

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT, dated this 10th day of October, 2018, is by and between the COUNTY OF ALBEMARLE, VIRGINIA (the "County" or "Owner"), and the JEFFERSON AREA BOARD FOR AGING, a joint exercise of powers among the Counties of Albemarle, Greene, Nelson, Fluvanna and Louisa, Virginia and the City of Charlottesville, Virginia ("JABA" or the "Occupant").

ARTICLE I. PREMISES AND IMPROVEMENTS

In consideration of the covenants herein set forth, the County hereby authorizes JABA 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 "JABA Premises"). Except as otherwise provided herein, JABA shall have exclusive use of the Media Center Storage Room & Office, and shall have shared use of the Media Center, Nurse's Office, Cafeteria, and common areas. Upon mutual written agreement of the parties, this Agreement may be amended to add additional square footage to the JABA Premises.

ARTICLE II. TITLE: QUIET ENJOYMENT

So long as JABA is not in default hereunder, JABA shall have peaceful and quiet enjoyment, use and possession of the JABA 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 Agreement shall commence on October 11, 2018 (the "Date of Commencement") and shall expire on September 30, 2019. All references to the "term" of this Agreement shall, unless the context indicates a different meaning, be deemed to be a reference to the term described herein.

Section 3.2. Renewal. This Agreement shall automatically renew for additional 12-month terms unless written notice is given by either the County or JABA 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 Agreement, no rent shall be charged for JABA's occupancy of the JABA Premises.

ARTICLE V. UTILITIES AND SERVICES

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

services. The County shall provide JABA with prompt notice of any such change, and shall provide evidence of its actual costs. JABA shall provide telephone, custodial (including clean-up of the Media Center, Nurse's Office, and Cafeteria when used), and all other services to the JABA Premises.

ARTICLE VI. USE OF PROPERTY

Section 6.1. Permitted Use. JABA shall have use of the JABA Premises for senior recreational and health programs. No other use of the JABA Premises is permitted without the prior written consent of the County.

Section 6.2. Parking. JABA shall be entitled to the shared use of parking spaces in the parking lot and an access easement to the JABA Premises. The County reserves the nonexclusive right to use the parking lot.

ARTICLE VII. ALTERATIONS, IMPROVEMENTS, FIXTURES AND SIGNS

Section 7.1. Installation by JABA.

(a) JABA may, from time to time, make or cause to be made any interior non-structural alterations, additions or improvements which do not damage or alter the JABA Premises, provided that JABA shall have 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 shall be at the sole expense of JABA.

(b) JABA 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 shall not be unreasonably withheld. All such alterations, additions or improvements shall be at the sole expense of JABA. Upon the expiration or sooner termination of this Agreement, the County shall have the option (exercisable upon sixty (60) days' notice to JABA, except in the case of a termination of this Agreement due to a default by JABA, in which case no such notice shall be required) to require JABA to remove at JABA's sole cost and expense any and all improvements made by JABA to the JABA Premises or to elect to keep such improvement as County property. In the event JABA is required to remove any improvements, (i) JABA shall be responsible for the repair of all damage caused by the installation or removal thereof, and (ii) if JABA fails to properly remove such improvements or provide for the repair of the JABA Premises, the County may perform the same at JABA's cost and expense.

Section 7.2. Signs. JABA shall have the right to place signs on the interior or exterior of the JABA Premises with the prior written approval of the County.

ARTICLE VIII. MAINTENANCE OF JABA PREMISES

Section 8.1. Maintenance. JABA shall keep the JABA Premises clean, neat, orderly, presentable, and in good repair at all times. The County shall deliver the JABA Premises to JABA at the beginning of the term in its present condition. The County shall be responsible for all repairs and maintenance for the JABA 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. JABA shall be responsible for routine repairs and maintenance (excluding repairs and maintenance of the building and structural components identified above), except that JABA's obligation for such routine repairs and maintenance shall not exceed \$2,500 in any one year of the initial or subsequent term(s). Notwithstanding the foregoing, JABA shall be responsible for all maintenance and repairs necessitated by the negligence of JABA, 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 JABA Premises at any reasonable time to make repairs, alterations or improvements; provided, however, that such repairs, alterations, or improvements shall not unreasonably interfere with JABA's operations. Such right to enter shall also include the right to enter upon the JABA Premises for the purposes of inspection.

