

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

LEASE  
30238

THIS LEASE is entered into this 13th day of September, 2007, by the CITY OF LONG BEACH, a California municipal corporation ("Lessor"), and the AQUARIUM OF THE PACIFIC, a California non-profit public benefit corporation ("Lessee").

In consideration of the faithful performance of the terms and conditions hereinafter set forth, the parties agree as follows:

1. LEASED PREMISES. Lessor hereby leases to Lessee, and Lessee hereby accepts from Lessor those certain premises more particularly described in Exhibit "A" attached hereto and incorporated by reference ("Premises").

2. TERM. The term of this Lease shall commence on September 13, 2007, and shall terminate upon the expiration or termination of that certain Lease Agreement dated April 1, 2001, by and between the Long Beach Bond Finance Authority and the Aquarium of the Pacific, a copy of which is attached hereto as Exhibit "B" (the "Original Lease").

3. RENT. Tenant shall pay to Landlord as rent for the Premises for the entire term of this Lease the sum of One Dollar (\$1.00), payable in advance.

4. INCORPORATION OF ORIGINAL LEASE TERMS AND CONDITIONS. The provisions of the Original Lease (except Sections 4 and 5 and Exhibit "A" thereto ) are incorporated into this Lease as the agreement of Lessor and Lessee with regard to the Premises.

5. NO CHANGE TO ORIGINAL LEASE. Nothing in this Lease is intended to alter or modify the terms and conditions of the Original Lease.

IN WITNESS WHEREOF, the parties have caused this document to be duly

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1 executed as of the date first stated above.

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CITY OF LONG BEACH, a California  
municipal corporation

**ASSISTANT**

Dated: September 13, 2007

By: Christine J Shippy

**EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.**

Name: Anthony W. Batts  
Title: City Manager

LESSOR

AQUARIUM OF THE PACIFIC, a California  
non-profit public benefit corporation

Dated: \_\_\_\_\_, 2007

By: Joseph M Molina MD

Name: Joseph M Molina  
Title: Chairman

LESSEE

Approved as to form this 10<sup>th</sup> day of September, 2007.

ROBERT E. SHANNON, City Attorney of the  
City of Long Beach

By: [Signature]  
Assistant City Attorney

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

HAM.fl  
6/13/07; rev 7/16/07  
#07-02748

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Los Angeles

On August 27, 2007 before me, Lydia Leyn, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Joseph M. Molina, MD  
Name(s) of Signer(s)

personally known to me

(or proved to me on the basis of satisfactory evidence)

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

*Lydia Leyn*

Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**

Top of thumb here

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**

Top of thumb here

Signer Is Representing: \_\_\_\_\_

LEGAL DESCRIPTIONSOUTH LEASE AREA*Confirmed*

1  
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3  
4 That portion of the artificially created land within the tidelands and submerged  
5 lands conveyed to the City of Long Beach by the State of California under an act  
6 of May 1, 1911, Chapter 676, Page 1304, as amended, lying in said City, County  
7 of Los Angeles, said State, described as follows:

8  
9 Beginning at the easterly terminous of the line shown as having a bearing and  
10 distance of South 76°35'46" West 21.450 feet on the generally southerly line of  
11 Parcel 1 as described in document recorded October 17, 1995 as Instrument No. 95-  
12 1683687 Official Records of said County; thence westerly along the generally  
13 southerly line of said Parcel 1, the following three courses as shown on the exhibit  
14 map in said Instrument No. 95-1683687:

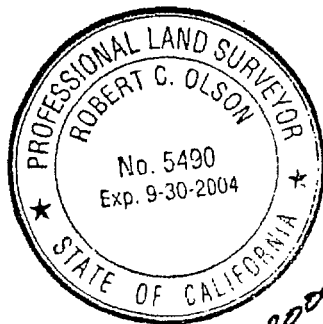
- 15 1. South 76°35'46" West 21.450 feet to the beginning of a non-tangent curve  
16 concave to the north, having a radius of 133.326 feet and to which beginning  
17 a radial line bears South 72°13'19" East;
- 18 2. Southwesterly, westerly, and northwesterly 341.820 feet along said curve  
19 through a central angle of 146°53'31";
- 20 3. North 90°00'00" West 107.561 feet to the beginning of a non-tangent curve  
21 concave to the west, having a radius of 153.00 feet and to which beginning a  
22 radial line bears South 75°05'04" East;
- 23 thence leaving said southerly line, southerly 33.03 feet along said curve through a  
24 central angle of 12°22'13"; thence on a non-tangent line, South 74°41'19" East  
25 73.69 feet; thence South 57°36'24" East 144.90 feet to the beginning of a curve  
26 concave to the north and having a radius of 175.00 feet; thence southeasterly 37.05  
27 feet along said curve through a central angle of 12°07'48"; thence South 69°44'12"  
28 East 91.41 feet to the beginning of a non-tangent curve concave to the east, having a  
29 radius of 42.00 feet and to which beginning a radial line bears South 58°21'49"

Sheet 1 of 2

1 West; thence northerly 52.91 feet along said curve through a central angle of  
2 72°10'44"; thence on a non-tangent line, North 71°14'39" East 21.61 feet to the  
3 beginning of a non-tangent curve concave to the east, having a radius of 100.25 feet  
4 and to which beginning a radial line bears North 83°52'05" West; thence northerly  
5 39.72 feet along said curve, through a central angle of 22°42'06" to the beginning of  
6 a non-tangent curve, concave easterly, having a radius of 104.25 feet and to which  
7 beginning a radial line bears North 61°55'32" West; thence northeasterly 32.71 feet  
8 along said curve through a central angle of 17°58'31"; thence North 46°02'59" East  
9 27.05 feet to the beginning of a curve, concave northwesterly and having a radius of  
10 51.00 feet; thence northerly 36.58 feet through a central angle of 41°06'01" to the  
11 beginning of a non-tangent curve, concave southwesterly, having a radius of 75.00  
12 feet and to which beginning a radial line bears North 62°53'01" East; thence  
13 northwesterly 7.09 feet along said curve, through a central angle of 5°24'52"; thence  
14 North 38°50'09" West 8.97 feet to the curved easterly line of said Parcel 1, said  
15 curve being a non-tangent curve, concave easterly, having a radius of 435.00 feet,  
16 and to which intersection a radial line bears South 77°46'27" West; thence  
17 southerly 8.94 feet along said curved easterly line, through a central angle of  
18 1°10'41" to the Point of Beginning.

19  
20  
21 This legal description is delineated on accompanying "Exhibit Map" and is made a  
22 part hereof for reference purposes.

