

March 26, 2019

TO THE COUNCIL OF MINISTERS

Att.: The Honorable Prime Minister, Mrs. Leona Marlin-Romeo
The Honorable Minister of Public Housing, Spatial Planning,
Environment and Infrastructure (VROMI), Mr. Miklos Giterson

Reference: Termination of the land lease to St Maarten Shipyard N.V.

Honorable Council Members; Honorable Prime Minister; Honorable Minister of VROMI:

On March 22, 2019, the St. Maarten Shipyard N.V., of which the undersigned are Managing Directors of companies that are individually each minority shareholders, received a letter from Government dated March 21, 2019, your ref: 6329, with the subject: **“Termination long lease agreement”**, a copy of which is herewith attached.

We are both shocked and outraged by the chain of events leading up this notice of termination.

On February 28th 2019, in the presence of Mr. Irwin Illidge, representative of SHANNY Real Estate, Mr. Raeyhon Peterson (VROMI/Domain Affairs) and the undersigned, Minister Giterson verbally agreed (once again) to provide us with a new 12-year lease under the terms and conditions set forth in the original lease. One of the conditions is a clause whereby the St. Maarten Shipyard would be required to vacate the property, and be relocated within the lagoon, ONLY in the event the airport (PJIA Holding Company) is prepared (and funded) to expand its airside facilities. Such expansion would be in the form of a by-pass taxiway north of the present runway.

In addition to the aforementioned ‘pre-existing’ lease terms, new conditions were listed:

- A. The re-payment of all outstanding lease payments is due within **one year**, or the new lease would automatically terminate without notice.
- B. St. Maarten Shipyard would further be responsible to ensure that all lease payments due from the three other lease holders, i.e. Mr. Duzanson, Mr. Illidge and Mr. Samson, are up-to-date and paid in full. Whether the lease-holders or St. Maarten Shipyard NV addresses the arrears is irrelevant. The amount is due in full.
- C. St. Maarten Shipyard NV would make available the required space needed, within St Maarten Shipyard’s premises, for the purpose of the “Ship Salvaging Project” to be funded from the World Bank managed Trust Fund, at no cost to the Fund and/ or to Country St. Maarten, for as long as required to complete the project.

Prior to receipt of Government’s official termination letter, the St. Maarten Shipyard NV, and the three (3) other Lease Holders, represented by Messrs. Irwin Illidge, Francisco Samson and Louis Duzanson, collectively representing ownership of the leased area in question, repeatedly requested extension of the leases.

For five (5) years requests have been registered at Government for the ministry of VROMI, with countless follow-up emails, phone calls and correspondence. This was done in an effort to extend the leases. As indicated to Minister Giterson and his ministry (and to VROMI Ministers before him), the St. Maarten

Shipyards N.V. needed this lease extension in order to be able to recapitalize and refinance the operations, so that the business could revitalize and service its debt, including the outstanding land lease payments.

In more recent times, we have had 4 meetings at the Minister of VROMI's office, three of which were attended by Minister Giterson. In each of these meetings, we left his office with the understanding that he was in favor of extending the lease as requested; this would be done based on the terms set forth below. For reasons unknown to us, there was a long period of silence after each meeting, marked by unanswered emails and/or phone calls, and ultimately, a complete reversal of the agreement and a change of direction. It would appear that as the Simpson Bay Lagoon Ship Wrecks Salvaging project came closer to fruition and the amount of dollars being allocated to this project was made public, the following issues, related to the St. Maarten Shipyards' requested lease extensions quickly surfaced:

- I. On December 7, 2018, VROMI Chef de Cabinet, Mr. Chris Wever, sent an email in which notice was given that Minister Giterson was no longer inclined to proceed with the lease(s) extension(s), because of the Lease payments arrears. We found this decision odd considering that all parties were apprised and well aware of these outstanding lease amounts from the start; we had made it clear from the onset that we were not trying to avoid paying the lease payments but needed to recapitalize, and in order to do so we needed the lease extended. Getting approval for lease extension always seemed to be elusive for reasons that according to VROMI, the SXM Airport could not, or would not commit to when they would be totally ready to commence the actual construction of the "By-pass East" and/or the full length Back-Taxiway, for which the annexation of the Shipyards parcels and all other properties to the North of the existing Airport Road are required, to allow for relocation of relevant sections of the Airport Road.
- II. We were subsequently approached by someone outside the VROMI ministry, who informed us that in order to get the lease extension (requested for the past 5+ years), we would need to make a payment to this individual of US\$35,000.00. This individual would then deliver the money to the appropriate person/people thereby ensuring the lease(s) would be extended. He went on to tell us that there were others "lined up" who wanted the property because of the announced World Bank-funded ships salvaging project. Only by paying abovementioned sum would the St. Maarten Shipyards and related leases be extended. It seemed third parties who allegedly were/are prepared to make the requested payment, would become the new lessee(s), if Shipyards failed to deliver.
- III. In his capacity as representative of the Managing Director of St. Maarten Shipyards N.V., the undersigned Jeff Boyd, adamantly refused the attempt towards extortion, or be a party to such. Thereafter, we were confronted with deafening silence, prompting us to request an urgent meeting with the Minister of VROMI to further discuss these developments. This meeting took place on Thursday, February 28, 2019, in the Minister's office. In his presence, we conveyed the names, dates and information regarding the request for the US\$ 35,000.00 and suggested to the Minister that a meeting be convened with all parties, including "the messenger", in order to put all the facts on the table in plain view of everyone. We went on to point out to the Minister that one way or the other, the person, who according to us is involved, in-fact has a connection to the Minister's office, as the individual who brought the

message cited the exact amount of long lease outstanding, information which had recently been presented by Domein Beheer to the VROMI Minister's office. The Minister agreed that this seemed to be the logical flow of events and a meeting would be organized on short notice. That afternoon (February 28th, 2019), Minister Giterson called the undersigned Mike Ferrier, and scheduled the promised follow-up meeting for Friday, March 1, at 1PM. Thereafter on that same day, the VROMI Minister called back to cancel the proposed follow-up meeting.

