

LEASE

THIS LEASE, dated this 7 day of December, 2020, is by and between the COUNTY OF ALBEMARLE, VIRGINIA (the "County" or "Owner"), and the B.F. YANCEY COMMUNITY FOOD PANTRY, a Virginia nonstock corporation (the "Food Pantry" or the "Occupant").

ARTICLE I. PREMISES AND IMPROVEMENTS

In consideration of the covenants herein set forth, the County hereby authorizes the Food Pantry to occupy the premises shown as "Leased Space" on Exhibit A attached hereto and made a part hereof, together with any and all improvements thereon (the "Premises"). Except as otherwise provided herein, the Food Pantry will have exclusive use of Rooms 18B and 19 and of the two walk-in freezers located outside the building, and shared use of Rooms 18, 18A, 18C, 18D, and of the common areas. Upon mutual written agreement of the parties, this Lease may be amended to add additional square footage to the Premises.

ARTICLE II. TITLE: QUIET ENJOYMENT

So long as the Food Pantry is not in default hereunder, the Food Pantry will have peaceful and quiet enjoyment, use and possession of the Premises without hindrance on the part of the County or anyone claiming by, through, or under the County.

ARTICLE III. TERM

Section 3.1. Commencement and Expiration. The term of this Lease will commence on February 1, 2021 (the "Date of Commencement") and will expire on January 31, 2022. All references to the "term" of this Lease will, unless the context indicates a different meaning, be deemed to be a reference to the term described herein.

Section 3.2. Renewal. This Lease will automatically renew for additional 12-month terms unless written notice is given by either the County or the Food Pantry no later than 60 days prior to the expiration of any term.

ARTICLE IV. RENT

Though the County reserves the right to collect unpaid charges and expenses incurred under this Lease, no rent (other than for utilities and services as provided in Article V) will be charged for the Food Pantry's occupancy of the Premises.

ARTICLE V. UTILITIES AND SERVICES

The County will provide water, sewer, electricity, and heating and cooling services at no expense to the Food Pantry. The County will further provide custodial services (to common areas only) and arrange for the regular collection of a shared dumpster at no expense to the Food Pantry. The Food Pantry will exercise reasonable and responsible care to conserve these services. Rent may be charged or adjusted to reflect any change in the cost to the County of providing the above

services. The County will provide the Food Pantry with prompt notice of any such change, and will provide evidence of its actual costs. The Food Pantry will provide telephone, custodial (including clean-up of shared space(s) when used), and all other services to the Premises.

ARTICLE VI. USE OF PROPERTY

Section 6.1. Permitted Use. The Food Pantry may use the Premises only for the collection, storage, preparation, and distribution of food items. No other use of the Premises is permitted without the prior written consent of the County.

Section 6.2. Parking. The Food Pantry will have shared use of parking spaces in the parking lot and an access easement to the Premises. The County reserves the nonexclusive right to use the parking lot.

ARTICLE VII. ALTERATIONS, IMPROVEMENTS, FIXTURES AND SIGNS

Section 7.1. Installation by the Food Pantry.

(a) The Food Pantry may, from time to time, make or cause to be made any interior non-structural alterations, additions or improvements that do not damage or alter the Premises, provided that the Food Pantry has first obtained both (a) the County's written consent and (b) all required governmental permits for such alterations, additions or improvements. All such alterations, additions or improvements will be at the sole expense of the Food Pantry.

(b) The Food Pantry may, from time to time, make interior structural alterations, additions or improvements, only with County's prior written consent to plans and specifications therefor, which consent will not be unreasonably withheld. All such alterations, additions or improvements will be at the sole expense of the Food Pantry. Upon the expiration or sooner termination of this Lease, the County will have the option (exercisable upon sixty (60) days' notice to the Food Pantry, except in the case of a termination of this Lease due to a default by the Food Pantry, in which case no such notice will be required) to require the Food Pantry to remove at the Food Pantry's sole cost and expense any and all improvements made by the Food Pantry to the Premises or to elect to keep such improvement as County property. In the event the Food Pantry is required to remove any improvements, (i) the Food Pantry will be responsible for the repair of all damage caused by the installation or removal thereof, and (ii) if the Food Pantry fails to properly remove such improvements or provide for the repair of the Premises, the County may perform the same at the Food Pantry's cost and expense.

