

**City of Coral Gables City Commission Meeting
Agenda Item I-1
December 19, 2011
Continuation of City Commission Meeting
City Commission Chambers
405 Biltmore Way, Coral Gables, FL**

City Commission

Mayor Jim Cason

Vice Mayor William H. Kerdyk, Jr.

Commissioner Maria Anderson

Commissioner Rafael “Ralph” Cabrera, Jr.

Commissioner Frank Quesada

City Staff

City Manager, Patrick Salerno

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Public Speaker(s)

Reeder Glass, Special Outside Counsel for the City

Gene Prescott, Biltmore Hotel

Bob Kay, Biltmore Hotel

Richard Namon, Coral Gables Resident

I-1 [Start: 10:15:00 a.m.]

Commission discussion and/or actions regarding Biltmore matters

Mayor Cason: OK. This is a resumption of our December 13th, continuation of that session. We had gotten through all of our Agenda Items except for a report from our City Attorney on the Biltmore, so I will turn it over to Craig Leen.

City Attorney Leen: Thank you Mr. Mayor. Before the Commission today is a resolution authorizing execution by the City of the following agreements; 1), Settlement and Release Agreement with the Biltmore Hotel Limited Partnership; and 2), First Amendment to the Management Agreement for Biltmore and Granada public Golf Courses, with the Biltmore Hotel

Golf Management LLC. It's good to see everyone today. What you have before you today are two proposed agreements: a Release and Settlement Agreement as well as an Amendment to the Golf Course Management Agreement, and these agreements have been provided to the City Commission. What you are being asked to do today is to, after reviewing them, which I know you already have, to approve these two agreements; and the way that I think we are going to present these today to you is first, I'm going to make a brief statement regarding what has been done here, then Reeder Glass, one of our Special Counsel will come up and explain the terms of each of the two agreements. Then I will provide a formal recommendation to you regarding the agreements. I believe the developer is here and they would like to speak as well, representatives of Seaway, including Gene Prescott and Bob Kay, and then at that point we will go forward with the resolution and the Commission will vote. Now this – let me talk about the Release and Settlement Agreement first, the Settlement and Release Agreement, that relates to the hotel lease and as you'll see in the proposed resolution one of the main terms is that Seaway is here today and they are prepared to make a payment of all the past due rent related to the hotel with interest in the amount of \$4,283,655.18. In addition, in relation to the Golf Course Management Agreement, which is being amended, Seaway is here and prepared to make a payment of \$650,000 to the City. Both of these payments will be made today. Now each of these agreements have a number of terms in them, which I think it's important for the Commission to hear on the public record. So, I'll ask Reeder Glass to come up and go through the Settlement and Release Agreement first, and then discuss the Golf Course Management Agreement – Mr. Glass.

Mr. Glass: Good morning, Mr. Mayor, Vice Mayor, Commissioners, Reeder Glass, Holland and Knight, Outside Counsel for the City with respect to the Biltmore Hotel. Starting with the Settlement and Release Agreement, as you know the City and GALIC, I mean the City and Seaway have been pursuing a second amendment to the lease, which contained a number of provisions associated with that amendment. The two main economic provisions were that Seaway was proposing to pay all the past due rent plus the interest that had accrued on that rent at the statutory rate, plus the \$650,000 payment that comes due next April, the so-called percentage rent, a number around \$5,220,000, over a period of time at two and-a-half percent interest starting July 1, 2012, at \$125,000 a quarter. That was how the past due rent and then some future rent due next year was to be that way. The second major economic part of that provision, of that second amendment was that over a ten year period the City would allow a credit against percentage rent and also consider discretionary credit against percentage rent, which depending on how the hotel did, performed, would be worth over that ten year period several millions of dollars; and then there was an elaborate series of releases, covenants not to sue, and some clarifications under the lease agreement, and it also included releases from GALIC and some performance by them with respect to going forward. About ten days ago, as the City Attorney indicated, Seaway came forth and said that they would like to make a payment of all the past due rent, and pay instead of the statutory interest rate of 2.5 percent from the due dates

