

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Branch Banking and Trust Company  
28050 US Highway 19 N  
Clearwater, Florida 33761  
Attn: Jeff Lampasso

Space above for Recorder's Use

### **SUBORDINATION AGREEMENT**

This Agreement is made as of \_\_\_\_\_, 2016, by and among the **CITY OF CLEARWATER, FLORIDA**, a municipal corporation under Florida law ("City"), **BRANCH BANKING AND TRUST COMPANY**, a North Carolina banking corporation having offices in the State of Florida ("Bank"), and **CLEARWATER MARINE AQUARIUM, INC. (formally known as CLEARWATER MARINE SCIENCE CENTER, INC.)**, a Florida non-profit corporation. ("Owner"),

#### **Factual Background**

A. City executed a Deed of Conveyance (the "Deed") dated September 12, 1986, to Owner granting and conveying the real property described in Exhibit A attached hereto (the "Property") to Owner as more particularly described therein. The Deed was recorded on September 18, 1986 in the Public Records of Pinellas County in O.R. Book 6319, Page 799.

B. In 2010 the Owner requested and obtained financing of \$8,600,000 from Bank for improvements to the Property and adjacent real property owned by Owner pursuant to tax-exempt financing established under (i) a Loan Agreement dated as of December 1, 2010 between Owner and the Pinellas County Industrial Development Authority, a political subdivision and body corporate and politic of the State of Florida ("Authority") and (ii) a Bond Purchase Agreement dated as of December 29, 2010 among Owner, Authority and Bank (the "Bond Purchase Agreement").

C. In 2010 the Bank purchased Authority's \$8,600,000 Revenue Bond (Clearwater Marine Aquarium, Inc. Project), Series 2010 (the "Bond") pursuant to the terms of the Bond Purchase Agreement and the proceeds of the Bond have been and are to be used by the Owner for the improvements to the Property and adjacent real property owned by the Owner.

D. In 2010 the Owner guaranteed to Bank the full and prompt payment and performance by Authority of all of Authority's obligations under the Bond pursuant to a Guaranty Agreement dated as of December 1, 2010 (the "Guaranty Agreement") between Owner and Bank.

E. The Guaranty Agreement is secured by, among other things, a Mortgage of Real Estate and Security Agreement dated as of December 1, 2010 and recorded in the Clerk of Court, Pinellas County Florida in Official Records Book 17129, Page 1391 (as amended or supplemented from time to time, the "2010 Bank Security Instrument") covering real property of Owner adjacent to the Property and the Property.

F. Owner has requested financing of \$[ ] from Bank for, among other things, the construction of Phase I of a parking garage pursuant to the taxable loan (the "Term Loan") made pursuant to the Loan Agreement dated [ ], 2016 between the Owner and the Bank (the "Loan Agreement") as evidenced by that certain Promissory Note dated [ ], 2016 from the Owner in favor of the Bank in the principal amount of \$[ ] (the "Term Note").

G. The Term Note and Loan Agreement are secured by, among other things, a **[Mortgage of Real Estate and Security Agreement]** dated [ ], 2016 and recorded in the Clerk of Court, Pinellas County, Florida in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_ (as amended or supplemented from time to time, the "2016 Bank Security Instrument") covering real property of Owner adjacent to the Property and the Property.

H. The Deed contains certain reversionary rights, restrictions and other limitations. In connection with the 2010 financing, the City and Owner executed and recorded a Deed Modification Agreement (the "2010 Deed Modification") dated April 1, 2010 and recorded in the Public Records of Pinellas County in O.R. Book 17353, Page 2161 pursuant to which certain modifications have been made to the reversionary rights, restrictions and limitations of the Deed. As used herein, the reversionary rights, restrictions, conditions and limitations in the Deed, as modified by the 2010 Deed Modification, are herein referred to as the "Restrictions and Limitations". This Agreement serves as the City's consent and authorization to a mortgage lien on the Property up to the amount of \$25,000,000.00.

