

**CONCESSION AGREEMENT FOR LIVERY BOAT (5 PONTOON BOATS) BETWEEN
THE TOWN OF LAKE LURE AND LAKE LURE ADVENTURE COMPANY, INC.**

THIS NON-EXCLUSIVE CONCESSION AGREEMENT, made this the 10th day of March, 2020 by and between the Parties: THE TOWN OF LAKE LURE, Lake Lure, North Carolina, a Municipal Corporation, hereinafter called "Town"; and Lake Lure Adventure Company, Inc., a North Carolina Corporation, 470 Memorial Highway, Lake Lure, NC, hereinafter referred to as LLAC.

WTINESSETH:

WHEREAS, all land covered by the waters of Lake Lure at full pond is owned by the Town of Lake Lure. Said lake is held in trust by the Town of Lake Lure for the benefit of the citizens of the Town. The Lake Lure Town Council created the Lake Lure Marine Commission as authorized by special act of the General Assembly of the State of North Carolina for the purposes of regulating all activities on Lake Lure. The Lake Use Regulations were first adopted by Resolution on March 9, 2004 to govern use of the Lake for the purpose of enhancing the health, safety, and general welfare of the citizens; and,

WHEREAS, said Lake Use Regulations provide for Concession Agreements in certain situations and one such situation is where a livery service desires to offer more than four (4) pontoon boats for rent to the public; and,

WHEREAS, LLAC offers pontoon boat rentals and currently holds four livery boat permits and desires to add a fifth pontoon boat for a total of five pontoon rental permits; and,

WHEREAS, the Town and LLAC are entering into this Concession Agreement so that LLAC's operation may hold five (5) pontoon livery boat permits and offer those pontoon boats for rental to the public, and,

WHEREAS, the concession fee to be paid to the Town is based on the fifth permit and pontoon boat offered for rent, as it is the one that triggered the need for this Agreement;

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants herein contained and other valuable consideration, the sufficiency of which is hereby acknowledged, agree as follows:

1. Use

LLAC agrees to manage, maintain and operate its livery boat operations for the term set forth herein. LLAC shall use the boats for no other purpose than livery rental on Lake Lure, and livery boat operation in strict conformance with the terms and conditions of this Agreement and the Lake Lure Lake Use Regulations, as amended from time to time.

LLAC agrees to manage the operation its boats during both seasonal and non-seasonal periods so

as to make it available for recreational opportunities for all age groups and abilities in such a manner so as to optimize the Town's economic performance.

2. Licenses and Permits

LLAC shall procure, at its own cost and expense, all licenses and permits necessary for the lawful operation of the livery boat business and its business. The Town shall provide reasonable cooperation to LLAC to obtain such license or permits.

3. Assumption of Risk

LLAC assumes all risks arising out of its operations and agrees to comply with all applicable Federal, State, and local laws and regulations and all rules, regulations, and Ordinances of the Town. LLCA expressly and specifically assumes the risks of injury or harm resulting from its livery boat and business. The Town agrees to comply with any rule, regulation, or ordinance under which it has sole responsibility as the owner of the Lake.

4. Indemnification

LLAC shall indemnify, defend and hold harmless the Town and its subsidiaries, divisions, officers, directors and employees from all liability, loss, costs, claims, damages, expenses, attorney fees, judgments and awards arising or claimed to have arisen, from any injury caused by, or allegedly caused by, either in whole or in part, any act or omission of LLAC or any employee, agent, or assign of LLAC. This provision is not applicable to any claim arising out of or related to any active or primary negligence of or by the Town, its officers or employees.

5. Waiver of Claims

LLAC understands that the Town will not be responsible for any injury, damage or loss arising out of its livery operations on Lake Lure and no attempt will be made by LLAC, or anyone on LLAC's behalf, to hold the Town responsible for such injury, damages or loss. LLAC hereby expressly and specifically assumes the risk of injury, harm or loss resulting from LLAC's activities undertaken pursuant to this Concession Agreement.

6. Equipment

All boats and equipment and the operation thereof must comply with the Lake Lure Lake Use Regulations.

7. Boat Operations

LLAC has the right to use the waters of Lake Lure for the purpose of operating a livery rental service. The fee for the right to add a fifth livery boat, (one over the 4 livery boat limit) will be set at \$4,500. This is an estimate of 15% of the income of this additional boat. The Town has the right to audit and check all books and records of LLAC relative to boat hours, and gross income for

boat rentals. The annual fee shall be adjusted based upon the actual average gross income per rental boat. The resulting number shall form the basis for the next subsequent year's franchise fee.

LLAC shall, at its own cost and expense, comply with all the rules, regulations, ordinances and requirements of the United States, the State of North Carolina, Rutherford County and the Town of Lake Lure applicable to operation of a boat rental business.

8. Transfer or Assignment

LLAC shall not subcontract, or assign, transfer, sublet, or otherwise convey LLAC's obligations under the Agreement, or any or all of its right, title or interest in this Agreement, without the Town's prior written consent. This Agreement is not assignable by either party without the prior written consent of the other party. In the event that the Town consents to the assignment or transfer of this Agreement or the change in control in LLAC's ownership, the assignee, transferee, or new owner shall operate the services in a fashion substantially similar to LLAC's operation and in strict conformance with the terms, conditions and requirements of this Agreement and all ordinances of the Town, including but not limited to the Lake Use Regulations.

