

NORTH CAROLINA

LEASE

CHATHAM COUNTY

THIS LEASE AGREEMENT (this "Lease"), made and entered into this ____ day of January, 2017, by and between **CHATHAM COUNTY**, a body corporate and politic of the State of North Carolina, hereinafter referred to as "Landlord"; and **BYNUM COMMUNITY GARDEN**, an unincorporated association, hereinafter referred to as "Tenant".

W I T N E S S E T H:

WHEREAS, Tenant has requested that Landlord lease to Tenant two (2) parcels of real property within a larger tract (hereinafter described) located on Bynum Hill Road in Chatham County, North Carolina (the "Property") so that Tenant may use the same as a community garden (the "Community Garden"); and

WHEREAS, Landlord has agreed to lease the Property to Tenant to be used by Tenant solely as a Community Garden; and

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements herein set forth, the parties agree as follows:

1. **PREMISES.** Landlord hereby leases and lets unto Tenant and Tenant hereby takes and hires from Landlord upon and subject to the terms, conditions, covenants, and provisions hereof, those two (2) certain parcels of land located within a larger tract (Tax Parcel Number 1950) on Bynum Hill Road, in Chatham County, North Carolina, all as more definitely described on the attached Exhibit A, which is by reference hereto made a part hereof (hereinafter "Premises"). In addition, Tenant shall have the right of ingress, egress, and regress to the Premises across the adjoining property of Landlord, at a location designated by Landlord, from Bynum Hill Road.
2. **ACCEPTANCE OF PREMISES BY TENANT.** Tenant has examined the Premises and found the same to be suitable for the Tenant's intended use. BY THE EXECUTION OF THIS LEASE, TENANT SHALL BE DEEMED TO HAVE ACCEPTED THE PREMISES IN AS-IS CONDITION (AS OF THE COMMENCEMENT DATE) AND ACKNOWLEDGES THAT LANDLORD HAS MADE NO REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED, OR OTHERWISE) WITH RESPECT THERETO, INCLUDING, WITHOUT LIMITATION, A WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH WARRANTIES ARE EXPRESSLY DISCLAIMED BY LANDLORD.
3. **USE AS COMMUNITY GARDEN.** The Premises shall be used by Tenant as a Community Garden and for no other purpose or purposes.

4. TERM. The term of this Lease shall commence on the **18th day of January, 2017** (the "Commencement Date") and shall exist and continue for a term of FIVE (5) years until the **31st day of December, 2022**, unless terminated as hereinafter provided.
5. LANDLORD'S RIGHT TO TERMINATE: Notwithstanding any other provision of this Lease, Landlord, upon Ninety (90) days prior written notice to TENANT, shall have the right to terminate this Lease at any time during the term.
6. RENT. Tenant shall pay Landlord an annual rent of One Dollar (\$1.00) per year, due and payable for the term entire on or before the Commencement Date.
7. OPERATION OF COMMUNITY GARDEN. The Community Garden shall be operated solely by Tenant for use by participants of Tenant and Landlord shall have no responsibility, obligation, duty, control, or authority with respect to the operation of the same.
8. UTILITY EXPENSES. Tenant shall contract in its own name and pay for all utilities and other services furnished to the Premises.
9. IMPROVEMENTS, REPAIRS, ADDITIONS, REPLACEMENTS.
 - (a) Tenant shall not make any additions or improvements to the Premises without the prior written consent of Landlord, which may be withheld in Landlord's absolute discretion. All improvements to the Premises done by the Tenant will remain the property of the Tenant and shall be removed prior to the end of the term.
 - (b) Tenant shall at all times during the term and all extensions of this Lease, and at its own cost and expense, keep and maintain in good condition and repair the Premises and any improvements, whether structural or otherwise, located on the Premises, and shall exercise reasonable care to prevent waste, damage or injury to any of the same.
 - (c) Tenant will not cause or permit any hazardous or toxic substance to be brought upon, kept or used in or about the Premises, whether by the Tenant, its agents, employees, contractor, or invitees, unless same will be used, kept and stored in a manner that complies with federal and state laws regulating any such hazardous or toxic substance so brought upon or used or kept in or about the Premises. If a violation of the foregoing occurs, the Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines and losses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space, and attorney's fees). Indemnification of the Landlord by the Tenant shall include but not be limited to any cost incurred in connection with site investigation, clean-up, remedial, removal or restoration work required by any federal, state or local government agency as a result of contamination by the Tenant, a sublessee, its agents, employees, contractors or invitees.

