

**CONTRACT FOR PURCHASE OF REAL PROPERTY
BY
THE CITY OF CLEARWATER, FLORIDA**

PARTIES: CLEARWATER MARINE AQUARIUM, INC., a Florida not-for-profit corporation, (herein "Seller"), and THE CITY OF CLEARWATER, FLORIDA, a municipal corporation of the State of Florida, (herein "Buyer" or "City") of 112 South Osceola Avenue, Clearwater, FL 33756, (collectively "Parties") hereby agree that the Seller shall sell and Buyer shall buy the following real property ("Property") upon the following terms and conditions.

1. PROPERTY DESCRIPTION

LEGAL DESCRIPTION: All of those certain parcels of land located in Pinellas County, Florida, being identified by the Pinellas County Property Appraiser's Office at Tax Parcel Nos. 16/29/15/00000/130/0500, 16/29/15/00000/130/0600, and 16/29/15/00000/130/0800, and being more particularly described in **Exhibit A** attached hereto (the "Land"), together with the following:

- (a) All and singular the rights and appurtenances pertaining to the Land including but not limited to any right, title and interest of Seller, if any, in and to adjacent streets, roads, alleys, easements and rights-of-way to the extent that such right, title and interest exist;
- (b) All of Seller's rights in and to all easements, if any, benefitting the Land; and
- (c) Any and all improvements located on the land to the extent that the same may exist.

The Land described in **Exhibit A**, together with the rights, interests and other properties described in (a) through (c) above, are collectively called the "Property."

PERSONALTY: NONE

2. FULL PURCHASE PRICE \$4,250,000.00

3. MANNER OF PAYMENT: Wire transfer in U.S. funds at time of closing

4. PURCHASE PRICE

The Full Purchase Price as shown herein has been reached through negotiations with the Seller by City staff. The Purchase Price is based upon appraisals by James Millspaugh & Associates, Inc. and Hupp Realty Advisors, Inc.

5. TIME FOR ACCEPTANCE; APPROVALS

Following execution of this contract by Seller, the price, terms and conditions as contained herein shall remain unchanged and be held unconditionally open for a period of 45 days following delivery in duplicate original to City Manager of the City of Clearwater for acceptance and approval, counter-offer, or rejection by action of the Clearwater City Council ("Council"). If this agreement is accepted and

approved by the Council, it will be executed by duly authorized City officials and delivered to Seller within 10 days thereafter. If a counter-offer is approved by the Council, it shall be delivered to Seller in writing within 10 days of such action by the City Council, and Seller shall have 10 days thereafter to deliver to Buyer written notice of acceptance or rejection of such counter-offer. If written notice of acceptance is not timely delivered, or if the counter-offer is rejected by Seller, this contract shall thereafter be null and void in all respects. If this contract is rejected by the Council upon initial presentation to the Council, this contract shall be null and void in all respects and Buyer shall be so informed in writing within 5 days of such action.

6. TITLE

Seller warrants legal capacity to and shall convey marketable title to the Property by Statutory Warranty Deed, subject only to matters contained in Paragraph 7 acceptable to Buyer. Otherwise title shall be free of liens, easements and encumbrances of record or known to Seller, but subject to property taxes for the year of closing; covenants, restrictions and public utility easements of record; and no others provided there exists at closing no violation of the foregoing and none of them prevents Buyer's intended use of the Property. (Seller warrants and represents that there is ingress and egress to the Property sufficient for the intended use as described herein.)

7. TITLE EVIDENCE

Seller shall, at Buyer expense and within **15** days prior to closing date deliver to Buyer a title insurance commitment issued by a Florida licensed title insurer agreeing to liens, encumbrances, exceptions or qualifications set forth in this Contract, and those which shall be discharged by Seller at or before closing. Seller shall convey a marketable title subject only to liens, encumbrances, exceptions or qualifications set forth in this Contract. Marketable title shall be determined according to applicable Title Standards adopted by The Florida Bar and in accordance with law. Buyer shall have 5 days from receiving evidence of title to examine it. If title is found defective, Buyer shall, within 3 days thereafter, notify Seller in writing specifying defect(s). If the defect(s) render title unmarketable, Seller will have 120 days from receipt of notice within which to remove the defect(s), failing which Buyer shall have the option of either accepting the title as it then is or withdrawing from this Contract. Seller will, if title is found unmarketable, make diligent effort to correct defect(s) in title within the time provided therefor, including the bringing of necessary suits.

