

MEMORANDUM

Agenda Item No. 8(H)(1)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: October 19, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution authorizing and
approving Assignment of Lease
from Festival Fun Parks, LLC
to MS Leisure Company, Inc.,
and authorizing the County
Mayor to execute any and all
documents required in
connection therewith

The accompanying resolution was prepared by the Parks, Recreation and Open Spaces Department and placed on the agenda at the request of Prime Sponsor Commissioner Raquel A. Regalado.



Geri Bonzon-Keenan
County Attorney


GBK/smm

Memorandum



Date: October 19, 2021

To: Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor 

Subject: Resolution Authorizing and Approving Assignment of Lease from Festival Fun Parks, LLC to MS Leisure Company, Inc. for the Operation and Maintenance of the Demised Premises known as Seaquarium Village

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing and approving the assignment of Lease from Festival Fun Parks, LLC (Lessee), a Delaware limited liability company to MS Leisure Company, Inc. (Assignee), a Florida corporation, for the operation and maintenance of the demised premises known as Seaquarium Village (Seaquarium).

Scope

The Seaquarium is located at 4400 Rickenbacker Causeway across Biscayne Bay on Virginia Key within Commission District 7, represented by Commissioner Raquel A. Regalado. The impact of this agenda item is countywide, as the Seaquarium is a regional asset and a tourist attraction for residents and visitors throughout Miami-Dade County.

Fiscal Impact/Funding Source

There will be no fiscal impact to the County for the assignment of this Lease. Pursuant to the Lease, the County is entitled to a one-time payment of eight percent (8%) of the net book profit realized by the Lessee from this assignment to the Assignee, not to exceed \$1.5 million; however, County staff has reviewed the sale transaction documents and determined that there is no net book profit to be realized from the assignment. Lessee has represented to the County (attached Exhibit A) that there is no net book profit, and the Seaquarium’s long-term auditors, BDO (formerly Morrison Brown Argiz and Farra, LLC), concur with this determination.

Delegated Authority

It is requested that the Board authorize the County Mayor or Mayor’s Designee to approve the assignment of the existing Lease with the Assignee on behalf of the County and to execute any and all documents that may be required in connection with the transaction authorized and approved by the attached resolution.

Track Record/Monitor

There are no known performance issues with the Assignee. The Parks, Recreation and Open Spaces Department’s (PROS) Assistant Director of Performance Excellence, Christina Salinas Cotter, will manage the terms and conditions of the assigned Lease.

Background

On March 9, 1954, the County and the predecessor entity, Marine Exhibition Corporation d/b/a The Miami Seaquarium (MEC), entered into a Lease for the construction, operation, and maintenance of the Seaquarium. The Lease documents have been amended and restated and approved by the Board a number of times since it originated, most recently on July 25, 2000. Subsequent amendments, together with capital and lease extensions, have extended the current lease term to November 26, 2044.

The Lessee and its predecessor corporation MEC, with whom it merged in 2014 after approval by this Board, has been one of the largest tenants within the Parks, Recreation and Open Spaces Department, with pre-pandemic rent payments to the County averaging approximately \$2.5 million annually since 2012. The Lessee is a subsidiary of Palace Entertainment Holdings, LLC.

The Lease permits the Lessee to assign the Lease or sell its rights under the Lease upon giving notice to the County and affording the County an opportunity to object if the transaction is contrary to the best interests of the County. The County has evaluated and determined that the assignment of the Lease from the Lessee to the Assignee is in the best interest of the County, as the Assignee, through its parent The Dolphin Company, is a large, experienced, animal welfare-focused, and well-established aquatic park, habitat, and marina operator that is able to make the necessary infrastructure improvements to the Seaquarium along with the capacity to ensure the highest levels of animal welfare and management.

