

**Lease-Purchase and Operating Agreement between
Texas State Aquarium Association and City of Corpus Christi**

State of Texas §

County of Nueces §

This Lease-Purchase and Operating Agreement (the “Lease” or “Lease-Purchase Agreement”) amends, restates and replaces in its entirety that prior Lease and Operating Agreement between Texas State Aquarium Association and City of Corpus Christi dated July 5, 2000.

Recitals:

The Texas State Aquarium Association, a Texas nonprofit corporation (“TSA” or “Lessee”), acting through its duly authorized President and CEO, or designee, (“President”), of 2710 N. Shoreline Blvd., Corpus Christi, Nueces County, Texas, 78402, has constructed and operates a public aquarium (the “Aquarium” as more specifically defined in Section 3) in Corpus Christi, Texas, on a nonprofit basis for multiple public purposes including the education and enjoyment of visitors from inside and outside of Texas, promotion and growth of scientific knowledge, advancement of interest in marine resources and the study thereof, and promotion of interest in the Corpus Christi Bay Area for both business and personal pursuits.

The City of Corpus Christi, a Texas home-rule municipal corporation (“City” or “Lessor”), acting through its duly authorized City Manager, or designee, (“City Manager”) of 1201 Leopard, Corpus Christi, Nueces County, Texas 78401, is the owner of certain real property in Texas State Aquarium Subdivision on Corpus Christi Beach in Corpus Christi (“Aquarium Property”) and on the Rincon Channel (“Sealab Property”).

The State Legislature of the State of Texas has designated the Aquarium facility operated by TSA as the official Aquarium of the State of Texas.

TSA has operated the Aquarium to deliver the above-mentioned public benefits in a manner reflecting favorably upon both TSA and the City while assuring appropriate accountability for all public monies previously contributed thereto.

The City purchased certain property for the Aquarium pursuant to Ordinance No. 19619, adopted on February 2, 1987, which authorized the City to spend up to \$1.3 million for the acquisition of certain property, improvement to certain property, and the form of lease for certain property acquired and improved.

Further, the City and TSA jointly funded the design of the Aquarium pursuant to Ordinance No. 19764, adopted on June 3, 1987, which authorized the City to spend up to \$500,000 on Aquarium design, with TSA to pay for 50% of the design, and all design costs in excess of \$1,000,000.

The City and TSA entered into a Purchase Agreement, whereby TSA would construct the Aquarium on land it had separately acquired and subsequently convey said land and the completed Aquarium to the City in consideration of the City's paying the purchase price for such completed Aquarium, then the City would lease the property back to TSA along with other property acquired by City for a 20-year lease term for TSA to operate the Aquarium, authorized by Ordinance No. 019674, adopted on June 15, 1987.

The City actually leased the Aquarium Property to TSA by virtue of a lease dated October 5, 1988, authorized by City Ordinance No. 020507 on March 29, 1988, which included a five-year lease on adjacent subsurface area.

The City subleased certain parking lots, leased by the City from the Texas Department of Transportation, to TSA with the agreement that TSA would operate the parking lots and pay a portion of the debt service related to construction of the parking lots by virtue of a lease authorized by Ordinance No. 021839, adopted on December 21, 1993.

By Agreement of March 20, 1996, authorized by City Council Resolution 022500 on February 27, 1996, TSA conveyed certain additional real property to the City in consideration of TSA revenue-backed Certificates of Obligation ("Certificates") in the amount of \$4,400,000.

The City and TSA entered into a new 20-year lease covering all of the above referenced properties by a lease dated July 5, 2000, authorized by City Ordinance No. 024083 on June 27, 2000, providing for the continued occupancy and operation of the Aquarium by TSA until September 5, 2020.

The City and TSA also entered into multiple other agreements to acquire and develop the Aquarium, and all such agreements are of public record. TSA desires to expand the Aquarium to construct the Caribbean Building (the "Project"), as more particularly described below, and in order to finance such expansion plans TSA requires a long-term leasehold interest in the Property, and both the City and TSA desire to enter into this Lease-Purchase Agreement to provide the option to purchase and extend the other terms, conditions and provisions of the current lease and operating agreement in order to facilitate such expansion plans and assure the continued maintenance and modernization of the Aquarium on a long-term basis.

The City and TSA further desire to provide for the purchase and re-acquisition of the land and improvements comprising the Aquarium by TSA conditioned on the faithful performance by TSA of its obligations under this Lease-Purchase Agreement and continuation of the operation of an aquarium and sea life park for a minimum of fifty (50) years.

NOW, THEREFORE, the City and TSA, in consideration of the covenants contained herein, do mutually agree as follows:

Agreement:

1. Premises. The City leases to TSA all of the property described in the attached and incorporated Exhibit A, all of City's interest in the Sealab Property described in the attached and

incorporated Exhibit B, and all improvements located thereon (collectively called “Aquarium Property” or “Lease Premises”) for and in consideration of the covenants and conditions of this Lease.

2. Term. This Lease-Purchase Agreement is for a term of fifty (50) years, commencing on the 61st day after final City Council approval, which is _____, 2014, and terminating on December 31, 2064.

3. Permitted Use. The Aquarium Property must be used solely as an aquarium and sea life park, herein referred to as either “Aquarium” or “Aquarium Facility”; provided, however, that TSA may operate food, drink, souvenir, and such other concessions as the President may deem consistent with, but secondary to, operation of the Aquarium, including without limitation participating in fundraising activities.

