



## Legislation Text

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**File #: 23-5891, Version: 1**

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An Ordinance of the City Commission authorizing execution of the Third Amendment ("Third Amendment") to Amended and Restated Lease ("Lease") between the Biltmore Hotel Limited Partnership, a Florida Limited Partnership ("Developer") and the City of Coral Gables, a Florida Municipal Corporation ("City") executed February 10, 1986 and Amended and Restated July 29, 1999 (the "Original Lease") and amended on January 2, 2001 (the "First Amendment") and on March 29, 2022 (the "Second Amendment") [the Original Lease, the First Amendment and the Second Amendment being collectively referred to as the "Lease"] amending Section 15 of the Lease by revising the property insurance requirements.

Lobbyist: N/A

### **Background:**

The lease of the redeveloped Biltmore Hotel was originally executed on February 10, 1986, between the City of Coral Gables (the "City") and the Biltmore Hotel Limited Partnership (the "Biltmore"). On July 29, 1999, an Amended and Restated Lease was executed combining into one agreement between the City and the Biltmore the terms and conditions pertaining to the Biltmore Hotel Lease Agreement and the Management Agreement for Operation of the Biltmore Hotel Country Club Property (the "Original Lease").

On January 2, 2001, the City and Biltmore entered into a first amendment to the Original Lease for the purpose of adjusting the Fixed Rent Amortization Schedule ("First Amendment"). On March 29, 2022, the City and Biltmore entered into a second amendment to the Original Lease for the purpose of amending the insurance requirements of Section 15 of the Original Lease ("Second Amendment") (the Original Lease, the First Amendment and the Second Amendment being collectively referred to as the "Lease").

Section 15 of the Lease requires, among other types of insurance, that the Biltmore obtain property insurance for all risks in an amount equal to the lesser of (i) the full actual replacement cost of the buildings and structures, including improvements and betterments or (ii) \$100,000,000. Additionally, the Lease requires that the insurance have commercially reasonable deductible limits. The Biltmore has advised the City that as of March 27, 2023, it has obtained windstorm insurance coverage in the amount of \$50,000,000 ("Reduced Windstorm Limits"), with a self-insured retention of 20% of the loss and a deductible of 5% of the actual value of the unit of insurance (capped at \$2,500,000) (collectively, "Deductible"). As such, the Biltmore is currently not in compliance with the terms of the Lease by failing to (i) obtain windstorm coverage in the amount of \$100,000,000 and (ii) obtain commercially reasonable deductible limits for such windstorm.

### **The Rationale Provided by the Biltmore:**

The rationale provided by the Biltmore for the reduction in the amount of the named windstorm coverage was that \$50 million of named windstorm coverage was the most that they were able to purchase at

anything close to a commercially reasonable premium. Lockton Companies, the insurance agent for the Biltmore, in a letter to the City dated April 14, 2023, explained that the reduction of the coverage amount was due to a combination of reduced capacity in the overall property insurance marketplace causing a restriction in the supply of insurance limits that can be purchased, and a dramatic increase in premiums and rates that are being charged for limits causing the cost of additional limits to exceed what they allege is commercially reasonable. The chart included in the cover memo shows the insurance property premium increases the Biltmore has incurred as reported by the Biltmore.

In further support of its request to purchase Reduced Windstorm Limits with the Deductible, Lockton cited to the 2023 Catastrophe Risk Summary report (the "Report"). The Report calculated the potential loss for all the properties within the portfolio of the Seaway Hotels Corporation, which includes the Biltmore in addition to the Sheraton-Sand Key Hotel located on the west coast of Florida (valued at \$68 million) and condominiums in the David Williams Hotel. Lockton stated in the letter that the Reduced Windstorm Limits "remain a sufficient limit to guard against the 1/1000 year return period, or put differently a 0.1% chance of exceeding \$46.4M," which, according to the Report, is the probable loss for a 1000 year return period net of the 5% deductible.

**Assessment of the Biltmore's Rationale:**

Based upon the City's own experience in 2023 as well as other municipalities, Lockton's explanation of the current insurance marketplace and the problems that the Biltmore experienced in the placement of the property insurance is consistent with what the City and other municipalities have experienced during the first half of 2023.

By way of example, the City experienced a 33% property rate increase (from \$0.6092 to \$0.8094 per \$100). This rate increase resulted in the City's overall property insurance premium to increase by 57% (from \$1,785,242 to \$2,804,656), as the City's statement of values increased to \$346,507,215 from \$294,212,528, an increase of 18% from last year. The increased values were the result of on-site appraisals of 18 locations as part of the City's 3-year appraisal program, the addition of the Garage 7 and indexing locations with a 15% increase for buildings/structures and 8% for contents for those locations that have not been appraised since 2021.

In addition to the increased rate/premium, the cap on the windstorm deductible of \$7.5 million was removed and the City took a 19% self-retention on the second \$25 million layer. The City also reduced its coverage for all other perils from total insured values to \$75 million.

For further illustration as to the ratio of property insurance limits purchased to total insurable values, refer to the chart included in the cover memo that shows the property insurance limits purchased in 2023 by some of the public entities in Miami-Dade and Broward County.

**Recommendations:**

Based on the aforementioned analysis, City staff recommends that the Lease be amended to allow the Biltmore to reduce the required \$100 million of windstorm insurance coverage during the period from March 27, 2023 to March 27, 2024, to \$50 million of windstorm coverage with their current terms (\$2.5 million maximum deductible and 20% self-retention) provided that the Biltmore obtains a Letter of Credit in the amount \$9.8 million with terms to be approved by the City ("Letter of Credit"). \$9.8 million is the approximate deductible/self-retention that the Biltmore would be responsible for if it suffers a loss of \$37.8 million. According to the 2023 Catastrophe Risk Summary, \$37.8 million is the projected ground up loss with loss amplification if the Biltmore were to be hit with a storm corresponding to a 700-year return period (in other words there is 0.17% annual chance of one hurricane event causing \$37.8 million or more in loss). The Florida Building Code uses the values of a 700-year return period storm to set the code for these types of structures.

The \$9.8 million letter of credit would be used by the Biltmore to cover the deductible and self-retention in the event of a code-storm (700-year return period) or to cover the deductible and self-retention in the event of 2 separate smaller storms.

The Letter of Credit must be provided to the City by July 21, 2023, and closed on by August 10, 2023. The terms for the Letter of Credit must be acceptable to the City in its sole discretion.

The aforementioned changes to the property insurance requirements in the Lease would only be applicable for the March 27, 2023 to March 27, 2024 insurance policy period and revert back to the Lease requirements on March 27, 2024. Lastly, it should be noted that the Lease currently requires the Biltmore have a priority of payments endorsement to ensure that insurance funds would first go towards the repair, restoration, and replacement of the Biltmore and not to other exposures and properties covered in the same policy.