

**City of Coral Gables City Commission Meeting**  
**Agenda Item F-1**  
**July 13, 2010**  
**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, Patrick Salerno**  
**City Attorney, Elizabeth Hernandez**  
**City Clerk, Walter J. Foeman**  
**Deputy City Clerk, Billy Urquia**

**Public Speaker(s)**

**Gene Prescott, President of the Biltmore Hotel**  
**Daniel Ponce, Attorney Representing the Biltmore Hotel**  
**Reeder Glass, Special Outside Counsel to the City**

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F-1 [Start: 11:03:00 a.m.]

Discussion of Biltmore’s Request for “Interim Agreement”  
Mayor Donald D. Slesnick, II

Mayor Slesnick: The next item we are going to jump to F-1, which I told the participants we would set for eleven o’clock. This is a discussion item that I have put on the agenda as my own item. This will be addressing the issue of the request from the Biltmore, who requested that this item come to our agenda, because of their desire to reach an “Interim Agreement” as it is termed on the payment of back lease payments and/or rent, whichever you would like to call it, for the past some months that have not been paid; and their request is to come before the Commission and to talk with the Commission about coming to an agreement to move forward with paying those amounts of money back on a schedule. This will be my item and we will have a presentation by the Biltmore. We will have a response by the City and this will not be a public hearing and the Commission will take whatever action on this lease arrangement as it sees fit, if any. With that, who is speaking for the Biltmore?

Commissioner Anderson: Is it just the principals of the Biltmore?

Mayor Slesnick: Right.

Commissioner Anderson: OK. Sorry, I didn’t understand.

Mayor Slesnick: And can I ask either of you to give me a timeframe.

Mr. Prescott: Ten to fifteen minutes.

Mayor Slesnick: Ten to fifteen minutes is fine, and the city will take up to like amount of time. By the way the City Clerk has passed out copies of thirty-five (35) pieces of correspondence received by various Commissioners or the Commission as a whole, and the one thing that I would offer is this, that there are people who have come here today to either listen or to support the Biltmore, or to raise issues. We have received a copy of a full formal statement from Mr. Richard Namon that we will incorporate into the record, and if any person who has come here today wishes to, for the record, to put down what their purpose of coming here, whether it's to support what the Biltmore has to say when we hear it, or to not support what the Biltmore has to say when they hear it, or to offer us information as one person has already done, you may certainly fill out a card giving us your name and address, put down what your position is, and so forth, it will become part of the record, and we will so note that as part of the record. Mr. Prescott.

Mr. Prescott: Well, thank you Mayor and City Commissioners. My name is Gene Prescott, Biltmore Hotel. We've operated the Biltmore Hotel for the last eighteen years, as most of you know it's at 1200 Anastasia. Just kind of an overview before I get specific, in terms of what has happened and a little bit of history of the Biltmore, and most of you know virtually all of this. You know the U.S. Government conveyed this property to the city for historic preservation purposes pursuant to the Federal Surplus Properties Act, and the Federal government recognizing the difficulty of preserving historic significant monuments created this Act to ensure preservation and perpetuity by transferring stewardship of such monuments to municipal governments with oversight by the Department of Interior; and this Act provided local governments the opportunity to partner with private, for-profit entities to restore, maintain, and operate the monument. In the mid '80's, the city, your predecessor decided to enter into a 99-year lease with a private enterprise to operate the monument as a luxury hotel. In fact it was Commissioner Bill Kerdyk, Sr. who really led in great part that effort, a successful effort. The group invested over \$50 million dollars, it opened in 1987, unfortunately within three and-a-half years, the Biltmore was shut down again; and Barnett Bank who was the mortgage holder thought the Biltmore could be sold immediately, but it took a couple of years, and then they found out, and we assumed the lease in 1992, with no substantial changes, and we all remember the...we opened at the day of the hurricane, Hurricane Andrew, two or three months before we anticipated, we housed some of the families of the employees of the city, and we also had for those first few months, many of the workers who were working on cleaning up the efforts of Hurricane Andrew; and then in '99 the Country Club building was added, and the building most of you might remember was in disrepair and needed substantial rehabilitation, and we invested over \$12 million dollars in that renovation; and really about five years ago we had continued to invest in the property, but we really came to the conclusion that the current lease, and we learned that the current lease had been based on \$36 million, and yet the prior developer had spent over \$50 (million). We had further, the capital that we needed to invest to complete what needed to be done, and since then we have invested since 1992, over \$60 million. So in total there has been over \$100 million

dollars, \$110 million to restore this national historic landmark; and in addition to these millions spent on renovations, tens of millions, we have paid over \$17 million in rent to the City of Coral Gables. Now, it is clear, it seems clear that this business model and arrangement that we have does not provide for a sustainable preservation of the Biltmore; and I think all of you were members of the Commission about four or five years ago, we looked to find the solution in terms of doing development of some residential units, some parking, and of course as we started that project and then the market fell apart, although that could well be some good solution, that's not in the immediate future to say the least. So in fact, therefore, we've been, the last few years, have been discussing the need to redo the agreement with the city. The city has engaged PriceWaterhouse as a consultant, they are a serious group; I can report to you that we've had a lot of interaction with them. In fact, we furnished over 16,000 pages of documents to them and they have also additional request for additional documents, but they certainly are knowledgeable about the hotel business, and we certainly are awaiting their final report. So that we see that, that will take, and I know that the City Manager has estimated, he has some estimates whether that's a month to two months quarter of magnitude for that to be completed; and since, the other side to report to you, that we have continued during this, what we call in our industry I think as Commissioner Withers knows, the "Great Recession" in the hospitality business, which has been the most sever contraction we've had in our industry since the "Great Depression" in terms of depth and severity of that recession. We've continued to invest in further capital improvements, over \$3 million dollars since the "Great Recession", and by the way since the fourth quarter of 2008, really when the event of Lehman Brothers bankruptcy, our revenues have fallen for the last quarter of '08, Fall '09, and '10. We will have fallen from the base we had in '08 of about \$25 million dollars; and of course as you can all appreciate the nature of the structure of our business with a high fixed cost, you are going to have losses. What we have coming before you today, and asking you is to reschedule the rents on an interim basis, and to provide a stable environment for the continued successful operation of the Biltmore until more information is available to the city from PriceWaterhouse, and that we can enter into a serious and substantial discussion between the city and us. This agreement would immediately remove the current interference with our banking relationship and allow our lender to fund. The long term issue of how we need to examine together a fair, mutually fair, agreement then can occur in the time period after the receipt of the report from PriceWaterhouse, but certainly we need to align the interest of the city, the Biltmore and the Federal government. What specifically we wanted to talk to you all about was, and perhaps, did we give this list of items?- you have it?- the one page?- which list seven. Just to highlight them, it says of course what the definition and what the objective of this "Interim Agreement", is to provide for the continued operation and protection of the property until a definite examination could be done, certainly based a lot on what PriceWaterhouse reports. The schedule is \$3.9 (million), that's the total amount, and that includes not only the past due, which now is \$3.15 (million), but it includes what will be due at the end of the calendar year. In addition it will be the so-called true-up which is not due until April of 2011, but which properly so could be accrued as of the end of December of this year, and we showed the amounts there the \$3.2 (million) for the hotel and the golf management of about \$739,000. We request that we could start to pay in about two years, and continue to pay on each day of that quarter, and the reason for that is because of the, as I say, the continued difficult environment that we are operating and the forecast including from PriceWaterhouse is that although eleven will improve, we will not have substantial -- improvement in our business, in the hospitality business, until

twelve and thirteen. The suggestion as I said was to start in two years and to repay at the rate of \$500,000 a year, i.e. \$125,000 per calendar quarter.

Vice Mayor Kerdyk: So just a clarification. In the first quarter of 2011, you would start paying again at \$240,000 a quarter, then when it hit July 1<sup>st</sup> of 2012, in addition to the \$240,000, you would add another \$125,000 until that...until you pay it up, the \$3.9 million dollars?- correct?

Mr. Prescott: Correct. We suggested a project steering committee or a similar mechanism to facilitate the communication between the parties, and we suggest that upon completion of the PriceWaterhouse report that after the city staff does their analysis, they meet with us so we could discuss a sustainable model and agreement going forward. This "Interim Agreement" would not become effective, or let me say in a positive way, it would become effective upon receiving the \$840,000 from the current lender. So it will have to occur before as part of this agreement to become effective.

Commissioner Cabrera: Mr. Prescott, a question.

Mr. Prescott: Yes.

Commissioner Cabrera: If you go back to number five for me; create a project steering committee, what are your thoughts on that?- who creates a project steering committee?

Mr. Prescott: It would be, I think, with the city, and hopefully we could be some part of that, but we want to go and make sure we ensure communication.

Commissioner Cabrera: You don't believe, you don't believe that we are capable of doing that? I don't mean that in an adversarial?

Commissioner Withers: It sounded that way.

Commissioner Cabrera: Oh no, come on, I'm not being adversarial.

Mayor Slesnick: Not as your attorney, I advise you not to answer (laughter).

Commissioner Cabrera: No, I'm talking about us, the five of us up here, not anyone else; I'm trying to keep other....

Mr. Prescott: Yes, well we are coming to you of course because you are the Commissioners because we felt that we needed to communicate directly with you.

Commissioner Cabrera: And I agree, I like this, that's why I think we should be the steering committee and not anyone else. We were the ones who are elected by the people and they don't like what we do, they will show it at the polls....

Mr. Prescott: Thank you.

Commissioner Cabrera:...or recall or resignation as some has suggested.

Mr. Prescott: Danny was here, I was thinking in terms of rebuttal to, or perhaps, I don't know if rebuttal is the right word, but response to our...

Mayor Slesnick: Can you introduce yourself Danny.

Mr. Ponce: Let me introduce myself, my name is S. Daniel Ponce, I'm a partner in the Miami law firm of Legon Ponce and Fodimon, I registered as a lobbyist with the City of Coral Gables yesterday afternoon in order to speak on behalf of the Biltmore; our goal Mr. Prescott didn't lay out, would be, he would make the presentation and presumably you will have remarks from your counsel and your Manager and I would reserve the right if you will, Mr. Mayor, to allow me to briefly rebut things they might say.

Mayor Slesnick: Hopefully you don't have to rebut anything, but maybe explain.

Mr. Ponce: Excuse the legalistic term, comment.

Mayor Slesnick: And Danny since this is your first time, for some time, we just like to thank you for your services, as President of the Orange Bowl Committee couple of years ago.

Mr. Ponce: Thank you Mr. Mayor.

Mayor Slesnick: What that does for the community...yes.