4. The Project. TSA will finance, design, build, maintain and operate a new Caribbean Journey building (the “Caribbean Building”) based on plans and specifications approved by the City Manager of the City (the “Project”). The Project will complement the existing Gulf of Mexico Exhibit Building (the “Gulf of Mexico Building”), in order to further the Aquarium experience in:

- Interpreting the unique biodiversity and culture of the Yucatan region;
- Utilizing state-of-the-art, immersive, interactive aquarium exhibitions;
- Incorporating a multi-sensory 4D-theater experience;
- Adding the capacity and building infrastructure to expand the Aquarium’s research and conservation programs, guest and event services, and catering capabilities.

TSA will be solely responsible for the design, construction and furnishing of the Project and will expend not less than \$45 million therefor. TSA has funds available, raised from donors, equal to over one-half of that amount. The remaining amount will be obtained through a loan secured by a leasehold mortgage of the Aquarium Property.

5. TSA Responsibility. TSA shall be exclusively responsible for all planning, design, financing, advertising for bids, choice of contractor, supervision of construction, construction, equipping, stocking, establishment, operation, maintenance, management, and all other activities related to the Aquarium. TSA is not relieved of such responsibility by any approval of the plans and specifications, inspection or approval by City or its agents of the Aquarium or any part thereof or any activity connected therewith, nor by any right of City, under this Lease-Purchase Agreement or otherwise, whether exercised or not, to make any such inspection or approval. Nothing in this Lease shall commit any City funds to pay for any maintenance or improvements to the Aquarium, and nothing herein shall commit the credit of the City for the payment of any obligations incurred by TSA in connection with its operation of the Aquarium and the construction of the Project or any improvements to the Aquarium.

6. Aquarium Operation; Admission. TSA must operate the Aquarium in a businesslike manner at all times. TSA shall furnish and stock the Aquarium with all marine life, exhibits, artifacts, equipment and facilities consistent with a quality aquarium operation. The

Aquarium shall be operated by TSA for the use and benefit of the public and must be open during a reasonable portion of the daytime hours of most days of the year; provided however, that TSA may charge a fee for admission to the Aquarium Facility on a nondiscriminatory basis and TSA may fence the Aquarium Property and restrict access. TSA may adopt admission fee rate structures of the type normally adopted by public zoological institutions.

7. Revenues Generated. All funds generated by the operation of the Aquarium and/or private fund raising efforts of TSA shall be used exclusively by TSA for the benefit of programs and facilities supporting the purposes specified in TSA's mission statement or as otherwise allowed under Section 501(c)(3) of the Internal Revenue Code. TSA will use its best efforts during the term of this Lease to raise sufficient funds to fully support the Aquarium.

8. Safety. TSA must operate, inspect, and maintain adequate firefighting and safety systems on the Aquarium Property.

9. Maintenance. At all times during this Lease TSA must keep and maintain in good repair and clean and attractive condition all buildings, improvements, grounds, and personal property on the Aquarium Property, and if any improvement erected on the Aquarium Property for Aquarium purposes is damaged or destroyed, TSA, as soon as the same may be done, must repair or restore the improvement to as good condition and value as existed before such damage or destruction, unless prohibited by law. Until the termination or expiration of this Lease, TSA shall continue to maintain the buildings, improvements, grounds, and personal property in the condition required in the preceding sentence.

10. Pollution of Bay. TSA shall make reasonable efforts to ensure that no pollutant, effluent, liquid or solid waste material, fresh or salt water discharge (except salt water discharges authorized by applicable local, state and federal government permits), litter, trash, or garbage that originates from the Aquarium Property is allowed to collect in Corpus Christi Bay, Nueces Bay, or neighboring property. TSA shall be solely responsible for any pollutant, effluent, liquid or solid waste material, fresh or salt water discharge (except salt water discharges authorized by applicable local, state and federal government permits), litter, trash, or garbage that originates from the Aquarium Property.

11. Financial Statements. TSA shall keep strict and accurate books of account and shall deliver to the City's Director of Finance an annual financial statement prepared by an independent certified public accounting firm reflecting financial operations of TSA for such calendar year, no later than May 31 annually. The books of account must be available to City Manager upon request during normal business hours.

12. Transfer of Funds Regarding 1996 Certificates. TSA agrees to pay the debt service on the 1996 \$4.4 million Combination Tax and Revenue Certificates of Obligation, and all monies due to the City by TSA to service such Certificates must be delivered to the City's Director of Finance 10 calendar days prior to the due dates shown on the Certificates.

13. Assignment or Sublease. TSA may not assign this Lease nor sublease the Aquarium Property, nor any part thereof, without the prior written consent of the City, except in

connection with a permitted leasehold mortgage as provided below. Provided, however, TSA may contract for and/or sublease concessions for the Aquarium and space rent any portion of the facilities for special events, so long as TSA maintains control over such areas and assures that their operation is consistent with this Lease. Provided, further, TSA may sublease dock space to allow tourist boat, water taxi, research and university boat access.

14. Leasehold Mortgages. TSA shall have the right to pledge its rights under this Lease in one or more successive leasehold mortgages to secure any indebtedness borrowed by TSA for the construction of the Project or any subsequent improvements by TSA during the term of this Lease. No more than two leasehold mortgages may be in effect at any time, but the term of any such leasehold mortgages can be renewed, extended and modified from time to time as required by TSA and its lenders. TSA shall provide written notice to the City of any such leasehold mortgages, the name of the lenders and addresses for notice purposes, the loan amount, and the terms of the loans prior to the creation of any such leasehold mortgages. Any such leasehold mortgagees shall be entitled to the rights and benefits as provided in this Lease for any leasehold mortgagee.

15. Sanitation. Garbage and trash must be stored on the Aquarium Property in normal containers or dumpster type containers inside a screened or appropriately landscaped area. Garbage pick-up service must be obtained by TSA on a schedule sufficient to maintain the Aquarium Property in a clean and sanitary condition.