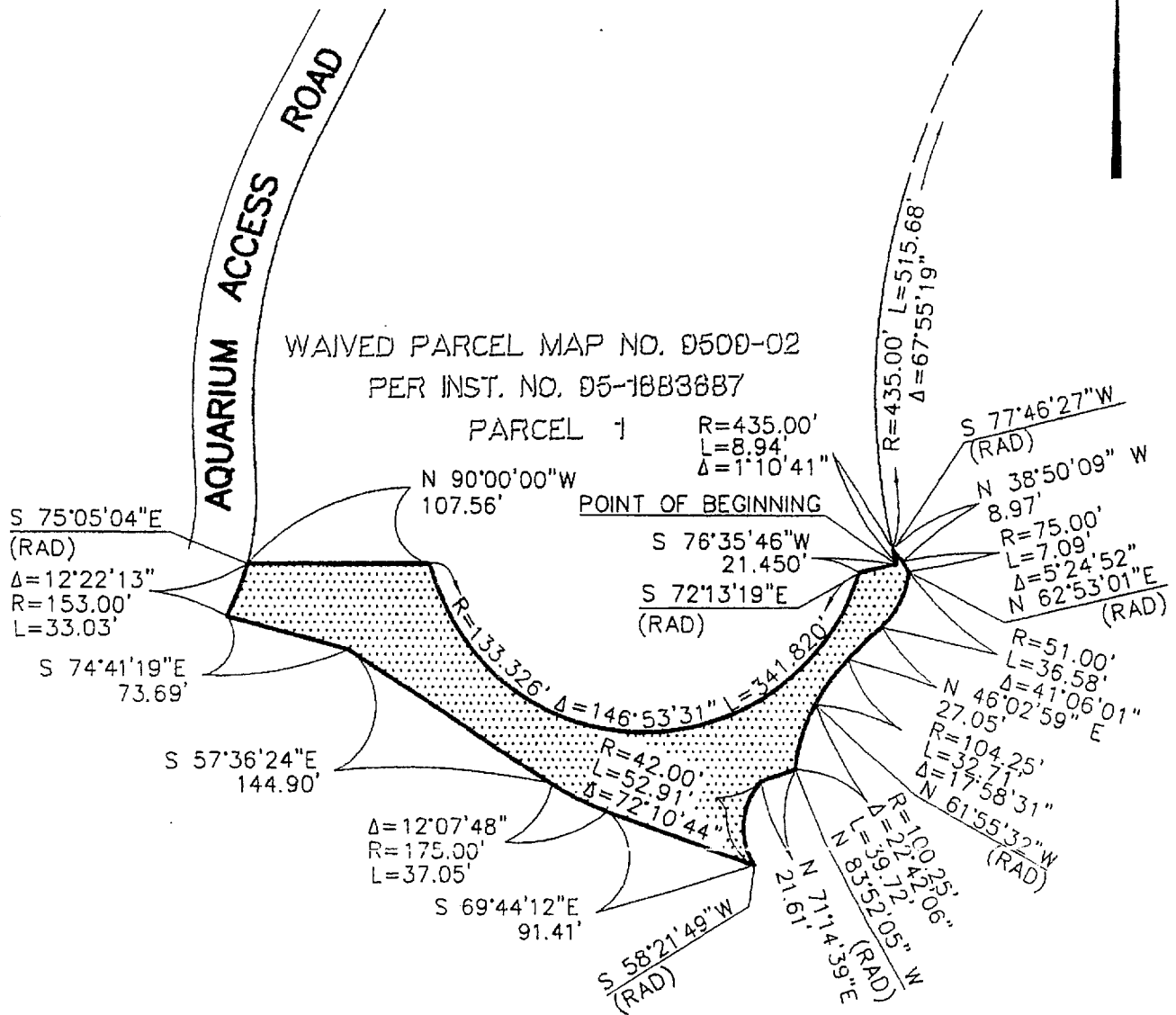
23  
24 Prepared under the direction of



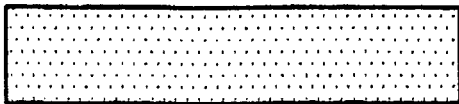
*Robert C. Olson*

Robert C. Olson, PLS 5490  
PSOMAS

# EXHIBIT MAP



TIDELANDS CONVEYED TO THE CITY OF LONG BEACH  
UNDER ACT OF MAY 1, 1911, CHAPTER 876, PAGE 1304



INDICATES PROPERTY IN QUESTION



GRAPHIC SCALE

SCALE: 1" = 100'

## PSOMAS

11444 West Olympic Boulevard, Suite 750  
West Los Angeles, CA 90064-1549  
(310) 954-3700 (310) 954-3777 (FAX)

EXHIBIT "B"

Memorandum of Lease  
Recorded in the Official Records of the  
County of Los Angeles, California  
on May 3, 2001  
Instrument No. 01-0755865

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**LEASE AGREEMENT**

**by and between**

**LONG BEACH BOND FINANCE AUTHORITY**

**and**

**AQUARIUM OF THE PACIFIC,  
a California nonprofit public benefit corporation**

**Dated as of April 1, 2001**

EXHIBIT "B"

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## LEASE AGREEMENT

**Section 1 Parties.** This Lease Agreement, dated as of April 1, 2001 (this "Lease"), is made by and between LONG BEACH BOND FINANCE AUTHORITY, a joint powers agency organized and existing under and by virtue of the laws of the State of California, as lessor (the "Authority"), and AQUARIUM OF THE PACIFIC, a California non-profit public benefit corporation, as lessee (the "Corporation").

**Section 2 Definitions.** Unless the context otherwise requires, the terms defined in this Section shall for all purposes of this Lease, and of any amendment hereto or any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. Capitalized terms used in this Lease and not otherwise defined herein shall have the respective meanings set forth in the Indenture (as hereinafter defined).

"**Authority**" means the Long Beach Bond Finance Authority, its successors and assigns.

"**Bonds**" means the Authority's Lease Revenue Refunding Bonds (Aquarium of the Pacific Project) Series 2001 and any Additional Bonds issued pursuant to the Indenture.

"**Budget**" means the annual operating budget for the Facility required to be delivered by the Corporation pursuant to Section 6.4 of this Lease.

"**Corporation**" means Aquarium of the Pacific, a California non-profit public benefit corporation, its successors and assigns.

"**Event of Bankruptcy**" means a filing of a petition in bankruptcy (or other commencement of a bankruptcy or similar proceeding) by or against the Corporation under any applicable bankruptcy, insolvency, reorganization or similar law that is now in effect or may be hereafter enacted unless such petition or proceeding shall have been dismissed and such dismissal shall be final and not subject to appeal.

"**Facility**" means the aquarium facility, including all buildings, structures, waterworks, landscaping, utilities, parking facilities and related and appurtenant improvements, located on that certain real property situated in the City of Long Beach, County of Los Angeles, State of California, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference, as the same may be expanded, remodeled, improved or otherwise changed.

"**Fiscal Year**" means the period beginning on January 1 of each year and ending on the next succeeding December 31, or any other twelve-month period hereafter selected and designated as the official fiscal year period of the Corporation in accordance with its bylaws.

"**Indenture**" means the Indenture, dated as of April 1, 2001, by and between the Authority and the Trustee, as originally executed or as it may from time to time be supplemented, modified or amended.

"**Independent Consultant**" means any independent certified public accountant or other

independent consultant who is nationally recognized as being experienced in the preparation of management studies for use in connection with the financing or operations of aquarium facilities, and who shall be engaged by the Corporation subject to the approval of the City.

“**Lease**” means this Lease Agreement, dated as of April 1, 2001, by and between the Authority and the Corporation, as it may from time to time be supplemented or amended.

“**Lease Default**” means any of the events specified in Section 15 of this Lease.

“**Person**” means an individual, corporation, firm, association, partnership, trust or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

“**Rental Payments**” has the meaning given such term in Section 5 of this Lease.

“**Revenue Deposit Fund**” means the fund by that name established in accordance with Section 5 of this Lease.

“**Revenues**” means all revenues, income, receipts and money received in any period by the Corporation and derived from its operation or possession of and pertaining or related to the Facility and any activities of the Corporation in connection therewith, including without limitation (a) rates, tolls, tariffs, fees, rentals, admission charges and other payments made to the Corporation for the use or availability of the Facility; (b) amounts received by the Corporation from the sale or provision of supplies, materials, goods and services provided or made available by the Corporation at the Facility (including, without limitation, revenues of any kind from the lease, licensing or operation of eating establishments, snack bars, concession stands and gift shops); (c) Parking Revenues; and (d) proceeds with respect to, arising from, or relating to the Facility and derived from (i) insurance (including business interruption insurance) or condemnation proceeds, (ii) accounts receivable, (iii) securities and other investments, (iv) inventory and other tangible and intangible property, (v) contract rights, accounts, instruments, claims for the payment of moneys and other rights and assets now or hereafter owned, held or possessed by or on behalf of the Corporation related to the Facility, (vi) proceeds of grants, membership fees and contributions to the Corporation, but only to the extent that such proceeds are not otherwise restricted as to their use by the terms thereof in a manner inconsistent with their characterization as Revenues hereunder, and interest earnings on all grants and contributions to the extent not so otherwise restricted.

“**Trustee**” means U.S. Bank Trust National Association, or its successor as trustee for the Bonds under the Indenture.

