



Department of Regulatory and Economic Resources
Code Compliance Division

11805 S.W. 26 Street (Coral Way) • Suite 230
Miami, Florida 33175-2474

CONSENT AGREEMENT

This stipulated Compliance Consent Agreement (“CCA” or “Agreement”) is entered into by and between MS Leisure Company (“Miami Seaquarium” or “Operator”) operator of an aquarium located at 4400 Rickenbacker Causeway (“Subject Property”), and Miami-Dade County Regulatory and Economic Resources Department (“County”) of 11805 SW 26th Street – Suite 230, Miami, Florida 33175; and shall serve to address the structural and fire safety deficiencies outlined in the Miami Seaquarium Site Inspection Report (“Site Inspection Report”) and attached herein as Exhibit A.

WHEREAS, EDUARDO ALBOR is the President of MS Leisure Company, a Florida Corporation, VALERIA ALBOR is the Vice President, CONCEPCION ESTEBAN is the Secretary, and TRAVIS BURKE is the Treasurer; and

WHEREAS, Miami Seaquarium currently operates an aquarium park at the Subject Property within unincorporated Miami-Dade County that is open year-long, and it is open to the public. The Subject Property includes a whale stadium (“Whale Bowl”) where members of the public previously gathered to watch aquatic animal shows and currently houses an orca known as Lolita the Orca. The Whale Bowl has been closed to the public since September 2021 and only Lolita the Orca’s caretakers and Miami Seaquarium maintenance staff are allowed within the whale stadium; and

WHEREAS, on August 20, 2021, the County opened an unsafe structure case under process number 20210211387-U for the Subject Property due to a preliminary 40-year recertification report provided by Jacqueline P. James, P.E. for GFD Group Miami, LLC, in which the report stated that the I-Beam Joist in the Whale Bowl was in disrepair and the Steel Joist had rusting; and

WHEREAS, November 15, 2021, the County issued building permit 2022010336 for installation of shoring at the Whale Bowl but no final inspection was obtained, and the permit is currently expired; and

WHEREAS, on December 1, 2021, a building permit application was submitted to the County under process number C2022030265 for structural repairs at the Whale Bowl but, although all the reviews were approved, no permit was obtained, and the process number is currently expired; and

WHEREAS, on June 21, 2022, the County visited the Subject Property to conduct an unsafe structure preboard inspection noted that the Whale Bowl was not open to the public and that Miami Seaquarium only allowed the caretakers of Lolita the Orca and maintenance staff within the whale stadium area; and

WHEREAS, on June 28, 2022, the County received a letter from Mohamed Fahmy, Ph.D. P.E. for GFD Group Miami, LLC., stating that the Whale Bowl has been closed to the public since September 2021 despite the installation of the shoring, and having inspected and found the facility to be sound. The letter states the Whale Bowl will remain closed to the public until repairs are completed except that it is otherwise safe for occupancy by whale care and maintenance staff and facility maintenance staff; and

Initials _____

Initials _____

WHEREAS, on September 23, 2022, Fredy Tain (“Tain”), Structural Division Director, and Juan C. Fernandez (“Fernandez”), Fire Prevention and Safety Manager, inspected the Whale Bowl and identified several structural and fire code safety issues that must be resolved for the continued occupancy by the whale care and maintenance staff and facility maintenance staff; and

WHEREAS, Tain and Fernandez outlined the structural and fire code safety issues in the Site Inspection Report and provided said report to Robert S. Fine, Esq., attorney-representative for MS Leisure Company, and Travis Burke, then Executive Director of the Miami Seaquarium; and

WHEREAS, on April 19, 2023, the County issued building permit 2023041050 for, among other things, the installation of structures to ensure the safety of the egress/ingress points to the Whale Bowl; and

WHEREAS, on April 21, 2023, the County revisited the Subject Property and noted that the shoring systems did not meet the minimum requirements of the Florida Building Code and it was explained to Fabrice Clouteau, General Contractor for building permit 2023041050, that the construction and repairs to the Whale Bowl needed to meet the requirements outlined in the Site Inspection Report; and

THEREFORE, BE IT RESOLVED that the Operator and the County (collectively “the Parties”) knowingly and voluntarily enter into this Agreement with the following terms and conditions:

Comes now, EDUARDO ALBOR as the President of MS Leisure Company, VALERIA ALBOR as the Vice President, CONCEPCION ESTEBAN as the Secretary, and TRAVIS BURKE as the Treasurer, who state and agree to the following:

1. We understand, acknowledge, and agree that the scope of work of building permit 2023041050 does not currently reflect the requirements outlined in the Site Inspection Report and revisions to the building permit 2023041050 must be submitted in the following manner:
 - a. Within **thirty (30) days** of the execution of this Agreement, the Operator shall submit to the County a signed complete permit revision application and revised plans, accompanied by the appropriate fees, to reflect the scope of work originally submitted in building permit 2022010336 and the requirements of the Site Inspection Report.
 - b. Within **fifteen (15) days** of the approval of the revisions required in paragraph 1(a), the Operator shall request the cancellation of building permit 2022010336 since the older permit will be superseded by the new scope of work in building permit 2023041050.
 - c. If during the plan review and approval process the Operator is issued any requests for additional information regarding the permit applications and plan submittals or their applications or plans are rejected, the Operator shall—**within thirty (30) days** of receipt of any such request or denial—respond to said request and submit revised permit applications or related documents to the County for review or meet with County staff to discuss those items which resulted in the request for additional

information or disapproval and shall submit revised permit applications or related documents to the County for review within **fifteen (15) days** of that meeting.

- d. Upon approval of the plans and the issuance of the revised permit, the Operator shall have **one-hundred and twenty (120) days** to address the requirements listed in the Site Inspection Report and obtain an approved final inspection on all permits.
 - e. Upon a showing of good cause and meaningful progress towards the resolutions of the deficiencies outlined in the Site Inspection Report, the County will grant reasonable extensions to the deadlines set forth herein. The Operator must submit its request for an extension of time prior to the expiration of the applicable deadline.
2. We understand, acknowledge, and agree that the building permit 2023041050 shall have inspections holds that would prevent the calling of inspections. We understand the inspection holds may only be removed by Gilberto Martin, Building Trade Division Director. We understand that the general contractor responsible for building permit 2023041050 must contact Mr. Martin prior to requesting any inspection so that Mr. Martin can ensure that the requirements of the Site Inspection Report are timely being met.
 3. We understand, acknowledge, and agree that failure to comply with the requirements outlined in paragraph 1 of this Agreement will be considered a default of this Agreement. We understand that a default of this Agreement may result in the revocation of the building permit 2023041050. We understand that any default of this Agreement shall be noticed to the Operator and the Operator shall have **five (5) days** to bring the Subject Property into compliance from the date of the electronic notice delivered to FineR@gtlaw.com.
 4. We understand, acknowledge, and agree that should we be in default of this agreement then further enforcement action, including all legal remedies available to enforce compliance with the Florida Building Code and the Code of Miami-Dade County, and/or to collect all penalties, fees, and costs due may be pursued by the County.
 5. We further acknowledge that nothing has been offered or promised, other than that which is expressly stated herein, to induce us to enter into this Agreement, and likewise acknowledge that no threats have been made to coerce my waiver, and such waiver is made of my own volition and free will.
 6. Nothing herein shall relieve the Operator from future compliance with the requirements of the Code.
 7. Everyone who signs this Agreement represents by signing it that each has fully reviewed the contents of this documentation, each understands the contents of the documentation, has had advice of counsel regarding the contents and legal effect of this documentation, is not relying on the representations of any other Party or the attorneys for the other Party in entering into this Agreement, executes this Agreement of his/her own free will and accord, and that each agrees to be fully bound by the terms and conditions of this Agreement, and that anyone signing this Agreement in a representative capacity has full authority to execute this Agreement in such representative capacity and to bind legally the Party for whom he or she signs.

8. For the consideration and promises made herein, the Operator, and their heirs, successors, and assigns, and any and all other persons, firms, corporations, or other entities who may claim by or through the Operator, release and forever discharge the COUNTY and its employees, officers, agents, successors and assigns, attorneys, or otherwise, from any and all claims, causes of action, demands, disputes and rights of whatever nature and kind, known or unknown, that the Operator have or claim to have in the past or present against the COUNTY related in any way to the Subject Property, including the use of the property, and concerning the issues relating to the citations and the application of the FBC.
9. It is expressly understood that notwithstanding any provisions of this Agreement and the COUNTY's status as a party to this Agreement
 - a. The COUNTY retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county or city under Florida law and shall in no way be estopped from or be liable for withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations of whatever nature, which laws or regulations are or might be applicable to the planning, design, construction, development, or operation of any project on the Property, including but not limited to the rights, obligations, or prohibitions provided in section 8CC-7(d) of the Code of Miami-Dade County which provides that, "Notwithstanding any provision of this Code, no County or municipal officer, agent, employee or Board shall approve, grant or issue any operating permit, license, building permit, certificate of use and occupancy, municipal occupational licenses, platting action, or zoning action to any named Association with (i) unpaid civil penalties; (ii) unpaid administrative costs of hearing; (iii) unpaid County investigative, enforcement, testing, or monitoring costs; or (iv) unpaid liens, any or all of which are owed to Miami-Dade County pursuant to the provisions of the Code of Miami-Dade County, Florida;"
 - b. The COUNTY shall not by virtue of this Agreement be obligated to grant any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development, or operation of any project on the Subject Property; and
 - c. Notwithstanding and prevailing over any contrary provision in this Agreement, any COUNTY obligation that may be contained in this Agreement shall not bind the Board, the COUNTY's Department of Regulatory and Economic Resources or its successor department, or any other COUNTY, Federal, or State department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the COUNTY or other applicable governmental agencies in the exercise of its police power.
10. No modification, waiver, amendment, discharge or change of this Agreement shall be valid, unless the same is in writing and signed by each and every Party.

