



November 20, 2023

onePULSE Foundation, Inc.
Attn: George A. Kalogridis, Vice
Chairman

Delivered via U.S. Mail Certified:
#91-7108-2133-3939-2160-2815

125 N. Lucerne Circle
Orlando, Florida 32801

and

gakalogridis53@gmail.com

RE: **NOTICE OF DEFAULT**

Agreement between Orange County, Florida and onePULSE Foundation, Inc.
regarding Pulse Museum TDT Funding approved on October 30, 2018 (Agreement)

Dear Vice Chairman, Kalogridis:

On October 30, 2018, Orange County (the "County") and the OnePULSE Foundation, Inc. (the "Foundation") entered into an Agreement regarding the Pulse Museum TDT Funding (the "Agreement"). Under the terms of the Agreement, the County agreed to contribute up to ten million dollars (\$10,000,000) to the Foundation from excess tourist development tax ("TDT") revenues to be used solely to fund costs associated with acquisition of the museum property and building design fees, all in accordance with Section 125.0104(5)(a)1.c., Florida Statutes (the "TDT Statute"). The Foundation used the TDT funding to purchase a property located at 438 W. Kaley Street, Orlando, Florida 32801 (the "Property") and to pay architectural and design fees.

By executing the Agreement, the Foundation bound itself to certain obligations and restrictions. Specifically, the excerpts of the following provisions are of note (emphasis added):

Section 5. a. (iii) Restrictive Covenants. *The Restrictive Covenants, and all terms, provisions, covenants, conditions, restrictions, and agreements thereof, are incorporated into this Agreement by this reference. The Foundation's failure to comply with any of the Restrictive Covenants shall constitute a breach of this Agreement by the Foundation.* The terms and provisions of this paragraph shall survive the Foundation's acquisition of the Property.

Section 6. Foundation. "...The Foundation shall: ...(iv) diligently proceed with the design, construction and operation of the Museum in a financially responsible and commercially reasonable manner; (v) *use the Property acquired with the County Contribution solely as the Museum open to the public;* and (vi) be solely responsible for

Byron W. Brooks, A.I.C.P., County Administrator

201 South Rosalind Avenue • Reply To: Post Office Box 1393 • Orlando, Florida 32802-1393

Telephone: 407-836-7370 • Fax: 407-836-7399

Byron.Brooks@ocfl.net

In the event of a default by the Foundation under this Agreement, the County, may, at its option, exercise any one or more of the following remedies: (i) declare this Agreement terminated; or (ii) exercise any and all remedies available at law and in equity.

The restrictive covenants required by Section 5. a. (iii) of the Agreement were recorded on September 13, 2018, as Doc# 20190568209, in the Public Records of Orange County, Florida (the "Restrictive Covenants"). The excerpts of the following provisions of the Restrictive Covenants are of note (emphasis added):

1. The Property shall be *used solely for a museum* with associated amenities... *unless the prior written consent of County is obtained for other uses*, which consent may be withheld or conditioned in County's sole and absolute discretion.

...

4. *Foundation shall not*, neither orally nor in writing, *without the prior written consent of County*, which consent may be withheld or conditioned in County's sole and absolute discretion, *sell, convey, alienate, transfer (including a transfer by agreement for deed or land contract), assign, or lease the Property, any part thereof, any interest therein, or any buildings, structures, or improvements now or hereafter located thereon...*

5. *Foundation shall not, neither orally nor in writing, without the prior written consent of County* (which consent may be withheld or conditioned in County's sole and absolute discretion), create, place, record, or *consent to* (nor permit to be created, placed, recorded, or exist) on, against, or *applicable to the Property, any part thereof, any interest therein, or any buildings, structures, or improvements now or hereafter located thereon, any further* monetary or a non-monetary liens, pledges, encumbrances, mortgages, security interests, easements, restrictions, *leases, agreements, or other instruments whatsoever* ("Unpermitted Encumbrances")...

...