**Section 3**     **Lease of the Facility.** The Authority hereby leases to the Corporation, and the Corporation hereby leases from the Authority, the Facility for the term, at the rental, and upon all of the conditions set forth herein. The parties acknowledge that the Authority holds leasehold title to the Facility pursuant to the Site Lease for a term not less than the term of this Lease. At the termination of this Lease, title to the Facility shall automatically be transferred to and shall vest in the Authority.

**Section 4** Term. The term of this Lease shall be for a period commencing on the date of the recordation of this Lease in the office of the County Recorder of Los Angeles County, State of California and ending on November 1, 2031, unless such term is extended or sooner terminated as hereinafter provided. If prior to November 1, 2031, the Bonds and all other amounts due under the Indenture shall be fully paid, the term of this Lease shall end ten (10) days thereafter or ten (10) days after the written notice thereof by the Authority to the Corporation, whichever if earlier.

**Section 5** Rent.

5.1 Rental Payments. The Corporation shall pay to the Authority on or before the last Business Day of each month during the term of this Lease monthly rental payments in an amount equal to the Revenues collected for such month (each a "**Rental Payment**") as rent for the Facility. Rental Payments shall be payable as provided in Section 5.2 in lawful money of the United States to the Trustee for the benefit of the Authority at the address stated herein or to such other persons or at such other places as the Authority may designate in writing. In the event that the Corporation is delinquent for more than one Business Day in the payment of any Rental Payment, the Authority or the Trustee, on behalf of the Authority, shall notify the Corporation in writing of such delinquency.

5.2 Revenue Deposit Fund; Security Interest. The Corporation hereby covenants to deposit all Revenues, when received or as soon as practicable thereafter (and in no case more than four Business Days after receipt thereof), in the Revenue Deposit Fund, which shall be an account or accounts of the Corporation maintained by the Corporation at such banking institution or institutions as the Corporation shall from time to time designate in writing to the Authority and the City for such purpose. The Corporation hereby pledges, and grants a security interest to the Authority and the Trustee, as its agent for the benefit of the Bondholders, in the Revenues and the Revenue Deposit Fund. The Corporation shall execute and cause to be filed or delivered, as appropriate, (i) Uniform Commercial Code ("UCC") financing statements with respect to amounts on deposit in the Revenue Deposit Fund, (ii) a notice to each banking institution holding a Revenue Deposit Fund of the security interest granted hereunder, and (iii) such other documents (including, but not limited to, continuation statements) as may be necessary or reasonably requested by the Authority or the Trustee in order to perfect or maintain a first priority security interest in the Revenues and the Revenue Deposit Fund.

The Corporation shall transfer (i) all amounts on deposit in the Revenue Deposit Fund weekly to the Trustee, and (ii) all unrestricted interest earnings and unrestricted moneys on deposit in any other fund or account held by the Corporation monthly to the Trustee. The Trustee has been instructed and directed, pursuant to the Indenture, to deposit all Revenues and other amounts received from the Corporation in the Revenue Fund created under the Indenture and to apply such moneys as set forth in Section 5.02 of the Indenture. Moneys transferred to the Trustee from time to time from the Revenue Deposit Fund shall, in the aggregate, constitute Rental Payments.

5.3 Facility Funds. The Corporation hereby acknowledges that under the Indenture, the Trustee will establish and hold in accordance with the terms of the Indenture the

following Funds (the "Facility Funds") for the benefit of the Corporation and the Facility, the Authority and the Bondholders:

- (1) Operating and Maintenance Fund;
- (2) Operating Reserve Fund; and
- (3) Renewal and Replacement Fund.

The Trustee is required under the Indenture to transfer Revenues received from the Corporation to the Facility Funds, among others, on a monthly basis in accordance with Section 5.02 of the Indenture. The Trustee shall withdraw and/or transfer moneys from the Facility Funds in accordance with and for the purposes set forth in Sections 5.03, 5.04 and 5.07, respectively, of the Indenture.

## **Section 6      Use and Operation of the Facility.**

**6.1      Use.** The Facility shall be used and occupied only as an aquarium facility for the purposes expressed herein and in accordance with the Indenture. Except as otherwise expressly provided in this Lease, the Corporation shall comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the term or any part of the term hereof, regulating the use of the Facility with which it is legally capable of complying. Without limiting the generality of the foregoing, the Corporation shall comply with all conditions of approval of Coastal Development Permit 5-95-055, including the provision of public access to the Shoreline Park peninsula and the submission of an annual report to the Coastal Commission each July, which documents show the public outreach program is being conducted. The Corporation shall not use or permit the use of the Facility in any manner that will tend to create a nuisance.

**6.2      Condition of the Facility.** The Corporation hereby accepts the Facility in the condition existing as of the commencement date of this Lease, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Facility, and any covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. The Corporation acknowledges that neither the Authority nor any of the Authority's agents has made any representation or warranty as to the present or future suitability of the Facility for the conduct of the Corporation's business, except as otherwise agreed upon herein or in related transaction documents and instruments.

**6.3      Operation of the Facility.** (a) The Corporation will operate the Facility as an aquarium facility (including related uses) open to the public. Without limiting the generality of the foregoing, the Corporation shall (i) use its best efforts to cause the Facility to be operated and maintained in a commercially reasonable manner designed to attract a sufficient number of visitors per year and to generate sufficient Revenues to pay all costs and expenses of operation and maintenance of the Facility (including payment of Operating and Maintenance Expenses, debt service on any indebtedness secured by the Facility or the revenues thereof and funding of the Operating Reserve Requirement and the Renewal and Replacement Requirement), (ii) cause the Facility to be operated and maintained by qualified and experienced personnel, (iii) employ

(A) a chief executive officer, (B) a director of husbandry qualified and experienced in the operation and management of public aquaria and zoos similar to the Facility, and (C) such other personnel as necessary to maintain and operate the Facility. The Corporation shall requisition amounts from the Operating and Maintenance Fund in accordance with Section 5.03 of the Indenture to ensure that all Operating and Maintenance Expenses are timely paid.

(b) The Corporation shall not engage in any business other than the ownership, operation and maintenance of the Facility and activities incidental thereto; provided, however, that the individual directors of the Corporation may separately engage in other businesses and activities as they see fit. Neither the Corporation nor any of its agents, employees, directors, contractors or representatives shall engage in any intentional misconduct or illegal activities relating to the Facility or in any activities involving a material conflict of interest with the interests of the Facility; provided, however, that the Authority shall not declare the Corporation to be in default under this Lease or declare a Lease Default to exist as a result of a breach of this covenant if (i) the agent(s), employee(s), director(s), contractor(s) or representative(s) that engaged in such intentional misconduct, illegal activities or activities involving a material conflict of interest have resigned or been dismissed or, immediately upon demand by the Authority, resign or are dismissed, and (ii) within thirty (30) days after the occurrence of any such breach, the Corporation has corrected, or has developed and presented to the Authority, and the Authority has approved, a plan for correcting, any and all damages and adverse effects arising out of the Corporation's failure (or the failure of its agents, employees, directors, contractors or representatives) to comply with this covenant and thereafter diligently pursues such corrections or plan of corrections to completion.

(c) The Corporation shall impose, levy, enforce and collect such admission charges, parking charges, concession prices, lease rentals, licensing fees and other fees and charges with respect to the Facility, based on general economic conditions and customary practices with respect to the operation of aquaria, to generate such Revenues as projected in the Budget. The Corporation covenants and agrees that if at any time actual Revenues are less than budgeted Revenues by more than 10% per fiscal quarter for three consecutive fiscal quarters, at the direction of the City, the Corporation will promptly employ an Independent Consultant to make recommendations as to a revision of the rates, fees and charges of the Corporation or the methods of operation of the Corporation that will result in producing Revenues in such amounts as required by the Budget. Copies of the recommendations of the Independent Consultant shall be filed with the City, the Authority and the Trustee. The Corporation shall, to the extent feasible, promptly upon its receipt of such recommendations, subject to applicable requirements or restrictions imposed by law, revise its rates, fees and charges or its methods of operation or collections and shall take such other action as shall be in conformity with such recommendations. In the event that the Corporation shall fail to comply with the recommendations of the Independent Consultant, subject to the applicable requirements or restrictions imposed by law, the City or the Trustee, at the request of the City, may, in addition to the rights and remedies elsewhere set forth herein, institute and prosecute an action or proceeding in any court or before any board or commission having jurisdiction to compel the Corporation to comply with the recommendations and requirements of this paragraph (c). If the Corporation complies in all material respects with the reasonable recommendations of the Independent Consultant in respect to said rates, fees, charges and methods of operation or collection, the Corporation will be deemed to have complied with the covenants contained in this

Section for such Fiscal Year, notwithstanding that Revenues may be less than the amount set forth in the Budget; provided that this sentence shall not be construed as to in any way excuse the Corporation from taking any action or performing any duty required under this Lease or the Indenture or be construed as constituting a waiver of any other default.

