

**CONCESSION AGREEMENT FOR  
THE OPERATION OF THE  
TOWN OF LAKE LURE  
BEACH, MARINA AND TOUR BOATS**

**THIS CONCESSION AGREEMENT**, made this the 15<sup>th</sup> day of February, 2018 by and between the Parties: THE TOWN OF LAKE LURE, Lake Lure, North Carolina, a Municipal Corporation, hereinafter called "Town"; and Lake Lure Tours, Inc., a North Carolina Corporation, P.O. Box 10043, Fleming Island, FL, hereinafter called "LLT;"

**WITNESSETH:**

**WHEREAS**, the Town of Lake Lure owns a municipal marina facility and public beach on Lake Lure; and,

**WHEREAS**, the Town seeks to contract with a Firm to manage, operate and grow the beach, marina and tour boat operations and whose combination of experience and expertise will provide quality driven professional service to the Town of Lake Lure and its guests; and,

**WHEREAS**, following a public selection process, the Town has determined that Lake Lure Tours, Inc. has the dedicated staff, strong financial assets and proven level of expertise needed to fulfill this operation; and,

**WHEREAS**, it is the general intent and purpose of this Concession Agreement (the "Agreement") to secure the safe, efficient and beneficial operation of beach, marina and tour boats, and to provide for such future repairs, improvements and modifications as shall be deemed acceptable to and in the best interests of the Town, its residents and their Concessionaire.

**NOW THEREFORE**, the parties in consideration of the mutual covenants herein contained, agree as follows:

**1. Use**

LLT agrees to manage, maintain and operate the beach, marina and tour boat operations for the term set forth herein. LLT shall use the Facilities allocated to it in the Agreement, as set forth below, for no other purpose than the operation of the beach, marina and tour boat operation services in strict conformance with the terms and conditions of this Agreement.

LLT agrees to manage the operation of the beach and marina 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 promote wholesome tourism and to optimize the facilities' economic performance.

**2. Facilities**

LLT shall operate the Marina and Tour Boat operations from the Marina located at 2930 Memorial Highway and the Beach operations from all the facilities located at 2724 Memorial Highway.

### **3. Hours of Operation**

LLT shall, with the approval of the Town, establish its hours of operation.

The Marina shall be open and staffed during all times that the boat tours are operating, with the exception of "after hours" special tour boat events such as Dinner, Sunset, and Special Event cruises.

The established hours of public admission use of the beach shall be from 10 a.m. through 6 p.m. daily, Memorial Day through Labor Day. The Beach will be opened daily from 9 a.m. to 5 p.m., from two weeks after Labor Day until two weeks prior to Memorial Day without admission fee. **(amended 9/8/2020)**

Unless otherwise approved in advance by the Town, all Facilities will be closed from 11 p.m. to 6a.m.

Following the closing of the beach during normal business and off-season hours, the pavilion and a portion of the beach will be available for rent by individuals, groups and organizations. Scheduling and arrangements for rental of the pavilion and a portion of the beach will be reserved and coordinated through LLT.

### **4. Personnel**

LLT agrees to have a sufficient number of trained, qualified staff members on duty for the proper operation of the facilities. Said personnel will be employees of LLT. LLT agrees to maintain an efficient staff, which at all times shall be courteous to the public, well groomed, neatly dressed, and reflect favorably upon the Town. LLT shall require its employees to observe a strict impartiality as to rates and service. Lifeguards shall be in easily identifiable uniforms and maintain on file current Red Cross, or equivalent, lifeguard, CPR, and first aid certifications.

### **5. Qualifications**

LLT warrants that it has substantial financial capacity and resources sufficient to provide the operation and maintenance of the Facilities in compliance with the terms and conditions of this Agreement and has extensive experience in the operation and management of the facilities of this operation.

### **6. Maintenance, Repair, and Care of Premises and Grounds**

LLT agrees that it shall keep any room, space, or area under its control or used in connection with its service, in a clean and sanitary condition.