8. SURVEY

Buyer acknowledges receipt of a copy of Seller's existing boundary survey dated April 12, 2013 (the "Existing Survey." Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have Real Property surveyed and certified to the Buyer by a registered Florida land surveyor. If survey shows any encroachment on Real Property, or that improvements located on Real Property encroach on setback lines, easements, lands of others, or violate any restrictions, contract covenants or applicable governmental regulation, the same shall constitute a title defect. The survey shall be performed to minimum technical standards of the Florida Administrative Code and may include a description of the property under the Florida Coordinate System as defined in Chapter 177, Florida Statutes.

9. CLOSING PLACE AND DATE

Seller shall designate closing agent and this transaction shall be closed in the offices of the designated closing agent in Pinellas County, Florida, no later than April 28, 2017, unless extended by other provisions of this contract including but not limited to time allotted for the removal of title defects as provided for in Paragraph 7 above. If either party is unable to comply with any provision of this contract within the time allowed, and be prepared to close as set forth above, after making all reasonable and diligent efforts to comply, then upon giving written notice to the other party, time of closing may be extended up to 60 days without effect upon any other term, covenant or condition contained in this contract.

10. CLOSING DOCUMENTS

Seller shall furnish closing statements for the respective parties, deed, bill of sale (if applicable), mechanic's lien affidavit, assignments of leases, tenant and mortgage estoppel letters, and corrective instruments. If Seller is a corporation, Seller shall deliver a resolution of its Board of Directors authorizing the sale and delivery of the deed and certification by the corporate Secretary certifying the resolution and setting forth facts showing the conveyance conforms with the requirements of local law.

11. CLOSING EXPENSES

Documentary stamps on the deed, unless this transaction is exempt under Chapter 201.24, Florida Statutes, shall be paid by the Seller. Seller shall also pay the costs of recording any corrective instruments. Recordation of the deed shall be paid by Buyer.

12. PRORATIONS; CREDITS

Any governmental assessments levied of record and accruing against the Property shall be paid by Seller at time of closing. Taxes, assessments, and other revenue of the Property shall be prorated through the day before closing. Closing agent shall collect all ad valorem taxes uncollected but due through the day prior to closing and deliver same to the Pinellas County Tax Collector with notification to thereafter exempt the Property from taxation as provided in Chapter 196.012(6), Florida Statutes. If the amount of taxes and assessments for the current year cannot be ascertained, rates for the previous year shall be used with due allowance being made for improvements and exemptions. Any deposits held by Seller in trust for third parties in occupancy of the Property shall be credited to Buyer at time of closing. Assessments for any improvements that are substantially complete at time of closing shall be paid in full by Seller.

13. PROPERTY CONDITION

Seller shall deliver the Property to Buyer at time of closing in its present "as is" condition, ordinary wear and tear excepted, and shall maintain the landscaping and grounds in a comparable condition. Seller makes no warranties other than is disclosed herein in Paragraph 19 ("SELLER WARRANTIES") and marketability of title. Buyer's covenant to purchase the Property "as is" is more specifically represented in the following paragraph.

a. **As Is With Right of Inspection:** Buyer may, at Buyer expense and until April 21, 2017 ("Inspection Period"), conduct inspections, tests, environmental and any other investigations of the

Property Buyer deems necessary to determine suitability for Buyer's intended use. Upon Seller's execution hereof, Seller shall grant reasonable access to the Property to Buyer, its agents, contractors and assigns for the purposes of conducting the inspections provided, however, that all such persons enter the Property and conduct the inspections and investigations at their own risk. Seller will, upon reasonable notice, provide utilities services as may be required for Buyer's inspections and investigations. Buyer shall not engage in any activity that could result in a mechanics lien being filed against the Property without Seller's prior written consent. Buyer may terminate this contract by written notice to Seller prior to expiration of the Inspection Period if the inspections and/or investigations reveal conditions which are reasonably unsatisfactory to Buyer. In the alternative, at the Buyer's sole discretion, if Seller offers to repair or otherwise remedy such conditions to Buyer satisfaction, Buyer may accept such offer; or Buyer, at its option, may elect to accept a credit at closing of the total estimated repair costs as determined by a licensed general contractor of Buyer's selection and expense. If Buyer terminates this contract, and this transaction does not close, Buyer agrees, at Buyer expense, to repair all damages to the Property resulting from the inspections and investigations and return the Property to its present condition.

14. WALK-THROUGH INSPECTION

At a time mutually agreeable between the parties, but not later than the day prior to closing, Buyer may conduct a final "walk-through" inspection of the Property to determine compliance with any Seller obligations and to insure that all Property is in and on the premises. No new issues may be raised as a result of the walk-through.