of the past due rent, a number of that was about \$4,325,000. They would go ahead and make the April 2012 payment of percentage rent, they would not be deferred, and they did not want to enter into a second amendment, and they did not want to enter into any releases, in other words they would make the payment and we will go forward from that point. Then negotiations began with respect to that proposal and as a result of those discussions we have an agreement now which is a Settlement Release Agreement. What that document provides and as the City Attorney mentioned, the payment of \$4,283,655.00, that is all the past two rent at a 2 percent accrual as opposed to the 2.5 percent that was proposed. In addition, we've agreed to expedite an agreement between Seaway and the City regarding the \$1.5 million Miami-Dade grant, which was to be used for renovation and repair of the hotel; and finally we are exchanging mutual general releases with certain exceptions. The general releases are of all claims accruing up to the day of the release that are known and discovered by either party. The releases do not modify the terms of the lease which the lease continues to have the same terms and provisions. The carve-outs going forward for Seaway is that they may in the future raise for rent payments in the future, the so-called federal question regarding excess income. We have, I think the Commission knows, two letters already from the National Parks Service which indicate that the federal laws and regulations to which that excess income provision relates have no application or modification to the lease, and that the City is in full compliance with its covenants to the federal government. The other reservation that Seaway has is to argue that it's not responsible for renovation and rehabilitation with respect to the lease. This again is a go forward provision which also allows them to raise the claim that the City is responsible for renovation and rehabilitation, but none of these claims have any application to the past. For the City we are in effect obtaining a release from Seaway and the specific statement that all past rent paid, including the rent that they will pay today, they are waiving any right to claim back under any theory that the City owes that back to them. We are both preserving the ability to raise any defaults that arise or accrue in the future. We are also reserving the right as a City to pursue GALIC, I'm sorry, Seaway for any claim related to renovation and rehabilitation either past or future that they fail to do in compliance with the lease. Now GALIC has some consent rights with respect to this agreement which I understand they have agreed to give, but they have participated in the negotiation with respect to any releases or changing position of themselves as qualifying mortgagee. So that element of the prior second amendment is not part and parcel of the settlement release agreement. Would you like to ask questions about that before I go to the first amendment?- or would you like to go to the first amendment?

Commissioner Cabrera: Can I just ask you one quick question about something you articulated a few minutes ago? It deals with the, I'll try to paraphrase you, that as part of this agreement there will be an expedited process to the \$1.5 million grant, is there more specific language to that?

Mr. Glass: Well just to go back in the history of that. The City negotiated with Miami-Dade a grant agreement, and Miami-Dade insisted that, that agreement be with the City and it imposes on the City certain responsibilities with respect to this work that is to be done at the Biltmore Hotel. We in turn prepared a document called an Indemnity Access Agreement with Seaway, which basically gave the City the ability to enter on the premises in the event the work was not done, and to pursue Seaway under certain circumstances if that work was not done. Ninety percent of the money Miami-Dade had agreed with the advance based on statements of money spent, as opposed to spending the money and seeking reimbursement. So ninety percent of it is purely a pass through from the City to Seaway, the last ten percent we must present evidence that that amount has been paid and then seek reimbursement. So we have an agreement they've been exchanges of comments on that agreement, but it's been sitting for several months now. So what both of us want to do now is to move that process back on the forefront and get both the agreement with Seaway and the City done and then if there are any changes or modifications with Miami-Dade, then get that done as well, and then pick a time for that renovation which will be least disruptive to the whole operation.

Mayor Cason: Is that two year money?

Mr. Glass: I think it was two years, we had to spend it within two years. I think we were discussing with Miami-Dade the idea of extending it one more year.

Commissioner Cabrera: OK, that's what I wanted to get at and I appreciate the education on the background of this \$1.5 million grant, but I guess what I'm trying to say is as much as I also appreciate you bringing up the word expediency, I would like some assurances that, that's the direction we are going to take to move it quickly because there could be some activity by Miami-Dade County to somehow, someway given their economic issues that they are facing with their budget, there could be withdrawal of that money and I want to ensure that doesn't happen. So that's the reason why I – when you said expedient or you used the word expediency I want to make sure that we are not going to “talk the talk,” we are going to “walk the walk”, and so I was just wondering as to what extent that was incorporated into this agreement.

Mr. Glass: It's in there – we have agreed to do it in 30 days.

Commissioner Cabrera: OK, that was the answer I was looking for.