Section 7.2. Signs. The Food Pantry may place signs on the interior or exterior of the Premises with the prior written approval of the County.

ARTICLE VIII MAINTENANCE OF THE PREMISES

Section 8.1. Maintenance. The Food Pantry will keep the Premises clean, neat, orderly, presentable, and in good repair at all times. The County will deliver the Premises to the Food Pantry at the beginning of the term in its present condition. The County will be responsible for all repairs and maintenance for the Premises, except as provided below, whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, including, but not limited to,

plumbing, heating, electrical, plate glass and windows. The Food Pantry will be responsible for routine repairs and maintenance (excluding repairs and maintenance of the building and structural components identified above), except that the Food Pantry's obligation for such routine repairs and maintenance will not exceed \$2,500 in any one year of the initial or subsequent term(s). Notwithstanding the foregoing, the Food Pantry will be responsible for all maintenance and repairs necessitated by the negligence of the Food Pantry, its employees and invitees.

Section 8.2. Right of Entry. The County reserves the right for itself, its agents and employees to enter upon the Premises at any reasonable time to make repairs, alterations or improvements; provided, however, that such repairs, alterations, or improvements do not unreasonably interfere with the Food Pantry's operations. Such right to enter will also include the right to enter upon the Premises for the purposes of inspection.

Section 8.3. Surrender of the Premises. At the expiration of the occupancy hereby created, the Food Pantry will surrender the Premises and all keys for the Premises to the County, and will inform the County of all combinations on locks, safes and vaults, if any, which the County has granted permission to have left in the Premises. At such time, the Premises will be broom clean and in good condition and repair, commensurate with its age. If the Food Pantry leaves any of the Food Pantry's personal property in the Premises, the County, at its option, may remove and store any or all such property at the Food Pantry's expense or may deem the same abandoned and, in such event, the property deemed abandoned will become the property of the County.

ARTICLE IX. INSURANCE

Section 9.1. Liability Insurance of the Food Pantry. At all times during the term of this Lease, the Food Pantry must keep in full force and effect a policy of public liability and property damage insurance with respect to the Premises and the business operated by the Food Pantry and any sub-tenants of the Food Pantry on the Premises. The limits of public liability for bodily injury and property damage must not be less than One Million Dollars (\$1,000,000) per accident, combined single limit. The policy must name the County as an additional insured. The policy will provide that the insurance thereunder may not be cancelled until thirty (30) days after written notice thereof to all named insured.

Section 9.2. Fire and Extended Coverage. During the initial and any renewal term of this Lease, the County will insure and keep insured, for the benefit of the County and its respective successors in interest, the Premises, or any portion thereof then in being. Such policy will contain coverage against loss, damage or destruction by fire and such other hazards as are covered and protected against, at standard rates under policies of insurance commonly referred to and known as "extended coverage," as the same may exist from time to time. The County will name the Food Pantry as an additional insured on such policy, as its interest may appear.

Section 9.3. Evidence of Insurance. Copies of policies of insurance (or certificates of the insurers) for insurance required to be maintained by the Food Pantry and the County pursuant to Sections 9.1 and 9.2 will be delivered by the County or the Food Pantry, as the case may be, to the other upon the issuance of such insurance and thereafter not less than thirty (30) days prior to the expiration dates thereof.

Section 9.4. Waiver of Subrogation. The County and the Food Pantry each hereby release

the other from any and all liability or responsibility to itself or anyone claiming through or under it by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage or supplementary contract casualties, even if such fire or other casualty results from the negligence of itself or anyone for whom it may be responsible, provided, however, that this release will be applicable and in force and effect only with respect to loss or damage occurring during such time as any such release will not adversely affect or impair the releasor's policies or insurance or prejudice the right of the releasor to recover thereunder.