**6.4** Facility Budget; Annual Financial Statements; Continuing Disclosure. (a)

The Corporation shall provide to the Authority, the Trustee, not later than the first day of each Fiscal Year during the term of this Lease, a Budget for such Fiscal Year, as consented to by the City, setting forth estimated Revenues and estimated Operating and Maintenance Expenses and other costs and expenses, separately stated, to be paid for such Fiscal Year. The Corporation may from time to time amend any Budget filed pursuant to this Section by filing such amendment, together with the written consent of the City, with the Authority and the Trustee. In the absence of a Budget for any Fiscal Year, the Trustee shall assume that the Budget for such Fiscal Year is the same as the final Budget for the prior Fiscal Year, unless otherwise directed in writing by the City.

(b) The Corporation shall provide (i) monthly, by not later than the last Friday of each month, financial statements for the prior month, together with an explanation of any material variations from the Budget for such month, (ii) within 30 days after the end of each fiscal quarter, financial statements for such fiscal quarter, and (iii) within 120 days after the end of each Fiscal Year, annual audited financial statements for such Fiscal Year; in each case, in such form and including such information as required by the City.

(c) The Corporation agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Failure of the Corporation to comply with the Continuing Disclosure Agreement shall not be considered a Lease Default hereunder, but the Trustee or any Bondholder or Beneficial Owner (as defined in the Continuing Disclosure Agreement) may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the Corporation to comply with its obligations under the Continuing Disclosure Agreement.

**6.5** Maintenance of the Facility. The Corporation will maintain and preserve the Facility in good repair and working order at all times in conformity with prudent commercial management and commercial standards customarily followed in the aquarium industry for aquaria of like size and character. The Corporation will from time to time make all necessary and proper repairs, renewals, replacements and substitutions to the Facility, so that at all times business carried on in connection with the Facility shall and can be properly and advantageously conducted in an efficient manner and at reasonable cost. The Corporation will operate the Facility in a commercially reasonable manner designed to achieve the result that the Facility shall be financially self-sufficient and self-sustaining. The Corporation shall not intentionally commit or allow any waste with respect to the Facility.

**6.6** Compliance with Grants, Loans and Other Assistance. The Corporation shall comply with the terms of all grants, loans and other assistance received by the Corporation from the United States or any agencies thereof. The Corporation will also comply with all federal and state regulations and statutes relating to any grants, loans or other assistance received by the Corporation from or through any federal, state or local governmental agency or entity.

**Section 7 Hazardous Materials.** The Corporation agrees to comply with all federal, state, and local laws, ordinances, rules, and regulations pertaining in any way to the construction, maintenance, handling, or storage of any hazardous or toxic materials, wastes or substances, as defined in any applicable law, ordinance, rule, or regulation (collectively, "Hazardous Materials"). The Authority acknowledges that Hazardous Materials are routinely present at the Facility due to the Corporation's ordinary course of business. The Corporation agrees to protect, defend, and indemnify the Authority and its agents and successors, and hold the Authority, its agents and successors, and the Facility harmless from and against all liability, losses, claims, suits, demands, costs or expenses (including, without limitation, attorneys' fees) incurred in connection with Hazardous Materials in, on or under the Facility during the term of the Lease, except to the extent such liability, loss, claim, suit, demand, cost or expense results from any act or omission of the Authority, its agents, employees, contractors and other persons for whom the Authority is responsible. The Corporation shall promptly, but in no case less than 48 hours following actual receipt of written notice or information from a governmental agency or entity that relate to a violation or potential violation of this Section 7 relating to Hazardous Materials in, on or under the Facility, give the Authority and the Trustee a copy of any such notice or correspondence it actually receives from such governmental agency or entity. This Section 7 shall survive the termination of this Lease.

**Section 8 Maintenance, Repairs, and Alterations.**

**8.1 Obligation to Maintain.** The Authority shall have no obligation or responsibility whatsoever for any maintenance or repairs to the Facility, and the Corporation shall perform any and all repairs and maintenance desired or required by the Corporation on the Facility. To the extent such maintenance or repairs are not funded from the Operating and Maintenance Fund pursuant to the Budget, the Corporation shall requisition amounts from the Renewal and Replacement Fund in accordance with Section 5.09 of the Indenture to pay the costs of any repair, replacement or additional facilities with respect to the Facility necessary to maintain the Facility's competitive position.

**8.2 Compliance with Laws; Notice to Authority.** All construction, maintenance, repair, alteration and improvement work done on the Facility shall comply in all material respects with all applicable governmental permits and laws. The Corporation shall give the Authority not less than ten (10) days' notice prior to the commencement of any work on the Facility, and the Authority shall have the right to post notices of non-responsibility in or on the Facility as provided by law.

**Section 9 Indemnity.**

**9.1 Indemnity.** The Corporation shall protect, defend, indemnify and hold harmless the Authority from and against any and all claims arising out of or in connection with the Facility, or from the conduct of the Corporation's business or from any activity, work or things done, permitted or suffered by the Corporation in or about the Facility or elsewhere, and shall further protect, defend, indemnify and hold harmless the Authority from and against any and all claims arising from any breach or default in the performance of any obligation on the Corporation's part to be performed under the terms of this Lease, or arising from any negligence of the Corporation, or any of the Corporation's agents, contractors, or employees, and from and



against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, except to the extent that any of the foregoing directly result from the actions of the Authority, its employees, agents and contractors, other than actions (including the exercise of remedies) by the Authority under this Lease. The Corporation, as a material part of the consideration to the Authority, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Facility arising from any cause other than the actions of the Authority, its employees, agents and contractors, other than actions (including the exercise of remedies) by the Authority under this Lease, and the Corporation hereby waives all claims in respect thereof against the Authority.

**9.2** Exemption of the Authority from Liability. The Corporation hereby agrees that the Authority shall not be liable for injury to the Corporation's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of the Corporation, its employees, invitees, customers, or any other person in or about the Facility, nor shall the Authority be liable for injury to the person of the Corporation, its employees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said damage or injury results from conditions arising upon the Facility, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to the Corporation except injury resulting from the actions of the Authority, its employees, agents and contractors, other than actions (including the exercise of remedies) by the Authority under this Lease; provided, however, that this Section 9.2 shall not be construed to impose any liability on the Authority that the Authority does not otherwise have hereunder or at law.

**9.3** Non-Recourse Liability. Notwithstanding anything herein to the contrary, no director, officer or employee of the Corporation shall have any personal liability for any breach or default hereunder by the Corporation except as a result of (a) intentional fraud, intentional misrepresentation or willful misconduct by such director, officer or employee or (b) intentional misapplication, misappropriation or conversion of funds (including Revenues, insurance or condemnation proceeds and the Corporation's accounts) by such director, officer or employee; provided, however, that the Corporation's directors, officers or employees may be named in a lawsuit or other proceeding if necessary to the jurisdiction of the court or other body before which such lawsuit or other proceeding is brought if no personal liability is sought with respect to such persons.