City Attorney Leen: I would like to add two things. First, as to the grant agreement, we are making the commitment to give our best efforts along with Seaway to proceed with that \$1.5 million loan; most of it is already done in terms of the documents. So of course to some extent that would depend on the County and we are not guaranteeing that, that money would be

received, but we will give our best efforts, that's something the City is committing to in the agreement, that would be my responsibility to give my best efforts to try to negotiate this agreement and get it done within the 30 days. Now there were two additional things I wanted to say. Mr. Glass did an excellent job explaining the agreement, it is a little complicated, but I wanted to make one point regarding the releases. One of the principal reasons that the interest rate went from 2.5 percent to 2 percent was because we wanted to obtain for the City these releases which I thought was very important. Remember Seaway has made the argument throughout that they have a potential claim for up to \$17 million going backward in time, and even though I have always made the opinion that I didn't think it was a particularly strong claim, and we have these letters from the federal government, I thought it was very important and in the benefit of the City to have that claim released. So a lot of the negotiations that have occurred over the last week have related to these specific releases; and I do want to say one other thing, even though Seaway going forward is maintaining their positions regarding the federal question regarding renovation and rehabilitation, they could have maintained those positions anyway going forward. The benefit of this agreement is that we are receiving all of the past due rent and we are not compromising our position at all. We will continue to maintain going forward based on the lease agreement as our counsel have interpreted it and as I have interpreted it that Seaway is responsible for those, and so I think when you look at it as a whole these releases greatly benefit the City.

Mayor Cason: Mr. Glass, you want to move on to the second part?

Mr. Glass: Yes. Just a little background on the management agreement. Back in 2004 the City entered into a 25 year management agreement with an affiliate of Seaway to manage actually both Granada and Biltmore, but this is principally about the Biltmore Golf Course. In 2007, the City invested \$3.5 million in renovation of the golf course, but there was no amendment of the golf course management agreement incorporating into it the obligations to make those payments, even though the Manager under that agreement has made the payments under that second Sunshine Law. In addition, there were no cross default provisions between that document and the lease. Over two or three years some disputes that have arisen between the Manager and the City regarding two things; one, the golf course was closed for two quarters back in 2007 for the renovation, the accrual of about \$170,000 in base fees, which were not paid. Part of that renovation, the bridges, were replaced or restored at a cost which exceed the estimates of Seaway and the improved number by the City of about \$382,000. So those two things had continued on; and the agreement currently provides for two elements of payments, one of base fee, which is paid quarterly and has increased over the years as CPI (Consumer Price Index) rate to presently at about \$92,000 a quarter. There is also a 9 percent percentage rent, actually percentage gross revenue feature, which is the higher of those two numbers, but the 9 percent of gross revenue has never kicked in, so it's always been over the term of the agreement, the base rent payment; and

according to information that we've been provided by Seaway, there has never been a profit made by them under the management agreement. So what we did enter into was the First Amendment with respect to that document, and it had several features which I'll go through really quickly. When we reduced the base, the management fee, from approximately \$92,000 now to \$40,000 a quarter, so that number will go from \$92,000 to \$40,000 and it will be subject to CPI adjustment, but that the CPI adjustment and those payments don't start until October of 2013. This is to give them some breathing room with respect to operations which they project will turn profitable over the next several years. The 9 percent of gross revenue provision has been eliminated, what that also eliminates is an obligation to repay the Manager for \$250,000 payment that they made back in 2004 for renovation and was used to renovate the Granada Golf Course, so that payment goes away. In addition, the settlement of the two issues that I mentioned, the past due base management fees were offset against the \$382,000 bridge renovation cost overrun giving a net benefit to the City of approximately \$200,000 on those two adjustments; and general releases are being exchanged between the two parties without the caveats that I mentioned in connection with the lease; and finally, the Manager is paying today \$650,000 – there are approximately \$1.1 million of base management fees that have accrued since '09. With the \$650,000, the forgiveness of the \$250,000 reimbursement payment and the excess settlement proceeds up to \$200,000, that adds up to approximately the same as the \$1.1 million. So that's the proposed resolution of a variety of issues and accommodations both to the City and to Seaway's affiliate manager in connection with that amendment.

Vice Mayor Kerdyk: Just a quick question. The management agreement and the lease revisions, is there any extension to either one of those documents as far as length of leases or length of management agreement?- or is everything stayed within the...

Mr. Glass: There is no amendment to the term of the agreement which is....in the document 25 years.