9. Independent Contractor Status

The relationship between LLAC and the Town is a contractual relationship. It is not intended in any way to create a legal agency or employment relationship. LLAC shall, at all times, maintain its status as an independent contractor and both parties acknowledge that neither is an agent, partner or employee of the other for any purpose. LLAC shall be responsible for providing all required insurance, workers' compensation (regardless of number of employees) and unemployment insurance for all of its employees. LLAC also agrees that it shall not, in any manner whatsoever, by its actions or deeds, commit the Town to any obligation irrespective of the nature thereof.

10. Insurance

LLCA shall procure and maintain commercial general liability insurance, with limits of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage, with a certificate of insurance to be furnished to the Town within 30 days or written request. Insurance shall be provided by companies authorized to do business in the State of North Carolina. Failure to keep such insurance current shall be grounds for the recession of the franchise agreement upon seven (7) days written notice.

11. Responsibilities of LLAC

LLAC shall be properly licensed in North Carolina and skilled in its respective trade. LLAC shall perform its services in accordance with generally accepted standards and practices of this type of service customarily utilized by competent firms in the locale in which the Agreement is being performed, in effect at the time LLAC's services are performed.

LLAC and its subcontractors (if consented to by the Town) shall comply with all state, federal or

local laws, or ordinances, codes, rules or regulations governing performance of this Agreement, including but not limited to, Americans with Disabilities Act (ADA), equal opportunity employment laws, O.S.H.A., minimum wage and hour regulation, e verify, use of alcohol, noise and North Carolina State Building Code regulations.

If activities related to the performance of this Agreement require specific licenses, certifications, or related credentials, LLAC represents that it and/or its employees, agents and subcontractors engaged in such activities possess such licenses, certifications, or credentials and that such licenses, certifications, or credentials are current, active, and not in a state of suspension or revocation.

12. Safety and Reporting of Accidents

The health and safety of residents, visitors and employees is of the utmost importance to the Town and LLAC. LLCA shall provide the Town with a copy of their policies regarding safety and operations of livery boats.

Serious problems, incidents or accidents shall be reported immediately to the Town Manager. "Serious" shall be defined as those events which involve bodily injury or property damage. All claims to LLCA's insurance carrier shall be reported in writing to the Town within one (1) business day. .

13. Term

The term of this Agreement shall be for an initial five (5) year term beginning January 1, 2020 through December 31, 2025, at which date, upon successful completion of the initial five year term, the Town shall have an option to renew for an additional five year period, commencing January 1, 2025 through and ending December 31, 2030.

14. Notices

Any notices hereunder shall be in writing and shall be given upon delivery by 1) hand delivery or 2) by the United States Postal Service, in each instance, addressed to each party at the following addresses:

For LLAC: P.O. Box 692
Lake Lure, NC 28746

For Town: Town Manager
Town of Lake Lure
P.O. Box 255
Lake Lure, NC 28746

Any such notice, request or other communications shall be considered given or delivered, as the case may be, on the date of delivery or the date that delivery is refused as evidenced by the records of the delivery service. Rejection or other refusal to accept or inability to deliver because of

changed address of which no notice was given shall be deemed to be receipt of the notice, request or other communication . Any party may from time to time may change its mailing address hereunder, effective upon written notice to the other party.

15. Modification

This Agreement may not be modified except by written amendment executed by both parties hereto.

16. Severability

Should any provision or provisions contained in this Agreement be declared by a court of competent jurisdiction to be void, unenforceable or illegal, such provision or provisions shall be severable and the remaining hereof shall remain in full force and effect. If any term or provision of this Agreement or the application thereof to any party or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

17. Governing Law

This Agreement is entered into in North Carolina and shall be construed under the Statutes and laws of North Carolina. The Venue shall be in the County of Rutherford.

18. Default and Opportunity to Cure

The failure or refusal of LLAC to perform fully and promptly any act, covenant, or obligation required under this Concession Agreement or to comply otherwise with any provision of this Agreement shall be grounds for cancellation of this Concession Agreement. Upon the occurrence of an event of default, if the Town shall provide to LLAC written notice of such default, LLAC shall have fifteen (15) days from the date that LLAC receives the notice to cure the default if the default may be cured solely by the payment of money or 30 days following receipt of notice from the Town with respect to a default which may not be cured solely by the payment of money. In either event, the Town may pursue any remedies available to it against LLAC under applicable law, including, but not limited to, the right to terminate this agreement. The Town shall not be obligated to provide LLAC with a notice of a default more frequently than two (2) times in any twelve (12) month period.

19. Headings.

The section and marginal headings herein contained are intended for convenience in finding the subject matters and are not to be used in determining the intent of the parties to this Agreement.

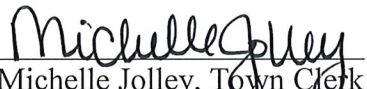
20. Entire Agreement

This Agreement contains the entire understanding and agreement by and between the parties, and all prior and contemporaneous understandings, agreements and negotiations are herein merged. This Agreement shall not be modified, terminated (except for in accordance with the express provisions of this Agreement), nor any provision waived except in writing and signed by LLAC and the Town.

This the 10th day of March 2020.

TOWN OF LAKE LURE

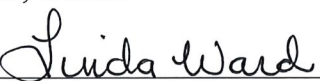

Carol C. Pritchett, Mayor

ATTEST: 
Michelle Jolley, Town Clerk



LAKE LURE ADVENTURE COMPANY, INC.


Mark Helms, Owner

ATTEST: 
Witness

Name: Linda Ward
(print)