## **Section 10** Insurance.

### **10.1** Acquisition of Insurance Policies.

(a) The Corporation shall procure and maintain, or cause to be procured and maintained during the term of this Lease, the following insurance from insurance carriers admitted to write insurance in the State or from nonadmitted insurance companies that are authorized to transact insurance in the State, and which, in either case, have at least a rating of or equivalent to 'A:VIII' by A.M. Best Company, unless otherwise determined by the City's Risk

Manager or designee. "Claims-made" policies are not acceptable unless approved in advance and in writing by the City's Risk Manager or designee.

(1) **Commercial general liability insurance** equivalent in coverage scope to ISO CGL CG 00 01 11 85 or 11 88, including, as may be applicable to the Corporation's operations, broad form contractual liability, cross liability protection, independent contractors liability, products and completed operations, garagekeepers liability, liquor liability, watercraft liability, and fire legal liability, in an amount not less than Ten Million Dollars (US \$10,000,000) per occurrence and in aggregate. The Authority, the City, the Trustee and their officials, employees, and agents shall be named as additional insureds in an additional insured endorsement (equivalent to ISO CG 20 10 11 85 or CG 20 26 11 85) and shall be protected from and against claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons, or damage to or loss of property arising out activities performed by or on behalf of the Corporation. Said insurance shall be primary insurance with respect to the Authority, the Trustee and the City, shall include cross liability protection, and shall be endorsed by insurer to waive its rights of subrogation against the Authority, the City, the Trustee and their officials, employees, and agents.

(2) **Workers' compensation** coverage as required by the California Labor Code and endorsed, as applicable, to include United States Longshoremen and Harbor Workers' Act coverage as required by federal and state law, and Jones' Act and employer's liability insurance with minimum limits of One Million Dollars (US \$1,000,000). Said insurance shall be endorsed by insurer to waive its rights of subrogation against the Authority, the City, the Trustee and their officials, employees, and agents.

(3) **Automobile liability insurance** equivalent in coverage scope to ISO CA 00 01 06 92, covering Auto Symbol 1 (Any Auto), in an amount not less than Two Million Dollars (US \$2,000,000) combined single limit per accident for bodily injury and property damage covering non-owned and hired vehicles and owned vehicles operated under this Lease.

(b) The Corporation shall procure and maintain for term of this Lease, the following insurance from insurance carriers having at least a rating of or equivalent to 'A:VIII' by A.M. Best Company or admitted to write insurance in California for at least the coverages and limits listed unless otherwise determined by the City's Risk Manager or designee.

(1) **"All risk" property insurance**, including debris removal, in an amount sufficient to cover the full replacement value of the buildings, objects (boilers and machinery), and improvements located at the Facility. The Authority shall be named as an additional insured under a standard loss payable endorsement.

(2) **"All risk" property insurance**, including debris removal, and builders risk coverage during the course of construction in an amount sufficient to cover the full replacement value of buildings and structural improvements constructed or erected on or about the Facility. The Authority and Trustee shall be named as an additional insureds under standard loss payable endorsements.

(3) **“All risk” property insurance**, including debris removal, in an amount sufficient to cover the full replacement value of the Corporation’s personal property, exhibits, including, but not limited to, marine life, and equipment on the Facility.

(4) **Business interruption insurance** providing that the Rental Payments due hereunder to the Authority shall be paid for a period up to twenty (24) months if the Facility or any portion thereof is destroyed or rendered inaccessible.

(5) **Difference in conditions (DIC) property insurance**. If available at reasonable cost from responsible insurers, wherein determinations of “reasonable” and “responsible” are the sole discretion of the City’s Risk Manager or designee, the perils of earthquake and flood shall also be covered with respect to the Facility. The Authority shall be named as an additional insured under a standard loss payable endorsement.

## 10.2 Terms of Insurance.

(a) Election of Alternative Acquisition of Insurance. If the Corporation fails to procure and/or maintain any of the insurance required herein, the Authority may, at its sole election, procure and maintain such insurance on behalf of the Corporation, the Trustee and the Authority, at the Corporation’s sole expense. If the Authority exercises its election, pursuant to the terms of this Lease, to purchase any of the insurance coverages herein, the Corporation shall reimburse the Authority immediately for the cost of insurance procured by the Authority on the Authority’s, the Trustee’s and the Corporation’s behalf and in any event no later than fifteen (15) calendar days of the date of the City’s invoice on behalf of the Authority therefor. Any such invoiced amount not received by the Authority within fifteen (15) calendar days of the date of City’s invoice is subject to interest of 2% per month accruing from the sixteenth calendar day after the invoice date, compounded monthly. If the Authority does not exercise its election to purchase any of the insurance required herein, the Corporation shall have the responsibility for procuring and maintaining such insurance.

(b) Insurance records. When the Corporation is responsible for procuring and maintaining any of the insurance required herein, the Corporation agrees to provide to the Authority and the City any policy information requested by the Authority or the City and to make available to the Authority and the City all books, records and other information relating to such insurance during normal business hours.

(c) Delivery of insurance records. The Corporation shall deliver to the Authority and the City certificates of insurance and original endorsements for approval as to sufficiency and form on April 1<sup>st</sup> of each year, not later than 30 days after the commencement of new or renewal policies required herein, or not later than 30 days after the effective date of any policy amendments required herein, whichever occurs first. The certificates and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf.

(d) Other insurance terms. Insurance required herein shall be primary insurance as respects the Corporation, the Authority, the Trustee and the City. Any insurance or self-insurance maintained by the City, the Trustee or the Authority shall be in excess of this

insurance. Coverage shall state that the insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. All policies shall be endorsed to provide at least 30-days notice of cancellation (10 days if cancelled for nonpayment of premium) and 30-days notice of nonrenewal, suspension, termination (other than cancellation), or material changes in coverage terms to the Authority and the Corporation.

(e) Self-insurance. Any self-insurance program, self-insurance retention or deductibles must be approved in writing by the City and shall protect the Authority, the Trustee, the City and their officials, employees, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention provisions.

(f) Limited waiver of property subrogation. With respect to damage to property, the Authority, the Trustee, the City and the Corporation hereby waive all rights of subrogation, one against the other, but only to the extent that collectible commercial insurance is available for said damage.

(g) Review and update of insurance requirements. Not more frequently than every three years, if in the opinion of the City's Risk Manager, the amount, scope or types of coverages specified herein are not adequate, the Corporation shall amend its insurances as required by the City's Risk Manager. Such amendments may include, but are not limited to, coverage for earthquake and flood if available from responsible insurance companies at reasonable cost. Determination of "responsible insurance companies" and "reasonable cost" for purposes of earthquake and flood perils are at the sole discretion of the City's Risk Manager. Any insurance requirements hereunder may be modified without the consent of the Trustee.

(h) Insurance does not limit liability. Such insurance as required herein shall not be deemed to limit the Corporation's liability relating to performance under this Lease. The Authority reserves the right to require complete certified copies of all said policies at any time. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification and hold harmless provisions of this Lease. The Corporation understands and agrees that, notwithstanding any insurance, the Corporation shall be obligated to defend, indemnify, and hold the Authority, the City, the Trustee and their officials, employees, and agents harmless hereunder for the full and total amount of any damage, injuries, loss, expense, costs, or liabilities caused by the condition of the Facility or in any manner connected with or attributed to the acts or omissions of the Corporation, its officers, agents contractors, employees, subtenants, licensees, patrons, or visitors, or the operations conducted by the Corporation, or the Corporation's use, misuse, or neglect of the Facility.

(i) Sublessees and on-site vendors. Any sublessees and on-site vendors that the Corporation may use shall be required to maintain insurance in compliance with the provisions of Sections 10.1(A)(1) and (2), except that the applicable limit with respect to Section 10.1(A)(1) for these sublessees and on-site vendors shall be in an amount not less than One Million Dollars (US \$1,000,000) per occurrence and Two Million Dollars (US \$2,000,000) in aggregate or as may otherwise be provided in the Corporation's bylaws.

**10.3 Insurance Proceeds Held in Trust.** All insurance proceeds received by the Authority or the Trustee shall be held in trust under the Indenture and shall be applied as follows: *first*, for the purpose of defraying the cost of repairing, restoring, replacing or rebuilding any structure or improvement relating to the Facility as provided in Section 17 hereof; and *second*, if the Facility or other improvement relating thereto is not repaired, restored, replaced or rebuilt as provided in Section 17, said funds shall be disposed of as provided in Section 17.