16. Parking. Parking shall be provided pursuant to one or more leases of the adjacent parking lot subject to the covenants of the Certificates of Obligation issued for construction of the parking lot. The City and TSA agree to negotiate in good faith for the addition of the parking lot to the Aquarium Property during the term of this Lease. The City and TSA will request TxDOT to declare the property that is currently leased from TxDOT, and subleased to TSA for the parking lots, to be surplus property, appraised and conveyed by TxDOT to the City for resale by the City to TSA.

17. Nondiscrimination. TSA is and will continue to be an equal opportunity employer and hereby covenants that no employee or customer will be discriminated against because of race, creed, color, sex, disability, or national origin.

18. Inspection. City personnel may enter upon the Aquarium Property, including all improvements thereon, at all times, for purposes of any inspection, repair, fire or police action, and the enforcement of this Lease.

19. Contractor's Insurance. During this Lease, TSA shall require all contractors employed for the construction of the Project, and all other Aquarium improvements or additions, to maintain at the contractor's sole expense (and provide documentation thereof prior to commencement of construction): insurance coverage throughout the construction period in at least the following amounts:

- (a) commercial general liability insurance, with TSA and City listed as an Additional Insureds. Such coverage must have either a minimum liability limit of \$1,000,000

per occurrence and \$2,000,000 aggregate. Additional Insured Endorsement must be provided with Certificate of Liability Insurance

- (b) automobile liability insurance, with limits of \$1,000,000 combined single limit.; TSA and the City shall be listed as an additional insured on the policy.
- (c) Workers' Compensation insurance covering all employees of TSA's contractor(s) and subcontractor(s) engaged in any work at or on the Aquarium Property, or TSA's contractor(s) and subcontractor(s) must be a "Certified Self-Insurer" as that term is defined in Chapter 401 of the Texas Labor Code, as it may be amended ("Approved Equivalent"). If an Approved Equivalent to Workers' Compensation for compensating injured employees is utilized a current copy of each contractor and subcontractor policy must be kept on file with the City Secretary's copy of this Lease, incorporated and attached as Exhibit 20. Any time such policy is revised, the newest revision becomes the attached and incorporated Exhibit 20. If Workers' Compensation insurance is provided, a certificate of insurance must be provided, together with notice of cancellation, non-renewal, or material change as set out in Section 20 herein. A waiver of subrogation shall be provided on behalf of TSA and the City;
- (d) builder's risk insurance written on an all risk basis with valuation at replacement cost for the full value of improvements will be required on construction projects estimated to cost more than Two Hundred Fifty Thousand Dollars (\$250,000);
- (e) performance and payment bonds for the full value of the contract are required on projects estimated to cost more than One Hundred Thousand Dollars (\$100,000).

20. Texas State Aquarium Insurance. TSA shall obtain at its own expense:

- (a) commercial general liability insurance, with City listed as Additional Insured. Such coverage must have minimum liability limit of \$1,000,000 per occurrence and \$2,000,000 aggregate.
- (b) automobile liability insurance, with liability limits of \$1,000,000 combined single limit. The City shall be listed as and additional insured on the policy.;
- (c) Workers' Compensation insurance or its approved equivalent, covering all employees of TSA engaged in any work at or on the Aquarium Property. If an approved equivalent to Workers' Compensation for compensating injured employees is utilized a current copy of TSA's policy must be kept on file with the City Secretary's copy of this Lease, incorporated and attached as Exhibit 20. Any time such policy is revised, the newest revision becomes the attached and incorporated Exhibit 20. If Workers' Compensation insurance is provided, a certificate of insurance must be provided, together with notice of cancellation, non-renewal, or material change as set out in this Section 20 herein. A waiver of subrogation shall be provided;

- (d) property insurance, throughout the term of this Operating Lease, in the amount of no less than 80% of the full replacement value of all TSA real and personal property on an “all risk basis” subject to normal and customary exclusions, however, the flood insurance requirement may be limited to the maximum available through the Federal Flood Insurance Program; provided, however, if excess flood insurance is available in the standard insurance market, TSA will provide no less than 50% of the coverage set out above. Further provided, however, that the windstorm insurance requirement may be limited to the maximum available through available markets; provided, however, if excess windstorm insurance is available in the standard insurance market, TSA will provide no less than the 80% coverage set out above.

TSA shall provide City Manager with evidence of insurance coverage annually within thirty (30) days of the anniversary of each such insurance policy. Such insurance must contain a provision that it may not be canceled or materially changed or not renewed without thirty days written notice to the City Manager. If TSA fails to maintain such insurance, City may terminate this Lease, or at its option procure such insurance, in which case any monies paid by City must be repaid by TSA upon City Manager’s written demand, with interest at the maximum permissible legal rate.

TSA shall decide whether to repair, rebuild, or replace any damaged property. If TSA decides to repair, restore, or rebuild, it shall develop plans and specifications as appropriate, and submit them to the City Manager for approval, which approval shall not be unreasonably withheld and shall be granted or denied within thirty (30) days of any request by TSA. If TSA determines not to repair, rebuild, or replace the property, all insurance proceeds remaining after the payment of the indebtedness to any leasehold mortgagee shall be paid to the City up to but not in excess of its unpaid obligations under this Lease. Any excess insurance proceeds may be retained by TSA.

Further, TSA shall have the option, but not the requirement, to participate in the City Property Insurance program when such participation is deemed beneficial to the Aquarium. Should this option be exercised, As the named insured on the property policy, TSA shall pay the City for their portion of the insurance coverage billed by the City. Property damage caused by an insurable peril above the established deductibles shall be reported to the City’s Risk Management Division. The City shall submit all claims to City’s Insurance Agent/Broker who will in turn, notify the necessary property insurance carriers of the damage. The City shall be responsible for the coordination of all claims with the carrier(s).