8. In the event of a breach or default by Foundation of any of these Restrictive Covenants, which continues for more than thirty (30) days following the date of written notice of such breach or default by Foundation from County, provided, however, that if the nature of the breach or default is such that it cannot reasonably be cured within such thirty (30) day period, then Foundation shall have a reasonable period of time to cure such breach or default provided that it diligently undertakes and pursues such cure, County shall be entitled to full and adequate relief by any and all remedies permitted at law or in equity, including without limitation award of damages, injunction, and specific performance. Any remedies specifically provided by these Restrictive Covenants shall be cumulative with and in addition to all other remedies permitted at law or in equity.

9. In the event of a breach or default by Foundation of any of these Restrictive Covenants, which continues for more than thirty (30) days following the date of written notice of such breach or default by Foundation from County, provided, however, that if the nature of the breach or default is such that it cannot reasonably be cured within such

thirty (30) day period, then Foundation shall have a reasonable period of time to cure such breach or default provided that it diligently undertakes and pursues such cure, then Foundation shall, within ninety (90) days after receipt of written notice from County requesting the same, convey to County by special warranty deed all of Foundation's rights, titles, and interests in and to the Property, and in and to any and all buildings, structures, improvements, and fixtures at such time located thereon, (collectively, the "Foundation Interests") with such conveyance "as is", *but subject to representations and warranties that Foundation then owns the Foundation Interests in fee simple, that Foundation has the right to convey title to the Foundation Interests to County, and the Foundation Interests is free and clear of any and all encumbrances which were not in effect as of the date of Foundation's acquisition of the Foundation Interests and which render title unmarketable or which materially and adversely impact the value of the Property. Foundation shall pay any and all costs and expenses, including costs of recording the special warranty deed, incurred by either County or Foundation in connection with the conveyance of the Foundation Interests to County.* The remedy provided to County by this paragraph is cumulative with and in addition to all other remedies provided by these Restrictive Covenants and/or permitted at law or in equity. In the event that County elects to exercise the remedy provided to County by this paragraph, Foundation shall remove all of its personal property from the Foundation Interests prior to conveyance; any personal property of Foundation not removed from the Foundation Interests prior to conveyance shall become the property of County upon the conveyance of the Foundation Interests to County. For avoidance of doubt, upon a breach or default by Foundation of any of these Restrictive Covenants, County may (but shall not be obligated to) exercise the remedy provided to County by this paragraph.

...

On October 27, 2023, the Foundation presented the County with a letter indicating that it would not be moving forward with the plans to construct the museum, requesting that the County terminate the Agreement, and offering to return the Property to the County (the "Letter"). The Letter further stated that the Foundation was not in default under the Agreement.

As part of the closing on the Property on September 13, 2019, the County agreed to one license agreement with The Nassal Company for 11,225 sf of parking (the "Parking License"). Following its receipt of the Letter, the County received copies of documents indicating that the Foundation had entered into three additional license agreements without prior approval from the County. The license agreements were entered into with The Nassal Company on August 1, 2022, for "18,000 sf of non-conditioned interior storage and exterior use of loading dock space..." (the "Interior License"), on May 1, 2023, for "14,345 sf of parking immediately east of the building" (the "East Parking License"), and on May 1, 2023, for "approximately 18,000 sf of non-conditioned interior storage and exterior use of loading dock..." and flex space (the "Flex Space License," and together with the Interior License and East Parking License, the "Unauthorized Licenses").

The Unauthorized Licenses are a violation of both the Agreement and the Restrictive Covenants; specifically, Sections 1, 4, and 5 of the Restrictive Covenants and Sections 5.a.(iii) and 6 of the Agreement. Accordingly, pursuant to Section 14 of the Agreement and Section 8

compliance and shall comply with all federal, state and local laws[,] ordinances, rules and regulations relating to the design, construction, funding, operation and maintenance of the Museum.”

Section 14. Default by the Foundation. The occurrence of any of the following constitutes an Event of Default by the Foundation:

...