**Section 11 Payment of Taxes.**

**11.1 Real Property Taxes.** The Corporation shall pay all real property taxes, as defined below, if any, applicable to the Facility or any portion thereof. As used herein, the term "real property tax" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed on the Facility by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, as against any legal or equitable interest of the Authority in the Facility or in the real property thereof, as against the Authority's right to rent or other income therefrom, and as against the Authority's business of leasing the Facility. The term "real property tax" shall also include any tax, fee, levy, assessment or charge (i) in substitution of, partially or totally, any tax, fee, levy, assessment or charge hereinabove included within the definition of "real property tax," or (ii) the nature of which was hereinabove included within the definition of "real property tax," or (iii) which is imposed as a result of a transfer, either partial or total, of the Authority's interest in the Facility or which is added to a tax or charge hereinbefore included within the definition of real property tax by reason of such transfer, or (iv) which is imposed by reason of this transaction, any modifications or changes hereto, or any transfers hereof.

**11.2 Personal Property Taxes.** The Corporation shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property contained in the Facility.

**Section 12 Utilities.** The Corporation shall pay for all water, gas, heat, light, power, telephone and other utilities and services supplied to the Facility, together with any taxes thereon to the extent applicable to cultural and educational facilities such as the Facility.

**Section 13 Assignment and Subletting; Subordinate Indebtedness.** (a) The Corporation shall not, without the Authority's written consent, voluntarily or by operation of law assign, transfer, mortgage, sublet or otherwise transfer or encumber all or any part of the Corporation's interest in this Lease or in the Facility, except to an entity that concurrently acquires fee title to the Facility and any other improvements thereon; provided that concessions and licensing arrangements entered into in the ordinary course of business shall not violate this Section.

(b) The Corporation may incur additional indebtedness to be paid from the Revenues, but only on a subordinate basis to the payment of the Bonds and in accordance with Section 5.02(g) of the Indenture; provided that (i) such indebtedness is approved by the

Authority; (ii) the payment and enforcement of such indebtedness shall be in all respects subordinate to the Bonds and the provisions of the Indenture, and (iii) no payment shall be made with respect to such indebtedness during any period that a Lease Default has occurred and is continuing or would occur upon giving effect to such payment or application. Upon the issuance of additional indebtedness, the Trustee will provide to the Corporation, upon its request, an accounting with respect to the amount of Revenues available for the payment of such indebtedness; and the Authority and the Trustee will provide such further assurances and execute such documents as may be determined reasonably necessary for the Corporation to incur and subordinate such indebtedness in accordance with the purpose and intent of this Lease.

**Section 14 Eminent Domain; Condemnation.** If the Facility or any portion thereof is taken under the power of eminent domain, or sold under the threat of the exercise of said power, this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. The Authority and the Corporation shall each have the right to represent its respective interest in any such proceeding and to make full proof of its claims. All condemnation proceeds received by the Authority shall be applied as set forth in Section 17 of this Lease.

**Section 15 Breach or Default.** Any of the following shall constitute an event of default by the Corporation under this Lease (each, a "Lease Default"):

(a) Failure of the Corporation to pay when due the Rental Payments or any other sums payable by the Corporation under this Lease, and the continuance of such failure for ten (10) days after the date that such payment is due; or

(b) The abandonment or vacation of the Facility for any reason; or

(c) The failure of the Corporation to perform any other obligation hereunder, which failure shall not be remedied to the satisfaction of the Authority within thirty (30) days after written notice thereof from the Authority specifying such failure (or, if such failure is curable but cannot reasonably be remedied by the Corporation within thirty (30) days, such period as may be reasonably necessary, provided the Corporation commences appropriate action to effect such remedy within said thirty (30) day period and thereafter prosecutes such action to completion with all due diligence); or

(d) an Event of Bankruptcy.

**Section 16 Remedies.**

**16.1 Option to Terminate.** If a Lease Default shall occur and be continuing, then in addition to any other remedies available to the Authority at law or in equity, but only after obtaining the prior written consent of the Trustee to any termination of this Lease and delivery to the Trustee of an Opinion of Bond Counsel to the effect that termination of this Lease will not adversely affect the tax-exempt status of interest on Tax-Exempt Bonds, the Authority shall have the immediate option to terminate this Lease and to bring suit against the Corporation and recover as an award in such suit the following:

(i) The value at the time of award of the unpaid Rental Payments and

all other sums due hereunder that had been earned at the time of termination;

(ii) The value at the time of award of the amount by which the unpaid Rental Payments and all other sums due hereunder that would have been earned after termination until the time of award exceeds the amount of such rental loss that the Corporation proves could have been reasonably avoided;

(iii) The value at the time of award of the amount by which the unpaid Rental Payments and all other sums due hereunder for the balance of the term after the time of award exceeds the amount of such rental loss that the Corporation proves could be reasonably avoided;

(iv) Any other amount necessary to compensate the Authority for all the detriment proximately caused by the Corporation's failure to perform its obligations under this Lease or which in the ordinary course of things could be likely to result therefrom; and

(v) Such amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

The "value at the time of award" of the amounts referred to in subsections (i) and (ii) above shall be computed by allowing interest at the lesser of ten percent (10%) per annum or the maximum allowable rate under applicable law on the date of the award. The "value at the time of award" of the amount referred to in subsection (iii) shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

**16.2 Right to Recover Rental Payments.** If a Lease Default shall occur and be continuing, and the Authority shall choose not to exercise the option to terminate this Lease as provided herein, this Lease shall continue in full force and effect for as long as the Authority chooses not to terminate the Corporation's right to possession, and the Authority may enforce all its rights and remedies under this Lease, including the right to recover Rental Payments as they become due. Accordingly, the Authority has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after the lessee's breach and abandonment and recover rent as it becomes due, if the lessee has right to sublet or assign, subject to reasonable limitations).

For the purpose of this Section 16, the following shall not constitute a termination of the Corporation's right to possession:

(A) Acts of maintenance or preservation or effort to relet all or any part of the Facility; or

(B) The appointment of a receiver upon initiative of the Authority to protect the Authority's interest under this Lease.

**16.3 Additional Rights of Authority.** The Authority may, at any time after a Lease Default arises under this Lease, remedy such Lease Default at the Corporation's expense;

provided, however, that the Authority shall have no obligation to do so and, once having commenced to remedy any such Lease Default, the Authority shall have no obligation to continue or prosecute such cure to completion. If the Authority at any time, by reason of the Corporation's default, pays any sum or does any act that requires the payment of any sum, the sum paid by the Authority shall be due immediately from the Corporation to the Authority at the time the sum is paid, and if paid at a later date, shall bear interest from the date the sum is paid by the Authority until the Authority is reimbursed by the Corporation at the greater of the rate of ten percent (10%) per annum or the maximum rate allowed by law (the "Delinquent Rate"). The amount to be paid, together with interest thereon, shall be included as additional rent hereunder.

In addition to the foregoing remedies, if a Lease Default has occurred and is continuing, the Authority shall have the right, at its election, to operate, manage and maintain the Facility, to the exclusion of the Corporation, as the Corporation's agent in such manner as the Authority in its discretion considers necessary or appropriate, and the Authority shall not be obligated to account to the Corporation for any actions taken or not taken, or for any funds expended or not expended, in good faith in so operating, managing or maintaining the Facility. Without limiting the generality of the foregoing, in exercising such remedy, the Authority shall have the right, in its own name or in the Corporation's name as agent, to receive and apply Revenues, to use all funds in accounts held by or on behalf of the Corporation (including accounts held hereunder or under the Indenture), to pay, settle or compromise bills and claims by vendors, suppliers or other persons, to hire, engage and/or terminate employees, contractors, subcontractors, vendors or other persons, to make or change operation, management or maintenance practices, and to do every other thing that the Corporation might itself be able to do with respect to the Facility. The foregoing agency shall be deemed to be coupled with an interest and shall therefore be irrevocable.