Commissioner Cabrera: I want to stay with a couple more questions, not to Mr. Prescott, he answered and I appreciate that. The seven points that we are all looking at, has the City Attorney's office taken the opportunity to review these?

City Attorney Hernandez: We have met with Mr. Prescott and Mr. Ponce, our Special Counsel, Mr. Reeder Glass is here, and with the Manager, and we've gone over several of the points that they are bringing before the Commission today.

Commissioner Cabrera: Is your office, or the office of the Special Counsel, or the Manager's office going to provide this Commission with any kind of input regarding these seven items or is it...

City Attorney Hernandez: Yes we are.

Commissioner Cabrera: You are?- are you going to be doing that today?

City Attorney Hernandez: We hope to be doing that today; the Manager is prepared to comment and so am I, and Mr. Glass.

Commissioner Cabrera: OK – good. I’m sorry...

Mayor Slesnick: OK, we are going to move to Mr. Glass next. Mr. Manager did you...Mr. Manager.

City Manager Salerno: Thank you Mayor. Gene though first before we start, I have one suggestion for you as far as how to help turn around your financial fortune at the hotel. Have you considered renaming the hotel “The Lebrun Biltmore” (laughter)?

Commissioner Withers: That might work.

Mr. Prescott: You know we thought that sometimes on perhaps adding something to the name, but that’s actually under the lease and under the terms they want to keep it the Biltmore. We are open to any ideas.

City Manager Salerno: Mayor just very briefly, the City Attorney, myself and Special Counsel have had a number of discussions over an extended period of time regarding the general subject matter of the Biltmore’s finances. I think it’s safe to say speaking on behalf of the three of us that we are all in favor of keeping this facility the crown jewel of the city, and it is because we believe so that we also believe we must be financially prudent in our actions, and doing so we also have a fiduciary responsibility, at least certainly I do, in that we are entrusted with making recommendations to the Commission that are in the best interest of not only the Biltmore, but all the people of Coral Gables. I think as you’ll hear shortly the three of us, particularly the City Attorney and I are uncomfortable with a short-term fix without understanding how a loan would be repaid, and understanding a business plan behind supporting this. While we all believe and have been following a path of receiving the PriceWaterhouse study before taking any action, if the Commission is so inclined to consider such an approach, the City Attorney and I have asked Special Counsel and have worked with Special Counsel to discuss certain terms that we both believe any agreement should include. With that said as background Reeder, would you mind coming up and presenting those points for consideration by the Mayor and Commission.

Mayor Slesnick: Welcome.

Mr. Glass: Good to be back. Reeder Glass, Holland and Knight, Special Outside Counsel to the City with respect to the Biltmore. Mr. Mayor, Mr. Vice Mayor, Commissioners the purpose of our presentation today is based on a premise that the Commission is considering the request of the Biltmore regarding an interim agreement, and to put before you some provisions, or terms, or issues that we think as part of the consideration you should have before you as you deliberate and then as you decide to accept or reject or modify those provisions today or in a subsequent agreement. I’d like to start out with making sure that we all understand what is proposed to be deferred, and we prepared a chart...

Commissioner Anderson: Mr. Glass could I ask you a quick question, and you can continue? This interim agreement is not what we talked about three weeks ago with a forbearance or standstill agreement, is that correct?



Mr. Glass: That's correct. We've been told through the Biltmore that the lender prefers to have the city eliminate the technical default. As you know in the chart before you shows that the Biltmore is delinquent in the payment of rent and management fees totaling almost \$4 million dollars. The city is not declared the Biltmore in default, but the lender prefers to have a situation where rather than a forbearance, which should simply be that the city agrees to take no action for a period of time that they elimination of the technical default. The methodology that the Biltmore has suggested is a deferral and a time payment of those obligations as Mr. Prescott outlined. So it's on that basis that we are here now to discuss the terms and provisions of such an agreement should the city be inclined to act. I'd like to first start out and talk about the terms of the repayment proposal. We believe that in any situation where you are being asked and requested to defer a substantial amount of money that there are other provisions that would normally come with such a deferral and that we, in order to frame our recommendation to you look back at the 9/11 Interim Agreement, which as you remember was granted to the Biltmore after September 11<sup>th</sup>. In that agreement the city agreed to defer rent and they agreed to defer it for a period of 20 quarters, a 5 year period; they agreed to allow the Biltmore to commence payments approximately a year after the agreement was reached with them, and that they would pay beginning with the ninth quarter interest rate of prime on the deferred portion; and we think that in the context of this discussion that, that decision by this Commission is relevant to your consideration today as to whether or not the term of the deferral, when it starts and whether interest should be paid on the deferred amount. We also believe that any basis of going forward with the deferred amount should the Biltmore fail to pay any portion of the deferred amount, or otherwise default in the rent payment under the lease, that there will be an acceleration of the deferred amount, it would come to, and that the city would issue a notice of default for that default. This again was actually the same methodology followed in the 9/11 agreement for acceleration for failure to pay.

Commissioner Withers: When you say acceleration, are you saying of the entire lease?- or just of these past due amounts?

Mr. Glass: Well the...if there is a failure to pay rent under the lease, you call that a default and you demand payment for that. So what we are saying is since this is a past due obligation, the entire amount of the deferred portion would come due and payable, to distinguish from say one payment under the lease.

Commissioner Withers: So if there is a default of the agreement you are saying that the lease does not default, just this, does not accelerate, just this agreement accelerates.

Mr. Glass: It's an event of the default under the lease, because of the failure to pay, which is the next point I was going to cover that although we are deferring this amount, which may appear to be in some respects a time payment, under the interim agreement that we recommend the city to define this payment as, this deferred amount as rent, because the importance of the categorization of rent under the agreement is if it's not paid, its obviously an event of default under the lease, and furthermore should the lender have to step in as they did in the previous situation that Mr.

Prescott mentioned, they would have to bring the rent current, which means that they would be obligated to make this payment if the Biltmore did not.

Commissioner Withers: Let me make sure I understand this Reeder, because it's important to me. So, right now there is an acceleration provision in the lease, the current lease?

Mr. Glass: The current lease actually simply deals with a default of rent and a demand to pay rent; it does not in effect terminate the lease.

Commissioner Withers: OK. So, this agreement will have an acceleration clause in it...

Mr. Glass: Right.

Commissioner Withers:...that only affects the interim agreement, it doesn't put the whole lease into default, if they correct this part of the...

Mr. Glass: If they pay that then the lease would then be current again.

Commissioner Withers: OK. I just want to make sure it doesn't throw the whole lease into default.

Mr. Glass: Only if they don't pay it.

Commissioner Withers: OK. No, but if they pay it, then the lease is not in default.

Mr. Glass: Rent is a very short term default as you know under the lease. They have ten days to pay, if they don't pay the lender has twenty days to pay...its in that category that we think that characterization should continue even though we are deferring this amount of money.

Vice Mayor Kerdyk: Let me ask you a question, a follow up on Commissioner Withers. The master lease is of course on the Biltmore Hotel...

Mr. Glass: Correct.

Vice Mayor Kerdyk:...and the amount of money owed as of the first of 2011 will be \$3,200,000...

Mr. Glass: Right.

Vice Mayor Kerdyk:...There was an amendment to the lease I suspect for the golf management, is that correct?- we awarded the golf course to the Biltmore, what document did we use to...

City Attorney Hernandez: A management agreement.

Vice Mayor Kerdyk: As a separate agreement



City Attorney Hernandez: Yes.

Mr. Glass: Yes. You entered into a management agreement for the golf course. The management agreement is with an affiliate of your developer tenant under the hotel.

Vice Mayor Kerdyk: Let me ask a question. How do the two documents intertwine?

Mr. Glass: Not very well.

Vice Mayor Kerdyk: Alright – why not? By the way, I see that this as two separate issues, the Biltmore Hotel and the golfing facilities are in my estimation two separate issues; alright go ahead, I'm sorry.

Mr. Glass: Well they are two free-standing agreements that are not very integrated except at the lender level. The lender has got all those agreements and is a collateral assignment. So what they looked at as the collateral for their loan is a holistic one, that is, that the golf course needs to be part of the hotel like the tennis center, etc. So, the city has not integrated those two agreements as yet, but in effect they are in effect related to one another, and so we believe that since the Biltmore elected to stop paying on the golf course management agreement, which is a separate conveyance from the Federal government and under Parks and Recreation Category and not historic monument, that we now in the context of this agreement want to bring those two obligations together and treat them as rent for purposes of future enforcement and obligation payment.

Commissioner Withers: One last question. The Sunshine State Debt that's totally out of this, is that correct? I don't see it addressed anywhere in here.

Mr. Glass: Its current except as to one payment, which I was going to get into later on when we get to some of the collateral issues that have been around for a while related to the Greater Biltmore and whether or not at this point the City Commission would like to resolve several other issues that are related to the request by the Biltmore.

Mayor Slesnick: During this time period when the rent and the management agreement were not being paid, the Biltmore did in fact though pay last year's, I believe, payment for the Sunshine State Fund borrowing for the conference center, is that correct?

Mr. Glass: That's correct. I mean, just to fast forward, they did not pay a payment of about \$368,000, which came due in '08, because they wanted to have the city offset that payment against an override or overrun in the restoring of the bridges and the golf course which is \$382,000. So that payment has not been made and is still outstanding today, otherwise all the Sunshine loan payments have been made by the Biltmore. OK. So, the next thing is that because of the importance of this request and because we want to be sure that the lender is in sync with what the city is doing, we're suggesting that this be an amendment to the lease, as opposed to a side agreement, which is the way we handled it in 2002, the 9/11 agreement.

Mayor Slesnick: Which is the way we handled it, did we handle it there as an amendment to the lease?

Mr. Glass: No, we did not.

Mayor Slesnick: We handled it as a side agreement.

Mr. Glass: As a side agreement, that's correct.

Mayor Slesnick: You are proposing we do it differently this time?

Mr. Glass: Yes, as an amendment to the lease, because under the lease the lender has to agree to any modification of the lease and since...

Mayor Slesnick: And doesn't that blend into number 7 on their sheet that this wouldn't even be effective without the lender actually releasing the funds of \$800,000, so...

Mr. Glass: It is, but the funding under their draw request of about \$850,000 is the quid pro quo, so to speak, for the city changing its position, and therefore we expect that any agreement would be conditioned upon their funding of that amount. However, because we are also dealing with some other issues associated with the lease, we want to be sure that the lender approves this so that there is no question later on about the consequences of a default or anything else. So this is a document that we recommend we do as an amendment.

Commissioner Anderson: So it would be an amendment to the lease versus an interim agreement, that way it makes it....I got it.

