

**NORTH CAROLINA
MACON COUNTY**

**REVISED LEASE TO COWEE SCHOOL ARTS AND HERITAGE CENTER
FROM MACON COUNTY**

This lease is made this ___ day of April, 2020, by and between MACON COUNTY, a body corporate and politic organized and existing under the laws of the State of North Carolina, hereinafter called the "Lessor," and COWEE SCHOOL ARTS AND HERITAGE CENTER, a North Carolina Non-Profit Corporation, located in Macon County, North Carolina, hereinafter called the "Tenant."

WITNESSETH:

THAT WHEREAS, the State of North Carolina by way of N.C. Gen. Stat. § 160A-351 has established the following as policy for the State of North Carolina concerning recreation:

"The lack of adequate recreational programs and facilities is a menace to the morals, happiness, and welfare of the people of this State. Making available recreational opportunities for citizens of all ages is a subject of general interest and concern, and a function requiring appropriate action by both State and local government. The General Assembly therefore declares that the public good and the general welfare of the citizens of this State require adequate recreation programs, the creation, establishment, and operation of parks and recreation programs is a proper governmental function, and that it is the policy of North Carolina to forever encourage, foster, and provide these facilities and programs for all of its citizens."

; and

WHEREAS, N.C. Gen. Stat. § 160A-352 provides that "Recreation" means activities that are diversionary in character and aid in promoting entertainment, pleasure, relaxation, instruction, and other physical, mental and cultural development and leisure time experiences; and

WHEREAS, pursuant to N.C. Gen. Stat. § 153A-444, Macon County is authorized to establish parks and provide recreational programs; and

WHEREAS, pursuant to N.C. Gen. Stat. § 153A-449, Macon County is authorized to contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that Macon County is authorized by law to engage in; and

WHEREAS, there is a need for recreation opportunities in the Cowee area of Macon County, North Carolina; and

WHEREAS, Macon County, does own a building known as the Old Cowee School, located at 51 Cowee School Drive, Franklin, NC 28734 and being the lands described in the Deed dated January 9, 2013, from Macon County Board of Education to Macon County recorded in Book J-35, at Pages 2206 - 2207, in the Office of the Register of Deeds for Macon County, North Carolina; and

WHEREAS, COWEE SCHOOL ARTS AND HERITAGE CENTER, a North Carolina Non-Profit Corporation, is willing to lease such real property in accordance with this Lease Agreement and as consideration for the same it is willing to agree with Macon County as provided for hereinafter that it will use such real property in part for public "recreation" as that term is defined by N.C. Gen. Stat. § 160A-352 and that it will provide recreational opportunities to the general public at such location; and

WHEREAS Macon County does reserve the right to appropriate and provide funds to COWEE SCHOOL ARTS AND HERITAGE CENTER, a North Carolina Non-Profit Corporation, within its discretion and in accordance with the provisions of N.C. Gen. Stat. § 153A-449 to further assist in carrying out the public purpose of providing recreation opportunities to the general public upon such real property.

NOW THEREFORE, IN CONSIDERATION of and subject to the terms and conditions hereinafter set forth, the Lessor does hereby demise and let and the Tenant does hereby rent and hire from the Lessor, those certain premises (hereinafter referred to as the "Premises") and being more particularly described as follows:

(1) *Premises.* Being the Old Cowee School Property, located at 51 Cowee School Drive, Franklin, NC 28734 and being more particularly described as the lands described in the Deed dated January 9, 2013, from Macon County Board of Education to Macon County recorded in Book J-35, at Pages 2206 - 2207, in the Office of the Register of Deeds for Macon County, North Carolina.

(2) *Term.* Subject to the terms below, this lease shall commence at the beginning of May 1, 2020, and shall continue for a term expiring at the end of April 30, 2025.

(3) *Rent.* The rent payable by the COWEE SCHOOL ARTS AND HERITAGE CENTER, a North Carolina Non-Profit Corporation, shall be as follows:

- A. It shall as provided for hereinafter use a substantial part of such real property for public "recreation" as that term is defined by N.C. Gen. Stat. § 160A-352;
- B. It shall as provided for hereinafter provide substantial recreational opportunities to the general public at such location in the nature of those which it has heretofore provided at such location and which are consistent with definition of "recreation"

as that term is defined in N.C. Gen. Stat. § 160A-352;

