

EXHIBIT "B"

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this _____ day of March _____, 2017, by and between The City of Clearwater, a municipal corporation of the State of Florida, 112 South Osceola Avenue, Clearwater, Florida, 33756, herein called the "**Lessor**", and Clearwater Marine Aquarium, Inc., a Florida non-profit corporation whose principal address is 249 Windward Passage, Clearwater, FL 33767, herein called the "**Lessee**".

WITNESSETH:

WHEREAS, the Lessor is the owner of that certain property located at 301 Pierce Street, Clearwater, Florida 33756, more particularly described in Exhibit "A", attached hereto and incorporated herein ("Premises"), which consists of an unimproved parking lot ("Parking Lot"); and

WHEREAS, Lessee desires to lease from Lessor that portion of the Premises constituting said Parking Lot for use as a parking facility during the construction of its improvements at its main facility, specifically the Parking Garage as approved by the Community Development Board on January 19, 2016, ("the Project");

NOW, THEREFORE, in consideration of the Premises and the mutual covenants contained in this Agreement, the Lessor and Lessee hereby agree as follows:

1. **RECITALS.** The foregoing recitals are true and correct and are incorporated in and form a part of this agreement.

2. **TERM.** This term of this lease shall commence on _March_____, 2017 (date of closing), ("Commencement Date") and continuing on a month-to-month basis until terminated by either party as provided for herein. If the Lessor terminates this lease while the Lessee's construction project at 249 Windward Passage is in progress the Lessor shall make a reasonable effort to locate alternative parking of similar capacity in downtown Clearwater for the Lessee to utilize until the completion of the Project.

3. **RENT.**

a. **Rent:** Lessee agrees to pay the sum of One dollar (\$1.00) per month, due on the 1st of each month, plus applicable sales taxes for the term of this lease. Simultaneously with the execution and delivery of this lease, the Lessee shall pay the first month's rent.

b. **Real Estate Taxes:** Lessee shall be responsible to pay the real estate taxes if any on the Premises.

4. **LEASEHOLD.** The Lessor leases to the Lessee the following described property, located in Pinellas County, Florida, to wit:
SEE EXHIBIT "A"
5. **USE OF PREMISES.** Lessee shall use the property for parking for Clearwater Marine Aquarium guests and employees during the construction of the Project at its main facility. Lessee covenants and agrees to make no unlawful, improper or offensive use of the leased premises. At the termination of this lease, Lessee agrees to return the premises to the Lessor in as good condition as at the effective date of this agreement, subject to normal wear and tear. Lessor does not warrant suitability of the Property for parking.
6. **MAINTENANCE/REPAIR/IMPROVEMENT OF PREMISES.** Property is being leased in "as is" condition. The Lessee shall properly maintain the leasehold in a clean and orderly condition. Lessor shall not be responsible for the maintenance of the Premises. Lessee may restripe, paint or otherwise mark or label parking spaces and install signage in accordance with applicable law.
7. **QUIET ENJOYMENT.** Upon payment of the rents herein required, and upon observing and performing the covenants, terms and conditions required by the lease, the Lessee shall peaceably and quietly hold and enjoy the leased premises for the term of the lease without hindrance or interruption by the Lessor.
8. **INSURANCE.** Prior to taking possession of the premises Lessee shall provide proof of Insurance against claims for injuries to persons or damage to property which may arise from or in connection with this lease.
- a. **Commercial General Liability Insurance** coverage, including but not limited to, premises operations, products/completed operations, products liability, contractual liability, advertising injury, personal injury, death, and property damage in the minimum amount of \$1,000,000 (one million dollars) per occurrence and \$2,000,000 (two million dollars) general aggregate.
- b. **Commercial Automobile Liability Insurance** coverage for any owned, non-owned, hired or borrowed automobile is required in the minimum amount of \$1,000,000 (one million dollars) combined single limit.

Nothing herein shall be construed as a waiver of Lessor's right to sovereign immunity or any limitation of liability to which Lessor is entitled to pursuant to § 768.28, Florida Statutes.