Mr. Glass: OK. I think the Biltmore has already covered the fact that a condition of this agreement would be that \_\_\_\_ agrees to fund the interim draw, and allows them to use it as working capital at the Biltmore. We also want to have some assurance from the lender or from the Biltmore that the city's actions in deferring payment here operates to address any existing defaults under their loan; we want to make sure that, we are now dealing in a longer term process for them and that they are not in effect deeming their loan under default which would create other issues for us. I want to depart now from their items and deal with some other issues that have been pending for some time which we think this Commission ought to consider in their deliberations of whether or not to enter into an interim agreement. As all of you know the Biltmore has suggested in documentation that there is a basis from which they can require the city to repay to it or give it as a credit, \$17 million dollars, which is all of the rent that they paid since 1992. Irrespective of how you view that claim, and I've heard varying positions about whether or not it's a serious claim or whether or not in fact it has any legal basis, and I have a point of view about that, but the point of it is that any time you are entering into an agreement where you are changing a position with another party, you want to address all of these issues that are pending including those where there is a claim against the instrument that we are amending, especially when it relates to going back and retroactively requiring the city to return an economic benefit over seventeen years. So it's our recommendation if you decide to act, that you require

the Biltmore as a condition of deferral to waive any claim with respect to rent previously paid to the city, together with rent that they will start paying in the future, that's number one; number two...

Commissioner Cabrera: Can I ask you about that one for a minute? That is a claim made by them, but there has been no other action taken in terms of, any legal action taken to move that claim along, has there?

Mr. Glass: Not to my knowledge, no legal claim. I think that we all know that through primarily, but not solely the efforts of the Biltmore that the National Parks Service has become involved and has written some letters associated with the transaction, but no one has gone to court or filed any kind of administrative proceeding regarding this particular claim.

Commissioner Cabrera: OK.

Mr. Glass: But it's been voiced, it's been suggested that it would be applicable, and so we believe that the City Commission ought to consider as part of this waiver of that.

Commissioner Cabrera: And obviously you feel that way because you have reviewed it, researched it, and have developed our own legal position on it.

Mr. Glass: Well we have a legal position, Commission, but whether the claim is frivolous or designed for another purpose, if that's the case it should be waived, and if it's a substitute division that will impact the city negatively if it's allowed to proceed, it should be waived. So in either case no matter where you grade it on the scale of enforceability or not, it is not something, I think, you should leave on the table while you are changing your position in a substantial way on almost \$4 million dollars worth of obligations.

Commissioner Cabrera: OK.

Commissioner Anderson: So bringing it under this amendment to the lease, bringing in this item to take care of the outstanding issues that have been raised at several times under one umbrella.

Mr. Glass: Right – and to be....the city is not recommending that we seek to obtain from the Biltmore any waiver of the right to continue to seek an amendment to the lease, or to assert their theories of that going forward. They will do whatever they want to do and then the city will deal with it when it comes up at the appropriate time. But as to this which is just an arrearage issue, and which the city has taken, applied, relied upon for seventeen years, we don't believe that it's appropriate to continue to hold that over the city as we go forward. The other element having to do with this question of going forward is, entering into a deferral from our standpoint assumes that neither the Biltmore is in litigation with the city, nor has the National Parks Service or any other federal agency filed an administrative claim or any other kind of action seeking to modify, reform, or amend the lease. Should either of those events occur, we believe that, that should be considered an event of default under the lease, which would accelerate the deferred portion of the rent. Did I make that....The final item is in connection with the golf course issue. There are three

issues that have been around for some time with respect to the golf course. The first is that, in two quarters of '07, the golf course was closed and the two management fee payments of about \$185,000 total were not made by the Biltmore. The second issue is in the construction of the bridges, which occurred several years ago, the Biltmore incurred under their numbers \$382,000 in excess of the budget that was presented to the City Commission and which was approved; and the third item is the \$368,000 payment of the Sunshine loan that was withheld and not made for Fiscal Year '08. As to the first item, we are recommending that the city waive and agree not to collect the two quarter payments for 2007.

Commissioner Withers: That was \$368,000?

Vice Mayor Kerdyk: \$370,000....?

Mr. Glass: Its two quarters of about \$92,000 each, or \$185,000, it's not on that sheet; that sheet is the deferred portion that they want to include in the \$3.9 million.

Vice Mayor Kerdyk: So it's a total of \$185,000?

Mr. Glass: That's correct.

Vice Mayor Kerdyk: The recommendation of city is to waive that \$185,000, is that right?

Mr. Glass: As part of your consideration of the interim agreement.

Mayor Slesnick: It was waived by the City Manager, but not officially taken action on, the former City Manager.

Mr. Glass: The second point has to do with the cost overruns for the bridges of \$382,000. The city is entitled under the lease to interest at the statutory rate for all unpaid rent, and we prepared a schedule...this is a schedule that starts with the cost overrun number per the Biltmore and then does a calculation of accrued interest on the unpaid rent under the Biltmore lease, and the section that imposes rent, I mean, interest is section 4.9 of the lease; and we calculated it out at two – three different times: to date which is the \$212,000 number to 12/31/2011, which is a little over a year from today; and then 7/1/2012 which is the date that they have asked for the commencement of the payments. The city believes that a fair outcome of concluding the dispute with respect to the cost overruns is to offset the rent accruing under the unpaid rent against the cost overrun of the bridge, so that when it's all said and done they do not owe past due interest on the rent that they have not paid, and the city does not owe them a reimbursement of \$382,000.

Commissioner Withers: Which is for the Sunshine State Fund?

Mr. Glass: No. The Sunshine State Fund is the third item; this is for the cost overruns that they spent in the construction of the bridges.

Commissioner Withers: I got that, we got that.

Mr. Glass: The third item is that the Biltmore still owes the city \$368,000 for the Sunshine State Fund loan payment that they did not make....

Commissioner Cabrera: Which was withheld.

Mr. Glass:...and which they want to offset against the \$382,000; in other words they don't pay us the Sunshine State Fund payment of \$368,000, and that's an offset against the \$382,000.

Commissioner Withers: That's against the bridges.

Mayor Slesnick: But your suggestion is different; your suggestion is we offset the bridges for the interest.

Mr. Glass: Exactly.

Mayor Slesnick: That means that they still have \$368,000 for the Sunshine State.

Mr. Glass: That's correct.

Mayor Slesnick: And that's not at this time added to the repayment schedule, but I presume that could be?

Mr. Glass: Yes, it could be added, depending on what the Commission wanted to...another obligation of the Biltmore and it has no legal connection to the overrun of the bridges.

Mayor Slesnick: I understand. I appreciate that.

Commissioner Cabrera: And on the overrun of the bridges, my memory serves me correctly, we did consult with a third party to provide their recommendation on, if in fact there were overruns or whether....I recall that we got into a "he said-she said" kind of thing, and we hired an outside consultant. It may have been a real estate consultant or engineering or a combination thereof, and that consultant provided some input.

Mr. Glass: You remember this matter was brought before you in an original budget which you approved. As the result of the process of constructing the bridges, there was a cost overrun of \$382,000 which the Biltmore paid. In seeking to resolve that, the Biltmore hired Ford Gibson, who is a local builder/developer to go in and analyze what they did in the process and come up with a....construct what the fair amount of what the overrun was, and I believe this is his number. The city conducted its own internal analysis of what the bridge cost should have been had they done it in accordance with the city's expectations, that was a lesser number. We have not yet ever come to a process of resolving that. Now in the March interim agreement that the Biltmore provided to us, they established a mechanism for trying to resolve this, either negotiation or arbitration. We are suggesting that we can do it by that method if the city is so inclined, or we can just simply offset the interest they owe us on the rent they haven't paid

against that obligation, which in effect is substantially more than \$382,000, which means we don't have to argue about if its \$382,000 or \$234,000.

Commissioner Cabrera: Were those the differentials, \$382,000 versus \$234,000?

Mr. Glass: Yes, I think it was...I think it was \$234,000 is the number we came up with as the cost should have been less what the budget was.

Commissioner Cabrera: I never got that, I just was curious how.

Mr. Glass: I guess this is kind of like trying to wrap all of these things up into one process so that at the end of the day we are going forward without any history of open items, and without any claims for past due payments to the city; we just kind of now forward looking on what is going to be the next iteration of this process.

Vice Mayor Kerdyk: So we have the \$3.9, we have \$185....

Commissioner Withers: Wait, slow down.

Vice Mayor Kerdyk: We have the \$3.9 (million) that's separate, the \$3.2 (million) for the Biltmore, the \$739,000 for the golf course, which is from January '09 to December 31, 2010; then we have the two quarters of '07 that they weren't open that total \$185,000, that staff recommendation is that we go ahead and waive that, so that's gone...

Commissioner Withers: They never paid that.

Vice Mayor Kerdyk: They never paid that, they never paid that.

Mayor Slesnick: Reconfirm a past waiver.

Commissioner Withers: How's that?

Mayor Slesnick: Reconfirm a past waiver; it was waived once by City Manager action.

Vice Mayor Kerdyk: Then we have \$382,000 overrun on the bridge issue that's an issue between the two parties, and our proposal is that we take the interest that is owed and offset that bridge overrun, correct?

Mr. Glass: Correct.

Commissioner Cabrera: Don's got a couple of valet parking receipts that he....(laughter)

Commissioner Withers: On the interest – are you talking about the interest to 11 or 212?

Mayor Slesnick: 212.

Mr. Glass: Well, I gave you two calculations...

Commissioner Withers: He just said you are waiving, you are trading the bridges for the future interest, so is it 211 or 212....?

Mr. Glass: We are trading all of it, basically all of it. We are not trying to make it even dollar for dollar; we are trading all of it.

Vice Mayor Kerdyk: OK. And then the final thing is that in addition to the \$3.9 (million) we have the \$368,000 that's owed to the Sunshine Bond Fund for the conference center that is still an outstanding item, correct?

Mr. Glass: That's correct.

Vice Mayor Kerdyk: So you got that?

Commissioner Withers: Yes.

Mayor Slesnick: Thank you Reeder.

Commissioner Withers: But future Sunshine State payments are going on right now, they are not going to be deferred to 2011-2012?- they are happening right now.

Mr. Glass: And the Biltmore has been paying those on a regular basis, so I don't think that has ever been part of the equation relative to the rent.

Mayor Slesnick: Thank you. Danny, you have a few minutes.