The **Effective Date** of this Agreement shall be the date that this Agreement was signed by a representative of Miami-Dade County.

FOR OPERATOR

By: EDUARDO ALBOR

President

MS Leisure Company

By: ROBERT FINE

Attorney for MS LEISURE COMPANY

_____/_____
Signature / Date

_____/_____
Signature / Date

State of Florida

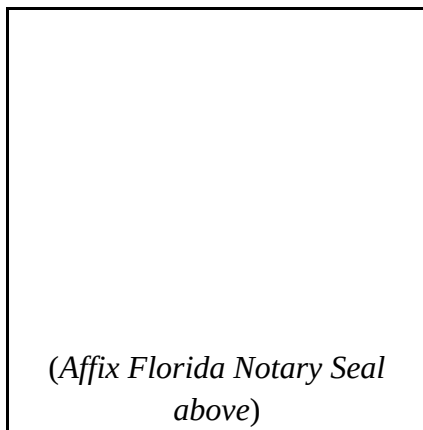
County of Miami-Dade

The foregoing Compliance Consent Agreement was acknowledged before me by means of (*how the individual appeared check one*):

c physical presence c online notarization this _____ day of _____, 20_____.
(date) (month) (year)

by _____ EDUARDO ALBOR _____
(Name of individual)

Individual identified by: c personal knowledge c satisfactory evidence _____.
(type)



(Signature of Notary Public)

(Typed, printed, or stamped name of Notary Public)

By: VALERIA ALBOR

Vice President

MS Leisure Company

_____/_____
Signature / Date

State of Florida

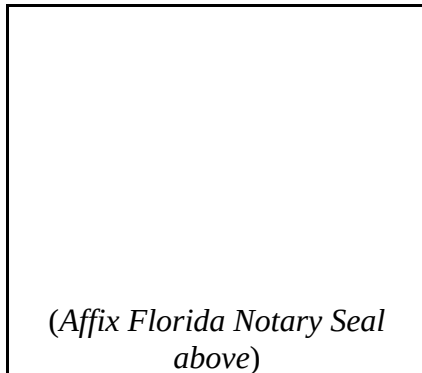
County of Miami-Dade

The foregoing Compliance Consent Agreement was acknowledged before me by means of (*how the individual appeared check one*):

☐ physical presence ☐ online notarization this _____ day of _____, 20_____.
(date) (month) (year)

by _____
VALERIA ALBOR
(Name of individual)

Individual identified by: ☐ personal knowledge ☐ satisfactory evidence _____.
(type)



(Signature of Notary Public)

(Typed, printed, or stamped name of Notary Public)

By: CONCEPCION ESTEBAN

Secretary

MS Leisure Company

_____/_____
Signature / Date

State of Florida

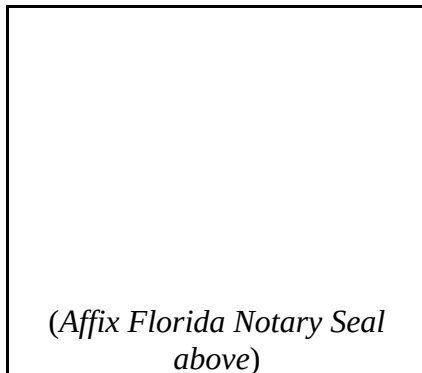
County of Miami-Dade

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☐ physical presence ☐ online notarization this _____ day of _____, 20_____.
(date) (month) (year)

by _____
CONCEPCION ESTEBAN
(Name of individual)

Individual identified by: ☐ personal knowledge ☐ satisfactory evidence _____.
(type)



(Signature of Notary Public)

(Typed, printed, or stamped name of Notary Public)

By: TRAVIS BURKE
Treasurer
MS Leisure Company

_____/_____
Signature / Date

State of Florida
County of Miami-Dade

The foregoing Compliance Consent Agreement was acknowledged before me by means of *(how the individual appeared check one)*:

☐ physical presence ☐ online notarization this _____ day of _____, 20_____.
(date) (month) (year)

by _____ MS Leisure Company _____
(Name of individual)

Individual identified by: ☐ personal knowledge ☐ satisfactory evidence _____.
(type)

(Affix Florida Notary Seal
above)

(Signature of Notary Public)

(Typed, printed, or stamped name of Notary Public)

FOR MIAMI-DADE COUNTY

Edward A. Rojas,
Assistant Director/Building Official
Construction, Permitting and Building Code
Division
Miami-Dade County Department of Regulatory
and Economic Resources

Date Signed