15. SELLER HELD HARMLESS

Buyer is self insured, and subject to the limits and restrictions of the Florida Sovereign immunity statute, F.S. 768.28, agrees to indemnify and hold harmless the Seller from claims of injury to persons or property during the inspections and investigations described in Paragraph 13(a) resulting from Buyer's own negligence only, or that of its employees or agents only, subject to the limits and restrictions of the sovereign immunity statute.

16. RISK OF LOSS

If the Property is damaged by fire or other casualty before closing and cost of restoration does not exceed 3% of the assessed valuation of the Property so damaged, cost of restoration shall be an obligation of the Seller and closing shall proceed pursuant to the terms of this contract with restoration costs escrowed at closing. If the cost of restoration exceeds 3% of the assessed valuation of the improvements so damaged, Buyer shall have the option of either taking the Property "as is", together with any insurance proceeds payable by virtue of such loss or damage, or of canceling this contract.

17. PROCEEDS OF SALE; CLOSING PROCEDURE

The deed shall be recorded upon clearance of funds. Proceeds of sale shall be held in escrow by Seller's attorney or by such other mutually acceptable escrow agent for a period of not longer than 5 days from and after closing, during which time evidence of title shall be continued at Buyer's expense to show title in Buyer, without any encumbrances or change which would render Seller's title unmarketable from the date of the last title evidence. If Seller's title is rendered unmarketable through

no fault of the Buyer, Buyer shall, within the 5 day period, notify the Seller in writing of the defect and Seller shall have 30 days from the date of receipt of such notification to cure the defect. If Seller fails to timely cure the defect, all funds paid by or on behalf of the Buyer shall, upon written demand made by Buyer and within 5 days after demand, be returned to Buyer and simultaneously with such repayment, Buyer shall vacate the Property and reconvey it to Seller by special warranty deed. If Buyer fails to make timely demand for refund, Buyer shall take title "as is", waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed. The escrow and closing procedure required by this provision may be waived if title agent insures adverse matters pursuant to Section 627.7841, F.S. (1987), as amended.

18. DEFAULT

If this transaction is not closed due to any default or failure on the part of the Seller, other than to make the title marketable after diligent effort, Buyer may seek specific performance or unilaterally cancel this agreement upon giving written notice to Seller. If this transaction is not closed due to any default or failure on the part of the Buyer, Seller may seek specific performance. If a Broker is owed a brokerage fee regarding this transaction, the defaulting party shall be liable for such fee.

19. SELLER WARRANTIES

Seller warrants that there are no facts known to Seller that would materially effect the value of the Property, or which would be detrimental to the Property, or which would effect Buyer's desire to purchase the property except as follows: **(Specify known defects. If none are known, write "NONE")**

_____NONE_____

Buyer shall have the number of days granted in Paragraph 13(a) above ("Inspection Period") to investigate said matters as disclosed by the Seller, and shall notify Seller in writing whether Buyer will close on this contract notwithstanding said matters, or whether Buyer shall elect to cancel this contract. If Buyer fails to so notify Seller within said time period, Buyer shall be deemed to have waived any objection to the disclosed matters and shall have the obligation to close on the contract.

20. RADON GAS NOTIFICATION

In accordance with provisions of Section 404.056(8), Florida Statutes (1989), as amended, Buyer is hereby informed as follows:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

21. CONTRACT NOT RECORDABLE; PERSONS BOUND

Neither this contract nor any notice of it shall be recorded in any public records. This contract shall bind

and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all.

22. NOTICE

All notices provided for herein shall be deemed to have been duly given if and when deposited in the United States Mail, properly stamped and addressed to the respective party to be notified, including the parties to this contract, the parties attorneys, escrow agent, inspectors, contractors and all others who will in any way act at the behest of the parties to satisfy all terms and conditions of this contract.

If to the Seller: Clearwater Marine Aquarium, Inc.
249 Windward Passage
Clearwater, FL 33767
Attn: Frank Dame, Executive Vice President/Chief Operating Officer
Telephone: (727)441-1790 Fax: (727)445-1139 Email: fdame@cmaquarium.org

With a copy to: Macfarlane Ferguson and McMullen, P.A.
625 Court St., Suite 200
Clearwater, FL 33756
Attn: Brian J. Aungst, Jr., Esq. and Thomas C. Nash, II, Esq.
Telephone: (727)444-1403 Fax: (727)442-8470
Email: bj@macfar.com, tcn@macfar.com

If to the Buyer: City of Clearwater
P.O. Box 4748
Clearwater, FL 33758-4748
Attn: Pamela K. Akin, City Attorney
Telephone: (727)562-4020 Fax: (727)562-4021
Email: pam.akin@myclearwater.com

23. ASSIGNABILITY; PERSONS BOUND

This contract is not assignable. The terms "Buyer", "Seller", and "Broker" (if any) may be singular or plural. This Contract is binding upon Buyer, Seller, and their heirs, personal representatives, successors and assigns (if assignment is permitted).