9. **REPARABLE DAMAGE.** If any portion of the Premises are damaged by fire or otherwise to such extent so as to interfere with their use by Lessee, the rent payable for the period commencing on the date on which Lessee gives Lessor written notice of such damage, and ending on the date on which restoration of the Premises is completed, shall be abated in the proportion which the area made unusable bears to the overall area of the premises leased to

the Lessee prior to the damage. If the Premises are totally destroyed or rendered untenantable, Lessor shall have the right, but no obligation, to render the premises tenantable by repairs within thirty (30) days from the date that insurance claims of Lessor and Lessee shall have been settled and Lessor shall be free of all restrictions as to proceeding with the work of repair or restructure. The rent payable for the period commencing on the date on which Lessee gives Lessor written notice of such damage and ending on the date on which restoration of the Premises is completed shall be abated. If the premises are not rendered tenantable within that period, either party may cancel this Lease, and in the event of cancellation rent shall be paid only to the day of the casualty.

10. LIABILITY AND INDEMNIFICATION. Lessee agrees to assume all risks of the Parking Lot and all liability therefore, and shall defend, indemnify, and hold harmless the Lessor, for all claims related to its use hereunder up to the limits of any and all available insurance coverage.

11. Assumption of Risk and Disclaimer of Liability:

The Property is to be used at the sole risk of the Lessee, Lessee's guests and invitees, or other persons making legal and proper use of the Leased Property, and the City of Clearwater shall not be liable or responsible for the care or protection of vehicles and contents, or for any loss or damage of whatever kind or nature to said vehicle, howsoever occasioned. There is no guarantee or warranty of any kind as to the condition of the Property, nor shall the City be responsible for injuries to persons or property occurring thereon for any reason whether herein specifically stated or not.

12. Nothing within this Lease shall constitute a waiver of the City's sovereign immunity under Section 768.28, Florida Statutes.

13. Lessee, Lessee's independent contractors, agents, servants, employees, guests, invitees, or other persons making legal and proper use of the Property shall assume the duty to report all accidents to the City's Parking Manager or the Lessor's designee.

14. ASSIGNMENT OF LEASE. This Lease, or any part thereof or interest therein, may not be assigned, transferred or subleased by Lessee without the consent of the Lessor, which consent shall not unreasonably be withheld. It is understood and agreed that the Lessor may, at any time, with notice, assign or delegate any or all of its rights hereunder.

15. Termination by Lessee. This Agreement shall be subject to termination by Lessee with thirty (30) days written notice.

16. Termination by Lessor. The City, at its option, may terminate this Lease upon six (6) months written notice to Lessee if any of the following conditions occur:

- a) At the sole discretion of the City Manager, the Property is needed for development, redevelopment or park purposes. However, the City Manager may not exercise this termination right during the initial one

year term;

- b) The City Council determines at a duly constituted City Council Meeting that the Property is needed for other municipal purposes and serves the Lessee with ten (10) days notice of the meeting where such termination is to be discussed.

17. NOTICE. Any notice given by one party to the other in connection with the Lease shall be sent by certified mail, return receipt requested, with postage and fees prepaid:

- 1. If to the Lessor, addressed to:

City Manager
City of Clearwater
P.O. Box 4748
Clearwater, Florida 33758-4748

Copy addressed to:

City Attorney
P.O. Box 4748
Clearwater, Florida 33758-4748

- 2. If to the Lessee, addressed to:

Frank Dame, COO
Clearwater Marine Aquarium, Inc.
249 Windward Passage
Clearwater, FL 33767

18. ATTORNEYS FEES. In the event that either party seeks to enforce this agreement or to interpret any provision of this agreement, by law or through attorneys-at-law, or under advice therefrom, the parties agree that each party shall bear its own costs, including attorney's fees.

19. COMMISSIONS. The parties hereto warrant and represent to each other that they have not dealt or consulted with any real estate broker or agent in connection with the property or this transaction other than Colliers Arnold, who represents the Lessor. Lessor acknowledges that Lessee shall not be responsible for any fee related to such representation.

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IN WITNESS WHEREOF, the parties have authorized the below signed officers to execute this Agreement on the date first above written.

Countersigned:

CITY OF CLEARWATER

By: _____
George N. Cretelos, Mayor

William B. Horne, II, City Manager

Approved as to form:

Attest:

Pamela K. Akin
City Attorney

Rosemarie Call, City Clerk

CLEARWATER MARINE AQUARIUM,
INC.

By: _____

FRANK L. DAVIS EUP/COO
Print Name/Title