LLT shall be responsible for the maintenance, repair, or replacement of the Facilities' fixed equipment and furnishings, owned by LLT. The Town shall be responsible for the maintenance, repair, or replacement of all other equipment included within the Facilities agreed to herein. All such structures and equipment shall be operated and maintained in strict accordance with all applicable federal, North Carolina, Rutherford County and Town codes, regulations and requirements. The Town shall have the right to enter upon and inspect the premises at any time during the term of this Agreement. If, as a result of such inspection, the Town determines that any deficiencies exist in the condition of those areas within the LLT's area of responsibility, the Town shall provide notice to LLT in writing. LLT shall commence appropriate corrective work

within five (5) business days of the date of such notice. If LLT fails to complete the appropriate corrective work within a reasonable time of such notice, as determined by the Town, the Town shall have the right to correct such deficiencies itself and to bill LLT for the cost of such work. LLT shall pay the bill for such work immediately upon presentation.

Upon termination of this Agreement, the premises, including the Facilities owned by the Town, shall be returned to the Town in as good an order, condition, and repair as they were in on the effective date, reasonable wear and tear excepted.

The Town shall be responsible for structural repair to the building(s), including the roof(s), and any repair needed to sea walls or banks that may be subject to erosion. The Town shall maintain and repair the plumbing systems at the beach and marina as well as winterize these Facilities; although LL T shall provide and maintain the restroom fixtures and supplies. LL T shall maintain its lake water handling system(s) at the beach.

The Town will at no cost to LLT, provide for outdoor maintenance of the lawns, parking lots, fence, and boardwalk. LL T shall make recommendations for any marina or beach improvements in keeping with this Agreement.

## **7. Utilities**

LLT shall be responsible for all utility costs of the Facilities and their employees. LL T agrees to be billed directly for these charges by the utility provider and to make appropriate arrangements for said direct billing of services within thirty (30) days of the Effective Date. In the event that LLT fails to pay any utility bill resulting in a utility provider terminating any service and/or pursuing collection from the Town, the Town shall have the right to terminate the Agreement and to require LLT to immediately vacate the premises.

## **8. Pricing**

LLT agrees that prices charged for its merchandise, food, and services shall be comparable to those charged by the local market and that it will honor the history and traditions of Lake Lure, but also deliver a high-quality product in several consumer price points. Merchandise, accessories, clothing, foods, and drinks normally associated with the operation of a beach and marina shall be permitted. The sale of other merchandise must be approved by the Town, which such approval shall not be unreasonably withheld. All vending machines will be provided by LLT.

For the 2021 season, the following admission fee and ticket pricing shall apply:  
**(amended 10/13/2020)**

### **Beach**

Adult: \$10.00

Child: \$8.00

Senior: \$9.00

### **Tour Boats**

Adult: \$18.00

Child: \$8.00

Senior: \$16.00

Bus Tour (10 Ticket Minimum): \$14.00

The rental rate for the beach outside of the established business hours and during "off-season" periods will be at a rate of \$50.00 per hour. Organizations qualified with a 501(c)3 designation, will, depending upon availability, have use of the beach on a "first-come; first-serve" manner, at

no fee.

Residents of the Town of Lake Lure and the Village of Chimney Rock and their immediate family members will not pay an admission fee to the Beach. Proof of residency is required.

LLT shall provide annually to the Town, no later than November 15 of each fiscal year, a proposed fee structure for the coming fiscal year. LLT shall provide the Town with sufficient information to evaluate the fees and programs for its operations. Such information shall include a full report of prior years' activity in all categories and shall, if reasonably available to LLT, include an analysis of the type of users of the facilities in the prior year and revenues associated with major categories. If proposed by LLT, and unless the proposal is deemed to be excessive by the Town, the Town shall agree, which agreement shall not be unreasonably withheld, on any changes in the fee schedule at the December meeting of the Town Council, applicable to the next concession year.

## **9. Licenses and Permits**

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

If activities related to the performance of this agreement require specific licenses, certifications, or related credentials, LLT 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.

## **10. Health Department Requirement**

LLT warrants and agrees that all food and beverage items that are offered for sale under this Agreement shall be handled, served, and/or sold in a clean and sanitary manner and in accordance with the requirements of the Rutherford County Health Department and any and all other applicable rules and regulations.