I. It is a condition to Bank providing the taxable loan evidenced by the Term Note to Owner and it is a condition to Bank agreeing to provide any additional financing to Owner in the future that the Bank have a lien on, in addition to other collateral, the Property and that such lien shall at all times be prior and senior to the Restrictions and Limitations.

J. The Bond, the Guaranty Agreement, the Related Documents (as defined in the Guaranty Agreement), the Loan Agreement, the Term Note, the Loan Documents (as defined in the Loan Agreement) and any other document related to and evidencing any indebtedness owed by the Owner to the Bank, as each such document is amended, modified, supplemented and extended from time to time, are referred to herein as the "Secured Obligations".

#### **Agreement**

Therefore, the parties agree as follows:

1. City hereby subordinates in favor of Bank the Restrictions and Limitations and does hereby expressly acknowledge the priority of the liens and security interests of any mortgage given to secure the Secured Obligations (including the 2010 Bank Security Instrument and the 2016 Bank Security Instrument, collectively, the "Bank Security Instruments") over the Restrictions and Limitations and further agrees that the liens and security interests of the Bank Security Instruments shall unconditionally be and remain at all times a lien or charge on the Property prior and superior to the Restrictions and Limitations.

2. City understands that Bank would not continue holding the Bond or make the Term Loan, advance proceeds of the Term Loan to or for the benefit of the Owner or enter into the Secured Obligations without this Agreement and that Bank is taking such actions in reliance upon, and in consideration of, the subordination and agreements provided in this Agreement.

3. City agrees and acknowledges that the provisions of, and the recording of, the Bank Security Instruments and the Secured Obligations do not and will not cause a default or violation on the part of the Owner under the Deed. City consents to the execution, delivery and performance by the Owner of the Bank Security Instruments and the grant of the liens and security interests under the Bank Security Instruments to secure the Secured Obligations, as the same may be amended from time to time.

4. The Owner agrees to use the proceeds of the Secured Obligations to benefit the real property and improvements owned by the Owner, including the Property, and for other financing needs of the Owner. City agrees and acknowledges that Bank, in making disbursements of the proceeds of the Secured Obligations, is under no obligation or duty to, nor has Bank represented that it will, see to the application of such proceeds by the person or persons to whom Bank disburses such proceeds and any application or use of such proceeds shall not defeat the subordination herein made in whole or in part.

5. City shall give Bank notice of any default by Owner under the Deed at the time such notice is given to Owner, and agrees to deliver to Bank copies of all further notices to Owner relating to such default.

6. As long as the Secured Obligations are outstanding, City will not take any action to enforce the Restrictions and Limitations on the Property against the Bank or its successors and assigns, and the City will not sell or otherwise transfer its reversionary interest in the Property. The Restrictions and Limitations shall continue in effect and be binding on the Owner and, in the event of a default by the Owner under the Restrictions and Limitations, the City may enforce its remedies available against the Owner for such default; provided that (x) the exercise of any such remedies shall be subject and subordinate to the Secured Obligations and the Bank Security Instruments and (y) the reversionary rights of the City shall be further subject to the following: the reversionary rights of the City shall not be effective in any manner unless (i) the City has repaid or caused to be repaid the outstanding principal, interest and other amounts owing to the Bank by the Owner under the Secured Obligations or (ii) the Bank

has consented in writing to the reversion of the Property to the City, such written consent to be effective when recorded in the Public Records of Pinellas County in which the Deed is recorded.

7. Bank shall have the exclusive right to collect, foreclose upon, sell, transfer, liquidate or otherwise dispose of any and all collateral for the Secured Obligations, including the Property, in the manner deemed appropriate by Bank. City will not hinder Bank's actions in enforcing its remedies with respect to such collateral. The City agrees that in the event of any foreclosure or deed in lieu of foreclosure in connection with realization on the Property under the Bank Security Instruments, the transferee of the Property shall take title to the Property free and clear of the Restrictions and Limitations.