Mr. Ponce: Mr. Mayor, Commissioners, thank you for allowing me to appear in front of you. Obviously a couple of the high points that Reeder brought up just for....First and foremost the 9/11 agreement that you all entered into with the city, between the city and the Biltmore also had a provision in there that the capital expenditures that the Biltmore had made could be used to credit it off against the obligation, and in fact that was the way that, that was resolved. So Reeder is correct in what he said, but unfortunately there was one part of it that didn't get mentioned to you. So you are all very wonderful and kind at that point to do that, the ultimate, the capital expenditures was what was used to offset it has been done, that has been repaid and that's past chapter. Frankly, that was the sort of the methodology that we were attempting to use when we started proposing an initial interim agreement several months ago. So we don't believe that's "apples for apples". To charge interest today on the \$3.9 million to accrue it to put it in there, we believe anything in the way of interest should all be captured in a new master agreement, my words not necessarily the correct terminology, that we need to do. We all agree that PriceWaterhouse report is important; we all agree as Mr. Prescott said earlier, we delivered over 15,000 pages of documents, there's been meetings, conversations, analysis going on, we need to wait for that, for the global solution, but this interim solution is something that needs to be done



today in order to get us where we are at today down the road and continue our relationships with our vendors. As far as the failure to pay, we believe that it should be characterized as rent, we believe it should be in a separate agreement, and we believe that if we start amending the lease and we start going to the lender and trying to accomplish that in a timely fashion, remember our goal is to get the lender to agree to advance \$850,000 more or less on the future advances clause of the first mortgage; we need to secure those dollars on a very important basis as you all know for the interim solutions. So some of these notions, some of these concepts that Reeder and I have talked about, Liz and I have talked about, and Pat and I have talked about them, we don't disregard them as being something that should be brought up, but we just don't believe that today is that day. The golf course agreement, I think Reeder uses the term overruns, I use the terms of what it cost to get the bridges done in a timely basis, though the city originally was going to take care of the bridges on the golf course renovations. It became obvious the city was not going to get it done on a timely fashion. As we all know the course was closed for two quarters. At that point, the management of the city turned to the Biltmore and said, please get this done, it got done. We've had conversations when Pat first became Manager to try to discuss the amount of it, to try to negotiate something. We hired Ford Gibson, I believe jointly, not just by the city, in an effort to get some conversation going as to what the amount may or may not be, what's a fair number?- could we resolve it? We didn't resolve it. The next step was an attempt to perhaps go to a mediation, but just to arbitrarily put upon us now that's the number and we have to absorb it and set it off, we believe that's mixing "apples and oranges" and this agreement should not have that in it, that, that's something again that we can address as part of the global solution, which I think we all want to go here. Commissioners, we all know that this is not an easy decision for anybody to make. The one thing I don't want to be lost in the room here is that Commissioner Kerdyk to your point Mr. Vice Mayor, that commencing Q1 the Biltmore will make its regularly scheduled payments that its always been making. Commencing July 2012, we will additionally commence this quarter. So for the next fiscal year, for the next calendar year the city will receive \$1 million dollars, and for the next fiscal year because it will only be three quarters of it, \$750,000. This is all being done, and obviously, because we know we have an obligation, the city we are your partners, we are your tenant, but I think all of us have had conversations that we need to rework this agreement, and the master agreement needs to be done, it needs to wait until the PriceWaterhouse, this is an interim solution for a minimal problem and on behalf of my clients, I would encourage you to please accept it and adopt it. Thank you.

Mayor Slesnick: We are going to go into a discussion period and what we are going to do is this, we are going to take a five minute stretch break just so that members of the Commission can clear their heads, and be prepared. I will ask the Commission to cooperate and let's leave it at five minutes and we need to move forward, we have a Budget Workshop, and we have some constraints at the end time of the Budget Workshop, which are important to get to certain things before that, so we will be back in five minutes, we'll try to make this a quick discussion, and I did want to recognize former Senator Margolis who has graced us with her presence a while back and I did also want to welcome former U.S. Ambassador to Belgium Paul Cejas is with us today, Paul thank you for being with us. With that five minutes and we'll be back.

[Note for the Record: The Commission took a five minute break]

Mayor Slesnick: Does anyone want to take a first shot? Do you want me to take the first shot?

Commissioner Anderson: I don't mind sharing, go ahead.

Commissioner Cabrera: What is this?

Mayor Slesnick: This was given to us by the City Manager.

Commissioner Cabrera: OK.

Mayor Slesnick: It was a capsulized version of what Reeder talked about.

Commissioner Cabrera: OK.

City Manager Salerno: These are the City Attorney and City Manager's items that we think should be concluded in any interim agreement approach that Reeder went through.

Commissioner Cabrera: Do all sides have a copy of it?- Mr. Ponce; I guess that's what you are looking for.

Mayor Slesnick: Mrs. Anderson.

Commissioner Anderson: I'm glad this discussion took place, that way all of our views can be put out in the open on this very important subject. We're put in a kind of interesting scenario, we are partners with the Biltmore, but we are also responsible for the operations of it, and the fiduciary responsibilities to the residents, the rest of the residents of our city. So it's a unique situation. I definitely want to resolve this issue to the benefit of all. The story has changed throughout the time as we try to find a solution to this. I am comfortable with the terms as described by our Special Counsel. I cannot... I want to accelerate it as much as possible as far as getting this done, but this provides me with a level of comfort with the protections from the city, yet providing the Biltmore some type of relief in their payment. I can't not waive these things, but I can certainly ask for this particular, for these terms to be agreed to; I can't support the terms as presented here, that's pretty much all I have to say.

Commissioner Cabrera: And you don't even want, I don't want to try to put you on the spot, you don't even want to go through a process between the five of us?

Commissioner Anderson: Oh, of course, I'm just telling my point of view.

Commissioner Cabrera: Oh, OK. So your starting point is that you just can't support the seven items.

Commissioner Anderson: Right. But I can support an accelerated version of this to help.

Commissioner Cabrera: Now, because you were nice enough to start, can you support some of these items?- some of these seven points? I don't mean to put you on the spot because there are a couple that I have indigestion with.

Commissioner Anderson: You know, I don't....I'm not quite sure...

Mayor Slesnick: Well some of them overlap.

Commissioner Anderson: They overlap because it talks about repayment, it talks about putting things together, the only thing I definitely couldn't support is the steering committee...

Commissioner Cabrera: OK, we both agree on that.

Commissioner Anderson: And the issue of any future change to a new discussion on business would have to be on the successful completion of the PriceWaterhouse hearing that the information that we get is good and hopefully will be, and I look forward to that, but not at this time, but I can't promise that right now, but I look forward to that happening. Right now, all I'm prepared to do to help the Biltmore and to protect the city is this type of agreement.

Vice Mayor Kerdyk: Can I ask you a question?- just since you were nice enough to volunteer.

Commissioner Anderson: So I get to be the guinea pig.

Vice Mayor Kerdyk: Yes. So are you comfortable with the monies that they are asking to defer into July of 2012?- and I'll ask you the question and I'll answer it myself at some point...

Commissioner Anderson: Why don't you answer it Commissioner Kerdyk, I'll be satisfied.

Vice Mayor Kerdyk: I'll go ahead and do it; I've always tried to be very upfront on this issue, I mean, that all of us strive to making sure as we move forward and hopefully in the very foreseeable future, that we make this model as Gene said, mutually fair and sustainable model and as Danny said globally acceptable. I think that, that is the ultimate goal in the future to get to that, but the question is, what have we done in the past?- and what do we need to do, so that the residents of the City of Coral Gables don't shoulder the full responsibility as we approach the budget time, and that's not a pleasant experience whatsoever. My issue here is, I look at this two-fold; I look at it as really three, as Chip said, the \$3.2 million dollars for the Biltmore Complex, the \$368,000 for the conference center, and then the \$750,000 for the Biltmore Golf Course, which I see totally different than the other two issues. I have no problem trying to work out a schedule that's little bit more aggressive than the one proposed for the Biltmore Complex. What I need to see is some cash into our coffers at least for the Biltmore Complex because I see this as a commercial enterprise, an enterprise that we could have had another establishment out there and working and paying us rent. So I see a totally different section as far as that goes, and I feel comfortable saying, yes, the Biltmore Hotel we want to see survive and I could see delaying the payments there as we've done before in subsequent agreements, but the fact is that I do think that some of these other points of contention and some of these monetary issues need to be resolved

before we move forward with that. That's where I'm having some issues there, and I've said that all along and I want to be very clear on that.

Commissioner Anderson: You've been very clear on that.

Vice Mayor Kerdyk:...but the ultimate goal is to make sure that the Biltmore runs and is as good a facility as it is now as in the future, I just have that issue with regards to the commercial establishment of the Biltmore Golf Course. So that's just my general overview of the financial ramifications here.

Mayor Slesnick: Let me take a shot. I spent a couple hours with Reeder yesterday, so his summary wasn't as a surprise to me and I've tried my best to work through, we've seen proposals from the Biltmore. I actually hadn't seen this seven point thing exactly in this outline until today, but it incorporates many of the things that have been said to us previously, and you know, I agree with you Bill, that the golf course, and I have said this to the management of the Biltmore, I agree that the golf course is a different category than the hotel, I also think that the payments to the Sunshine Fund is a different category too. On the other hand if we are talking about, and if we believe and I would think that part of what we are doing today is an exercise in faith and in good faith, and if we believe that the recession has impacted the Biltmore as they have told us it has, and as we've seen it; and I mean, we've heard from the President of the Greater Miami Visitors and Convention Bureau, we've heard from other hoteliers, we've heard from people in the industry saying this isn't a fake assertion, it is a bad market, hotels have been hurt; this hotel has one thing as a strike against it from the outset that other hotels may or may not have and that is it's a historic property, which requires an excessive amount of work to keep up. So in assuming that they are being accurate and truthful and honest with us, which I'm going to assume, everybody positions themselves, but I am going to assume that the underlying reason we are here is true, and that is it's a bad economy and they lack funds, pure and simple. So even though I do distinguish between the different reasons for the funding, if they lack funds they lack funds, and to help them get through this, if I'm going to consider postponement of the rent then it might as well be postponement of everything, that's my thoughts. So here's...I'll just go right through what I can agree to and what I can't. You know, I can agree to the proposed schedule of repayment and I will say as a subset set of comments to this is that we don't have the \$4 million dollars today, give or take, I don't see any promise of getting the \$4 million dollars, except for this proposal set before where the Biltmore says, we'll come to the table, we've had a hard time, they tried not to pay us the \$4 million previously, they tried to say let's offset some of our cost of upkeep, but now they are saying they will pay the whole thing back, we just need an extended lengthy period of time, and my position is its better to get it back over an extended lengthy period of time if we can count on that than it is not to get it. So I can agree with their schedule that they have proposed starting 7/1/2012, quarterly payments of \$125,000 a year. The thing that I will say that I appreciate that they've come forward and agreed to in this proposal, and Reeder and I have talked about it, because it was something that was important to me is that they will go back on their payment schedule on a date certain, and that is January 1, 2011, that they will begin to pay, and I hope they can do that. We haven't talked about it, but let's face it there could come a moment when everybody throws up their hands and just says we can't do it, but they are going into this agreement saying we'll will come back and start paying 1/1/11. The Biltmore will, as I

see it, as I see it, this extended payment over a period of time it will include all their back due payments, all of their back due payments as of 1/1/11, so that we can combine the totals of what they owe us for the hotel, the management lease and the one payment of the Sunshine Fund is what they owe us, and we can just wrap that up into the payment schedule. I have to tell you though that starting today, this would be a separate thing for me, that they need to pay the Sunshine debt, except for that one two-year old payment that we can wrap up, they need to keep paying the Sunshine debt as it comes due, and I don't know when it comes due, but if it comes due before 1/1/11, it needs to be paid, because that to me is in fact a separate issue and very important, because that payment goes through us to the State of Florida, well not the State but the Sunshine Fund, which is a statewide organization of cities. I do believe that the payment deferral is and should be considered part of the lease, and that by defaulting on the payment deferral would be a default on the lease, and that the lender would stand in the operator's shoes for covering the default.