- IV. We furthermore brought to the Minister of VROMI's attention, the remarks/rumors that were conveyed to us, not only from the individual seeking the US\$ 35,000.00, but from others, who claimed "that a lucrative deal was in the making with others", that would allow "them" to be issued the lease on the Shipyard properties, at which point they would benefit from the World Bank shipwrecks salvage fund.

In Government's termination letter, there are a variety of inconsistencies we simply cannot understand, among which, but not limited to:

- A. "Also as you are aware, the Country of St Maarten as owners of the parcels urgently requires the usage of these parcels for the ship salvaging project". This statement on the one hand is accurate, as at Minister Giterson's request, we met and worked with EECC representatives to establish the guidelines, location, and logistics surrounding this project. On the other hand, it is illogical to include this in the termination letter, when we previously agreed (actually offered) to make the required space available free of charge and have been preparing our facilities to receive the project with 30 days' notice, for over 6 months. What possible difference could not extending our lease, as previously agreed, have made unless there is some other motive? In our opinion, the delays in launching this project, have nothing to do with St. Maarten Shipyard and or the extension of the lease.
- B. Government makes note that the lease expired on September 21, 2018, and yet leading up to that date and thereafter, we were all in agreement that the lease was to be extended. If this was not the case, why would we not have been served notice of the intended non-renewal/termination prior to the e-mail of January 4th from Mr. Wever, referenced by Minister? We would like to point out that we also have similar e-mails from VROMI Officials that state we are moving forward with the Shipyard lease extension and with the Ship Salvaging Project. such as:

(7-17-2018) The issue of the airport road, is being handled, I am just having difficulty in determining the exact period within which we will require the use of the land. There are some delays in the approval of the project and I expect that to be done in August some time. However we aim to resolve matters pertaining to the land with you before that.

And

(7-17-2018) In any case, what it looks like is that it will be an arrangement between yourself/Shipyard NV and the Government.

- C. We note that in the letter we received, only those parcels leased in the name of St Maarten Shipyard NV, are identified as being terminated and no reference is made of Certificate of Admeasurement 231/1995 in the name of Shanny Real Estate represented by Mr. Irwin Illidge, Certificate of admeasurement 57/1993 represented by Mr. Francisco Samson and Certificate of admeasurement 395/1996 represented by Mr. Louis Duzanson. In speaking with the individuals listed above, who have always been party to and signatories of the request for extension of the leases, they report **not** receiving notice to vacate their leased premises, while ALL leases are in arrears. Are we to assume that their leases have been excluded from this termination and are therefore arbitrarily extended?
- D. In Government's termination letter we read: *"You are hereby requested to clear the aforementioned parcels at your earliest convenience. You will be given a period of two (2) months to do so."* This seemingly fails to acknowledge our e-mail to you of June 14th 2018, and our continuous follow-up correspondence and communications, where we point out the logistics of getting ready for the shipwrecks salvaging/removal project and the arrangements that would be required for this. We further pointed out that we were declining boat reservations and haul-outs based on the space requirement as requested from the VROMI office. PLEASE NOTE: this further hampered the company's cash flow. Although we took steps to limit the issues we would face once the project started and, as a result, suffered the financial consequences, we still have ongoing operations which cannot be concluded in the time frame mentioned. Had we not been given assurances numerous times that the extension was forth coming, and that we would support the Recovery Fund project, this would not have been the case.

In closing, taking into consideration the present very volatile and dynamic political situation on our island, we are baffled by what is going on here and why...

To knowingly and intentionally

- I. Force a company into bankruptcy, thus negating their willingness and new ability to finally pay what is outstanding to government for land lease, seems illogical.
- II. To withdraw a land lease, Government creates a situation which promotes additional scrutiny and possibly un-willingness of banking institutions to do business with other companies that have a land lease, as there is no longer any security in the land. Moreover, this action is counterproductive for the country's economic growth.
- III. To withdraw the lease on the basis of the need for the space for the ship salvaging project, when said space is already available and at no cost, makes no sense.
- IV. To end the employment of in excess of 15 employees directly, or indirectly, in a time where the country is trying to rebuild and move forward, seems inconsistent with the

needs of the people and is in stark contradiction to public policy as outlined in the National Recovery and Resilience Plan

- V. To end a lease after a catastrophic hurricane that devastated the business which occupied the lease, a business that is trying to recover in an industry that continues to play a vital role in our Islands recovery, shows a lack of concern for the business
- VI. To end a lease that was hampered from the onset by its short-term duration in spite of repeated requests for an extension for over 5 years, fails to show any consideration for the business community
- VII. To subject this ministry and the Government, as a whole, to yet more scrutiny and possible prosecutorial oversight in the already volatile times we live in and risking possibly lengthy and costly legal battles, should and could be avoided.

Simply put, none of this makes sense unless all of the fears and concerns we pointed out to the Minister of VROMI in his office are in-fact real and that there is an ulterior motive to all of this. We therefore respectfully ask the Council of Ministers' intervention and request reconsideration of Government's position on this matter, based on the clarity we have provided and the chain of events leading up to where we stand today. To be clear, we respectfully request that the terms of the agreement reached with the Minister of VROMI in his office on February 28, 2019, is respected, honored and implemented.

We are available at your convenience to meet, should the need be there.

Respectfully submitted

Jeffrey D. Boyd

Michael J. Ferrier