- C. Tenant agrees to make the Old Cowee School open and available to members of the general public during reasonable days and hours for “recreation” as that term is defined by N.C. Gen. Stat. § 160A-352 for the period between May 1, 2020, and the end of April 30, 2025, and it shall in fact provide substantial provide recreational opportunities to the general public at such location and during such hours;
- D. Tenant agrees to to perform its obligations hereunder in a nondiscriminatory fashion appropriate for public activity and there shall be no discrimination by Sublessee on the basis of race, sex, national origin, religion or otherwise; and
- E. COWEE SCHOOL ARTS AND HERITAGE CENTER, a North Carolina Non-Profit Corporation, shall account to Macon County for its uses of resources provided by Lessor to it and for its uses of the leased premises in accordance with paragraph 3 A, B and C above.

(4) Use of Premises. The leased premises shall only be used by Tenant for the operation of the COWEE SCHOOL ARTS AND HERITAGE CENTER, a North Carolina Non-Profit Corporation, consistent with the manner in which it has heretofore operated the same at such location and for also providing substantial recreational opportunities to the general public at such location in the nature of those which it has heretofore provided at such location and consistent with definition of “recreation” as that term is defined in N.C. Gen. Stat. § 160A-352.

(5) No Assignment, but certain Subleases allowed. This lease shall not be assigned by Tenant but Tenant may sublet rooms within the buildings located upon the leased premises for purposes consistent with the recreational use of premises allowed unto the Tenant under the terms of this Lease Agreement. Any subleases shall include provisions which read as follows:

- A. E-Verification. Sublessee shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Sublessee utilizes a subcontractor, Sublessee shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes;
- B. Sublessee agrees to fully cooperate with Sublessor in connection with Sublessor’s contractual obligation under its Lease Agreement with Macon County as aforesaid to make the Old Cowee School open and available to members of the general public during reasonable days and hours for recreation as that term is defined by N.C. Gen. Stat. § 160A-352 and it shall cooperate with Sublessor’s efforts to provide recreational opportunities to the general public at such location; and
- C. Sublessee acknowledges and agrees to fully cooperate with Sublessor in connection with Sublessor’s obligation under its Lease Agreement with Macon

County as aforesaid to perform its obligations hereunder in a nondiscriminatory fashion appropriate for public activity and there shall be no discrimination by Sublessee on the basis of race, sex, national origin, religion or otherwise.

(6) Repairs and Maintenance.

Lessor's sole maintenance and repair obligations of the Lease Premises shall be as follows:

- A. The roof, outside walls and other structural parts of the building;
- B. The parking lot, driveways, and sidewalks;
- C. The sanitary sewer system, water pipes and other matters relating to plumbing;
- D. The electrical wiring; and
- E. The heat and air conditioning.

Except as provided for hereinabove, Tenant shall be responsible for any and all other maintenance and repairs of the Sublease Premises. Tenant agrees to accept the premises in their present condition and to maintain the interior components of the portion of the premises leased to Tenant in a good state of repair during the term of this lease not set forth as part of the Lessor's obligations hereinabove. At termination, Tenant shall surrender the premises to the Lessor in as good condition as they now are, except for ordinary wear and tear incident to the use of the premises.

(7) Abatement of Nuisances and Appearance. Tenant shall comply with all laws, rules and regulations of any governmental jurisdiction applicable to the leased premises and shall take all measures necessary to prevent or abate nuisances or other grievances arising out of the manner of the occupancy of the premises for its business purposes. Tenant shall further maintain the appearance of the premises in manner that is aesthetically pleasing and consistent with other business users in the neighborhood and shall not accumulate trash or debris nor display merchandise on the premises.

(8) Utilities. Lessor will provide utilities for the leased premises.

(9) Alterations. Tenant shall not make any alterations, additions or improvements to the premises without first obtaining written permission from the Lessor and any such alterations, additions or improvements which are permitted shall inure to the benefit of the Lessor upon expiration of the lease and surrender of the premises by the Tenant.

(10) Indemnification. Tenant shall indemnify Lessor and hold it harmless from and against any and all claims, actions, damages, liability and expense in connection with the loss of life, personal injury or damage to property occurring in or about, or arising out of, the leased

premises, or occasioned wholly or in part by any act or omission of Tenant, its agents, licensees, concessionaires, customers or employees. In the event Lessor shall be made a party to any litigation, commenced by or against Tenant, its agents, licensees, concessionaires, customers or employees, then Tenant shall protect and hold Lessor harmless and shall pay all costs, expenses and reasonable attorneys' fees included or paid by Lessor in connection with such litigation.