The Assignee, a Florida corporation, is a wholly-owned subsidiary of Controladora Dolphin S.A. de C.V. d/b/a The Dolphin Company, headquartered in Cancun, Quintana Roo, Mexico, which operates 32 aquatic parks, habitats, and marinas generating approximately \$40 million in annual revenue while serving more than 12 million visitors around the world, including the United States, Italy, Mexico, Argentina and the Caribbean, under brands such as Dolphin Discovery, Dolphin Cove, Zoomarine and Marineland, among others.

Founded in 1994, The Dolphin Company is committed to the preservation of the environment and the environmental education of the communities where it operates. The Dolphin Company’s Marine Mammal Specialists and Environmental Educators have visited over 230,000 schools worldwide to teach children about conservation and has conducted over 130,000 educational tours of their aquatic habitats to provide students with first-hand environmental learning opportunities.

The Dolphin Company and its facilities have been accredited by the Alliance of Marine Mammal Parks and Aquariums (AMMPA), International Association of Marine Animal Trainers (IMATA), Association of Zoos and Aquariums (AZA), certified by American Humane, a member of the International Association of Amusement Parks and Attractions (IAAPA), and a founding member of the Mexican Association of Habitats for the interaction and protection of marine mammals (AMHMAR), among others.

In Florida, The Dolphin Company operates Gulf World in Panama City Beach, Marineland in St. Augustine, and Dolphin Connection in Duck Key. The Assignee is a Florida corporation based in St. Augustine, Florida.


The Lessee is currently making necessary infrastructure upgrades and repairs to the Seaquarium including the whale habitat and stadium facilities to include, but not limited to: structural repairs as required by the 40-year inspection, paint remediation throughout the park, and water filtration improvements throughout the various habitats. The Assignee has committed to assuming all repairs should the assignment of the Lease be approved and is projecting repairs to be completed by the end of this year, 2021. The Lessee has recently been issued a report from the United States Department of Agriculture (USDA) citing 21 non-significant infractions. To date, 15 infractions have been corrected and the remaining six infractions will be corrected by no later than November 2021. Notwithstanding approval of the assignment by this Board, the sale transaction from the Lessee to the Assignee cannot be effectuated until all infractions are corrected. In addition to the repairs already in progress, the Assignee intends to make several enhancements to the existing concessions at the Seaquarium to upgrade the amenities for children, including the play areas, and intends to provide additional interactive programs and experiences to educate patrons on the importance of respecting and caring for the environment.

The Assignee has provided and committed to a health and welfare management plan specifically for the care of the Orca whale (*Orcinus orca*) Tokitae (a/k/a Lolita) that addresses the staff of professionals responsible for Lolita’s care with daily functions, habitat maintenance, husbandry, and enrichment. The health and welfare management plan has been reviewed by the staff of PROS ZooMiami to ensure the highest standards of animal welfare are being met. The Assignee has confirmed to not procure or acquire any additional orcas.

The Assignee has a proven track record of achieving the highest certification levels for its facilities and has similarly committed to achieving for the Seaquarium an accreditation by AMMPA and to secure AZA certification, which is regarded as the “gold standard” certification in the zoo and aquarium industry. Additionally, the Assignee has agreed to future Lease amendments, subject to approval by the Board, aimed at reinforcing the commitments to the highest levels of infrastructure maintenance, animal and welfare management, certification requirements, and conservation education.

It is recommended that the Board approve the assignment of the Lease from the Lessee to the Assignee as it is in the best interest of the County because the Assignee is a large, experienced, animal-welfare focused, and well-established aquatic park, habitat, and marina operator that is aligned with the County’s goals and objectives of conservation and education. (The principals of the Assignee are listed in the attached Exhibit B) The Assignee has the proven capacity and is committed to achieving and maintaining the highest standards of infrastructure maintenance, animal welfare and management, and certification requirements for the Seaquarium.