Commissioner Withers: So you are saying an amendment to the lease.

Mayor Slesnick: Yes, I mean, if I could be convinced that an agreement could be as effective and binding the lender's hands and that would be OK; I don't have the technical knowledge that Reeder and Liz do as far as what we have to do to ensure ourselves of the future of this deal, but I'm not hung up on one or the other, but I do need to tie the lender into this; and I have to say, this is going to come as something harsh for my friends at the Biltmore to accept, but it should be no surprise, but I support Reeder's proposal that they give their \$17 million dollar claim up now. I expressed this to Mr. Prescott when he wrote us a letter, I expressed my gentle outrage at the even suggestion of the \$17 million dollars, he and I had a long discussion about that, he knows my feelings about it, and by the way my outrage had nothing to do with Mr. Prescott's sincerity or his good faith in putting it forward, but I felt that from the outset it was a red herring that should not have been entered into this discussion. I would agree that we can trade the interest for the cost overruns of the bridges, and I would also give up the two quarters of the management of the golf course because our former City Manager already, and I believe in good faith, entered into that agreement when the golf course was closed for construction, and so I would not want to go back and undo that what was considered to be a decision, even if not properly concluded.

Commissioner Cabrera: The only thing I disagree with you on is the good faith part.

Commissioner Withers: Is the what?

Commissioner Cabrera: The good faith part.

Mayor Slesnick: On what?- on which issue?

Commissioner Cabrera: On the two quarters of forgiveness, which incidentally I'm willing to...

Mayor Slesnick: Well, I'll strike the good faith part as an outreach to you.

Commissioner Cabrera: You don't have to, you don't have to outreach.

Mayor Slesnick: OK. I would agree with my two fellow Commissioners that have spoken already, that I reject the idea of a committee, and I will be very upfront, I don't think the City Manager will disagree with my interpretation; the City Manager is working very hard on behalf of the citizens to do a number of things to better prepare himself, to have discussions with the Biltmore about the long term fix and solution, but I can assure you that I and I know for a fact that other members of this Commission have urged the Manager, as we have urged the Biltmore, to get on as best we can and talk about the long term security and safety of the Biltmore financially, and my pledge to all the citizens of Coral Gables, to the Biltmore and to my fellow Commissioners, I will not change in that position that I will continue to urge fast, fastidious negotiations or discussions or whatever, to approach and determine the future of the Biltmore Hotel and its leasehold.

Commissioner Cabrera: You and Ms. Anderson brought up an interesting, both of you have brought up a lot of interesting comments, but one that resonated with me had to do with the audits, and I do have a question of staff, and that is, well let me take a step back, for those in the audience two things has occurred, one is, the City of Coral Gables Internal Audit Department proceeded to conduct an audit of the Biltmore Hotel, and secondly and most recently, the Biltmore Hotel is under an audit by PriceWaterhouse. In both cases my office knows nothing of the outcome of either one; first of all the internal audit was just recently completed and I believe that audit was submitted for review to the Biltmore personnel, the PriceWaterhouse audit is not completed as of yet. So my questions are, where are we with the internal audit process?- and my second question deals with where are we with the PriceWaterhouse audit process?

City Manager Salerno: I'll be glad to answer those and again Commissioner, I think, I know you and I have discussed these matters, and I'll give you the same answer that I did before...

Commissioner Cabrera: Well, we discussed them on Saturday.

City Manager Salerno: No, we discussed them some time ago as well.

Commissioner Cabrera: No sir, we discussed the internal audit on Saturday afternoon after my ride, because I took notes and we talked about the internal audit at that time.

City Manager Salerno: Commissioner, the day that the internal audit report, the draft internal report, it is not final, it is not a public record, that day I called every Commissioner, talked to every Commissioner...

Commissioner Cabrera: I know you did, but we had a subsequent conversation.

City Manager Salerno:...except for Commissioner Kerdyk, who I think was out of town at the time. What I explained at the time was the draft report was done, I was not going to submit it to the Commissioners, if I submitted it to the Commissioners the draft report would be a public record. I felt was only fair that the Biltmore had the opportunity to respond, and that our draft report should not be going out as a public document without the benefit of their response. That's



what I felt, I took that on my responsibility; counsel advised me to give it to the Commission at that time, I felt it wasn't the fair thing to do. The fair thing to do was give them an opportunity so that the media or anybody else who looks at it has the chance to see our auditor's comments and the Biltmore's comments at the same time. The problem is we need to give our internal auditors the opportunity to consider the information that comes from the Biltmore that may change their opinion; they may think differently, they may take an item out based upon what the Biltmore does. So I think it's the only fair and prudent thing to the Biltmore and that's what's going to govern our relationship in dealing with them. What I had also discussed with members of the Commission was that the PriceWaterhouse study and the Biltmore representative know this as well, that as soon as they get information, their latest information request, which was in the two and-a-half ago week time period, that it would take them 30 plus or minus days to complete, they are making a judgment as to what the information is going to say in it, but that's the timeframe. PWC has had a conversation with the Biltmore recently and they have indicated, I think, that they hope to have a response to the information requested by within the week, I think that's safe, and Gene is acknowledging that. So within a week if that timeframe is met, if their questions have been answered adequately, then PWC is in the 30-day plus or minus response. That's where we stand, that's the information I've given everybody on the Commission, it hasn't changed, and we are looking forward to getting the information from PWC, I think it's going to be an asset to this Commission, to the city, and to the public as any deliberations may proceed. I also think the audit report will be useful as well, and I think the way we proceeded has been the fair approach to all parties, and that's what we are going to be, we are going to be fair. If I had started to brief Commissioners individually on what's in that report, it may turn out that what I have seen already gets removed and may not even be a concern. So that is the way you do audit reports – draft report goes to the person being audited, they have a right to agree, disagree, and comment. Once that comes back auditor will make judgments, they can accept, they agree, but you get both parts, you get all the information at one time so they aren't any misinterpretations. So that's the process we are going under, but the report is not final; the final report would make it a public record and it just simply isn't fair to the Biltmore for them to have to have their response catch up to the report, and as we all know with the media their comments won't ever get caught up, they'll be trying to get somebody to listen, and I don't think that's fair, that's why we approach it that way.

Commissioner Cabrera: Commissioners when I spoke to the Manager on Saturday, I believe the purpose of his call to my cell phone was to obtain or to ascertain my position regarding the Biltmore Hotel, and at that time I didn't have a position because quite candidly I didn't have the documents that I have with me today; and we did talk about or I talked about my concerns with the fact that with regards to the internal audit, I was getting a lot of information from one side, and that side was the Biltmore Hotel, but I was not getting any information from the city, and the Manager is correct, he did say that he was trying to be fair, and he was trying to be fair to all parties, and that he was in a position at that time that the document should not become a public document until the Biltmore Hotel had an opportunity to review it and provide feedback. Once again though, I am getting it from one side and not the other, and secondly, we did have a conversation about the PriceWaterhouse audit and I did ask when did we anticipate a response, and I was told that response will be given after the Biltmore had an opportunity to provide some answers, which I believe they are in the process of doing, and that would approximately take 30



days. The problem that I have is that I'm working with very little information, I think we all are, and we are all up here trying very hard to come up with a solution that's fair to all parties, the Biltmore Hotel, this government, and most importantly the people of Coral Gables. So it's hard, it not impossible, but it's very hard to make decisions with limited information; and some may look at it as a way to be fair to all parties, others may look at it as a way to remain in control over a process, that decision or that judgment is solely up to you folks, but I just want to be very clear as an elected official in this city that has three constitutional officers reporting to him of what went on between us on Saturday. So now that I got my answer, I'm very comfortable Mr. Mayor with the comments you've made with regard to the seven items; I share the same concerns Ms. Anderson shares, I also have no qualms with doing away with that special committee, I think that she is absolutely correct, I think you are too, I share some of Mr. Kerdyk's concerns with the monies, but the bottom line is, I don't see an easy solution on this one and so if we are going to proceed we have to proceed fairly quickly because this has really dragged on, and I will also say for the record that this Commission at one time or another, every member of this Commission at one time or another, because I've seen it in a public forum, has attempted to move this process along with absolutely no success, and I think Mr. Prescott without insulting your team, I think you are just frustrated and that's why you threw in that special committee, you somehow thought that maybe another committee would be able to navigate these waters much easier than this elected body, but you know what, we are the ones that got elected, so I don't want to put this project on anyone else that we may appoint for political or personal reasons, and so having said all that where do we go from here Mr. Slesnick?

Mayor Slesnick:...Chip, he hasn't said anything yet and then we are going to conclude it.

Commissioner Withers: Ralph how do you feel about the....I think I know how Maria feels, and I think I know how Bill feels, and I know how Don feels about the relinquishing of their claim on the \$17 million dollars in the past?

Commissioner Cabrera: Well you know, it's an interesting question and I posed it, kind of posed it to Reeder from the standpoint from a legal position, and obviously he was forthcoming in saying there was no legal issue out there. I'm always torn by it and here's why, because I read the letters from the Department of Interior, the National Parks Service, I've met with the Biltmore folks, Mr. Prescott and Mr. Kay and others from on their team, I have certainly spoken to the City Attorney, and I have certainly spoken to Mr. Glass on this item, and I believe that both the City Attorney and Mr. Glass have made me comfortable with our position as it relates to that really does not have, or the letters that have been written by the Federal government do not project the intent of the past monies, the \$17 million that we are referring to, but bluntly speaking I'm just very torn about it one way or the another. I can see our side of the argument and I can see theirs, and I can also see all the things they've done to try to protect this landmark time and time again.