As used herein, the term “toxic or hazardous substances” means any toxic or hazardous substance, material or waste which is or becomes regulated by any local government authority, the State of North Carolina or the United States Government, including but not limited to such materials and substances as regulated under the Comprehensive Environmental Response Compensation and Liability Act 42 U.S.C. 9601 et seq. and as regulated under the North Carolina Oil Pollution and Hazardous Substances Control Act.

- (d) On the expiration or sooner termination of this Lease, Tenant shall quit and surrender the Premises, remove all Tenant owned property, and return the same to Landlord in the same or better condition that existed on the date hereof, ordinary wear and tear excepted.

10. REQUIREMENTS OF PUBLIC AUTHORITY.

- (a) Tenant shall, at its own cost and expense, promptly observe and comply with all laws, ordinances, requirements, orders, directives, rules, and regulations of any governmental authority affecting the Premises or any part thereof, whether the same are in effect at the commencement of the term of this Lease or may in the future be passed, enacted or directed. Tenant shall pay all fines, penalties, and fees levied upon or suffered by Landlord, which arise out of or occur from the failure of the Tenant to comply with the covenants of this Section.
- (b) Tenant shall have the right to contest by legal proceedings diligently conducted in good faith, in the name of the Tenant and/or Landlord, without cost or expense to the Landlord, the validity or application of any law, ordinance, rule, regulation or requirement of the nature referred to in the preceding paragraph except for any such law, ordinance, rule, regulation or requirement enacted, adopted, or enforced by the Landlord acting in its capacity as a county government.
- (c) Landlord agrees to execute and deliver any appropriate papers or other instruments which may be requested by Tenant to contest the validity or application of any such law, ordinance, order, rule, regulation or requirement, and to fully cooperate with Tenant in such contest.

11. COVENANT AGAINST LIENS. If, because of any act, or omission of Tenant, any mechanic's or other lien, charge or order for the payment of money shall be filed against Landlord or any portion of the Premises, Tenant shall, at its own cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after written notice from Landlord to Tenant of the filing thereof, and Tenant shall indemnify and save harmless Landlord against all costs, liabilities, claims, and demands resulting therefrom.

12. ACCESS TO PREMISES. Landlord or Landlord's agent shall have the right, but not the obligation, to enter upon the Premises at any reasonable times to examine the same.

13. ASSIGNMENT AND SUBLETTING. Tenant may not assign, or sublet, either in whole or in part, mortgage or otherwise encumber this Lease or its interest herein without the Landlord's prior written consent, which may be withheld in Landlord's absolute discretion. In the event Landlord consents to an assignment or sublease the Landlord, as a condition to its consent, may require the assignee or sublessee to assume the liabilities set forth herein and pay an assumption fee and all other expenses, including attorney fees, incurred by Landlord. Notwithstanding the foregoing, Tenant shall have the right to sublet or otherwise grant its participants the right to plant, garden, harvest or carry out other activities related to Community Gardening on the Premises without any further consent from Landlord. Tenant shall remain liable to Landlord notwithstanding this or any other consent by Landlord.
14. SIGNS. Subject to the prior written approval of Landlord, Tenant shall have the right to install, maintain and replace signs upon the Premises, provided the same comply with all local sign ordinances. All costs of the signs, including permits, will be paid by Tenant, and such signs placed upon the Premises will be removed by Tenant at its cost at the expiration or earlier termination of this Lease.
15. INDEMNITY. Tenant shall indemnify, defend and save harmless Landlord from and against any and all claims, costs, expenses (including, without limitation, reasonable attorney fees and the cost of investigations and experts), damage, penalty or judgment arising from injury to persons or property sustained on and about the Premises. Tenant shall at its own cost and expense defend any and all suits or actions, including appeals, which may be brought against Landlord or in which Landlord may be impleaded with others upon any such aforementioned matter or claim except suits or actions which arise or occur solely as a result of the acts of Landlord, its officers, agents or employees.
16. INSURANCE. As of the Commencement Date Landlord believes that it has sufficient insurance coverage to provide protection against any anticipated liabilities it may incur as a result of entering into this Lease. If at any time during the term hereof, Landlord, in its sole and absolute discretion, determines that its insurance coverage is not sufficient to provide a comfortable level of protection from possible claims, cost, expenses damages, and liabilities then Tenant, at Tenant's sole cost and expense, shall provide the following insurance coverage:
 - (a) Tenant shall and keep in full force and effect during the remaining term of this Lease general liability insurance with an insurance company or companies licensed to do business in the State of North Carolina and approved by Landlord in an amount of not less than Five Hundred Thousand Dollars (\$500,000.00) with respect to injury or death to any one person, Five Hundred Thousand Dollars (\$500,000.00) with respect to injury or death to more than one person in any one accident or occurrence, and Fifty Thousand Dollars (\$50,000.00) with respect to damages to property. Such policy or policies shall include Landlord as an additional insured party.

