

FACILITIES USE AGREEMENT

This Facilities Use Agreement (hereinafter this “**Agreement**”) is entered into on the date of the last signature affixed hereto by and between the North Carolina Department of Natural and Cultural Resources (hereinafter “**Department**”) and _____ (hereinafter “**Permittee**”).

Department and Permittee are collectively hereinafter referred to as the “**Parties**.” The use of the pronouns “it” or “its” shall include the masculine, feminine, neuter, singular, or plural as required by context. This Agreement relates to the facilities of Department’s Division named at the top of Exhibit A.

In consideration of the obligations of Department and Permittee one to the other and the terms and conditions contained herein, the Parties agree as follows:

1. Department grants to Permittee the use of the specific facilities or space described in Section 1.1 of Exhibit A on the date and for the period of time specified in Section 1.2 of Exhibit A, subject to the terms and condition of this Agreement.

2. Permittee is permitted to use the specific facilities or space for, and only for, the purposes stated in Section 2.1 of Exhibit A which are hereinafter referred to as the “**Event**.”

3. Permittee shall pay to Department the total of the fees and charges stated in Section 3.1 of Exhibit A plus all applicable taxes for the use of Department’s facilities, space, or equipment, etc. Permittee shall pay a non-refundable deposit in the amount stated and by the date specified in Section 3.1 of Exhibit A by check or other means acceptable to Department, made payable to and delivered to the Site identified in Section 1.1 of Exhibit A. Permittee shall pay in the manner described above the balance amount stated in Section 3.1 of Exhibit A by the date specified. If Permittee does not make the payments on time, Department shall have the right either to charge a late payment fee of fifteen (15) percent of the late payment or to forego the late fee and cancel this Agreement without refund and make the facilities or space available to others.

4. Permittee designates the person identified in Section 4.1 of Exhibit A as its Contract Administrator, who shall be Permittee’s primary point of contact with Department for all issues regarding this Agreement and to whom Department shall send notices related to this Agreement. Department designates the person identified in Section 4.1 of Exhibit A as its Contract Administrator, who shall be Department’s primary point of contact with Permittee for all issues regarding this Agreement and to whom Permittee shall send notices related to this Agreement.

5. This Agreement is made upon the following terms and conditions, and Permittee shall keep, observe, perform, and comply with each term and condition throughout its use of Department’s facilities or space:

- (a) Permittee shall punctually pay the fees and taxes indicated herein in the manner specified.

- (b) The facilities or space shall only be used by Permittee for the purpose(s) set forth herein.
- (c) This Agreement shall not be assigned. The use of the facilities or space shall not be assigned, transferred, or sublicensed by Permittee.
- (d) Permittee shall not make any alterations to the facilities or space. Permittee shall not attach any tape, screws, nails, or fasteners of any kind to the facilities or space without the prior written permission of Department.
- (e) Permittee and its employees, agents, contractors, personnel, and Event attendees shall faithfully comply with Department's rules and regulations as they may be amended or supplemented from time to time. Permittee shall not make, nor allow its employees, agents, contractors, personnel, or Event attendees, to make any unlawful or disruptive use of the facilities or space.
- (f) If Department, at any time, in its reasonable discretion, shall deem the conduct of Permittee or its employees, agents, contractors, personnel, or Event attendees to be objectionable or improper, Permittee shall be notified to discontinue or rectify such conduct, and if such conduct is not immediately discontinued or rectified to the satisfaction of Department, then Department, in its sole and absolute discretion, may terminate this Agreement and Permittee shall immediately cease its use of Department's facilities or space with no refund by Department.
- (g) Permittee shall give Department immediate written notice of any accident occurring in connection with Permittee's use of Department's facilities or space. Permittee shall give Department immediate written notice of any damage to or defect in any structure, improvement, property, plumbing, HVAC system, electrical system, or other systems, facilities, equipment, or features belonging to Department.
- (h) Permittee is responsible for ensuring that Department's facilities, space, and premises are restored to their original condition immediately following the Event's conclusion. If any damages have occurred, an assessment of the cost of these damages will be determined solely by Department. This cost is the sole responsibility of Permittee, and Permittee must pay this cost to Department no later than thirty (30) days from the date of the Event. Damaged turf shall be replaced at the expense of Permittee.
- (i) Permittee shall be responsible for the removal of food, beverages, and rental materials, as well as for the general clean-up of the facilities or space.
- (j) All caterers are required to have a food service permit issued by the County Department of Public Health and liability insurance in order to provide services for the Event.
- (k) Permittee shall be responsible for rental equipment and goods. Permittee shall be responsible for its personal property. Department assumes no responsibility for loss of or damage to Permittee's rental equipment or goods or Permittee's personal property.

