

ORDINANCE NO. 7296-16

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST, ON BEHALF OF THE CITY OF NEWPORT NEWS, VIRGINIA, THAT CERTAIN LEASE BY AND BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA, AND THE VIRGINIA LIVING MUSEUM, INC. DATED THE 9TH DAY OF AUGUST, 2016.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Newport News:

1. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain Lease by and between the City of Newport News, Virginia, and the Virginia Living Museum, Inc. dated the 9th day of August, 2016.

2. That a copy of the said Lease is attached hereto and made a part hereof.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON AUGUST 9, 2016

Mabel Washington Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk

THIS LEASE, made this 9th day of August, 2016, by and between **CITY OF NEWPORT NEWS**, a Municipal Corporation in the Commonwealth of Virginia, hereinafter referred to as “City” and the **VIRGINIA LIVING MUSEUM, INC.**, a non-profit, non-stock corporation organized and existing under the laws of the Commonwealth of Virginia, hereinafter referred to as “Lessee.”

WITNESSETH: That in consideration of the terms, conditions, provisions and covenants hereinafter set forth, which on the part of Lessee are to be kept and performed, City does grant, lease and demise unto Lessee that certain lot, piece or parcel of land consisting of 20.96 acres, more or less, located at 524 J. Clyde Morris Boulevard in the City of Newport News, Virginia (the “demised premises” or “premises”), and further described as follows:

Beginning at a point on the east right of way line of the Chesapeake and Ohio Railway said point being S 27° 32' 01" E 170.88 feet from the intersection of the south right of way line of J. Clyde Morris Boulevard and the east right of way line of the Chesapeake and Ohio Railway, and from the point thus established thence along the east right of way line of the Chesapeake and Ohio Railway S 27° 32' 01" E 869.35 feet, thence N 62° 27' 59" E 320 feet, thence N 6° 01' 09" W 604.78 feet, thence N 62° 33' 39" E 580 feet, thence N 27° 26' 21" W 765 feet, thence S 56° 17' 33" W 156.94 feet, thence S 42° 17' 33" W 917.37 feet, thence S 27° 32' 01" E 73.48 feet, thence along an arc with a radius of 305 feet with a chord bearing S 45° 04' 01" E 59.27 feet, thence S 62° 27' 59" W 78.25 feet to the east right of way line of the Chesapeake and Ohio Railway, the point of beginning, all as shown on plat entitled, “Proposed Site for Peninsula Junior Nature Museum and Planetarium”, dated June 28, 1965.

TO HAVE AND TO HOLD the said demised premises unto the said Lessee for the term of five (5) years commencing on September 1, 2016, and terminating on August 31, 2021, at the rental rate of One Dollar (\$1.00) per annum, said rental rate for all five (5) years payable upon the execution of this Lease, and subject to the following terms and conditions:

1. The demised premises shall be used as a museum and for no other purpose.

2. Lessee has examined and knows the condition of said premises and shall maintain said property in good condition. At the termination of this Lease, Lessee shall leave the premises in like condition as found, ordinary wear and tear excepted.

3. Lessee shall pay for all repairs, maintenance, insurance and public utilities. The amount of fire insurance shall be for the full value of the buildings on the demised premises. In the event of fire or other casualty, however arising, which destroys a building or buildings or other improvements or any part thereof, then, and in that event, City shall have no obligation to replace or repair any such building or buildings or other improvements, or any part thereof.

4. Lessee shall not permit or suffer any nuisance to be created or maintained on the demised premises.

5. Lessee shall not assign this Lease or sublet the whole or any portion of the demised premises without the prior written consent of City.

6. If at any time during the term of the Lease, Lessee shall be adjudged bankrupt or insolvent by any Federal or State court of competent jurisdiction, such adjudication shall terminate and cancel this Lease without any further action on the part of either party hereto, and City may at once re-enter and take possession of the premises.

7. City shall not be liable to Lessee or any other person, firm or corporation for any loss or damage suffered during the term of the Lease on account of any defective condition of the premises or any building, structure or equipment upon the premises, and Lessee assumes all risks to persons or property due to latent or patent defects in the premises and fixtures thereon.

8. It is understood and agreed that the Lessee will indemnify, defend, protect and save harmless City and its officers, agents and employees from and against all losses and claims of physical damages to property and bodily injury or death to any person or persons, including costs,

reasonable attorney's fees and defense costs, which may arise out of or be caused by Lessee's use and maintenance of said premises (including any building, structure, or equipment thereon) or any claim resulting from Lessee's tenancy. In addition, Lessee agrees to obtain, and continuously keep in force, a liability insurance policy with a company licensed to do business in the Commonwealth of Virginia. The policy shall at least provide for the following coverage:

- a. Bodily injury or death to any person or persons \$1,000,000.00
- b. Physical damage to property \$ 500,000.00

Said policy shall provide that City and its officers, agents and employees are added as additional insureds under the terms of the policy, which policy and coverage shall first be approved by City's Administrator of Self Insurance Programs. Failure to keep the required insurance coverage continuously in force shall constitute an event of default of this Lease.

9. The terms, conditions and covenants of this Lease shall be kept and performed by City and Lessee and shall be binding upon their successors and assigns. No waiver of any breach of any term, condition or covenant contained shall be construed to be a waiver of said term, condition or covenant itself, or of any subsequent breach thereof, or of this Lease.

10. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia. The parties hereby irrevocably submit themselves to the original jurisdiction and venue of the state courts located within the City of Newport News, Virginia, with regard to the any controversy arising out of, relating to, or in any way concerning the premises or the Lease.

11. Severability. If any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is invalid or

unenforceable, shall not be affected hereby, and each provision of this Lease shall be valid and be enforced to the full extent permitted by law.

12. This Lease embodies the entire understanding of the parties hereto and supersedes all prior agreements between the parties, whether written or oral.

WITNESS the following signatures and seals:

CITY OF NEWPORT NEWS

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

VIRGINIA LIVING MUSEUM, INC.

By: _____
President