**Section 17 Damage and Destruction to Facility.** If the Facility is damaged or destroyed, in whole or part, by fire or other casualty, the Corporation shall give prompt written notice thereof to the Authority and the Trustee. Any moneys received as payment for any loss under any insurance policies required to be maintained by the Corporation in accordance with this Lease are required to be deposited and applied as provided for in this Section.

**17.1 Repairs, Alterations, and Further Improvements.** In the event of damage to or destruction or taking of the Facility:

(A) The proceeds of casualty insurance carried on the Facility and the proceeds of any insurance or condemnation awards with respect to the Facility shall be paid immediately upon receipt by the Corporation or other named insured parties to the Trustee for deposit in the Insurance Proceeds Account of the Surplus Fund established under the Indenture. In the event the Corporation elects, with the consent of the Authority, to repair or replace the property damaged, destroyed or taken, it shall furnish to the Trustee a certificate of an independent architect or other qualified expert satisfactory to the Authority, estimating the reasonable cost of such repair or replacement and a written certificate of the Corporation stating that the amount of insurance or condemnation proceeds, together with investment income reasonably expected to be received with respect thereto, and any other funds available or reasonably expected to become available therefor (and which the Corporation shall agree to deposit in said fund



when so available), shall be sufficient to repair or replace the property damaged, destroyed or taken in accordance with said plans. Moneys in the Insurance Proceeds Account shall be disbursed by the Trustee for the purpose of repairing or replacing the property damaged, destroyed or taken in the manner and subject to the conditions set forth in the Indenture.

(B) In the event the Corporation shall not elect to repair or replace the property damaged, destroyed or taken, as provided in subsection (A) of this Section, the Corporation acknowledges that the Trustee shall be instructed to transfer all amounts in the Insurance Proceeds Account on account of such damage, destruction or condemnation to the Bond Fund and apply such amounts to the redemption of Bonds as provided in the Indenture. Any insurance or condemnation proceeds not used by the Corporation to repair or replace the property damaged or destroyed pursuant to subsection (A) shall be used by the Trustee to redeem Bonds.

**17.2 Prompt Repair.** If the Corporation, pursuant to the terms hereof, is obligated or elects to repair, replace, reconstruct or rebuild the Facility as provided herein, the same shall be paid from the insurance or condemnation proceeds available therefor and all repairs shall be of a quality and workmanship to return the Facility to a first-class structure, according to the standards then prevailing in California for structures of similar type and age, and the Corporation shall diligently commence and continuously carry out such repair, replacement, reconstruction, or rebuilding to full completion as soon as possible, except to the extent of delays due to strikes, lockouts, shortages of labor or materials after due diligence in obtaining the same, governmental restrictions, fire, casualty, riot, act of God, act of the public enemy, or other causes beyond the reasonable control of the Corporation after the exercise of due diligence, including diligence in contracting and the exercise of rights under contracts with contractors and suppliers.

**Section 18 Attorneys' Fees.** In the event legal action is commenced to enforce or interpret any provision of or any right under this Lease, the prevailing party shall be entitled to recover its costs and expenses incurred, including reasonable attorneys' fees, from the party not prevailing.

**Section 19 Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

**Section 20 Time of Essence.** Time is of the essence.

**Section 21 Incorporation of Prior Agreements; Amendments.** This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification, including the City and the Trustee.

**Section 22 Notices.** Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery, nationally recognized overnight courier service, telecopier (if followed by a hard copy sent by United States mail) or certified mail, and,

if so given, shall be deemed sufficiently given when received, if personally delivered, delivered by overnight courier service or telecopied, or if sent by mail, five days after being deposited in the United States mail, postage prepaid and addressed to the Corporation or to the Authority at the applicable address noted below. Either party may by notice to the other specify a different address for notice purposes. A copy of all notices required or permitted to be given to the Authority hereunder shall be concurrently transmitted to the Trustee and such other party or parties at such addresses as the Authority may from time to time hereafter designate by notice to the Corporation.

To the Authority: Long Beach Bond Finance Authority  
333 West Ocean Boulevard, 6th Floor  
Long Beach, California 90802  
Attention: Executive Director  
Telephone: (562) 570-6979  
Telecopier: (562) 570-6583

To the Corporation: Aquarium of the Pacific  
310 Golden Shore, Suite 300  
Long Beach, California 90802  
Attention: Chief Executive Officer  
Telephone: (562) 951-1680  
Telecopier: (562) 590-3109

**Section 23 Right of Entry.** The Authority and the Trustee reserve the right for any of their duly authorized representatives to enter upon the Facility at any reasonable time to inspect the same or, at their own expense and upon prior written notice thereof to the Corporation, to make any repairs, improvements or changes reasonably necessary for the preservation thereof.

**Section 24 Waivers.** No waiver by the Authority of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by the Corporation of the same or any other provision. The Authority's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of the Authority's consent to, or approval of, any subsequent act by the Corporation. The acceptance of Rental Payments hereunder by the Authority shall not be a waiver of any preceding breach by the Corporation of any provision hereof, other than the failure of the Corporation to pay the particular Rental Payments so accepted, regardless of the Authority's knowledge of such preceding breach at the time of acceptance of such Rental Payments.

**Section 25 Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

**Section 26 Covenants and Conditions.** Each provision of this Lease performable by the Corporation shall be deemed both a covenant and a condition.

**Section 27 Binding Effect; Choice of Law.** Subject to any provisions hereof restricting assignment or subletting by the Corporation, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State of California.

**Section 28 Quiet Possession.** Upon the Corporation making Rental Payments for the Facility and observing and performing all of the covenants, conditions and provisions on the Corporation's part to be observed and performed hereunder, the Corporation shall have quiet possession of the Facility for the entire term hereof subject to all of the provisions of this Lease. The individuals executing this Lease on behalf of the Authority represent and warrant to the Corporation that they are fully authorized and legally capable of executing this Lease on behalf of the Authority and that such execution is binding upon all parties holding an ownership interest in the Facility.

**Section 29 Easements.** The Corporation acknowledges that the City has reserved to itself under the Site Lease the right, from time to time, to grant such easements, rights and dedications that the City deems necessary or desirable, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights dedications, maps and restrictions do not unreasonably interfere with the use of the Facility by the Authority or the Corporation. The Corporation shall sign any of the above-referenced documents upon request of the City and failure to do so shall constitute a material breach of this Lease.

**Section 30 Approval of Indenture.** The Corporation hereby acknowledges and approves the terms and provisions of the Indenture and, to the extent applicable, agrees to be bound by such terms and provisions of the Indenture.

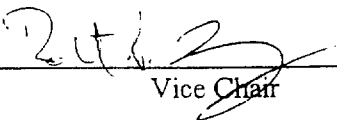
**Section 31 Third Party Beneficiaries.** The City and the Trustee are intended to be and shall each be a third-party beneficiary of this Lease. The City and the Trustee shall each have the right (but not the obligation) to enforce, separately or jointly with the Authority, or to cause the Authority to enforce, the terms of this Lease and to pursue an action for specific performance or other available remedy at law or in equity in accordance with Section 16 hereof, provided that any such action or remedy shall not materially adversely affect the interests and rights of the Bondholders.

**Section 32 Captions.** The captions and headings in this Lease are inserted only as a matter of convenience and for reference, and they in no way define, limit or describe the scope of this Lease or the intent of any provision hereof.

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first written above.

**LONG BEACH BOND FINANCE  
AUTHORITY, as Lessor**

By:   
Vice Chair

Approved as to form

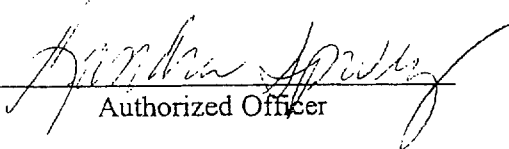
  
Assistant City Attorney

**AQUARIUM OF THE PACIFIC, a California  
non-profit public benefit corporation, as Lessee**

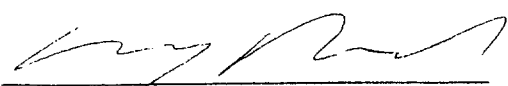
By: \_\_\_\_\_  
Chairperson

ACCEPTED AND AGREED TO BY:

**U.S. BANK TRUST NATIONAL ASSOCIATION, as Trustee**

  
Authorized Officer

**CITY OF LONG BEACH**

  
City Manager

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first written above.