Vice Mayor Kerdyk: OK – and likewise on the lease, there is no increase.

Mr. Glass: That's correct.

Vice Mayor Kerdyk: How many years left on the lease?

Mr. Glass: About eight years of – on the lease?

Vice Mayor Kerdyk: On the lease, our master lease.

Mr. Glass: About 65 if they execute the extension.

Vice Mayor Kerdyk: OK.

Mr. Glass: About 17 years on the management agreement.

Vice Mayor Kerdyk: On the management – OK.

Mayor Cason: You are saying the 9 percent never kicked in because you would need something like \$2 or \$3 million revenue in order for it to...

Mr. Glass: Yes, it never exceeded the base amount.

City Attorney Leen: Thank you Mr. Glass. If I may Mr. Mayor, I was going to make my recommendation now and then at that point, it's up to you Mr. Mayor, but I think Seaway wanted to speak.

Mayor Cason: Sure.

City Attorney Leen: So before the Commission is a resolution approving both of these agreements that have just been presented. Now, I'd like to give my formal recommendation now. In making this recommendation, from the beginning since I've been here, the Commission has been very clear to me at these public meetings that one of the principal goals of any agreement was to ensure that all of the past due payments were made, that I think has been stated many times on the public record, and that was one of the principal goals we went into negotiations with to try to achieve. In addition, one of the principal concerns were the claims being made by Seaway going backwards related to rehabilitation and renovation and whether they could somehow, if there was ever litigation, sue us for the amount that they paid to do that, to do rehabilitation, and the federal argument, whether going back they could sue for the \$17 million that they had claimed. Regardless of whether I told you it was a strong argument or a weak argument, and it's always been my opinion that those were not strong arguments. It was still important I thought for the City going forward to have those claims released based on what the Commission told me and my instructions at these public meetings. I believe that this resolution and these agreements meet those goals that have been given to me by the City Commission. I recommend them; I believe that they are in the best interest of the City. To receive all of the past due rent related to the hotel is a tremendous benefit to the City, and something that would be difficult to obtain in any other way except through litigation or something like that. To have that payment made voluntarily by Seaway today is a tremendous benefit to the City. So at this point – and so I strongly recommend this proposed resolution and the attached agreements. Now at this

point I think Seaway wanted to make a statement or do you want to wait until after the vote and the debate?

Mayor Cason: I think we should allow Seaway to speak now.

Mr. Gene Prescott: Good morning. I know all of you, Gene Prescott, my partner Bob Kay. We are glad to arrive at this point. We had a couple of long time discussions about these items and most of you, some of you have been for all the duration and some of you just the last six months. I think we want to view going forward and view the positive aspects, because this is positive and we view it that we stopped the discussions about the past and what we do is work going forward, and that's what we are looking for. We have common objectives certainly to make the Biltmore sustainable, we need to continue to make it something we are all proud of, it really is something we are proud of, Bob and I are and I think the City is and we want to continue to do that. So we look forward to working in a very positive way and ask I'm sure or I'm confident that we'll hear the same from the City. Bob?

Mr. Bob Kay: Yes. I'd only like to add that our effort in doing this really was to buy a harmonious future, you know, before doing what we've now done which was to take our own investment and other ... and use them to obtain the additional capital that we are giving to the City assuring us that, at least in part, we will never be able to recover the investments that we made in the Biltmore, but we did it after having gone through a very difficult process of negotiation which I think imposed on the City Attorney and on us enormous burdens and distractions from all the other things we were doing. We reached a point through agreement and principal of having the City agree that it was going to make substantial participation, investments in the Biltmore with us which was our goal, in fact you know our original goal, and we have given up that in a compelled form through the agreement with the view that instead we will be sitting across from each other and trying to think together about how to preserve the Biltmore indefinitely as the City, and we of course wish to do. So this \$4 million amount that was built into the structure that was to prevail instead is going to be an act of voluntary activity between the two of us. We and the City, we hope in a harmonious way will plan and execute the future of the Biltmore together. So it's a gesture that we hope to see reciprocated strongly by the City behavior now and we are all very happy to be finished with the process that we've gone through.

Mayor Cason: Anybody wants to have a discussion right now?- if not...thank you very much, I would invite Richard Namon, it's not a public hearing, but go ahead Richard at any rate.

