



OFFICE OF THE MAYOR

MIAMI-DADE COUNTY

via electronic and certified mail

March 7, 2024

Mr. Eduardo Albor
President
The Dolphin Company
MS Leisure Company, Inc.
The Miami Seaquarium
4400 Rickenbacker Causeway
Key Biscayne, FL 33149

RE: Notice of Termination of Lease and Additional Notice of Defaults
Property Address: 4400 Rickenbacker Causeway, Key Biscayne, Florida 33149
Folio No.: 30-4220-000-0010 (the "Property")

Dear Mr. Albor:

This **Notice of Termination** serves to notify MS Leisure Company, Inc. ("Lessee") of Miami-Dade County's ("Lessor") decision to terminate the Lease as a result of Lessee's numerous and significant violations and defaults of the assigned and assumed "Amended and Restated Lease Between Miami-Dade County and Marine Exhibition Corporation, d/b/a The Miami Seaquarium" dated July 25, 2000, as amended by a First Amendment dated November 16, 2001, a Second Amendment dated August 7, 2003, a Third Amendment dated September 9, 2022, and by three (3) Lease Extension Agreements dated July 7, 2006, October 6, 2006, and March 9, 2020, respectively (collectively, the "Amended and Restated Lease Agreement" or "Lease").

Lessee's long and troubling history of violations constitute repeated, continuous and longstanding violations of Lessee's contractual obligations to keep the Property in a good state of repair, maintain animals in accordance with applicable law, and comply with all laws as set forth in Section 11 (as amended) and Section 29 of the Amended and Restated Lease Agreement.

I. DEFAULTS AND NOTIFICATIONS OF DEFAULTS BY LESSOR

Although Lessor herein details Lessee's extensive history of defaults, each and every material default constitutes an independent basis on which Lessor seeks to terminate the Lease.

As a consequence of these violations and defaults of the Lessee's obligations, this letter serves to notify Lessee of Miami-Dade County's decision to terminate the Lease. Commensurate with this **Notice of Termination** we hereby demand that Lessee vacate and surrender the Property by **April 21, 2024 ("Date of Termination")**.

a. Maintenance of Animals

First, the Lease requires MS Leisure Company, Inc. to "maintain animals in accordance with federal laws and regulations, including the Marine Mammal Protection Act and the Animal Welfare Act as applicable." See Section 11. Additionally, the Lessee is required to comply with "all applicable laws, rules, regulations, ordinances and statutes." See Section 29.

On November 28, 2022, Lessor issued a Notice of Non-Compliance related to MS Leisure Company Inc.'s failure to comply with applicable law in accordance with Section 29 of the Lease. The default was a result of several violations found related to animal care by the United States Department of Agriculture ("USDA"). Another Notice of Default was issued on November 1, 2023, for violations of Sections 11 and 29 of the Lease again as related to failure to comply with applicable law as related to animal care. Again, on December 22, 2023, Lessor sent a Notice of Default for violations of Section 11 and 29 of the Lease as related to animal care.

These Notices were the result of the Lessee failing to provide for the safe and adequate maintenance of the animals in its care in violation of applicable federal law on countless occasions, as set forth in the alarming observations and conclusions documented by the USDA in its many reports. For example, between July 6, 2022, and January 9, 2024, Lessee has been cited by the USDA seven times for failing to adequately maintain facilities, seven times related to inadequate veterinary care, two times for inadequate handling of animals (in one instance resulting in a patron being bitten during a dolphin encounter), three times for failure to maintain outdoor facilities, three times for failing to have adequate staff, two times for failure to maintain indoor facilities, and three times for inadequate water quality. These continuous, repeated and ongoing violations represent not just a default under the terms of the Lease that requires termination, but a complete disregard for the safety of the animals housed on the premises.

b. Maintenance of the Premises

Second, the Lease requires MS Leisure Company, Inc. to "keep the Demised Premises and all improvements and personal property thereon ... in a good state of repair and in a clean condition ... similar to other facilities maintained by Lessee". See Section 11. Additionally, as previously noted, the Lessee is required to comply with "all applicable laws, rules, regulations, ordinances and statutes". See Section 29.

On December 22, 2023, Lessor issued a Notice of Default related to Lessee's violation of the Miami-Dade County Building Code (Case No. 20240226206). The Property has been the subject of numerous Notices of Violations issued by the Building Official finding that structures

on the Property are unsafe and structurally deficient. Specifically, on December 13, 2023, Lessee and Lessor were notified of several violations on numerous structures, including failure to maintain Flipper Stadium, failure to maintain Manatee Tank Area, and failure to maintain Dolphin Stadium, among other things. These violations represent Lessee's failure and refusal to maintain the Property and its improvements in a good state of repair.