**LONG BEACH BOND FINANCE  
AUTHORITY, as Lessor**

By: \_\_\_\_\_  
Vice Chair

Approved as to form

\_\_\_\_\_  
Assistant City Attorney

**AQUARIUM OF THE PACIFIC, a California  
non-profit public benefit corporation, as Lessee**

By: Russell Hill  
Chairperson

ACCEPTED AND AGREED TO BY:

**U.S. BANK TRUST NATIONAL ASSOCIATION, as Trustee**

\_\_\_\_\_  
Authorized Officer

**CITY OF LONG BEACH**

\_\_\_\_\_  
City Manager

**EXHIBIT A**

**THE FACILITY**

THE AQUARIUM FACILITY COMPRISED OF THE BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES AND EQUIPMENT AND PERSONAL PROPERTY, INCLUDING THE AQUARIUM FACILITY LOCATED ON THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND AS DESCRIBED AS FOLLOWS:

DESCRIPTION

PARCEL M (AQUARIUM SITE):

THAT PORTION OF THE ARTIFICIALLY CREATED LAND WITHIN THE TIDELANDS AND SUBMERGED LANDS CONVEYED TO THE CITY OF LONG BEACH BY THE STATE OF CALIFORNIA UNDER AN ACT OF MAY 1, 1911 CHAPTER 676, PAGE 1304, AS AMENDED, LYING IN SAID CITY, COUNTY OF LOS ANGELES, SAID STATE, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF PINE AVENUE (NORTH) AND SEASIDE WAY, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 14039, RECORDED APRIL 12, 1983, IN BOOK 161, PAGES 3 THROUGH 5, RECORDS OF SAID COUNTY, THENCE SOUTH 89 DEGREES 51' 47" WEST 5.00 FEET ALONG THE CENTERLINE OF SAID SEASIDE WAY (SHOWN AS SOUTH 89 DEGREES 52' 02" WEST ON SAID PARCEL MAP) TO THE INTERSECTION OF PINE AVENUE (SOUTH) WITH SEASIDE WAY AS ESTABLISHED NOVEMBER 12, 1991, PER DRAWING NO. C-5271, SHEET 5, ON FILE IN THE OFFICE OF THE CITY ENGINEER OF THE CITY OF LONG BEACH; THENCE ALONG THE CENTERLINE OF SAID PINE AVENUE SOUTH 0 DEGREES 05' 17" EAST 737.01 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE WEST AND HAVING A RADIUS OF 300.00 FEET; THENCE SOUTHERLY 134.98 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 25 DEGREES 46' 46", THENCE SOUTH 25 DEGREES 41' 29" WEST 167.74 FEET TO THE INTERSECTION OF SAID PINE AVENUE (SOUTH) AND THE HORIZONTAL CONTROL LINE FOR SHORELINE DRIVE WESTBOUND, SAID INTERSECTION HAVING THE COORDINATES NORTH 4,026,194.76; EAST 4,229,710.80 OF ZONE 7 OF THE CALIFORNIA COORDINATE SYSTEM, NAD 27, AS SHOWN ON DRAWING NO. H207, SHEET 32, ON FILE IN THE OFFICE OF SAID CITY ENGINEER; THENCE SOUTH 25 DEGREES 41' 29" WEST 32.00 FEET TO THE INTERSECTION OF PINE AVENUE (SOUTH) AND THE HORIZONTAL CONTROL LINE FOR SHORELINE DRIVE EASTBOUND; THENCE CONTINUING ALONG SAID SHORELINE DRIVE EASTBOUND HORIZONTAL CONTROL LINE NORTH 64 DEGREES 18' 31" WEST 121.56 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 2032.00 FEET; THENCE NORTHWESTERLY 133.30 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 3 DEGREES 45' 31" TO A TANGENT LINE; THENCE NORTH 60 DEGREES 33' 00" WEST 368.08 FEET TO THE INTERSECTION OF THE SHORELINE DRIVE EASTBOUND HORIZONTAL CONTROL LINE WITH THE CENTERLINE OF THE PROPOSED AQUARIUM ROADWAY; THENCE ALONG SAID CENTERLINE OF THE PROPOSED AQUARIUM ROADWAY SOUTH 29 DEGREES 27' 00" WEST 90.34 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHWEST AND HAVING A RADIUS OF 358.07 FEET; THENCE SOUTHWESTERLY 334.83 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 53 DEGREES 34' 40" TO A TANGENT LINE; THENCE SOUTH 83 DEGREES 01' 40" WEST 163.03 FEET; THENCE NORTH 56 DEGREES 42' 21" WEST 183.37 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTH AND HAVING A RADIUS OF 121.08 FEET; THENCE ALONG A RADIAL LINE TO SAID CURVE SOUTH 33 DEGREES 17' 39" WEST 35.00 FEET TO THE TRUE POINT OF BEGINNING, SAID POINT HAVING COORDINATES NORTH 4,026,254.86; EAST 4,228,501.67 OF SAID COORDINATE SYSTEM; THENCE SOUTH 56 DEGREES 42' 21" EAST 104.81 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 20.00 FEET; THENCE SOUTHWESTERLY AND SOUTHERLY 18.83 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 53 DEGREES 56' 38" TO THE BEGINNING OF REVERSE CURVE CONCAVE TO THE EAST AND HAVING A RADIUS OF 100.00 FEET; THENCE SOUTHERLY, SOUTHEASTERLY, AND EASTERLY 154.97 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88 DEGREES 47' 31" TO A NON-TANGENT LINE; THENCE SOUTH 25 DEGREES 38' 58" EAST 85.24 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 435.00 FEET TO WHICH POINT A RADIAL OF LAST SAID CURVE BEARS NORTH 34 DEGREES 18' 13" WEST; THENCE SOUTHWESTERLY AND SOUTHERLY 524.62 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 69 DEGREES 06' 01" TO A NON-TANGENT LINE; THENCE SOUTH 76 DEGREES 35' 46" WEST 21.45 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTH AND HAVING A RADIUS OF 133.33 FEET TO WHICH POINT OF CUSP A

DESCRIPTION

RADIAL OF LAST SAID CURVE BEARS SOUTH 72 DEGREES 13' 19" EAST; THENCE SOUTHWESTERLY, WESTERLY AND NORTHWESTERLY 341.80 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 146 DEGREES 52' 56" TO A NON-TANGENT LINE; THENCE NORTH 90 DEGREES 00' 00" WEST 107.56 FEET TO A NON-TANGENT CURVE CONCAVE TO THE WEST AND HAVING A RADIUS OF 153.00 FEET AND FROM WHICH POINT A RADIAL BEARS SOUTH 75 DEGREES 05' 02" EAST; THENCE NORTHERLY 46.14 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17 DEGREES 16' 39" TO A TANGENT LINE; THENCE NORTH 2 DEGREES 21' 41" WEST 30.25 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 355.88 FEET; THENCE NORTHERLY AND NORTHEASTERLY 184.99 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29 DEGREES 47' 00" TO A TANGENT LINE; THENCE NORTH 27 DEGREES 25' 19" EAST 181.12 FEET TO A TANGENT CURVE CONCAVE TO THE NORTHWEST AND HAVING A RADIUS OF 265.00 FEET; THENCE NORTHEASTERLY 60.34 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13 DEGREES 02' 42" TO A TANGENT LINE; THENCE NORTH 14 DEGREES 22' 37" EAST 188.83 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 86.08 FEET; THENCE NORTHEASTERLY, EASTERLY, AND SOUTHEASTERLY 163.64 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 108 DEGREES 55' 02" TO THE TRUE POINT OF BEGINNING.