ARTICLE X. WASTE, NUISANCE, COMPLIANCE WITH GOVERNMENTAL REGULATIONS

Section 10.1. Waste or Nuisance. The Food Pantry must not commit or allow to be committed any waste or any nuisance upon the Premises.

Section 10.2. Governmental Regulations. During the term of this Lease, the Food Pantry must, at the Food Pantry's sole cost and expense, comply with all requirements of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to the Premises or the Food Pantry's use and occupancy thereof.

ARTICLE XI. FIRE OR OTHER CASUALTY

If the Premises are damaged so as to render two-thirds (2/3) or more of the Premises untenantable by fire or other casualty insured against under the insurance required to be carried by the County pursuant to Section 9.2, the County may elect either to terminate this Lease as of the date of damage or to repair the Premises. Unless the County elects to terminate this Lease, such damage or destruction will in no way annul or void this Lease. Notwithstanding the foregoing, if any damage or destruction from any cause whatsoever has not been repaired and such repairs have not commenced within one hundred eighty (180) days of the date thereof, the Food Pantry may, as its exclusive remedy, terminate this Lease upon thirty (30) days written notice to the County.

ARTICLE XII. CONDEMNATION

If the whole or any part of the Premises is taken under the power of eminent domain, then this Lease will terminate as to the part so taken on the day when the Food Pantry is required to yield possession thereof, and the County will make such repairs and alterations as may be necessary to restore the part not taken to useful condition. If the amount of the Premises so taken substantially impairs the usefulness of the Premises, then either party may terminate this Lease as of the date when the Food Pantry is required to yield possession.

ARTICLE XIII. DEFAULT

Section 13.1. Default. The occurrence of any of the following will be deemed a "default" under this Lease:

- (a) The Food Pantry fails to pay when due any amounts due under this Lease, including Articles IV and V, and such payment is not received by the County within ten (10) days after written notice of such failure is received by the Food Pantry; or
- (b) a default in any of the other provisions of this Lease, and such default continues

uncured for a period of thirty (30) days after written notice thereof from the County.

Section 13.2. Remedies. In the event of any default or breach hereof by the Food Pantry, the County may (in addition to all other rights and remedies provided by law) terminate this Lease or re-enter and take possession of the Premises, peaceably or by force, and remove any property therein without liability for damage to and without obligation to store such property, but may store the same at the Food Pantry's expense, and collect from the Food Pantry any amounts then due and which would accrue for the unexpired portion of the term hereof, together with reasonable attorney's fees. In addition, in the event of a failure to pay any amount due within five (5) days of its due date, the Food Pantry must pay to the County the greater of Twenty-Five Dollars (\$25.00) or one half (1/2) of one percent (1%) of such sum for each day after the fifth day such amount is late.

ARTICLE XIV HOLDING OVER, ASSIGNS, SUCCESSORS

Section 14.1. Holding Over. Any holding over after the expiration of the term hereof, with the consent of the County, will be construed to be a tenancy from month-to-month at the same rent herein specified (prorated on a monthly basis) and will otherwise be on the terms and conditions herein specified as far as applicable.

Section 14.2. Showing the Premises. During the last ninety (90) days of the term hereof, the Food Pantry will allow the County, or its agents, to show the Premises to prospective tenants or purchasers at such times as County may reasonably desire.

Section 14.3. Successors. All rights and liabilities herein given to, or imposed upon the respective parties hereto, will extend to and bind the heirs, executors, administrators, successors and permitted assigns of the parties. All covenants, representations and agreements of the County will be deemed the covenants, representations and agreements of the fee owner of the Premises. The County will be automatically released of any liability under this Lease from and after the date of any sale by the County of the Premises. All covenants, representations and agreements of the Food Pantry will be deemed the covenants, representations, and agreements of the occupant or occupants of the Premises.

ARTICLE XV. BROKER'S FEES

The Food Pantry and the County hereby warrant that there are no brokerage commissions due in connection with this Lease.