Additionally, the United States Department of Agriculture ("USDA") inspected the Property and noted the Property's structural deficiencies posed serious risks to the animals. As noted above, on November 1, 2023, Lessor provided Notice of Default for Lessee's violations of Sections 11 and 29 of the Lease because, among other things, the USDA's July 17, 2023 inspection found that Lessee "failed to maintain marine mammal enclosure in good repair and protect the animals from injury."

II. ADDITIONAL NOTICE OF DEFAULTS

Additionally, the Lessor hereby provides notice of the following defaults that were not the subject of prior Notices to Lessee:

- Lessee has been the subject of numerous Notices of Violations issued by the Building Official dating as far back as 2022 finding that structures on the Property are unsafe and structurally deficient, including the Whale Bowl (Case No. 20210211387-U), the Golden Dome (Case No. 20210211348-U), and Corridor A (20230218376-U), and Building U (Case No. 20240226206). Lessee is currently in noncompliance with the Building Official's safety requirements on these three (3) Unsafe Structures Cases (Whale Bowl, Golden Dome, and Corridor A).
- On several occasions the United States Department of Agriculture ("USDA") inspected the Property and noted the structural deficiencies that posed serious risks to the animals. For example, on November 28, 2023, USDA reported the deficient condition of the penguin building, parrot trailer, dolphin pools, sea lion holding, and perimeter fencing. On November 14, 2023, USDA reported the deficient condition of the Golden Dome stadium, sealion housing and perimeter fencing. On October 16, 2023, USDA reported the deficient condition of the parrot trailer, dolphin pools, perimeter fencing, penguin building, flamingo enclosure, and Tropical Wings building. The USDA's reports describe the deficient and dangerous conditions that Lessee has allowed to persist on the Property, which in many instances has resulted in injury to the animals and the animals' ingestion of foreign materials degrading from the poorly maintained Property improvements.
- According to our records, as of this writing, the Seaquarium has not submitted its evidence of certifications with the Alliance of Marine Mammal Parks and Aquariums ("AMMPA") and the American Humane Association (or similar third-party validated program). The Seaquarium must also commit to using reasonable efforts to seek Association of Zoos & Aquariums ("AZA") accreditation, in accordance with Section 5 of the Third Amendment adding new Amended and Restated Lease Agreement Section 27, subsection R, Certifications.

- The Seaquarium has not submitted to the County its annual report on the implementation of conservation and education programs, and awareness campaigns for the community, including the development of a classroom curriculum for routine and periodic instruction and education to the public and students that incorporates environmental protection, science conservation, and other educational programs. Such programming shall also include programming for neurodivergent children and adults, in accordance with Section 5 of the Third Amendment adding new Amended and Restated Lease Agreement Section 27, subsection S, Conservation, Educational, and Environmental Awareness Programs.

III. TERMINATION

Accordingly, Lessor hereby provides this **Notice of Termination and Notice of Default** in accordance with Section 16, Default, due to Lessee's ongoing failure to timely cure its non-monetary default under the Amended and Restated Lease Agreement, despite being afforded such additional time as was reasonably necessary to cure any curable events of default.

Please sign and date indicated below, acknowledging that Lessee will surrender and deliver possession of the Property back to the Lessor effective no later than April 21, 2024, and return this signed and dated document by March 11, 2024 via certified mail. Please be advised that should Lessee fail to sign and return this document to Lessor on or before March 11, 2024, Lessor shall avail itself of any and all legal means to enforce its rights and remedies.

The Lessor reserves all of its rights under the Amended and Restated Lease Agreement at law and in equity and nothing herein waives or shall be deemed to waive those rights. Lessor specifically reserves all rights to pursue termination on the basis of any defaults specified herein or any other defaults that merit termination.

Should you have any questions regarding this matter, please contact me at: (305)375-2448, or by email at: jimmy.morales2@miamidade.gov .

Thank you for your time and attention to this matter.

Sincerely,



c: Geri Bonzon-Keenan, County Attorney
Maria Nardi, Director, Parks, Recreation and Open Spaces

Certified Mail Number: 70001670000482035469

Acknowledgment of termination and surrender of possession:

By: _____

Dated: _____

Name and position: _____

Witnesses:

Name: _____

Name: _____

Signature: _____

Signature: _____