Mr. Namon: Richard Namon, 5555 Oakwood Lane. I've had all but less than 30 minutes to look at the document, which is very favorable to the City on the surface of it, taking money now and keeping our positions, and they keeping their positions going into the forward, going forward

seems like reasonable. Two things – one is that this sort of reminds me of the Marlin Stadium agreement, we haven't as a public seen anything regarding the financial statements of the hotel, have no idea what situation they are in financially as we make an agreement with them going forward. There is – I thought the issue was historic preservation of the hotel and that was expenses related to it, and in the document here in items 2(b)(iii) and 3(b)(iii), I see that it refers to renovate and rehabilitate and I would hope that there would be a clarification of what those are because that could mean that they would be arguing down the future that we are responsible for replacing, vetting, carpeting, and other things that have nothing to do with historic preservation. Police I know covers rehabilitation and maintenance and all that, but I would have hoped that this would clarify out exactly what it is that they might be claiming in the future. This seems to me a little bit vague; and the other one is a release of financial information to the public on the audit that we paid for as residents of the City, and that's an issue that seems to be incomplete here. Those are the two things that strike me, I think the deal on the surface is a great deal, I always believe take the money now and keep the same position you are in. So, I wouldn't recommend against the agreement, but I would recommend that there be two little items taken care of there, which are the clarification of what is meant by renovate and rehabilitate, and something about being able to release information because of an agreement between the City and Seaway that has put a muzzle on information to the public. Thank you.

Mayor Cason: Thank you Richard. City Attorney could you make – do you have a comment on the first part?

City Attorney Leen: Certainly. It's my opinion that this is much different than the Marlin Stadium deal, just to say that at the beginning. I believe that this is completely in the interest of the City here because remember if we had done the prior agreement, the one that was discussed before where there would be percentage rent, concessions made, things like that, we were increasing our audit rights under the agreement because of that. Now, this agreement, we are not giving up anything, we are receiving money that's owed to us under a present lease; we are receiving that money, they are releasing their past claims and we are maintaining our position going forward, and also remember they are a private company and they are in the hotel business, they are competing, so there are reasons why the agreement is structured the way that it is, and these have all been discussed in negotiations. So, I don't think at all it's like the Marlin Stadium agreement. Number two, I do appreciate the comments Mr. Namon made regarding the benefits to the City here. I would say that in my opinion, I guess the other issue he raised was the rehabilitation...?

Commissioner Anderson: Right – the renovation and rehabilitation, the definition of what that is.

City Attorney Leen: All I can say is that this was an issue that was discussed between the parties. We were unable to agree going forward, but I think the City is in the strongest possible position that it could be because of the two federal letters, and Mr. Mayor I have the federal letters here, I can put them into the record.

Mayor Cason: Yes, put them into the record, appreciate it; and the second issue on the question, I think we discussed it at one point, I think Mr. Ponce mentioned that there was some information that might be forthcoming if we had an agreement, is that correct?

Commissioner Anderson: The escrow agreement, are you talking about the escrow agreement?

Mayor Cason: Yes, where do we stand in terms of the escrow agreement?- is there any information about...?- I know some of it is privileged.

City Attorney Leen: The prior agreement which was different than this, because they weren't making this \$5 million payment, approximately \$5 million payment under both of the agreements that would have resulted in termination of the escrow agreement. I think that, that is – that just isn't discussed here, isn't it Reeder? OK, it's my understanding though and we will probably enter into discussions with Seaway, that both sides want, intend to terminate that agreement and return the documents and then at that point going forward the Commission could discuss things that came up in the audit that they learned about in the public setting. The only thing that would be protected would be the actual documents, is that generally correct Gene as you understand or Bob?

Mr. Bob Kay: I think first of all that the escrow agreement terminates by its own mechanisms built into it, so no further act is required to terminate the escrow agreement and as a matter of fact there has always been extensive information available to the Commission and to the public because we have always been filing with the City annual certified financial statement which contain all of the relevant information about the hotel. I think what the City Attorney was referring to was that since we are a private company and we have to compete against all of our other hotel competitors in the community, if we are forced to put out information on a detailed level that would advantage our competitors and have no access to comparable information from our competitors, we would be put into a position of competitive disadvantage that would be significant, we believe that would be very much against the interests of the City and ourselves and is not necessary on a fairness level to the public which already has more than enough information about our condition. So, we think those issues really were attended to in the discussions and are completely fulfilled.