In the event of a large property loss, the City, as the named insured will receive disbursement of payment from the insurance carrier(s) and then disburse accordingly.

21. Indemnity, Hold Harmless and Waiver of Subrogation. TSA agrees to indemnify, defend and hold harmless the City, its officers, employees, and agents against any and all liability, damage, loss, claims, demands, suits, and causes of action of any nature whatsoever on account of personal injuries, property loss or damage, or any other kind of damage, including all expenses of litigation, court costs, and attorney’s fees, which arise out of or are in any manner connected with, or are claimed to arise out of or be in any way connected with, TSA’s

performance under this Lease or TSA's or any of its agents', employees', officers', or invitees' use, operation, or occupancy of the Aquarium Property or the Aquarium. TSA and City shall mutually agree to waive any rights of subrogation to each other as respects insurance claims, injuries, or property damage. TSA shall at its own expense investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon, and pay all charges of attorneys and all other costs and expenses of any kind arising from any such liability, damage, loss, claims, demands, and actions.

22. Access for Individuals With Disabilities. The Aquarium and all improvements thereto must be constructed to be readily accessible to individuals with disabilities and in compliance with all applicable state and federal laws.

23. Utilities. City has made sewer, water, and natural gas service available to the Aquarium Property, at standard rates offered by City for comparable users. TSA must pay for all utility services whether provided by City or another supplier. TSA will make every effort to establish itself as a utility conservation leader, particularly in the area of adaptive water re-use.

24. Compliance With Laws, Permits. In the planning, design, construction, and operation of the Aquarium and future improvements, TSA shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations. All applicable permits and licenses must be obtained by TSA. City shall cooperate in obtaining permits and licenses from other agencies by applying or joining TSA in applying for such where City is a necessary party to the application. TSA shall, however, prepare all documents, information, and materials necessary to support any such application. TSA recognizes that as to City licenses or permits, City must apply its rules in an objective, uniform manner.

25. City Financial Contribution. City does not assume, and has no other responsibility whatever for, any financial obligations incurred or created by TSA or its officers, employees or agents, in connection with the planning, design, financing, construction, equipping, stocking, establishment, operation, or other activity relating to the Aquarium, and TSA shall not represent or infer otherwise to any third party.

26. Prior Agreements. The 20-Year Lease between City and TSA, authorized by Ordinance No. 024083, adopted on June 27, 2000, and dated July 5, 2000, remains in full force and effect, except as inconsistent herewith, until the effective date of this Lease, at which time it expires automatically. All bond covenants and covenants related to the 1996 Tax and Revenue Certificates of Obligation or any other financing that was provided to TSA by City using City's credit, tax base, etc. for the Aquarium remain in full force and effect until said indebtedness is fully retired. All other prior agreements between City and TSA are of no force and effect.

27. Lease Relationship. The parties intend to create a landlord/tenant relationship, and this Lease must be construed conclusively in favor of that relationship. Nothing herein contained may be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that no provision contained herein, nor any of the acts of

the parties hereto, may be deemed to create any relationship between the parties herein other than that of landlord and tenant.

28. Modifications. No changes or modifications to this Lease may be made, nor any provision waived, unless in writing signed by a person duly authorized to sign agreements on behalf of each party. In the event any leasehold mortgages are in effect concerning this Lease-Purchase Agreement, such changes or modifications also will be subject to approval by any leasehold mortgagees.

29. Termination of Lease. Upon occurrence of any Event of Default (as defined below), the City may, at its option, in addition to any other remedy or right hereunder by law, give notice to TSA's President, and any leasehold mortgagee for which written notice has been provided to the City pursuant to the terms of this Lease, that unless such Event of Default has been cured as required herein that this Lease shall terminate upon the date specified in the notice, which date will not be earlier than sixty (60) days after the giving of such notice. Each of the following will be deemed an Event of Default:

- (a) failure to have in effect, at all applicable times, policies of contractor's insurance, liability insurance, workers' compensation insurance or its approved equivalent, and property insurance as required elsewhere herein;
- (b) intentional, knowing, or fraudulent failure to maintain strict and accurate books of account, or to furnish said books of account to City Manager for inspection, as provided elsewhere herein;
- (c) abandonment of the Aquarium Property;
- (d) failure of TSA for a period exceeding 180 days to regularly operate the Aquarium, open to the public, at least five days per week during reasonable business hours; provided, however, that there will be subtracted from such calculation of days any period during which TSA's failure is attributable to acts of God or public enemy, the elements, fire, flood, labor dispute, civil disturbance, or other similar cause beyond TSA's control, without the City Manager's prior written approval as an exception;
- (e) failure of TSA to correct any default in the performance or observance of any other covenant or condition of this Lease; or
- (f) in the event any securities issued by the City are outstanding that are conditioned upon TSA's tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, written notice by the Internal Revenue Service that the exemption of the TSA from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 has been finally revoked; provided, however, the parties agree that in the event this Lease is canceled by reason of such loss of tax exemption under such Section 501(c)(3), then, in good faith, the parties will negotiate and execute a lease or management contract which complies with the provisions of

the Internal Revenue Code of 1986, as amended, so that the interest on any securities issued by City to acquire the Aquarium will not be subject to federal income taxes.

- (g) failure to repair or replace, and dedicate a new easement if necessary, that 48-inch storm water line that Phase II-A of the Aquarium was constructed over, upon the City Manager's written request, all as provided in Section 38 below.
- (h) Provided, however, that in the event curing any of the above Events of Default would reasonably require more than sixty (60) days, TSA shall have an extension of the time required to cure such Event of Default for so long as City may reasonably determine that TSA is proceeding diligently with curing such Event of Default.