(c) Foundation’s *failure to comply with the Restrictive Covenants* beyond any applicable grace or cure period;

...

(e) Foundation’s default in the performance of any material term or covenant of this Agreement not otherwise provided for in this section for a period of more than thirty days after its receipt of a notice of default from County provided however that if the nature of the default is such that it cannot reasonably be cured within such thirty day period then Foundation shall have a reasonable period of time to cure such default provided that it diligently undertakes and pursues such cure;

...

(f) The dissolution of the Foundation;

(g) If (i) a petition is filed by the Foundation seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency, or (ii) a petition is filed against the Foundation, which is not dismissed within sixty (60) days after filing, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency, or (iii) Foundation seeks or consents to or acquiesces in the appointment of any trustee, receiver, master or liquidator of itself or of all of the rent, revenues, issues, earnings, profits or income of any part of the Museum, or (iv) Foundation makes any general assignment for the benefit of creditors, or (v) Foundation is Insolvent (as defined herein); or (vi) any trustee, receiver or liquidator of Foundation or of all or any part of the Property is appointed who is not discharged within sixty (60) days after its appointment. For purposes of this paragraph, a person or entity shall be deemed to be “**Insolvent**” if they are unable to pay their debts as they become due and/or if the fair market value of their assets does not exceed their aggregate liabilities.

...

of the Restrictive Covenants, please consider this letter notice of the Foundation's default. Please cure the default by immediately sending notice to the Nassal Company terminating the Unauthorized Licenses as well as the Parking License in accordance with the respective termination provisions in each of those agreements. The County's expectation is that all of the licenses would be terminated and the property vacated by the outside date for termination as set forth in the agreement, which would be sixty (60) days from the date the Foundation provides notice for the property to be vacated. Whitney Evers, Senior Assistant County Attorney, shall be copied on the notices. Please direct them to her attention at: whitney.evers@ocfl.net and mailed to 201 S. Rosalind Avenue, County Attorney's Office, 3rd Floor, Orlando, Florida 32801.

As a reminder, pursuant to Section 10 of the Agreement, the Foundation agreed to indemnify and hold the County harmless from all claims, actions, losses, suits and judgments, fines, liabilities, costs and expenses (including attorney's fees) attributable to its negligent acts or omissions or those of its officers, directors and employees acting within their scope of employment or connected in any way or arising from performance under the Agreement. To the extent it becomes necessary, we hereby put you on notice that we are invoking that provision.

With respect to the Foundation's desire to deed the Property back to the County, Paragraph 9 of the Restrictive Covenants details the timing by which the Foundation shall convey the Property back to the County upon County's written notice to the Foundation. Due to the nature of the breach and the allowance of the Foundation for other parties to use the Property, the County deems it prudent to perform due diligence prior to accepting the deed to the Property. A representative from the County's Real Estate Management Division will coordinate such due diligence, as well as any necessary physical inspection of the Property, with the Foundation. A representative from the County Attorney's office will coordinate with the Foundation to discuss a written termination agreement and the timing for the conveyance. Please ensure that the Property continues to be properly insured until such time as the Property is conveyed back to the County.

Further, pursuant to Sections 11 and 12 of the Agreement, the County is hereby requesting copies of the documents set forth in **Exhibit A** hereto (the "Foundation Documents"). Please provide copies of said documents to Ms. Evers at the address above and to Mr. Chris Dawkins, at 201 S. Rosalind Avenue, 4th Floor, Orlando, Florida 32801.

Should you have any questions, you can reach Ms. Evers at 407-836-7320.

Sincerely,



Byron W. Brooks
County Administrator

Encl.