Commissioner Anderson: That's absolutely true. I am as equally torn, but at some point we've got to put some of these matters to rest...

Commissioner Cabrera: To rest.

Commissioner Anderson:...and then move forward on a better more solid footing to try to help the Biltmore, but also make sure that we are fiduciary responsible.

Commissioner Cabrera: I'll throw it back at you.

Commissioner Withers: Well, I'm kind of more in your camp and Don's camp than I am in Maria's camp and Bill's camp on this....

Commissioner Cabrera: OK.

Commissioner Withers:...and so I'm trying to obviously understand where Don is on the \$17 million, and so I'm kind of....puts me in the same camp with that aspect.

Commissioner Cabrera: I think all three of us probably share....

Commissioner Withers: I think....

Commissioner Cabrera: You know, it's uncomfortable to move forward with something like this if we have that hanging over our heads.

Commissioner Withers: Don, you didn't mention anything about the accelerated, or maybe you did and I missed it, the acceleration of the interest, the acceleration, if either the federal government....

Mayor Slesnick: I didn't, but I will be willing to have that in there.

Commissioner Withers: Let me tell you how I feel, I mean look, my biggest concern is the overall long term sustainability of the Biltmore, and I'm really more concerned about that than I am this; and I'm not trying to scare anybody or anything like that, Gene and his group, Seaway, had this going for seventeen or eighteen years, and even in the really, really good years I haven't seen huge money spin off of it, whenever there is a real blip in the economy whether its 9/11 or whether it's what we've gone through recently, this place really hemorrhages and it's the reality. I think the issue of the debt versus the equity is probably what we are going to learn from PriceWaterhouse where all that is. Saying all that, I think, let's kind of refocus, I think, what I'm trying to do is what our original plan of this interim agreement was, whether it was the forgiveness through capital improvements or whether it's this leopard now that's changed its spots a little bit. The key is we want to try to get the Biltmore out of default, so that the lender can release money, so isn't really whatever we come up with has to be approved by the lender, right?

City Attorney Hernandez: Right.

Commissioner Withers: So really you know, we can move this thing around the way we want, but unless they really sign off on it we're back to square one. So saying that, and my last

comment is, I think that in three months or four months we are going to be right back here again looking at the big picture, the global solution that Mr. Ponce said; and I'm not saying we'll never execute this agreement in 2011 or 2012, but I just have a very strong feeling that whatever terms and agreements we agree to today are probably going to be amended, and probably be changed, and probably be rewritten; I don't know if you all agree with me or you don't agree with me.

Commissioner Anderson: For me it's a two step process.

Commissioner Withers: It's going to be different to what we even agree to today. So my goal today is to get something that's palatable for the lender to release the \$850,000 or whatever they are holding up on their capital improvement funds, to get that released so the Biltmore can make it through the next three or four months that will take us to the next step. That's the approach I'm taking. I understand the city's position, Reeder's position; they don't want to give up too much right now, so that it puts the city in a difficult position four months from now.

Commissioner Anderson: Right. I had envisioned another thing happening, you know, a few weeks ago there was another solution on the table which ended up today not being the case; and all along actually in conversations, and the last conversation I had with Gene was, if I remember correctly, we were looking at a forbearance, terms to figure it out, that changed, the name changes whatever it is, it's still an attempt to try to get them their monies, but we also have to get our repayment, we have to put a schedule to it, and I hope that the lender will release that and get us going. I see it as a two step process; I see it when PriceWaterhouse comes back to see if there is another, if that is something that bears out positively, which I hope it will, that will be a look at the business model.

Commissioner Withers: Well you know Maria, whether it does or whether it doesn't we have to do something.

Commissioner Anderson: And I have a confident feeling that it will be alright, and we'll be able to relook at it.

Commissioner Cabrera: I'm looking forward to that report too, but what happens when that report comes and it doesn't tell us what we really want to know, then what do we do?- do we start at square one again?

Commissioner Anderson: Well my understanding is the business model working?- and I think we've all kind of looked at it and it may not be working right now.

Commissioner Cabrera: I don't think it was working in the '20's (laughter). No, I'm serious.

Mayor Slesnick: Definitely wasn't in the '30's.

Vice Mayor Kerdyk: But you know what, I think there is a disconnect from the general public also, because here you have a beautiful structure that's run very efficiently, and for sixteen years we never heard anything about it, and then all of a sudden we have problems, and shame on you

for not telling us earlier, and you are the first one that admitted that, hey, we should have come to you five years ago...

Commissioner Cabrera: They were trying to make it work.

Vice Mayor Kerdyk:...they were trying, you're right, but that's the public's vision, that's different from my thought process outside the Biltmore, the golf course, etc.

Mayor Slesnick: And you know what ties into that when you read these thirty-five or so messages we've got from citizens and from people, the general theme is Bill, just to support what you are saying, the general theme is this is the greatest place on earth, this is the place I take my family, this is the place we eat at, this is the place we go to the pool, this is the place...it is run well, its run efficiently.

Vice Mayor Kerdyk: But to encapsulate my thoughts....

Mayor Slesnick: So they miss the fact there is a problem.

Vice Mayor Kerdyk: Right, right. To encapsulate my thoughts, when we are spending so much money on this PriceWaterhouse, that's going to ultimately tell us what's going on, it's going to tell us the Biltmore is being run well, there is a deficiency there because there are too many capital improvements that need to be...all those things line up, that's good, it's unfortunate that report is not received now instead of sixty days or ninety days from now because maybe all of our minds change a little bit, but that's the situation.

Mayor Slesnick: Chip, why don't you lay out for us what you propose.

Commissioner Withers: Well, I think it's a smorgasbord of what everybody has kind of agreed there, Don.

Commissioner Cabrera: Well then would you....?

Mayor Slesnick: Do you support what I said?

Commissioner Withers: Yes, I would....

Commissioner Cabrera: Conceptually, I think we support each other on many issues, but do we want to work off of...

Mayor Slesnick: But what I was going to suggest, the Clerk has what I read, Chip's added the acceleration feature, and we give Reeder a week, we are going to address this in a few minutes, we haven't addressed it yet, but I believe the City Attorney has polled the Commission and that there is at least the majority of us that can come back for a very special meeting next week, which is going to be an Executive Session on a pending lawsuit, and then a meeting following that to conclude that matter, and we can add this to the agenda.

Commissioner Cabrera: I don't know if you can, can we?

City Attorney Hernandez: The Mayor or three members of the City Commission or the City Manager can call a special meeting.

Commissioner Cabrera: No, I got that, I know a special meeting.

Mayor Slesnick: Well we haven't called it yet, so we can make this one of the agenda items.

Commissioner Cabrera: OK, help me understand. I know one Executive Session we are going to have because I've talked to the City Attorney about it, I don't know about – OK – as I understand the process, would this be taken up as a public matter – OK, that's what I wanted to know, that's what I wanted to know, got it, you answered my question.

Mayor Slesnick: We have the Executive Session...

Commissioner Cabrera: Got it, got it, I didn't understand the logistics of it, but I understand them now. But before we go away and before try to make a decision here today, what template are we going to follow?- because I've got a lot of paper on my table here, I've got the term sheet for discussion purposes only, and I've got what Mr. Prescott and Mr. Ponce presented us with and both together there are some...

Mayor Slesnick: OK, let's go down and see if we have any consensus on point by point.

Commissioner Cabrera: I think that's a good idea.

City Attorney Hernandez: Which document do you want to go through?

Commissioner Withers: You are going to be using three documents.

City Attorney Hernandez: Pardon me?

Commissioner Withers: You are going to be using three documents.

Mayor Slesnick: I was just going to do the points and then they can figure out what document they want to use.

Commissioner Cabrera: That works for me.

Mayor Slesnick: Number one point is that we would agree to defer payment of all monies due and owing to the city through December 31, 2010 to be paid at the rate of \$125,000 per calendar quarter starting July 1, 2012.

Commissioner Cabrera: So that's points two and three.

Mayor Slesnick: Yes on their memo.

Vice Mayor Kerdyk: For a seven year....

Mayor Slesnick: For whatever it is, seven-eight years.

Vice Mayor Kerdyk: I have a problem with that. I think that, I've already expressed my opinion, but I think that there should be some monetary agreement here other than deferring all the rent for two to seven years. So I have a problem with that.

Mayor Slesnick: OK. Mr. Kerdyk defers from that, but do you agree with that?

Commissioner Cabrera: Yes.

Mayor Slesnick: Do you?

Commissioner Anderson: Which one?- there are two parts....

City Attorney Hernandez: Number two and three

Mayor Slesnick: The deferral of the payments starting in July 1, 2012, all the payments that are now owed over \$125,000 a quarter.

Commissioner Anderson: Based on these terms.

Mayor Slesnick: Yes.

Commissioner Anderson: Only on these protections.

Mayor Slesnick: Right – right.

Commissioner Anderson: The two hundred and....

Mayor Slesnick: Well we haven't gotten to that.

Commissioner Anderson: I am going to go off of this document, I'll be very clear, this is my simplistic....

Mayor Slesnick: That's right, and we will incorporate some of that, OK. Chip, are you?

Commissioner Withers: Yes, what about the interest on it?

Mayor Slesnick: We will get to that in a second. I just want to get it point by point.

Commissioner Withers: I am OK, and you are going to roll the Sunshine State?

Mayor Slesnick: Yes.

Commissioner Withers: That is included in that amount.

Mayor Slesnick: Right. Exactly.

Commissioner Withers: The Three Hundred and Sixty-eight or whatever?

Mayor Slesnick: Yes the 2008 Sunshine State is included in that. OK? OK. We have a majority consensus on that point. Now in answer to a couple of the other questions as far as the interest..., interest we will offset interest by the bridge project.

Commissioner Withers: I am talking about the interest while the debt is being paid. Accrued interest from...

Commissioner Anderson: You are talking the rate of interest?

Mayor Slesnick: Well, I think we had a suggestion that we would defer the accrued, I mean we would offset the accrued interest by the bridge project. Is that?

Commissioner Anderson: No.

Commissioner Withers: No.

City Attorney Hernandez: Past due.

Mayor Slesnick: Past due OK. Well let's cover that, past due.

Commissioner Withers: Yes, I am OK with the past interest covering it all.

City Attorney Hernandez: That would be, on second page of the term sheet. Right?

Mayor Slesnick: OK. The past due, OK. the past due interest versus the offset for the bridge.

City Attorney Hernandez: You are talking about 8B, right?