30. Leasehold Mortgagee Rights in Event of Default. If notice has been provided to City of a leasehold mortgage pursuant to the provisions of this Lease and indebtedness remains secured by such leasehold mortgage, this Lease may not be terminated unless and until the City has provided a second notice of default after expiration of the time required for cure under the notice of default provided above and afforded said leasehold mortgagee an additional thirty (30) days to cure any such default in the case of any monetary default and an additional sixty (60) days to cure any such default in the case of any non-monetary default. In any event, this Lease shall not be terminated if a leasehold mortgage is in place with indebtedness outstanding unless the City has afforded said leasehold mortgagee the opportunity to assume and assign this Lease, and arrange for the assumption of this Lease by another qualified tax exempt lessee, pursuant to a foreclosure of the leasehold mortgage or such other rights as said leasehold mortgagee may have and comply with the requirements of this Lease. Such opportunity may require additional time to the notice periods provided above, and for so long as City reasonably determines that the leasehold mortgagee is diligently proceeding with curing any such Event of Default the time for curing the Event of Default shall be extended accordingly. Alternatively, the City may, at its option but without any obligation to do so, pay any remaining indebtedness secured by such leasehold mortgage and terminate this Lease immediately after providing the initial notice of the Event of Default as required above. In any event, the City is under no obligation to pay any such indebtedness, and the full faith and credit of the City is in no way obligated under the terms of this Lease.

31. City's Rights on Termination. Upon termination of this Lease as hereinabove provided, or pursuant to statute, or by summary proceedings or otherwise, City may take possession of the Aquarium Property either by summary proceedings, or by action at law or in equity, or by force, or otherwise, as City may determine, without being liable in trespass or for any damages. The foregoing rights and remedies given to the City are, and will be deemed to be, cumulative of any other rights of the City under law, and the exercise of one will not be deemed to be an election, and the failure of the City at any time to exercise any right or remedy will not be deemed to operate as a waiver of its right to exercise such right or remedy at any other future time.

32. Effect of Termination or Expiration. Upon termination or expiration of this Lease, the Aquarium Property and all buildings on the Aquarium Property shall become the property of the City; provided that, TSA shall have the right to remove all furnishings and personal property

placed in such buildings at TSA expense, at TSA's option, at any time until one hundred eighty days (180) days after termination or expiration of the Lease. If TSA fails to remove such fixtures and personal property within that time period, such property shall become the property of the City. Any City monies payable under this Lease which, at the time of termination or expiration, remain unspent, must be returned to or retained by City and spent by City as it sees fit.

33. Publication Costs. TSA shall pay the cost of publishing in the legal section of the local newspaper any provisions of this Lease required by the City Charter.

34. Taxes and Assessments. (a) In addition to the foregoing sums, TSA shall, as further consideration for this Lease, pay and discharge all ad valorem taxes, general and special assessments, and other charges of every description which during the term of this Lease may be levied on or assessed against the Lease Premises, including all interests therein, improvements thereto, or property thereon, whether belonging to the City or TSA or to which either of them may become liable in relation thereto.

(b) Timely Payment by TSA. TSA agrees to and shall pay all the foregoing ad valorem taxes, if any, assessments and charges not less than twenty (20) days prior to the delinquency thereof, and give written notice of such to Lessor within five (5) days after such payment is made.

(c) Advance by Lessor. If Lessee fails to pay any such ad valorem taxes or assessments or fails to give written notice of any payment thereof at least ten (10) days prior to the time the same becomes delinquent, the City may, at its option, at any time within or after such ten (10) day period, pay any ad valorem taxes or assessments, together with all penalties and interest which may have been added thereto. Any such amount so paid by Lessor shall become immediately due and payable by TSA to the City, together with interest thereon at the highest rate authorized by law. Any such payment which the City may make pursuant to this Section 34 shall not constitute a waiver of any rights which the City may have under the provisions of this Lease or as provided by law.

(d) Tax Exemption. Notwithstanding anything to the contrary in this Section 34, the TSA and the City agree the Lease Premises are exempt from taxation in accordance with the laws of the State of Texas, and that TSA shall have the full right to administratively or judicially challenge any tax or assessment levied or attempted to be levied on the Lease Premises. Save and except to the extent it becomes necessary to pay any tax or assessment to protect the property and security interests of TSA, the City and any assignee, TSA may, in its sole discretion, elect not to pay any tax or assessment until such time as the tax or assessment is determined to be due and owing on the Lease Premises by a final judgment issued by a court of competent jurisdiction.

35. Notices. Any notices provided for under this Lease must be given in writing, to the City, by delivering or mailing the notice as follows:

To the City: City Manager
City Hall

P.O. Box 9277
Corpus Christi, Texas 78469-9277

To TSA: Texas State Aquarium Association
2710 N. Shoreline Blvd.
Corpus Christi, Texas, 78402

To Leasehold Mortgagee: [Address to be provided by written notice.]

The parties may from time to time designate new addresses for notice purposes by written notice pursuant to this provision. All notices will be deemed delivered on the third day after mailed by prepaid postage in U.S. mail.

36. Captions. Captions employed in this Lease are for convenience only and are not intended to and do not in any way limit or amplify the terms or provisions herein.

37. Future Additions. Both parties to this Lease recognize that improvements to the Aquarium Property may be required from time to time in order to maintain a state of business which produces adequate funds to meet the debt service requirements of this Lease. For interior construction that does not involve a structural change and for incidental exterior construction (e.g. sidewalks, open air structures) the President has the authority to undertake such improvements, subject to compliance with applicable City building codes and regulations, without prior City Manager approval. For interior construction that does involve a structural change, for exterior construction that involves changing the footprint of the existing Aquarium, or for additional structures (e.g. new phases) that are desired by TSA, plans and specifications shall be submitted by TSA to the City Manager for City Manager's approval which will not be unreasonably withheld.