## **11. Assumption of Risk**

LLT assumes all risk in the operation of the Facilities and agrees to comply with all federal, state, and local regulations and all rules, regulations, and Ordinances of the Town. The Town agrees to comply with any rule, regulation, or Ordinance under which it has sole responsibility as the owner of the Facility.

## **12. Advertising and Branding**

LLT shall design, print and distribute informational flyers and promotional materials at their own expense. The Branding Guide for Lake Lure & Chimney Rock Village states that in order to ensure consistent use of the Lake Lure brand, the brand shall be used in signage, advertising products and services, direct mail, events and activities, logos, merchandising, website development, social media and other promotional materials. LLT shall apply, where appropriate, Lake Lure's branding themes to the beach, marina, and tour boat operations. The

Town must approve in advance any newly-designed branded advertising and promotional material, which such approval shall not be unreasonably withheld.

### **13. Equipment**

LLT has the right to use any fixed equipment belonging to the Town on the premises as of the Effective Date and any fixed equipment installed by the Town thereafter. LLT may, with prior approval of the Town, purchase additional fixed equipment required and necessary for the operation of the Facilities. LLT agrees to be responsible to the Town for any damage or loss to Town equipment that occurs by reason of LLT's negligence or other fault, or that of its patrons, employees, or suppliers. Title to all non-fixed equipment and fixed assets provided by LLT shall remain with LLT, and such equipment and fixed assets shall be removed by LLT after the expiration or termination of this Agreement. If any property remains on the premises after the expiration or termination of this Agreement, the Town shall notify LLT, and if LLT fails to remove such property within ten (10) days from the date of such notification, the Town may deal with such property as though it had been abandoned and charge all costs and expenses incurred in the removal thereof to LLT.

The Town shall be responsible for maintenance, repair, and replacement of major capital equipment owned by the Town including, but not limited to the fuel dispenser, gas storage tank and piping, and docks.

### **14. Supplies**

LLT agrees to provide, at its own cost and expense, all furnishings, equipment, materials, and supplies ordinarily incident to the operation of the service.

### **15. Tour Boat Operations**

LLT has the right to use the waters of Lake Lure for the purpose of operating a scenic passenger boat ride service. Fees for this right are outlined in Section 33 of this Agreement. The monthly payment shall include an activity report and a copy of the daily trip log.

LLT 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 scenic passenger boat ride business.

LLT may operate up to four tour and four rental boats and will be allowed to use Town dock space to moor said boats at an area designated by the Town. Boats shall have a large, clear numeral identification method to facilitate identification for comments. LLT shall be responsible for the cleaning and maintenance of their dockage area. LLT will also be allowed to use the Town property near the Town dock. Any changes in location of the waiting area must be approved by the Town. Any repairs to the boat slips must be pre-approved by the Town.

LLT will establish and publish a telephone number where comments about the tour boats, rental boats, or marina operation can be reported. LLT shall respond to any comments within five (5) business days. If a comment is not resolved, then it may be reported to the Town Manager or their designee. LLT shall maintain a log on all comments and the action/response taken to resolve the comment. In addition, LLT shall have an answering machine/voice mail with a pre-

recorded message relating the information and process for reporting comments.

Regular tours shall operate during daylight hours up to seven days a week. Dinner Cruises shall operate from approximately 45 minutes before dusk, until after dinner and return. Sunset Cruises will operate from approximately 45 minutes before dusk until approximately 30 minutes after sundown. LLT shall follow the allowances and prohibitions regarding safe operation and wake issues detailed in the "Lake Lure Tours Operation" document. Areas of no-wake operation are identified in this document and on a map, which may be amended from time to time. At no time will the maximum capacity permitted by law be exceeded in any boat.

## **16. Events and Activities**

The Town and LLT shall work cooperatively on expanding and enhancing the products and service options of the Facilities by offering new and appropriate activities. The Town supports LLT's addition of special events, festivals, activities, tours, and educational programs, and the Town will work with LLT and other Town and LLT partners in facilitating these events.