City Attorney Leen: But do you agree that to the extent that the escrow doesn't terminate automatically, we'll work to get that terminated?

Mr. Kay: Sure, sure, absolutely.

Mayor Cason: Maria, have a discussion?

Commissioner Anderson: Yes, I just want to make some comments. First of all, I want to thank the whole team, the whole negotiation team, Craig, City Manager, you did the legal, the City Manager did the business terms, and we also had Reeder and the rest of the team City and our partners, and I want to thank them for their hard work, and I want to thank Seaway for coming to the table. I hope this is it. As far as I'm concerned this is a – well actually I would have liked a little more, but considering nothing is ever perfect, this is pretty good, and I agree with Mr. Namon, you better have your money up front before anything else, but I would have liked some more protections, especially with regards to any issues that may be raised, and I hope they are not, about future renovations of the Biltmore. I think we've got a strong position with our federal government letters, and I hope we will use them if we need to into the future. That's it for me for now. Thank you all, it's been a long, long time, actually I do want to add something. I think we couldn't have gotten here had it not been for an event in April called an election, I think this unifies us as a team to make this happen, so thank you.

Mayor Cason: Ralph?

Commissioner Cabrera: Well let me just say that I think Mr. City Attorney you cut your teeth on this one, and I know how hard you've worked along with your team. You have persevered, I know it's very difficult to, not only negotiate on the City's behalf, but then go and talk to six people about this process, and I know you did that diligently with a great deal of dedication, and most of all what I come away with is a whole level, a new admiration for how hard you've worked on this process. I know throughout it there were a lot of emotions on both sides and you tried to handle it in a very professional and eloquent manner, and I want to make sure that we don't go without complementing you and your team for the hard work. So, Craig well done.

City Attorney Leen: Thank you.

Commissioner Cabrera: I don't hope this is it, I hope that this is just the beginning, I hope that this is the beginning of a long term relationship between the City and the Biltmore to ensure the preservation of this gem; and therefore I'm very hopeful that the comments that were made in the summer of '09 when we were getting ready to have the PriceWaterhouse people conduct a review; and I remember then Commissioner Withers talking about three important variables, a

short term, the midterm, and the long term. Well, I think today we've hit on the short term, and to some extent we may have hit on the midterm, but truly going forward I think that both sides have to put aside personal feelings and do everything possible to ensure that this majestic structure is preserved for many generations to come. So, I'm exceedingly hopeful that staff will take my comments and will work together to try to come to the table once again and develop a sustainable agreement, a sustainable plan that ensures that, but today I complimented the City Attorney and I also thanked the Biltmore, the Seaway Corporation for stepping it up and doing something very difficult, which was during this very tedious and contentious agreement process find a solution and that's what you did, you found a solution and we – I'm very grateful, I can't speak for others, but I'm very grateful. So having said that, I'm really hopeful that we will work together for a long term process that focuses on the preservation of the Biltmore Hotel and the City of Coral Gables. Thank you.

Mayor Cason: Bill?

Vice Mayor Kerdyk: Yes briefly. First of all, I'd like to start off and thank our staff, Craig you did an excellent job with this and your team was very, very well prepared, it's been an extensive year long, intense negotiations, plus your long intense negotiation. Mr. City Manager you also have helped orchestrate a very, very good settlement for the City of Coral Gables and I'd like to commend Seaway for being there as part of the negotiations themselves. I will tell you that we sit up here as public servants for the residents of the City of Coral Gables and one of those functions that we have is to be stewards of the public money, and to receive \$5 million today from Seaway Corporation is a good day for all the residents of the City of Coral Gables, a good day for us and a good day for the City of Coral Gables. I also would like to say that we are entrusted to preserve our nationally designated historic sites; and I think it would behoove us to revisit that issue again with Biltmore at some point to make sure that we preserve this as Commissioner Cabrera said, this historic monument in the future. So it is a very, very good day for the City of Coral Gables. I didn't think two months ago we'd be sitting here getting a check for \$5 million, but that is something that is beyond all imagination. So, I'd like to thank you again for all the work that you've done Mr. City Attorney. Thank you.

Mayor Cason: Frank?