(11) Environmental Matters. With respect to any pollutants, contaminants, chemicals, or industrial, toxic or hazardous substance or material defined as such in, or for purposes of, all applicable environmental laws, rules, regulations and ordinances now or hereafter in effect ("Environmental Laws"), including without limitation, any waste constituents coming within the definition or list of hazardous substances in 40 C.F.R. §§ 261.1 through 261.33 ("Hazardous Material"), the Tenant represents, warrants and covenants that it will indemnify and hold Lessor harmless from and against any and all losses, liabilities, damages, injuries, interest, deficiencies, fines, penalties, costs, expenses, attorneys' fees, disbursements, and costs of investigation and clean-up, including without limitation, claims, suits, and proceedings by federal, state, or local government authorities with respect to, or as a direct or indirect result of (i) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or releasing from, the property of any Hazardous Material, if such occurs during the term of the lease, (ii) any other environmental pollution, including without limitation, any contaminant, waste, irritant or pollutant, discharged into or otherwise contained in the environment at or adjacent to the property if such occurs during the term of the lease, (iii) non-compliance relating to the Tenant's business or the property with any Environmental Law or any other federal, state or local statute, law, ordinance, rule, regulation, order or decree, or (iv) the inaccuracy, misrepresentation or violation or default of or under any matter set forth in this section unless any such loss, liability, damage, injury or the like is directly caused by negligent acts of the Lessor. In addition, the Tenant shall at all times keep on file with the Macon County Fire Marshall a list of any of the materials, substances, or chemicals described in this paragraph and stored or kept on the leased premises.

(12) Incidents of Default. Each and every term of this lease is a material part of this lease and continuation of the lease is conditioned on the parties' adherence to its terms. The breach or threatened breach of any of the lease terms by the Tenant shall be deemed an incident of default. A declaration of insolvency or the filing of a petition of bankruptcy by the Tenant shall also be deemed an incident of default. In the event Tenant defaults as defined in this paragraph, Lessor may declare the lease terminated and retake possession of the premises upon allowing Tenant a reasonable time to vacate the premises and remove its personal property from the premises.

(13) E-Verification. Tenant shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Tenant enters into one or more subleases, Tenant shall require the sublessee(s) to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

In testimony whereof, the parties have signed this lease on the date first written above in duplicate originals, one of which is retained by each of the parties.

COUNTY OF MACON

By: _____
Macon County Manager

COWEE SCHOOL ARTS AND HERITAGE CENTER, a
North Carolina Non-Profit Corporation

By: _____
Authorized Representative

PRE-AUDIT CERTIFICATE

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

This the ___ day of _____, 2020.

Macon County Finance Officer

STATE OF NORTH CAROLINA
COUNTY OF MACON

**RESOLUTION OF THE MACON COUNTY BOARD OF COUNTY COMMISSIONERS
TO REVISE A FIVE YEAR LEASE IN ORDER TO CORRECT A TYPOGRAPHICAL
ERROR IN THE SAME**

THAT WHEREAS, Macon County did on April 14, 2020, approve the entry of a five year lease from Macon County to Cowee School Arts and Heritage Center for the old Cowee School property; and

WHEREAS, Paragraph # 2 of said Lease contained a typographical error in that the date of "April 30, 2020" contained in Paragraph # 2 of said Lease should have read "April 30, 2025"; and

WHEREAS, Macon County desires to authorize the correction such typographical error by this resolution.

NOW THEREFORE, upon Motion of Commissioner _____, seconded by Commissioner _____, and duly approved, be it hereby resolved by the Macon County Board of County Commissioners as follows:

RESOLVED, that Macon County does hereby authorize correcting such typographical error in Paragraph #2 of the five year Lease that it authorized on April 14, 2020, from Macon County to Cowee School Arts and Heritage Center for the old Cowee School property so that the date of "April 30, 2020, contained in Paragraph #2 of said Lease is changed to April 30, 2025; and

RESOLVED, that Derek Roland, Macon County Manager, is hereby authorized and directed to fill in any blanks upon the same and execute said Lease to Cowee School Arts and Heritage Center on behalf of Macon County.

Adopted at the June 2, 2020, recessed Regular Meeting of the Macon County Board of Commissioners.

James Tate, Chairman
Macon County Board of County Commissioners

ATTEST:

Derek Roland, Macon County Manager
and Clerk to the Board

(Official Seal)