Attachments



Jimmy Morales
Chief Operations Officer

EXHIBIT A



September 21, 2021

Maria I. Nardi
Director
Miami-Dade County Parks, Recreation and
Open Spaces Department
275 N.W. 2nd Street, Fifth Floor
Miami, FL 33128


Re: The Miami Seaquarium – Assignment of Lease

Dear Ms. Nardi:

Representatives of The Miami Seaquarium, The Dolphin Company and the Parks, Recreation and Open Spaces Department met on September 15, 2021, to discuss the assignment of the Amended and Restated Lease (the "Lease"). We confirmed at that meeting that Festival Fun Parks, LLC, the Lessee and operator of The Miami Seaquarium, would not realize a Net Book Profit, as described in Sections 22 and 23 of the Lease, upon the sale and assignment of its interests to The Dolphin Company. The Miami Seaquarium's long-term auditors, BDO, formerly Morrison Brown Argiz and Farra, LLC, agree with this determination.

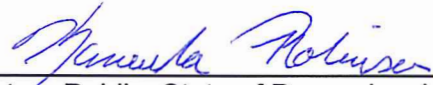
Sincerely,

Festival Fun Parks, LLC


John Reilly
Chief Operating Officer

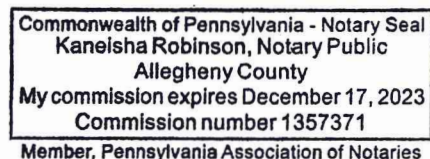
State of Pennsylvania, County of Allegheny

Sworn to and subscribed before me this 21st day
of September, 2021, by John Reilly, Chief Operating
Officer of Festival Fun Parks, LLC, who is personally
known to me.



Notary Public, State of Pennsylvania at Large
My commission expires: 12/17/2023

(Notary Seal)





DISCLOSURE OF INTERESTS PURSUANT TO SECTION 2-8.1(d)(1)

MS Leisure Company (a Florida corporation)

Directors

Eduardo Albor
Valeria Albor
Travis Burke

Officers

Eduardo Albor, President
Valeria Albor, Vice President
Concepción Esteban, Secretary
Travis Burke, Treasurer

Owned by:

Dolphin Leisure, Inc.

Owned by:

Controladora Dolphin, S.A. de C.V.

Owned by:

Dolphin Capital Company, S.R.L. de C.V.

Individuals with ownership interest of 5% or more: Eduardo Albor, John Olson, and Michael Wood

The business address for all individuals disclosed herein is:

9600 Ocean Shore Blvd, St. Augustine, FL 32080.





MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: October 19, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(H)(1)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(H)(1)
10-19-21

RESOLUTION NO. _____

RESOLUTION AUTHORIZING AND APPROVING
ASSIGNMENT OF LEASE FROM FESTIVAL FUN PARKS,
LLC TO MS LEISURE COMPANY, INC., AND AUTHORIZING
THE COUNTY MAYOR OR THE COUNTY MAYOR'S
DESIGNEE TO EXECUTE ANY AND ALL DOCUMENTS
REQUIRED IN CONNECTION THEREWITH

WHEREAS, this Board desires to accomplish the purpose outlined in the accompanying memorandum together with Exhibits A and B attached to the memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Authorizes and approves the assignment of the Lease from Festival to MS Leisure Company, Inc. Further, this Board finds that Exhibit "B" attached to the accompanying memorandum, satisfies the disclosure requirements of Section 2-8.1(d)(1) of the Code of Miami-Dade County and hereby authorizes and approves said Exhibit.

Section 2. Finds that the proposed assignment will not be contrary to the best interests of the County and that MS Leisure Company is a competent, experienced operator comparable to Festival.

Section 3. Authorizes the County Mayor or the County Mayor's designee to execute any and all documents that may be required in connection with the transaction authorized and approved by this resolution.

The foregoing resolution was offered by Commissioner ,
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Jose "Pepe" Diaz, Chairman	
Oliver G. Gilbert, III, Vice-Chairman	
Sen. René García	Keon Hardemon
Sally A. Heyman	Danielle Cohen Higgins
Eileen Higgins	Joe A. Martinez
Kionne L. McGhee	Jean Monestime
Raquel A. Regalado	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared this resolution duly passed and adopted this 19th day of October, 2021. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

mjs

Melanie J. Spencer