Mayor Slesnick: Yes. Now, interest on the forward payment, what is your suggestion Chip?

Commissioner Withers: Well, I think it is a business deal, I think that we have to charge interest.

Mayor Slesnick: OK.



Commissioner Withers: Now, I don't know what interest rate we have to charge, but I think it is only fair.

Mayor Slesnick: OK.

Commissioner Withers: I mean how do you feel about it. Ralph how do you feel about that?

Commissioner Anderson: I think this has become a smorgasbord.

Commissioner Withers: Yes.

Mayor Slesnick: Well it is, it is a smorgasbord, that is why when we bring it back, it has to be brought back in a very formalistic, very...

Commissioner Cabrera: Yes.

Commissioner Cabrera: But what do you want?-we have been trying to wrestle with this monster for what, 9 months?

Mayor Slesnick: We have been forced to do this.

Commissioner Cabrera: And we have been saddled it with now, so we have got to solve the problem. You know.

Mayor Slesnick: This is watching sausage being made, in public, and I apologize to the public for it, but we have had really little few choices offered to us to address this. Prime, prime.

Commissioner Withers: Bill Kerdyk prime.

Mayor Slesnick: If there is a default, it is a default of the lease and it accelerates the payments, is that a point that we, Maria I think that is something that you were looking to.

City Attorney Hernandez: That is 2E on the terms sheet.

Mayor Slesnick: We waive the two quarters of golf course payments that the golf course was close for construction.

City Attorney Hernandez: OK, that is 8A on the terms sheet.

Mayor Slesnick: Well, I don't care where it shows up.

City Attorney Hernandez: I know, but I have to prepare a resolution Mr. Mayor that is why I am directing everybody to it.

Commissioner Anderson: I appreciate it.

Mayor Slesnick: OK. We have rejected the idea of a steering committee. Reeder, I presume that we can include the request and I think it is on your term sheet at 5B, that of course the lender needs to come up with the \$846,767.09 to effectuate this agreement. OK, so we can incorporate 5B, that brings us back to 5A on Reeder's terms sheet, and that is your choice lady and gentlemen as to whether this is an amendment to the lease or a separate agreement.

Commissioner Withers: I like amendment to the lease.

Commissioner Anderson: Amendment.

Commissioner Withers: I mean that just makes it.

Commissioner Cabrera: Madam City Attorney.

City Attorney Hernandez: Our recommendation is an amendment to the lease and Mr. Glass has indicated that he can turn that around rather quickly.

Commissioner Cabrera: OK.

Mayor Slesnick: OK.

Commissioner Anderson: He is just smiling over there.

Commissioner Cabrera: You don't want to weigh in on that one Mr. Kerdyk.

Vice Mayor Kerdyk: What?

Commissioner Cabrera: I am sorry.

Vice Mayor Kerdyk: No, I think the amendment to the lease, I think the modification is going...

Commissioner Cabrera: I didn't realize I was getting blocked by...

Vice Mayor Kerdyk: No, I think the modification will probably come at a later time, I think amendment for the short term perspective would probably be the right way.

Mayor Slesnick: OK. Let's just go down the line. Give up the 17 million claim at this time. Yes or no?

Commissioner Anderson: Yes.

Commissioner Withers: Yes, I think that is important.

Commissioner Anderson: Unless it will be hanging over us.

Altogether: Yes.

Mayor Slesnick: OK. Reeder, what have we missed? What have we not given you direction on?

Commissioner Withers: Well, Don the other thing is number 7, I guess is that part of 6 to you?

City Attorney Hernandez: Yes.

Mayor Slesnick: Yes, 6 and 7.

City Attorney Hernandez: And you all agree because Biltmore and the City agreed on number 3 that it should be treated as rent and as a lease right?

Commissioner Cabrera: May I ask? Mr. Ponce.

Mr. Ponce: Yes, sir.

Commissioner Cabrera: May I get you up here for a minute? Do you anticipate getting an answer from the loan facility rather quickly?

Mr. Ponce: Well the lender's representative has been involved in conversations with us and at least one conversation with his lawyer. I don't know until we have a form of a document, one of the deep concerns that I have of course is the notion that if you want a waiver of the 17 million that is certainly your prerogative to put it in there, but if you put in there, what Reeder put in there, if anybody was to file a claim, a third party was to file a claim and somehow or another we would have to hold the City harmless for that, I think that is an over reach. I mean, if you want a waiver of what we have then that is your prerogative to ask for it, but please make sure you define it, but the answer to your question is, if the direction is to get this done, which it is, we will get it done. If you need it done by next week the special meeting we will get it done and we will bring the lender into the loop, and until we have everything down that we can present to the lender it is impossible to tell you what they may or may not do.

Commissioner Cabrera: OK. I have another question for you, that has nothing to do with what we are discussing. In terms of the Price Waterhouse audit, I know that I was advised by the City Manager office that there were some questions that they had for your client. Your client was then given time to respond to those questions may I ask you where you are in that process.

Mr. Ponce: Well, Commissioner, thanks for asking that question, number 1, they haven't simply asked for documents, they have asked for a lot of analytical work, it is requiring an awful lot of staff time, frankly of the people in the Biltmore. Between this issue being alive today, what we are bringing here the conversations that we have been having, Mr. Prescott's time, Mr. Pelltier's time, Mr. Butler's time certainly has been directed towards this today. They have also been working on that, we have also as the Manager indicated received the internal audit from the City and we are in the process of trying to respond to that, so there are 3, now 4 major projects all going on at the same time. Our goal is to get Price Waterhouse their answers to their questions

and meet with them as we have in the past, as timely as we possibly can. We are moving that as fast as we can, sir.

Commissioner Cabrera: Can I tell you that for me, at least for my office, it is more critical to get the Price Waterhouse project completed and get it so that it can be formally presented, then the internal audit.

Mr. Ponce: As a matter of fact today we were going to ask for an extension on the internal audit response, because it is a very time consuming process so we can focus on that.

Commissioner Cabrera: I don't know where you get that approval from, but...

Mr. Ponce: I am raising my hand Mrs. Jones in 4<sup>th</sup> grade and asking permission.

Commissioner Cabrera: I know, well that's...

Mayor Slesnick: Well I think it is in the Manager's...

Mr. Ponce: I am sure we will ask the Manager.

Commissioner Cabrera: You are going to ask his office, I am sure given his power, he can give it to you or not, but I can tell you that I have no problems, but I am really excited to see the Price Waterhouse. I mean I made it clear, I think to all 5 of us, not to say that the internal report is not valued, but to the 5 of us the credibility of an outside consultant is very helpful.

Mr. Ponce: And we would agree, sir.

Commissioner Cabrera: Thank you.

Mr. Ponce: Thank you.

Commissioner Withers: Mr. Ponce, what was your explanation I am sorry on number 7, I understand where we can't keep the federal government...Are you saying that if the federal government comes after us that accelerating the lease isn't...

Mr. Ponce: Correct, if the federal government does, what the federal government does I have no power to stop them, or if someone files an administrative procedure which is what Reeder was suggesting in our meeting, that somehow we would be responsible for that. All that the Biltmore can do is what is within the Biltmore's power.

Commissioner Withers: OK. Are you saying that, that is going to cause an issue with the lender?

Mr. Ponce: Very much so, sir. I can't believe the lender would accept that. I mean we are asking the lender to advance this level of economics.

Commissioner Withers: But, the Biltmore obviously has it under control, so that is not the issue. It is the federal government that is the issue?

Mr. Ponce: Correct.

Commissioner Withers: Don, I to have to defer to you and Liz. I mean you guys are the...

City Attorney Hernandez: My position is that they put this in play, you know, and the bottom line is that even though we feel very comfortable with our legal position, this issue needs to be resolved, or we have to continue to use our resources, our legal resources and continue to deal with this matter. So it needs to go away, and you know, we didn't put it in play.

Commissioner Withers: Well, what do you mean?

Mayor Slesnick: He is asking about the third party release.

City Attorney Hernandez: Well the problem is we, the City has not control over the representatives that have now, you know now I would obviously prefer to advise you personally one on one, but you have received letters and you have received correspondence from individuals who expressed interest in this issue as a result of actions that the City has not initiated.

Mayor Slesnick: OK. Where are we?

Commissioner Withers: Don, I mean, what do you think about that? I understand where Liz is...when you say put it into play do you mean...

Mayor Slesnick: They said put it into play, I didn't say put it into play. I can live without 7, except for the Biltmore, if the Biltmore...

Commissioner Withers: Yes, that is what I am saying, I am talking about the Biltmore. I want to hear the City's approach on that also.

City Attorney Hernandez: And I would just advise you that...

Mayor Slesnick: The federal government is not going to... I am sorry this was ever brought into play.

City Attorney Hernandez: Right.

Mayor Slesnick: I am sorry this was ever brought into play.

City Manager Salerno: We didn't bring it into play.

Mayor Slesnick: I know.

City Manager Salerno: Mayor.

Mayor Slesnick: You know, it has been clear since the beginning Mr. Manager, I know who brought it into play and I have already said clearly on the record, this hearing that I had already had this discussion with the person who brought it into play and told them about my disappointment in that and so forth, and it has made us have to consider this. Now we are at the point of making a decision where do you stand, I can leave the federal government out or I don't have to, I don't care. You have heard the attorneys.

Commissioner Withers: Well, I mean if they don't have control over the federal government and if it is going to cause the lender to...then that concerns me.

Mayor Slesnick: Yes, it concerns me too.

Commissioner Withers: We are here to get them through the next four months. We are here to get \$835,000 because we are going to be back here in September and we are going to rewrite this whole thing.

Mayor Slesnick: Just tell me where you are on the federal government.

Commissioner Withers: Well, if it is going to get the money released then I think we should strike federal government, that is how I feel.

Commissioner Cabrera: I agree with Chip.

Mayor Slesnick: We are striking the federal government, the majority of the Commission has stricken the federal government.

Mr. Ponce: Thank you Manager, thank you Mr. Mayor.

Mayor Slesnick: We'll leave the Biltmore in. Reeder have we covered the points? Our goal will be that we can announce now that we are calling an executive...do we have to?

City Attorney Hernandez: I think the Commission is going to be setting a special City Commission meeting for the 19<sup>th</sup>, I believe the Biltmore will be one of the topics the question is the time, Mr. Mayor, we need a majority.

Commissioner Anderson: I can't meet until later in the afternoon on Monday, I can meet Tuesday, Thursday.

Commissioner Withers: Bill said he is leaving on a cruise.

City Attorney Hernandez: Bill will not be here.

Commissioner Withers: He is going Monday, what time on Monday. Don't say 8 o'clock in the morning.