38. Storm Water Line. The parties acknowledge that Phase II-A of the Aquarium facility was constructed over a 48-inch storm water line that is the major storm drain for the south end of North Beach. The City agreed to continue to maintain the storm drain and water inlet regulator. The parties further acknowledge that parts of the Caribbean Building also may be built over the 48-inch storm water line. If the storm water line within the Aquarium Property needs to be repaired or replaced, TSA shall pay for all costs associated with repair or replacement, including granting any additional easement needed to relocate the storm water line. The City Manager will make written demand to the President for repair or replacement of the storm water line within the Aquarium Property and set a reasonable time frame to accomplish same. Failure to repair or replace, or at least begin to repair or replace, within the time frame set out by the City Manager is grounds for City to terminate this Lease. City does not warrant the 48-inch storm water line, and the construction by TSA of any improvements over the 48-inch storm water line is expressly at its own risk.

39. Representations; Cooperation. TSA acknowledges and agrees that the Aquarium Property and all improvements thereon, or to be constructed thereon, are leased by City to TSA, and are accepted by TSA "AS IS", in their current condition and appearance, and without any warranties by City, expressed or implied, with respect to appearance, condition, defects,

habitability, fitness for any specific purpose, or the availability of access. TSA agrees that TSA is not relying and will not rely on any statement, covenant, representation, or warranty pertaining to any of the matters described in this paragraph which is not expressly set forth in this Lease. City and TSA shall cooperate to enforce all warranties and causes of action available to either party against third parties arising out of or in any way related to this Lease.

40. Options to Purchase. In consideration of the timely performance by TSA of each and all of its obligations pursuant to this Lease-Purchase Agreement, including, but not limited to, the financing, design and construction of the Project in compliance with Section 4 above, the payment of all the debt service on the 1996 \$4.4 million Combination Tax and Revenue Certificates of Obligation in compliance with Section 12 above, TSA shall have the option to purchase the City's interest in this Lease and the Lease Premises, as follows:

- (a) Option to Purchase at Expiration of Lease Term. Upon the expiration of this Lease-Purchase Agreement and TSA having timely performed all of its obligations under this Lease-Purchase Agreement as above provided, TSA shall have the option to purchase the City's interest in this Lease and the Lease Premises for the additional sum of Ten Dollars (\$10.00), provided: (i) Lessee is not in default under the Lease; (ii) Lessee gives notice to the City of its intention to exercise this option within sixty (60) days from the expiration date of this Lease, and (iii) City is provided a Special Warranty Deed, containing the provisions set forth in Section 41 below and in form and content otherwise acceptable to the City, with directions for delivery of the Special Warranty Deed by the City to TSA; and (iv) Lessee complies with all applicable laws concerning acquisition of the Lease Premises.
- (b) Early Option to Purchase. In consideration of the performance by TSA of all of its obligations under this Lease-Purchase Agreement and the payment to City in full of the funds required to be paid under this Lease, TSA shall have the option to purchase the Lease Premises from City upon the terms and conditions set forth in this subsection 40(b). This early option to purchase may be exercised any time after the expiration of ten (10) years from the effective date of this Lease or on an earlier date after TSA has completed the payment of the debt service required under Section 12 above, completed construction of the Caribbean Building Project as required under Section 4 above, and performed all covenants and conditions of this Lease-Purchase Agreement in a manner satisfactory to the City. TSA may exercise this option by providing at least sixty (60) days' written notice to City of its intention to exercise the option on the following terms:
 - i. The consideration for the sale shall be the payments and performance above provided and the additional sum of \$100.00, and TSA's acceptance of a covenant running with the land, as provided in Section 41 below, to continue the operation of the Aquarium Property as an aquarium and sea life park in the manner required under Section 3 above.

- ii. Any survey, title insurance, title searches or similar closing expenses shall be at the sole cost and expense of TSA.
- iii. Closing of the purchase and re-acquisition of the Aquarium Property shall occur at the offices of a title company selected by TSA or at City's offices as designated in the notice of exercise of the option provided by TSA.
- iv. The Aquarium Property shall be conveyed by City to TSA "AS IS" in its then existing condition, subject to those matters of record as set forth in the deeds obtained by City when it acquired the Aquarium Property, without any warranties or representations of City whatsoever except for the limited warranty of title provided in the form of special warranty deed promulgated by the State Bar of Texas.
- v. No brokerage fees or commissions shall be due or owing to any party arising from the transaction.
- vi. The Aquarium Property conveyed specifically shall exclude any parking lots being leased by City from the State of Texas and subleased to TSA
- vii. The Lease Premises will be conveyed to TSA by the City by a Special Warranty Deed containing the provisions set forth in Section 41 below, and in form and content otherwise acceptable to the City.

Upon the closing of the purchase under either of Subsection 40(a) or 40(b), this Lease shall terminate and be of no further force or effect, and the parties shall be released from all obligations hereunder; provided that, TSA shall have the continuing obligation to fund, operate and maintain the Lease Premises for the purposes set forth in this Lease, as provided in this Lease, and nothing in this section shall be construed as releasing TSA from its obligations under the deed to continue operation of an aquarium and sea life park as provided above.