Exhibit A

cc: Claudia Mason, CFO onePULSE Foundation, Inc. (via email only:
cm@onepulsefoundation.org)
Vicki Berman, Esq., Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A. (via
certified mail and email: vberman@deanmead.com)
Roseann Harrington, Chief of Staff (via email only)
Jeffrey J. Newton, County Attorney (via e-mail only)
Whitney Evers, Senior Assistant County Attorney (via e-mail only)
Chris Dawkins, Assistant Comptroller (via email only)
Stephanie Taub, Manager, Fiscal and Business Services (via email only)
John Petrelli, Director, Risk Management & Professional Standards (via email only)
Mindy T. Cummings, Manager, Real Estate Management Division (via email only)
Richard Steiger, Manager, Facilities Management Division (via email only)

EXHIBIT A
FOUNDATION DOCUMENTS

- Copies of bank statements with cancelled checks for all payments made by the Foundation with TDT funds provided pursuant to the Design Cost Requisitions dated as follows:

Invoice	Invoice Date	Total TDT Request
FORM of DESIGN COSTS REQUISITION NO. 1	11/12/2019	\$434,351.36
FORM of DESIGN COSTS REQUISITION NO. 2	4/22/2020	\$27,711.24
FORM of DESIGN COSTS REQUISITION NO. 3	5/7/2020	\$25,806.00
FORM of DESIGN COSTS REQUISITION NO. 4	5/20/2020	\$240,825.53
FORM of DESIGN COSTS REQUISITION NO. 5	6/9/2020	\$25,926.00
FORM of DESIGN COSTS REQUISITION NO. 6	7/15/2020	\$97,203.60
FORM of DESIGN COSTS REQUISITION NO. 7	8/7/2020	\$24,306.00
FORM of DESIGN COSTS REQUISITION NO. 8	9/16/2020	\$200,000.00
FORM of DESIGN COSTS REQUISITION NO. 9	10/7/2020	\$8,910.00
FORM of DESIGN COSTS REQUISITION NO. 10	10/27/2020	\$132,270.00
FORM of DESIGN COSTS REQUISITION NO. 11	11/4/2020	\$44,675.00
FORM of DESIGN COSTS REQUISITION NO. 12	12/7/2020	\$18,555.00
FORM of DESIGN COSTS REQUISITION NO. 13	12/21/2020	\$300,000.00
FORM of DESIGN COSTS REQUISITION NO. 14	1/6/2021	\$19,176.11
FORM of DESIGN COSTS REQUISITION NO. 15	2/4/2021	\$26,629.50
FORM of DESIGN COSTS REQUISITION NO. 16	3/5/2021	\$58,841.50
FORM of DESIGN COSTS REQUISITION NO. 17	4/8/2021	\$55,820.96
FORM of DESIGN COSTS REQUISITION NO. 18	5/10/2021	\$364,037.96
FORM of DESIGN COSTS REQUISITION NO. 19	6/8/2021	\$260,215.00
FORM of DESIGN COSTS REQUISITION NO. 20	7/7/2021	\$323,860.35
FORM of DESIGN COSTS REQUISITION NO. 21	3/10/2022	\$14,009.00
FORM of DESIGN COSTS REQUISITION NO. 22	5/10/2022	\$99,267.83
FORM of DESIGN COSTS REQUISITION NO. 23	5/10/2022	\$10,155.00
FORM of DESIGN COSTS REQUISITION NO. 24	6/17/2022	\$53,972.00
FORM of DESIGN COSTS REQUISITION NO. 25	8/18/2022	\$36,037.00
FORM of DESIGN COSTS REQUISITION NO. 26	10/10/2022	\$47,620.67
FORM of DESIGN COSTS REQUISITION NO. 27	12/16/2022	\$53,972.00
FORM of DESIGN COSTS REQUISITION NO. 28	2/6/2023	\$6,210.00
FORM of DESIGN COSTS REQUISITION NO. 29	3/21/2023	\$12,421.00
Grand Total		\$3,022,785.61

- Most recent Statement of Activities and Statement of Financial Position, including the months ending September 30, 2023, October 31, 2023, and November 30, 2023 (when available)
- Copies of all board minutes for the years 2019 through and including 2023