- (b) All such insurance carried by Tenant shall name Landlord as a co-insured and shall provide that the same cannot be modified or canceled without thirty (30) days written notice to both parties, and shall waive any right of subrogation against Landlord or Tenant. Tenant shall furnish proof of all such insurance and the renewal of the same.
17. QUIET ENJOYMENT. Tenant, upon paying the rent and all other sums and charges required by it to be paid as herein provided, and observing and keeping all covenants, warranties, agreements, and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the term hereof without any hindrance or molestation by anyone claiming under, by, or through Landlord.
18. DEFAULT OF TENANT. If Tenant shall fail to keep and perform any covenant or obligation of this Lease and shall continue in such default for a period of thirty (30) days with respect to any default after Landlord has given Tenant written notice of such default and demand of performance, Landlord may:
- (a) Enter into the Premises or any part thereof and expel Tenant or any person occupying the same in order to repossess and enjoy said Premises as in Landlord's former estate, and hold Tenant responsible for the cost of performing any covenant or obligation hereunder not performed by Tenant;
 - (b) Exercise its rights under subparagraph (a) above and relet the Premises, applying the rent collected from the new Tenant toward the cost of performing Tenant's obligations and covenants;
 - (c) Terminate this Lease; or
 - (d) In addition to the foregoing, Landlord may pursue the rights and remedies accorded to it under applicable law or Landlord may do nothing and shall not waive any of its rights and remedies by such inaction. Upon default, Tenant hereby expressly waives notice to quit possession and such other formalities or conditions as may be required by law.
19. WAIVERS. Failure of Landlord to complain of any act or omission on the part of Tenant no matter how long the same shall continue shall not be deemed to be a waiver by Landlord of any of its rights hereunder. No waiver by Landlord at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision.
20. NOTICES. Every notice, approval, consent or other communication authorized or required by this Lease shall not be effective unless same shall be in writing and sent postage prepaid by United States registered or certified mail, return receipt requested, directed to the other party at its address shown as follows:

To the Landlord:

Renee F. Paschal
Chatham County Manager
Post Office Box 1809
Pittsboro, North Carolina 27312

To the Tenant

Rachel Lawrence, Chair
Bynum Community Garden
Post Office Box 377
Bynum, North Carolina 27228

21. **PARTIAL INVALIDITY.** If any term, covenant, condition or provision of this Lease or the application thereof at any time to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision 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, condition, and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.
22. **EMINENT DOMAIN.** If the whole or any part of the Premises shall be acquired or condemned by eminent domain or like power for any public or quasi-public use or purpose which renders the Premises unusable by Tenant then this Lease shall terminate effective on the date possession thereof shall be taken. Such termination, however, shall be without prejudice to the right of either Landlord or Tenant to recover compensation and damages caused by the taking from the condemnor. Neither party shall have any rights in any award made to the other party by any condemnation authority.
23. **ENTIRE AGREEMENT.** No oral statement or prior written matter shall have any force or effect. Tenant agrees that it is not relying on any representation or agreement other than those contained in this Lease.

This Lease with Exhibit "A" attached hereto contains all the agreements and conditions made between the parties hereto and may not be modified orally or in any other manner than in writing signed by the parties hereto or their respective successor.

24. **SUCCESSORS.** All rights and liabilities herein given to, or imposed upon Landlord and Tenant shall extend to and bind the respective successors and assigns of Landlord and Tenant.

IN WITNESS WHEREOF, the Landlord and Tenant have set their hands and seals this the day and year first above written.

LANDLORD:

CHATHAM COUNTY

By: _____
Renee F. Paschal, County Manager

ATTEST:

By: _____
Lindsay K. Ray, County Clerk

TENANT:

BYNUM COMMUNITY GARDEN

Rachel Lawrence, Chair

Exhibit A

Two certain parcels of land located within a larger tract on Tax Parcel 1950; one parcel being approximately 40' x 50' x 72' in a triangular shape and the second parcel being approximately 12' x 20'.