ARTICLE XVI. NO ASSIGNMENT

The Food Pantry may not assign this Lease or sublet all or any portion of the Premises, either directly or indirectly, without the prior written consent of the County. No assignment, sublease or transfer of this Lease by the Food Pantry will (i) be effective unless and until the assignee, subtenant or transferee expressly assumes in writing the Food Pantry's obligations under this Lease, or (ii) relieve the Food Pantry of its obligations hereunder, and the Food Pantry will thereafter remain liable for the obligations of the Food Pantry under this Lease whether arising before or after such assignment, sublease or transfer.

ARTICLE XVII. SUBORDINATION OF AGREEMENT

This Lease and all rights of the Food Pantry hereunder are and will be subject and subordinate in all respects to (1) any mortgages, deeds of trust and building loan agreements affecting the Premises, including any and all renewals, replacements, modifications, substitutions, supplements and extensions thereof, and (2) each advance made or to be made thereunder. In confirmation of such subordination, upon the County's request, the Food Pantry will promptly execute and deliver an instrument in recordable form satisfactory to the County evidencing such subordination. If the Food Pantry fails to execute, acknowledge or deliver any such instrument within ten (10) days after request therefor, the Food Pantry hereby irrevocably constitutes and appoints the County as the Food Pantry's attorney-in-fact, coupled with an interest, to execute, acknowledge and deliver any such instruments on behalf of the Food Pantry. If any such mortgagee or lender requests reasonable modifications to this Lease as a condition of such financing, the Food Pantry may not withhold or delay its consent thereto.

ARTICLE XVIII. MISCELLANEOUS

Section 18.1. Waiver. A waiver by either party of any breach of any term, covenant or condition contained herein will not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition contained herein. The subsequent acceptance or payment of any amount hereunder by the County or the Food Pantry, respectively, will not be deemed to be a waiver of any breach by the Food Pantry or the County, respectively, of any term, covenant or condition of this Lease, regardless of knowledge of such breach at the time of acceptance or payment of such amount. No covenant, term, or condition of this Lease will be deemed to have been waived by the Food Pantry or the County unless the waiver be in writing signed by the party to be charged thereby.

Section 18.2. Entire Agreement. This Lease, and the Exhibits attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between the County and the Food Pantry concerning the Premises; and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease will be binding upon the County or the Food Pantry unless reduced in writing and signed by them.

Section 18.3. Notices. Any notice, demand, request or other instrument which may be, or is required to be given under this Lease, will be in writing and delivered in person or by United States certified mail, postage prepaid, and will be addressed:

- (a) if to the County, at
County of Albemarle
County Executive's Office
401 McIntire Road
Charlottesville, Virginia 22902
or at such other address as the County may designate by written notice;
- (b) if to the Food Pantry, at
B.F. Yancey Community Food Pantry

7625 Porters Road
Esmont, VA 22937-2112
or at such other address as the Food Pantry may designate by written notice.

Section 18.4. Captions and Section Numbers. The captions and section numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Lease nor in any way do they affect this Lease.

Section 18.5. Partial Invalidity. If any term, covenant or condition of this Lease, or the application thereof, to any person or circumstance to any extent is held to be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby and each term, covenant, or condition of this Lease will be valid and be enforced to the fullest extent permitted by law.

Section 18.6. Governing Law. This Lease will be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

Section 18.7. Counterparts. This Lease may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

OCCUPANT

B.F. YANCEY COMMUNITY FOOD PANTRY

By: 
Berlinda Mills, Director

COUNTY

This Lease is executed on behalf of the County of Albemarle by Jeffrey B. Richardson, County Executive, following a duly-held public hearing, and pursuant to a Resolution of the Albemarle County Board of Supervisors.

COUNTY OF ALBEMARLE, VIRGINIA



By: _____
Jeffrey B. Richardson, County Executive

Approved as to form:

Albemarle County Attorney

EXHIBIT A

7625 Porters Road, Esmont, VA 22987

-  Leased Space (376 sqft)
-  Shared Space (2,275 sqft)