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

ARTICLE IX. INSURANCE

Section 9.1. Liability Insurance of JABA. At all times during the term of this Agreement, JABA shall keep in full force and effect a policy of public liability and property damage insurance with respect to the JABA Premises and the business operated by JABA and any sub-tenants of JABA on the JABA Premises. The limits of public liability for bodily injury and property damage shall not be less than One Million Dollars (\$1,000,000) per accident, combined single limit. The policy shall name the County as an additional insured. The policy shall provide that the insurance thereunder shall 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 Agreement, the County shall insure and keep insured, for the benefit of the County and its respective successors in interest, the JABA Premises, or any portion thereof then in being. Such policy shall 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 agrees to name JABA 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 JABA and the County pursuant to Sections 9.1 and 9.2 shall be delivered by the County or JABA, 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 JABA 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 shall be applicable and in force and effect only with respect to loss or damage occurring during such time as any such release shall 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. JABA shall not commit or suffer to be committed any waste or any nuisance upon the JABA Premises.

Section 10.2. Governmental Regulations. During the term of this Agreement, JABA shall, at JABA'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 JABA Premises or JABA's use and occupancy thereof.

ARTICLE XI. FIRE OR OTHER CASUALTY

If the JABA Premises shall be damaged so as to render two-thirds (2/3) or more of the JABA 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 Agreement as of the date of damage or to repair the JABA Premises. Unless the County elects to terminate this Agreement, such damage or destruction shall in no way annul or void this Agreement. 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, JABA may, as its exclusive remedy, terminate this Agreement upon thirty (30) days written notice to the County.

ARTICLE XII. CONDEMNATION

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

ARTICLE XIII. DEFAULT

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

(a) JABA fails to pay when due any amounts due under this Agreement, 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 JABA; or

(b) a default in any of the other provisions of this Agreement, 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 JABA, the County shall have the right (in addition to all other rights and remedies provided by law) to terminate this Agreement or to re-enter and take possession of the JABA Premises, peaceably or by force, and to remove any property therein without liability for damage to and without obligation to store such property, but may store the same at JABA's expense, and to collect from JABA 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, JABA shall 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, shall be construed to be a tenancy from month-to-month at the same rent herein specified (prorated on a monthly basis) and shall otherwise be on the terms and conditions herein specified as far as applicable.

Section 14.2. Showing the JABA Premises. During the last ninety (90) days of the term hereof, JABA shall allow the County, or its agents, to show the JABA 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, shall extend to and bind the heirs, executors, administrators, successors and permitted assigns of the parties. All covenants, representations and agreements of the County shall be deemed the covenants, representations and agreements of the fee owner of the JABA Premises. The County shall be automatically released of any liability under this Agreement from and after the date of any sale by the County of the JABA Premises. All covenants, representations and agreements of JABA shall be deemed the covenants, representations, and agreements of the occupant or occupants of the JABA Premises.

ARTICLE XV. BROKER'S FEES

JABA and the County hereby warrant that there are no brokerage commissions due in connection with this Agreement.

ARTICLE XVI. NO ASSIGNMENT

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

ARTICLE XVII. SUBORDINATION OF AGREEMENT

This Agreement and all rights of JABA hereunder are and shall be subject and subordinate in all respects to (1) any mortgages, deeds of trust and building loan agreements affecting the JABA 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, JABA shall promptly execute and deliver an instrument in recordable form satisfactory to the County evidencing such subordination. If JABA fails to execute, acknowledge or deliver any such instrument within ten (10) days after request therefor, JABA hereby irrevocably constitutes and appoints the County as JABA's attorney-in-fact, coupled with an interest, to execute, acknowledge and deliver any such instruments on behalf of JABA. If any such mortgagee or lender requests reasonable modifications to this Agreement as a condition of such financing, JABA shall 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 shall 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 JABA, respectively, shall not be deemed to be a waiver of any breach by JABA or the County, respectively, of any term, covenant or condition of this Agreement, regardless of knowledge of such breach at the time of acceptance or payment of such amount. No covenant, term, or condition of this Agreement shall be deemed to have been waived by JABA or the County unless the waiver be in writing signed by the party to be charged thereby.

Section 18.2. Entire Agreement. This Agreement, and the Exhibits attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between the County and JABA concerning the JABA 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 Agreement shall be binding upon the County or JABA 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 Agreement, shall be in writing and delivered in person or by United States certified mail, postage prepaid, and shall 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 JABA, at
JABA Main Office
674 Hillside Drive, Suite 9
Charlottesville, VA 22901
or at such other address as JABA shall designate by written notice.

Section 18.4. Captions and Section Numbers. The captions and section numbers appearing in this Agreement 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 Agreement nor in any way do they affect this Agreement.

Section 18.5. Partial Invalidity. If any term, covenant or condition of this Agreement, or the application thereof, to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, 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, shall not be affected thereby and each term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

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

Section 18.7. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall 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

JEFFERSON AREA BOARD FOR AGING

By: _____
M.E. (Dick) Gibson, Jr., Chairman

COUNTY

This Agreement 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 22937

-  Leased Space (319 sq ft)
-  Shared Space (3,855 sq ft)