24. ATTORNEY FEES; COSTS

In any litigation arising out of this contract, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

25. TYPEWRITTEN OR HANDWRITTEN PROVISIONS

Typewritten or handwritten provisions shall control all printed provisions of contract in conflict with them.

26. BROKER REPRESENTATION

Seller is not represented by a Licensed Real Estate Broker upon Seller's execution hereof. Should Seller choose to obtain the services of a License Real Estate Broker, Seller shall be responsible for any Broker fee or expense due to said Broker.

27. EFFECT OF PARTIAL INVALIDITY

The invalidity of any provision of this contract will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this contract is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

28. GOVERNING LAW

It is agreed by and between the parties hereto that this contract shall be governed by, construed, and enforced in accordance with the laws of the State of Florida.

29. COUNTERPARTS; FACSIMILE COPY

This contract may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. A facsimile copy of this contract, including any addendum, attachments and any written modifications hereof, and any initials or signature thereon shall be deemed an original.

30. SPECIAL CONDITION REGARDING FUTURE PARKING

As further consideration for the purchase and sale contemplated herein, the Buyer shall enter into a lease with the Seller for the Property as provided for in paragraph 32, a copy of which is attached as EXHIBIT "B."

This Section 30 shall survive Closing and conveyance contemplated herein.

31. LEASES

Parties acknowledge and agree that Seller may continue to occupy the Property under a Business Lease Contract between the City and Seller as provided for in paragraph 32 below and Seller may sublease the Property and collect rents pursuant to said Business Lease Contract for a period not to exceed the Seller's occupancy.

32. BUSINESS LEASE CONTRACT ADDENDUM

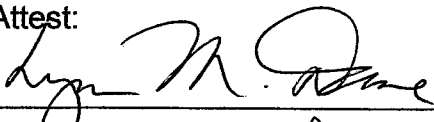
It is agreed by and between the Parties that execution, implementation and fulfillment of the terms and provisions of that certain Business Lease Contract respective to the Property, an exact copy of which is appended hereto as EXHIBIT "B", is integral, appurtenant to and a part of this Contract, and will be executed and effective as of the closing date.

33. ENTIRE AGREEMENT

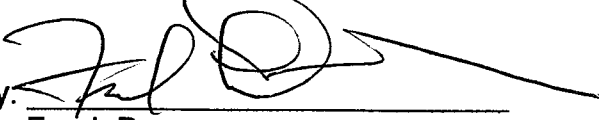
Upon execution by Seller and Buyer, this contract shall constitute the entire agreement between the parties, shall supersede any and all prior and contemporaneous written and oral promises, representations or conditions in respect thereto. All prior negotiations, agreements, memoranda and writings shall be merged herein. Any changes to be made in this agreement shall only be valid when expressed in writing, acknowledged by the parties and incorporated herein or attached hereto.

EXECUTED this 10th day of MARCH, 2017 by Seller.

Attest:


LYNN M. DAME
Print Name

CLEARWATER MARINE AQUARIUM, INC.

By: 
Frank Dame,
Executive Vice President/COO

APPROVED BY BUYER & EFFECTIVE this _____ day of _____, 2017.

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

Rosemarie Call
City Clerk

Exhibit A
Legal Description

Commence at the Northeast corner of Section 16, Township 29 South, Range 15 East, Pinellas County, Florida, and run West, along the North boundary line of said Section 16, 1320.00 feet; thence South, along the West boundary line of the East 1/2 of the Northeast 1/4 of said Section 16, 1526.16 feet to an intersection with the Easterly projection of the centerline of Pierce Street; thence North 89°45'W, 418.0 feet to the projection of the West right-of-way line of Osceola Avenue; thence South 20.00 feet to the Southwest corner of the intersection of Pierce Street and Osceola Avenue for a Point of Beginning; thence South 00°19'55" East, along the West right-of-way of Osceola Avenue, 148.20 feet, to the North boundary line of OAK COVE, A COMMERCIAL CONDOMINIUM, as recorded in Condominium Plat Book 102, Page 92, of the Public Records of Pinellas County, Florida; thence leaving said West right-of-way line South 88°50'45" West, along the North boundary line of said OAK COVE, 475.00 feet; thence North 00°19'55" West, 48.05 feet; thence North 88°48'12" East, 100.00 feet; thence North 00°19'55" West, 99.80 feet to the South right-of-way line of Pierce Street; thence North 88°48'12" East, along the said South right-of-way line, 375.00 feet to the POINT OF BEGINNING.