41. Special Warranty Deed. Upon TSA's exercising its option to purchase in compliance with the terms and conditions of this Lease-Purchase Agreement, the City shall convey the Lease Premises to TSA by Special Warranty Deed. In addition to other terms and conditions acceptable to the City, the Special Warranty Deed shall contain and include the following provisions:

- (a) Right of First Refusal. If TSA shall decide to sell the above described property to a third party on established terms and conditions acceptable to TSA, TSA shall first offer the property to the City for the price and on the same terms and conditions as are offered by the third party. The City shall have ninety (90) days from the date of the offer to the City in which to accept or reject the offer. In connection with any such exercise of this right of first refusal by the City, the City shall be entitled to a credit against the purchase price equal to the \$14,500,000 bond indebtedness issued by the City in connection with the initial construction of the Aquarium. This right of first refusal shall inure to the benefit of City, and the

City's successors, representatives, and assigns, and shall continue in full force and effect for a period of seventy-five (75) years from and after December 31, 2014, and at the expiration of that period shall be of no further force or effect. In the event that the City elects not to exercise the right of first refusal, the City shall be repaid the \$14,500,000 bond indebtedness issued by the City in connection with the initial construction of the Aquarium out of the sales price. Nonetheless, the City Council may agree to subordinate this \$14,500,000 repayment obligation to future specified mortgage indebtedness.

- (b) Subordination to Caribbean Building Mortgage Indebtedness. The obligations of TSA to reimburse the \$14,500,000 bond indebtedness to the City shall be expressly subordinate to the obligations for payment of mortgage indebtedness incurred by TSA pursuant to the terms and conditions of this Lease-Purchase Agreement for the construction of the Caribbean Building Project. Such subordination shall be included in the Special Warranty Deed provided above and identify the leasehold mortgages, if any remain in effect at such time, by date and recording information.
- (c) Restrictive Covenant. The above described property shall be used, occupied and maintained solely as an aquarium and sea life park ("Aquarium"); provided, however, that TSA may operate food, drink, souvenir, and such other concessions as the TSA may deem consistent with, but secondary to, operation of the Aquarium, including without limitation participating in fundraising activities; and provided further that if the property is damaged by fire, storm or other event beyond TSA's control the TSA shall not be in violation of this Restrictive Covenant so long as TSA is taking such action as is necessary to finance, design, rebuild, reconstruct or repair the damages to the property in a timely manner. This restrictive covenant shall expire on December 31, 2089.
- (d) Utility Easements. The City shall have the right to reserve in the Special Warranty Deed utility easements as needed to accommodate public utilities maintained in areas being conveyed to TSA.
- (e) Storm Water Line. The obligations of TSA in Section 38 above concerning the 48-inch storm water line shall be continued in the Special Warranty Deed unless TSA has relocated such storm water line into a new easement without any encroachments of TSA improvements.
- (f) Reverter Clause. If TSA violates the above and foregoing Restrictive Covenant, after the lapse of sixty (60) days' written notice and the opportunity to cure such violation the ownership and title to above described property and all improvements and fixtures thereon shall revert to the City immediately upon the City giving TSA written notice of reversion.

EXECUTED in duplicate originals this _____ day of _____, 2014, by duly authorized representatives of the parties.

Texas State Aquarium Association

By: _____
Thomas H. Schmid, President & CEO

Attest:

City of Corpus Christi, Texas

By: _____
Rebecca Huerta, City Secretary

By: _____
Ronald L. Olson, City Manager

Legal form approved on _____, 2014.

By: _____
Assistant City Attorney

Acknowledgements

STATE OF TEXAS

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§

COUNTY OF NUECES

This instrument was acknowledged before me on the _____, 2014, by Thomas H. Schmid, as President & CEO of the Texas State Aquarium Association, a Texas non-profit corporation, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS

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COUNTY OF NUECES

This instrument was acknowledged before me on the _____,
2014, by Ronald L. Olson, as City Manager of the City of Corpus Christi, a Texas municipal
corporation, on behalf of said corporation.

Notary Public, State of Texas

Exhibit 1

Actions related to land acquisition for Aquarium:

30 year lease from Port Authority of Corpus Christi, authorized by Ordinance No. 19619 on January 27, 1987

Resolution authorizing the condemnation of 8 tracts, authorized by Resolution 20214 on February 16, 1988

Multiple Use Agreement with Texas Department of Transportation to allow parking under the SH 181 bridge adjacent to TSA

Closing and abandoning N. Shoreline from Canal Street to 200 feet North of Bennett Street, portions of Canal Street, Surfside, and Bennett Streets, subject to a replat, authorized by Ordinance No. 20244, on March 15, 1988

Acquisition of Parcel 15, authorized by Resolution No. 20353 on June 21, 1988

Acquisition of Parcels 1 and 10, authorized by Motion No. M87-0215 on June 2, 1987

Acquisition of Parcel 12, authorized by Motion No. M87-0284 on August 11, 1987

Acquisition of Parcel 16, authorized by Motion No. M87-0364 on November 3, 1987

Authorizing acquisition of Parcels 2, 3, 4, 5, 6, 7, 8, 11, 15, and 16 by Condemnation by Resolution No. 19941 on August 25, 1987

Acquisition of Parcels 5 and 6, authorized by Motion No. M88-0038 on February 16, 1988

Acquisition of Parcel 7, authorized by Motion No. M88-0055 on March 15, 1988

Acquisition of Parcel 4, authorized by Motion No. M88-0066 on March 22, 1988

Acquisition of Parcels 2 and 3, authorized by Motion No. M88-0120 on May 24, 1988

Acquisition of Parcels 13 and 14, authorized by Resolution 20147 on January 5, 1988

Acquisition of Lots 3, 4, 5, and 6, Block 69, Beach Portion authorized by Resolution No. 20210 on February 16, 1988

Acquisition of Parcel 15, authorized by Resolution No. 20353 on June 21, 1988

Acquisition of Parcel 11, authorized by Motion No. M88-0078 on April 5, 1988

Acquisition of Parcel ____ owned by Helen Royal, authorized by Resolution No. 20346 on June 21, 1988

Actions related to parking Lot A for Aquarium:

- Multiple Use Agreement with Texas Department of Transportation to allow parking under the SH 181 bridge adjacent to TSA
- 5 year parking lease with TSA for parking lots A, B, C authorized by Ordinance No. 021839 on December 21, 1993
- Contact between City and TSA to construct a parking lot, issue Certificates of Obligation, set out payment obligations, etc., authorized by Motion No. M89-0344 on November 28, 1989
- Contract between City and Haas Construction Co. for paving streets, parking lots, bus loop, irrigation, and landscaping improvements, authorized by Resolution No. 020852 on December 19, 1989
- Actions related to financing for Aquarium
- Ordinance No. 020309 authorizing Tax and Tax Increment Financing Revenue Certificates of Obligation on _____
- Ordinance No. 020488 amending Ordinance No. 020309, which authorized Tax and TIF Revenue Certificates of Obligation, on October 4, 1988
- Ordinance No. 020166 amending Re-Investment Zone No. 1 contracts with various governmental agencies to provide financing for improvements to Aquarium and the Corpus Christi Museum of Natural History on January 19, 1988
- Resolution 020169 on January 19, 1988
- Ordinance No. 019674 authorized a purchase agreement and Management contract which set out duties, rights, obligations of City and TSA to construct and operate the Aquarium on June 15, 1987

Actions related to construction in area around Aquarium:

Award of construction contract for Waterfront Improvements to Garrett Construction Company, authorized by Motion No. M88-0050 on March 8, 1988.

Acceptance of Waterfront Improvements by Garrett Construction Co., authorized by M88-0271 on December 20, 1988.

Award a Wastewater Line Construction Project to King Isles, authorized by Motion No. M89-0071 on March 14, 1989.

Award an infrastructure contract to King Isles, authorized by Motion No. M89-0226 on August 15, 1989.

Award a contract to remove a leaking underground petroleum storage tank to Genesis Environmental, authorized by Motion No. M90-094 on April 10, 1990.

Exhibit A

Lots A-1, A-3, B, C, & D, Texas State Aquarium Subdivision

Exhibit 20

I. TEXAS STATE AQUARIUM (TSA) LEASE INSURANCE REQUIREMENTS

- A. TSA must not commence work under this agreement until it has obtained all insurance required herein and such insurance has been approved by the City. Nor may TSA allow any subcontractor to commence work until all similar insurance required of the subcontractor has been so obtained.
- B. TSA must furnish to the City’s Risk Manager 2 copies of Certificates of Insurance, with the City named as an additional insured for all liability policies, and a blanket waiver of subrogation on all applicable policies, showing the following minimum coverage by an insurance company(s) acceptable to the City’s Risk Manager.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-Day Notice of Cancellation required on all certificates	Bodily Injury and Property Damage
Commercial General Liability including: 1. Commercial Form 2. Premises – Operations 3. Products/Completed Operations Hazard 4. Contractual Insurance 5. Broad Form Property Damage 6. Independent Contractors 7. Personal Injury	\$2,000,000 COMBINED SINGLE LIMIT
AUTOMOBILE LIABILITY--OWNED NON-OWNED OR RENTED	\$1,000,000 COMBINED SINGLE LIMIT
WORKERS’ COMPENSATION	WHICH COMPLIES WITH THE TEXAS WORKERS’ COMPENSATION ACT AND PARAGRAPH II OF THIS EXHIBIT
EMPLOYERS’ LIABILITY	\$100,000
PROPERTY INSURANCE 1. All Risk coverage to include Windstorm, Hurricane and Hail and Flood Insurance	No less than 80% of full replacement cost coverage for all TSA real and personal property

In the event of accidents of any kind, TSA must furnish the Risk Manager with copies of all reports of such accidents at the same time that the reports are forwarded to any other interested parties.

II. ADDITIONAL REQUIREMENTS

- A. TSA must obtain workers' compensation coverage through a licensed insurance company or through self-insurance obtained in accordance with Texas law. If such coverage is obtained through a licensed company, the contract for coverage must be written on a policy and endorsements approved by the Texas Department of Insurance.

If such coverage is provided through self-insurance, then within 10 calendar days after the date the Contract Administrator or his designee requests that TSA sign the contract documents, TSA must provide the Risk Manager with a copy of its certificate of authority to self-insure its workers' compensation coverage, as well as a letter signed by the TSA stating that the certificate of authority to self-insure remains in effect and is not subject to any revocation proceeding then pending before the Texas Workers' Compensation Commission. Further, if at any time before final acceptance of the Work by the City, such certificate of authority to self-insure is revoked or is made the subject of any proceeding which could result in revocation of the certificate, then TSA must immediately provide written notice of such facts to the City, by certified mail, return receipt requested directed to City of Corpus Christi, Legal Department, P.O. Box 9277, Corpus Christi, TX 78469-9277 - Attention: Contractor Administrator.

Whether workers' compensation coverage is provided through a licensed insurance company or through self-insurance, the coverage provided must be in an amount sufficient to assure that all workers' compensation obligations incurred by TSA will be promptly met.

B. Certificate of Insurance:

- * The City of Corpus Christi must be named as an additional insured on the liability coverage, except for the Workers' Compensation coverage and a blanket waiver of subrogation on all applicable policies.
- * If your insurance company uses the standard ACORD form, the cancellation clause (bottom right) must be amended by adding the wording "changed or" between "be" and "canceled", and deleting the words, "endeavor to", and deleting the wording after "left".
- * The name of the project must be listed under "Description of Operations"
- * At a minimum, a 30-day written notice of change or cancellation is required.

- C. If the Certificate of Insurance on its face does not show on its face the existence of the coverage required by items I.B (1)-(7), an authorized representative of the insurance company must include a letter specifically stating whether items I.B. (1)-(7) are included or excluded.

III. A completed Disclosure of Interest must be submitted with your proposal.