Vice Mayor Kerdyk: I don't know, actually I really don't know.

Mayor Slesnick: He is out.

Vice Mayor Kerdyk: Well I didn't schedule the meeting.

Mayor Slesnick: Hold on a second. Madam City Attorney, I was under the impression that you had polled the Commission and had a time said that the majority of the Commission could be here and that we were working on this.

Commissioner Cabrera: Monday afternoon.

City Attorney Hernandez: Mr. Mayor, I spoke with members of the Commission and knowing full well that Commissioner Kerdyk was not going to be here.

Mayor Slesnick: We know full well, he is not going to be here.

City Attorney Hernandez: Commissioner Withers, had indicated he could not be here until the afternoon, Commissioner Anderson indicated that she could not be available until late afternoon, but I do have 4 members of the City Commission who will be available on Monday.

Mayor Slesnick: Fine.

City Attorney Hernandez: On Tuesday, I have an injunction hearing that is coming up later.

Mayor Slesnick: If that is the reason, let's explain this to the public, we look like somewhat dysfunctional from our usual very well oiled...

Commissioner Cabrera: Dysfunctional process.

[Laughter]

Mayor Slesnick: There is an injunction hearing the next day, which is why we are having the Commission meeting before the injunction hearing while it is tied. That is the point I wanted to make sure, we will have an Executive Session off, not off the record, but out of the public view. The record is kept of Executive Sessions and released after the court case is closed, and we will be talking in the executive session about the position we wish our City Attorney to take at the injunction hearing on Tuesday. Then we need to come into a public session to confirm that position if we have a position to confirm, and at the same time while we are in public session I am setting the Biltmore again asking Reeder Glass and your office Liz, and the City Manager to be before us with a formalized document of the points that we have discussed today for approval brought into a very finely tuned back to our non-dysfunctional selves where we are actually



presented with a document which we have set the terms forth today as a consensus, not everyone agrees, but as a consensus and we will view that document and vote yea or nay on the document at that time. There we go, we are back to being functional again.

Commissioner Cabrera: No we are never going to be functional.

Mayor Slesnick: Liz.

City Attorney Hernandez: Yes, sir.

Mayor Slesnick: What time? Let's just go ahead and talk about this, what time would we start the executive session?

City Attorney Hernandez: Well, at the appropriate time of the City Commission I will asking and making a legal request for a 4 o'clock Executive Session on July 19<sup>th</sup>.

Mayor Slesnick: OK. 4 o'clock.

City Attorney Hernandez: And that will last approximately 40 minutes, and then I am assuming that after that we will have a special meeting on this item and then on the Biltmore.

Commissioner Cabrera: OK. It works.

Mayor Slesnick: Good. We now know where we are headed. Before we sent Reeder off to do this is there any final thoughts or comments. Reeder, we have covered the subject matter, right? Thank you. Well, we will vote when he brings it back. I mean we will have a document.

Commissioner Anderson: Do we need a resolution?

Mayor Slesnick: No, they are going to prepare a resolution for us to consider at that time. incorporating those discussion items that we have had, because I wouldn't want you all to vote without seeing it in writing. And yes Chip.

Commissioner Withers: I am sorry, but I want to ask Reeder to come up here a second if you don't mind. Just to make sure I understand this.

Mayor Slesnick: OK. Well, the federal government almost got away.

Commissioner Withers: OK. Number 7 if I read it correctly, it says that if there is a commencement of action by either the Biltmore or the federal government that it will accelerate, it will basically default the lease and accelerate it. Is that correct?

Mr. Glass: That is correct.

Commissioner Withers: It doesn't say anything about the \$17 million, the \$20 million or does it?

Mr. Glass: No that is a separate item.

Commissioner Withers: That is a separate item. So, what this basically says is that it just keeps the lease from accelerating and being in default of the lease, is that what it says.

Mayor Slesnick: What does it say, Reeder?

Mr. Glass: No, it is designed to protect the City from being either sued by the Biltmore or an administrative claim filed by a federal agency seeking to reform the lease, but at the same time we are taking defer payments that don't start until 2012; and if that happens and I realize that the linkage issue is maybe problematical to the City because the Biltmore doesn't control NPS, but they have been put in play and so they are in my mind capable of being requested to defer action, because we don't want them to be an agent for the process of changing the lease involuntarily and if the City decides to voluntarily decides to change the lease, then that is another story. This is design to create a situation where we are not forced, we are being asked to involuntarily change the lease at the same time we are taking deferred payments on this rent.

Commissioner Withers: Are we concerned that the Biltmore is going to ask the federal government, are we concerned about that? That they may go to the federal government and ask them to...I know they have kind of done it through the...I mean moving forward, are we concerned about that? Are you concerned about that?

Mr. Glass: I just think that the Biltmore has the ability to request and influence the National Parks Service not to take action while there are negotiations going on more so than just a citizen asking an inquiry, but I understand the concerns of the Biltmore about the control issue. I just want to raise the point so that we are not caught in the situation where we are forced to do something at the same time we are taking deferred payments of the rent.

Commissioner Anderson: Yes, that is what I was thinking about, that would be my...

Commissioner Withers: So what could happen, that the payments would cease?

Mr. Glass: Well the Biltmore would just simply be in default under the lease and those payments would accelerate. That the rent would become due again as it is now.

Commissioner Withers: Otherwise they just keep paying them regularly? I mean, if the federal government steps in now they are still going to be paying whatever we agree to as far as an agreement, correct?

Mr. Glass: If the federal government steps in is because they are going to seek some kind of action with respect to the current terms of the lease. They are not going to take action to confirm the whole thing. This is a global point and really to control the environment that the City is operating under during that process. I am saying that there are two things that we don't want to happen, one is that the Biltmore sues us, and the other is that the National Parks Service comes out with some administrative, and I say administrative, because I really don't know what forum would be for all of that, but I mean whatever the forum is we don't want either one of those things to be going on while we are taking deferred payments. That should then effect accelerate that deferred rent.

Commissioner Withers: But the Federal government cannot come in and say quit the deferred payments, quit the deferred rental payments. Or could they?

Mr. Glass: Well, you know this gets into the kind of discussion that I am sure we are going to have more of when we get into this global analysis because there is no mechanism that I know of where the National Parks Service would come in and reform the lease. They have said in writing that this is an issue between the grantee the City and the Biltmore, they would like to see a resolution of course, but I found no precedent for them to come in and take a commercially prepared document that was negotiated at arm's length between the grantee and an operator and say we are going to throw that out and start over. This is all part of the process of whether or not we are voluntarily, the City is voluntarily considering changes to the lease or whether or not we are being forced to change the lease, and it is those two distinctions that I am trying to draw in this paragraph, because if we are forced to do something, then quite frankly I don't have much sympathy with the idea of deferring payments of past due rent as long as we are voluntarily going along nothing is going to happen. So this would be only if the discussion broke down and for some reason the Biltmore decided that they needed to bring a suit or to encourage the intervention of the federal government.

Commissioner Withers: Can we say if we leave the federal government in, can we say at the City's discretion as oppose to saying they shall become immediately due and payable?

Mr. Glass: The City always has...

Commissioner Withers: Well, that is what I am saying.

Mr. Glass: The City always has the discretion to call a default or not to call a default as witness by the fact that we have \$3.9 million right now, so this would be a decision that you don't have to pre-judge.

Commissioner Withers: That we have the option instead of having it mandated, or instead of automatically.

Mr. Glass: Yes if you declare in the default, the default would be acceleration of the debt, but I mean otherwise if you don't declare in the default nothing happens. You still go on the same way.

Mayor Slesnick: Can you outline that in your words, that if in fact this happens the City will have the total option unilaterally to declare default, so that Mr. Withers can feel comfort in that.

Mr. Glass: Absolutely.

Mayor Slesnick: OK. Is that then your desire, Chip?

Commissioner Withers: Does that work for you guys, gals?

Mayor Slesnick: Well, it was 3 to 2 to leave them out anyways so if you turn it changes it so it is fine. I am trying to get a consensus where we all can leave with each other points and not get everything each of us needs.

Commissioner Withers: Sure, I have no problem.

Mr. Ponce: Commissioner Withers, the biggest issue with that is, I don't believe the lender would accept that, I have not talked to the lender about that, but I just think that, kind of an issue. I think what you are asking the Biltmore to do, what is in the Biltmore's power that is one thing and I certainly think that you are well within your rights to ask for that if that is what you want to ask. We don't agree with that, but we hear you, but the Federal government piece, you know.

Commissioner Withers: Well, here is where I am thinking, I think the lender has seen how responsible and somewhat compassionate this Commission has been in this whole issue so far. So, I am thinking if I am a lender and I have gone through the exercise that we just went through, and the time and effort that we went through to try and help the Biltmore, that it would carry through that if this did come up that the City would probably look at it and evaluate it. I just don't want it to be an automatic.

Mr. Ponce: And Commissioner, the only way that I can respond to you is that, we are here for an interim solution, I don't disagree with what you are saying should be part of the bigger picture, and it should be, it should be within 3 or 4 months, it should be as soon as we all can get there, but I truly believe the goal of getting the 850 you indicated earlier would be seriously challenged.

Commissioner Withers: Well let's see, if it is then we redo it. If that is what we have to do. I don't know how the rest of you feel, but if it comes back to us that they are not releasing the money because of these points, then I assume we are back here again, aren't we.

City Attorney Hernandez: Yes.

Commissioner Anderson: Yes.

Commissioner Withers: Another meeting, so.

Mayor Slesnick: OK. So what is it? So, what was Reeder's instructions? That at the discretion of the City?

Commissioner Withers: Yes. It doesn't automatically default.

City Attorney Hernandez: Right. Number 7, so we will prepare and distribute...

Mayor Slesnick: Yes, we hope what Reeder and Liz and the City Manager prepares for this Commission's consideration next week based on the points that were discussed will something that helps us through this time, something that helps the Biltmore, helps the citizens, helps

everyone. It has been a little bit of a tenuous process, but I think we have gotten to a point where I hope we have come to a successful decision.

Commissioner Withers: When are we meeting on Monday? Do we have the time?

Mayor Slesnick: 4 o'clock. Is that OK?

Commissioner Anderson: I am gone here by 3:30 p.m. I have...

Mayor Slesnick: No, no he asked about next week.

Commissioner Anderson: Oh, OK. I am thinking today.

Mayor Slesnick: OK. With that we are going to go back to our agenda and we have C-15, that was hanging, I would like to repeat and reiterate that anyone who has attended today, that wishes to leave for the record a card from our speakers cards just stating your position, if you wish to do that you are certainly welcome to do so and we will add your name to the record and your position.