Commissioner Quesada: I'm going to start with a question. Mr. City Attorney the escrow agreement, Mr. Kay came up and said it's going to expire its natural built in expiration terms in the escrow agreement. I remember when Danny Ponce, attorney for Seaway Corporation came to speak to us, he mentioned that the escrow agreement was entered into because of these negotiations and it was a mechanism in which to hold certain documents that were used during the negotiation process, is that your understanding of the agreement? I read it, it's been some

time, I just want to know about the expiration terms of the escrow agreement and what kind of conversations we as a Commission can have with the constituency.

City Attorney Leen: Yes – Reeder will you come up.

Mr. Glass: As you know under the escrow agreement Seaway provided thousands of pages of documents into a bank, an escrow agreement, which in turn was turned over to PriceWaterhouse. This was done for the protection of the confidentiality and the proprietary nature of some of these documents. The dismantling mechanism of the escrow agreement was based on the ultimate issuance of a report by PriceWaterhouse at a time that they were prepared to do so. Then the Biltmore was given that information and all the documents would go back to the Biltmore. They then would go through all the documents they had given into the escrow and determine which ones were proprietary, and then they would come back with marked proprietary. Then PriceWaterhouse would look at those documents to see if any of that information had been incorporated in their proposed report, and if it had been those provisions would be redacted. PriceWaterhouse hasn't issued a report and part of this was set up because of the mechanism desired to protect all that information. When we were negotiating on the second amendment, we had a provision in there that said that Seaway agreed to allow the City to use this information that they had received in a public forum context. I think Seaway is still concerned about whatever is proprietary. So I think the City Attorney had discussed with them the idea of doing something similar to what the prior City Attorney had done and that is to try to create a mechanism where if there is anything that is being asked for that is proprietary they have an opportunity to come in and defend its publication. The challenge here is, we don't know at this juncture what is proprietary and what's not, so I think that's the mechanism that I think Bob was suggesting we can work out is to try to unwind the escrow because I don't think there is any need for it any longer and then come down and deal with the question of what is knowledge of the City that's free to be used in these kinds of forums, and what of that amount might be harmful to the Biltmore because its proprietary. So, it's not an answer today, but I think the process of going forward and creating that separateness is what really we've talked about.

Commissioner Quesada: Thank you for the explanation, but it's not only the conversations we can have in this forum, but it's also the conversations we can have when we go to Publix and we have a resident ask a question and we can get into those conversations.

Mr. Glass: Right.

Commissioner Quesada: Again, my biggest emphasis throughout this process with the escrow agreement is the transparency and being out there and being able to have those conversations

with residents and clarify their concerns, they are the taxpayers; they are the ones running the City.

Mr. Glass: Sure – and that wasn't intended to be a limitation...this was the most public forum of any use of...

Commissioner Quesada: I understand that, I just wanted to clarify that.

City Attorney Leen: Reeder stay there. Bob could you please get Mr. Kay, could you stand up.

Mr. Kay: We'd like to try to respond to the sensitivity that you have about this. The structure of the escrow agreement was intended to protect information that would be harmful, not because it's negative information, but it would be competitively harmful because it's not information that any other company would share with the public, it would divulge – the requests for information which we fulfilled in all the specs amounted to some 14 or 15,000 documents...

Mr. Prescott: 19,000.

Mr. Kay: It included details of every compensation arrangement that we had with any employee, social security numbers, all sorts of things that would never be naturally...

Mr. Prescott: Pricing...

Mr. Kay: And all of our internals, granular pricing information, everything else. The natural conduct was to seek protection and to obtain protection of that, it wasn't intended to deprive the Commission of any information because everything about our arrangements allowed all the information to float to the Commission, so we understand the awkwardness that the Commission might feel about how they can behave in relation to the public, and we have no problem with having the Commission deal on the level that the Commission has information with the public and to discuss anything it wishes with the public, because I emphasize throughout all of our term we have always been giving information to the City, which is public record information, our financial statement audited and so on. So you have that information through a different mechanism that isn't protected by the escrow agreement. The escrow agreement will – we believe it terminates by itself anyhow, but as the City Attorney and I just spoke in the hall we surely agree to cooperate to see to it, that if it didn't by its own terms terminate, we will close to terminate together. The documents will be given back to us, the Commission will be free to do anything it wishes in discussing anything it wishes, and we understand that the Commission is also sensitive to the idea that it has no desire to communicate information that it might have that

is competitively viewed, but we trust you with that, there is no issue that will hang over, it won't be threatened by any aspect....So please rest assured that you are free to do as you wish.

