.

Vice Mayor Kerdyk: Thank you very much.

Mr. Pino: You're welcome.

Mayor Slesnick: I'll tell you what – I am impressed, and I hope we can do the same with other projects.

Mr. Pino: Well, my job.

Mayor Slesnick: That's great, I'm delighted. This is on H-5. It's a resolution recommending that the City Commission award the construction contract for the improvements of existing space to house the Art Cinema at the Museum Garage, City of Coral Gables, Florida, to Solution Construction, Inc., the lowest and most responsive bid, in an amount \$535,343.00. Do I have a motion?

Vice Mayor Kerdyk: I'll make that motion.

Mayor Slesnick: It's been moved, do I have a second?

Commissioner Cabrera: Second.

Mayor Slesnick: Second by Mr. Cabrera, moved by Mr. Kerdyk. Any further discussion or questions.

Mr. Clerk

Commissioner Withers: No

Commissioner Anderson: No

Commissioner Cabrera: Yes

Vice Mayor Kerdyk: Yes

Mayor Slesnick: Yes

(Vote: 3-2)

Mayor Slesnick: And now on H-4, a resolution to approve the renaming of the plaza in front of the proposed Art Cinema and accepting the \$250,000 donation from the Community Foundation (Perrin Fund). Do I have a motion?

Vice Mayor Kerdyk: So moved.

Mayor Slesnick: Been moved by Mr. Kerdyk.

Commissioner Cabrera: Second.

Mayor Slesnick: Seconded by Mr. Cabrera. Any further questions or discussion?

Mr. Clerk

Commissioner Anderson: No

Commissioner Cabrera: Yes

Vice Mayor Kerdyk: Yes

Commissioner Withers: Yes

Mayor Slesnick: Yes

(Vote: 4-1)

Mayor Slesnick: Ms. Swanson, your staff, Dr. Damian to your Board, to everyone, to the Chamber thank you all, David, Liz thank you for your hard work on this.

City Manager Brown: You're welcome.

[End: 11:11:00 a.m.]