8. Notwithstanding the above, in the event (i) a default by the Owner or its successors and assigns occurs under any of the Bank Security Instruments which is not waived or cured to the satisfaction of the Bank and (ii) following such default the Bank determines to commence action to foreclose on the Property under any of the Bank Security Instruments or to request a deed in lieu of foreclosure from the Owner, then the Bank shall provide the City with written notice of its determination to commence such action or make such request (such notice a "Default Notice"). The City shall, for a period of sixty (60) days following the date of delivery of the Default Notice, have the right to either (1) acquire from Bank or its successors and assigns all of the Bank's right, title and interest in the Secured Obligations at a purchase price equal to the outstanding balance of principal, interest and other amounts due under the Secured Obligations on the date of such acquisition or (2) receive a deed in lieu of foreclosure from the Owner (which the Owner, at the direction of the Bank, agrees to provide) upon payment by the City to the Bank of a purchase price equal to the outstanding balance of principal, interest and other amounts due under the Secured Obligations on the date of such deed in lieu of foreclosure to be applied against such indebtedness. The rights of the City under this Section 8 shall terminate on the date sixty (60) days following the delivery to the City of the Default Notice.

9. The Owner agrees that, without the prior written consent of the City, it will not grant any other liens or encumbrances secured by the Property, other than the Bank Security Instruments. The Bank agrees that no more than \$25,000,000 in principal will be advanced under the Secured Obligations at any one time (provided that, after a default under the Secured Obligations, the Bank may advance additional amounts necessary to protect and preserve the Property as provided by the Secured Obligations). The City agrees that amounts repaid by the Owner on the Secured Obligations may be re-advanced or re-loaned by the Bank to the Owner without the City's consent or approval.

10. City acknowledges that this Agreement shall extend to and benefit the successors, assigns and transferees of Bank.

11. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings,

both written and oral, between the parties with respect to the subject matter contained in this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

City:

Countersigned:

CITY OF CLEARWATER, FLORIDA

\_\_\_\_\_  
GEORGE N. CRETEKOS  
Mayor

By: \_\_\_\_\_  
WILLIAM B. HORNE, II  
City Manager

Approved as to form:

Attest:

\_\_\_\_\_  
PAMELA K. AKIN  
City Attorney

\_\_\_\_\_  
City Clerk

Bank: BRANCH BANKING AND TRUST COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Owner: CLEARWATER MARINE AQUARIUM, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF FLORIDA            )  
  )  
COUNTY OF \_\_\_\_\_ )

**PROBATE**

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named CITY OF CLEARWATER, FLORIDA, a Florida municipal corporation, by \_\_\_\_\_, sign, seal and as its act and deed, deliver the within-written instrument.

\_\_\_\_\_  
Witness

SWORN To and subscribed before me  
This \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_(SEAL)  
Notary Public for Florida  
My Commission Expires:\_\_\_\_\_

STATE OF FLORIDA            )  
  )  
COUNTY OF \_\_\_\_\_ )

**PROBATE**

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation, by \_\_\_\_\_, \_\_\_\_\_ President, sign, seal and as its act and deed, deliver the within-written instrument.

\_\_\_\_\_  
Witness

SWORN To and subscribed before me  
This \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_(SEAL)  
Notary Public for Florida  
My Commission Expires:\_\_\_\_\_

STATE OF FLORIDA            )  
  )  
COUNTY OF \_\_\_\_\_ )

**PROBATE**

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named CLEARWATER MARINE AQUARIUM, INC., a Florida corporation, by \_\_\_\_\_, \_\_\_\_\_, sign, seal and as its act and deed, deliver the within-written instrument.

\_\_\_\_\_  
Witness

SWORN To and subscribed before me  
This \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_(SEAL)  
Notary Public for Florida  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**