- (l) Rice, bird seed, artificial flower petals, live animals, and similar items are not permitted inside or outside. Balloons are permitted inside, but are not permitted outside, and may not be released outside.
- (m) Candles and similar devices are prohibited except that Candles in closed containers are permitted on the conditions stated if, and only if permission is granted as indicated in Section 5.1 of Exhibit A. Sky lanterns, fireworks, sparklers, and similar items are prohibited.
- (n) All aspects of the Event, including decorations, caterer, music, and special lighting requirements or needs must be pre-approved by Department.
- (o) No alcoholic beverages shall be possessed, served, or consumed at the facilities, space, or State property unless permission is granted as indicated in Section 5.2 of Exhibit A. If alcoholic beverages are permitted, then Permittee must comply with the following requirements:
 - i. Permittee is responsible for ensuring that all required alcoholic beverage permits have been obtained and for ensuring compliance with all applicable statutes, rules, permits, and policies related to alcohol or the North Carolina Alcohol Beverage Commission.
 - ii. Permittee shall provide personnel to ensure that NO alcohol will be served by or to, or possessed or consumed by, anyone under the legal drinking age of 21 years.
 - iii. Self-service of alcoholic beverages is prohibited. Open containers of alcoholic beverages may not leave the facilities or space.
- (p) Permittee may use Department's electric power, but must supply its own power cables, cords, and power strips and must follow the instructions of Department's Contract Administrator as to where Permittee can connect to electric power. No cables or cords shall be permitted on paved roadways.
- (q) The possession or use of any restricted (without a prescription) or illegal substance at the facilities, space, or on State property by Permittee or its employees, agents, contractors, personnel, or Event attendees will result in immediate expulsion from the facilities, space, and State property, event cancellation without refund, and notification of the proper authorities and law enforcement officials in accordance with the laws of the State of North Carolina.
- (r) Smoking shall be prohibited in all indoor facilities. Persons smoking in indoor facilities may be expelled from the facilities, space, and State property.
- (s) Permittee must adhere to the ending time and other related requirements of this Agreement. Permittee and its employees, agents, contractors, personnel, and Event attendees must vacate the facilities or space by the ending time. If the Event, including clean-up and removal of all items brought to the facilities or space by Permittee, lasts longer in duration than the contracted rental time, additional overstay time will be charged at the rate specified in Section 5.3 of Exhibit A.
- (t) Department reserves the right to limit the noise level at the Event.

- (u) Department reserves the right to charge Permittee additional fees as a result of extra security, failure to honor time requirements, use of other or additional Department staff, extra cleaning, and incurred damages. Any and all damages incurred by the facilities, space, or State real or personal property shall be the responsibility of Permittee and shall subject Permittee to forfeiture of the original security deposit in full and any additional charges deemed necessary to restore the facilities or space and State real or personal property to its original condition. If a security deposit is required, the amount is specified in Section 3.1 of Exhibit A. The security deposit is refundable within thirty (30) days of the end of the Event except as limited by this Paragraph.
- (v) Department reserves the right to restrict the access to or remove from the facilities, space, or State property any employee, agent, contractor, personnel, or Event attendee of Permittee who Department determines, in its discretion, to be in non-compliance with any of the terms and conditions of this Agreement. Subject to any other provision in this Agreement stating otherwise, Department will provide Permittee with a reasonable opportunity to remedy any problems with its employees, agents, contractors, personnel or Event attendees prior to removal by Department.
- (w) Use of a Drone on State Property: Department will allow the use of a small, unmanned aircraft system, or drone, by a licensed operator (either an employee or subcontractor of the Permittee) at the Event. The operator of the drone must meet and follow all local and Federal rules and regulations governing the operation of a drone. The drone may not be flown directly overhead of people. The operation of the drone is allowed during daylight hours only. The drone operator and Permittee are solely liable for any and all damages, injury and/or, death resulting from the drone's operation, use, misuse, or failure.
- (x) At all times while at or using the facilities or space or State property, Permittee and its employees, agents, contractors, personnel, and Event attendees shall faithfully comply with all federal, state, and local laws, ordinances, regulations, rules, and orders.

6. Permittee shall comply with the special Site requirements in Section 6.1 of Exhibit A and shall comply with the special Event requirements in Section 6.2 of Exhibit A. The special Site and Event requirements shall control over the other provisions in this Agreement in the case of conflicting provisions.

7. If Permittee violates any provision of this Agreement, Department has the right to give Permittee notice thereof and immediately terminate this Agreement if Permittee does not immediately correct the violation, in the sole and absolute discretion of Department.

8. Release/Indemnity: Permittee assumes all the risk associated with its use of the facilities, space, and State real and personal property, and Permittee hereby releases and forever discharges Department and the State of North Carolina, and their employees, officials, and agents, from any and all claims, demands, damages, actions, causes of action, rights, costs, expenses and compensation whatsoever, including attorney's fees, or suits of any kind or nature whatsoever, both known or unknown, arising from or related to this Agreement. Permittee shall indemnify, defend, and hold harmless the Department and the State of North Carolina, and their employees, officials, and agents, from and against all claims, costs, expenses, damages, and/or

liability for injury, death, or damage, to persons or property arising from or relating to the use of the facilities, space, or State real or personal property by Permittee, or resulting from any breach or default in the performance of Permittee's obligations under this Agreement, including, but not limited to, attorney's fees and court costs.

9. Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, pandemic, or other catastrophic natural event or act of God.

10. North Carolina General Statute §133-32, as applicable, prohibits the offer to, or acceptance by, any employee of Department of any gift from anyone with a contract with Department, or from any person seeking to do business with Department. By execution of this Agreement, Permittee attests, for its entire organization, including its employees or agents, that it is not aware that any such gift has been offered, accepted, or promised by any employees of its organization.

11. Permittee agrees that it shall be responsible for the proper custody and care of any State personal property furnished to Permittee for use in connection with the performance of this Agreement and will reimburse the State for loss of or damage to such State personal property.

12. A failure of either Party to insist upon or enforce any provision of or right under this Agreement, shall not be a waiver of any such provision or right. No waiver by either party of any term or provision hereof shall be binding unless made in writing and signed by both Parties.

13. If any provision(s) of this Agreement is held to be invalid, illegal, or unenforceable, then such provision(s) shall be severed from this Agreement and the remaining provisions shall remain in full force and effect.

14. The Parties are neither partners nor joint venturers.

15. The laws of the State of North Carolina without regard to its choice of law principles shall govern this Agreement and all disputes related thereto. North Carolina shall be the venue for resolving all disputes arising under or related to this Agreement including, but not limited to, contract and tort matters.

16. This Agreement represents the entire agreement between the Parties on the subject matters contained herein. This Agreement supersedes all previous communications, representations, understandings, and agreements related these subject matters. No modification of this Agreement shall be valid unless in writing and signed by the Parties.

17. The following shall survive the termination or expiration this Agreement: (a) all obligations and liabilities that accrue under this Agreement before the termination or expiration of this Agreement, (b) all indemnity obligations imposed by this Agreement, (c) all provisions of this Agreement that impose an obligation after termination or expiration of this Agreement, (d) all obligations under this Agreement which by their nature or context are intended to be performed after the termination or expiration of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN TESTIMONY WHEREOF this Agreement has been executed by the individual party or the authorized officer or representative of the parties hereto as applicable.

Permittee:

By: _____

Date

Print Name: _____

Title: _____

North Carolina Department of Natural and Cultural Resources

By: _____

Date

Print Name: Michelle Lanier

Title: Director, Division of Historic Sites

*** This Agreement must be signed by the Department by either a Division Head or a Deputy Secretary.

EXHIBIT A
TO FACILITIES USE AGREEMENT
[Insert the Name of the DNCR Division Here and Delete This Instruction]

Section 1.1

Site Name: Governor Charles B. Aycock Birthplace State Historic Site

Street Address: 264 Governor Aycock Rd. Fremont, NC 27830

Specific Facilities or Space: _____

Section 1.2

Starting on the ____ day of _____, 20____ at _____ O'clock, AM/PM;
Ending on the ____ day of _____, 20____ at _____ O'clock, AM/PM.

If a portion of the time described above is restricted to setting up or removal for the Event, specify those times here:

Section 2.1

Description of the Event: _____

Section 3.1

Facilities or Space Rental Fee: \$ _____

Equipment Rental Fee: \$ N/A

Other Fees or Charges: \$ N/A

Taxes Due: \$ N/A

***Security Deposit \$ To Be Determined

Total of all above items: \$ _____

Non-refundable Deposit Amount: \$ N/A

Date Non-refundable Deposit is Due: N/A

Balance Amount Due: \$ N/A

Date Balance is Due: N/A

*** Note: The Security Deposit is refundable if no damages are caused.

Section 4.1

Permittee's Contract Administrator:

Name: _____

Title: _____

Address: _____

City/State/Zip: _____

Phone Number: _____

Email: _____

Department's Contract Administrator:

Name: _____ Nelson Edmondson

Title: _____ Historic Site Manager

Address: _____ 264 Governor Aycock Rd.

City/State/Zip: _____ Fremont / NC / 27830

Phone Number: _____ 919-242-5581

Email: _____ nelson.edmondson@dncr.nc.gov

Section 5.1

Are candles in closed containers permitted? ☒ Yes ☐ No

Conditions applicable to the use of candles in closed containers:

Open flame not allowed due to fire hazard, only flameless candles are permitted.

Section 5.2

Is alcohol permitted? ☒ Yes ☐ No

***If alcohol is permitted, Permittee must comply with all of Paragraph 5(o) of this Agreement.

Section 5.3

Overstay time will be charged to Permittee at the rate of \$ _____ per hour.

Section 6.1

The following special requirements apply to the Site:

*** If special Site requirements are lengthy, please use attachments and indicate “See Attachments” immediately above.

Section 6.2

The following special requirements apply to the Event:

See Attachment A to Exhibit A

*** If special Event requirements are lengthy, please use attachments and indicate “See Attachments” immediately above.