City Attorney Leen: And based on that representation it's my opinion that you are unfettered in your ability to be able to talk to members of the public or speak at Commission meetings regarding any information you learned related to that, and we will work to get that terminated.

Commissioner Quesada: Thank you.

Mr. Kay: Is that helpful?

Commissioner Quesada: Yes, thank you, it clarifies it. I just want to say thank you as many of the other Commissioners have already. Craig, thank you so much for everything you've done, you've kept us up late at night and we've kept you up late at night working through this. Pat as well thank you. Cora Lopez-Castro thank you so much for everything you've done, Adolfo Jimenez thank you so much. Reeder Glass, who I think has been involved longer than any of us, thank you for your participation in this project, Cindy Birdsill thank you so much, Lori St. John and Diana Gomez, thank you I know all of you were involved and we talked about the team in the background, but I think those are the primary members of the team that were involved at one point or another, and who worked hard on this. Like the other Commissioners, I'm glad that the money has been paid. Obviously we are not happy it took so long and we had to go through such a difficult negotiating process, but it's behind us now. I want to piggyback on something that Mr. Leen said earlier. When we first had the discussions about when we are going to get the payment back and it was going to be at 2 percent. I was a little upset that the number was a little low. We had talked about 2.5 percent, but when I understood that we were getting a release from the past issues, I understand how long litigation can drag itself out, whether they had good claims or bad claims and how expensive it can get over a long period of time. So I think that's a winner for the City in the long run, so thank you, and there was little intricacies and I know in negotiations that maybe we weren't privy to at all times. I know you guys worked hard and I think it's the best thing for the City at this time, and I hope that we can move forward with this relationship and we can continue to keep this agreement going which is substantially, say it's been around for about 18 years now just about, so I'm glad that we are moving forward with this and hopefully we don't have to go through this process again. Thank you. That's it. Thank you.

Mayor Cason: Also, I would like to thank Reeder Glass, Craig Leen, City Manager, all our team, the Biltmore for this outcome. I think it was worthwhile, we kicked the can a little bit more down the road in the last couple of months, but I think it was worthwhile. I think the extra time lead to an agreement that – it's a good agreement. I always remember that the perfect is the enemy of the good, and this was an occasion where I think we got good results for the citizens. I agree that

we are here as stewards for the citizens, the main objective was to receive the money that was due with interest, I think the interest rate is fair, it's basically the federal funds rate, if we had gotten the money two and-a-half years ago that would have been – we would have invested it, put in the bank and the maximum we would have gotten is 2 percent. So I think the interest rate is fair. I think the Golf Course has been losing money, and so I think that agreement in dropping the percentage rent made sense because it was never paid at any rate, and it's unlikely that the income from the golf course would be in the \$2 or \$3 million range for that to kick in. So, I'm very happy that we've been able to get to this point. Again, thank everybody for their hard work and looking forward to having good and harmonious relations with the Biltmore as we move forward. So at this point I think – are we going to vote on these as a package?

City Attorney Leen: Yes Mr. Mayor, and I'd like to make one small amendment, the date on the resolution will state today's date, which is December 19, 2011. I'll make that change right after.

Mayor Cason: OK.

Commissioner Cabrera: You want to make a change on page 6, which is known as Exhibit "A" on the resolution itself, do you want to put a date on that, because it's on the interest through, there is no...

Mayor Cason: It says 12...

City Attorney Leen: It's the 19th; we will put in the 19th there. Thank you Commissioner.

Commissioner Cabrera: Put in the 19th, OK. I wanted to catch that before we voted on it.

Mayor Cason: Great – with those amendments do I have a motion.

Vice Mayor Kerdyk: So moved.

Commissioner Anderson: Second.

Mayor Cason: Vice Mayor makes a motion seconded by Commissioner Anderson.

City Clerk

Commissioner Anderson: Yes

Commissioner Cabrera: Yes

Vice Mayor Kerdyk: Yes

Commissioner Quesada: Yes

Mayor Cason: Yes

(Vote: 5-0)

Mayor Cason: Thank you very much. The meeting is adjourned.

[End: 11:07:55 a.m.]