LLT and the Town shall solicit cooperatively "new business" and "new users" for the beach, with the intent to drive additional patronage of the beach in enhancement of local tourism.

## **17. Supervision**

LLT shall at all times have a manager, assistant manager, or other designated person in charge on duty during established business hours. Proper supervision shall be provided for all events, activities, and daily operations of the Facilities. LLT shall be responsible for the selection, training, certification, licensing, and daily supervision of all staff.

## **18. Safety**

The health and safety of residents, visitors and employees is of the utmost importance to the Town and LLT. LLT shall provide the Town with a copy of their Safety Operations Policy that outlines a comprehensive approach to safety including awareness and training.

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 LLT's insurance carrier shall be reported in writing to the Town within one (1) business day. LLT shall follow the Town's policies and procedures for Media Contact regarding such incidents.

LLT shall report to the Town Manager within two (2) business days, in writing, any problem with building structure or deficiencies, major equipment, electrical or plumbing systems.

## **19. Access**

LLT shall grant access to the premises at all reasonable times to the Town.

## **20. Possession**

It is expressly understood and agreed that no building space, equipment or area is leased to LLT,

but that during the term of this Agreement, LLT shall have unrestricted use and possession of the designated premises, except as provided in this Agreement. LLT has the right to occupy the spaces assigned to it, operate under the Agreement hereby granted to it, and continue in possession of the premises subject to the terms of this Agreement only so long as LLT strictly and properly complies with every provision contained in this Agreement. No interest in real property is conveyed by or under this Agreement.

## **21. Alterations**

Any proposed modifications, alterations, or repairs made by LLT, except those required on an emergency basis, must be approved in advanced by the Town. The Town may, with mutual agreement from LLT whose approval may not be unreasonably withheld, make any alterations, additions, or improvements to the premises at the Town's expense. Nothing herein shall be deemed to obligate or require the Town to make any such alterations, additions or improvements.

## **22. Records and Accounts**

LLT shall keep books and records of account in accordance with Generally Accepted Accounting Procedures, and shall maintain any other records pertinent to this Agreement in a manner so as to clearly document LLT's performance. LLT shall permit the Town or its duly authorized representative to inspect and audit appropriate books and records at any reasonable time during normal business hours after giving LLT twenty-four (24) hours' notice of the time and day of such inspection and audit. The Town has the right, at its option and expense, to perform an audit each year of this Agreement. LLT shall retain and keep accessible all the fiscal and other records for a minimum of five (5) years following final payment and termination of this Agreement, or until the conclusion of any audit or controversy related to this Agreement, whichever is later.

## **23. Insurance and Workers' Compensation**

LLT agrees to keep and maintain insurance for the duration of this Agreement, including commercial general liability, auto liability, workers' compensation, employer's liability, and umbrella coverage with at least the minimum limits shown below:

Commercial General Liability:	\$1,000,000 per occurrence
Excess (Umbrella) Liability:	\$5,000,000
Commercial Auto Liability:	\$1,000,000 combined single limit
Workers' Compensation:	Statutory
Employer's Liability:	\$1,000,000

LLT shall furnish the Town with certificates of insurance for each type of insurance described herein, with the Town listed as Certificate Holder and as an additional insured on LLT's general liability policy and provide a waiver of subrogation on LLT's general liability and workers' compensation policies. In the event of bodily injury or property damage loss caused by LLT's acts or omissions in connection with LLT's services performed under this Agreement, LLT's Liability insurance shall be primary with respect to any other insurance which may be available to the Town, regardless of how the "Other Insurance" provisions may read. In the event of cancellation, substantial changes or nonrenewal, LLT and LLT's insurance carrier shall give the

Town at least thirty (30) days prior written notice. No work, service or operation shall be performed until LLT has furnished to the Town the above reference certificates of insurance and associated endorsements, in a form suitable to the Town.

## **24. Termination of Agreement**

The Town has the right to terminate this Agreement for cause during or following the five (5) year initial term.

### **A. Termination for Default**

The Town may terminate the Agreement upon LLT's default of any material duty or obligation of LLT under the Agreement and LLT's failure to cure such default within fifteen (15) calendar days of the Town's written notice to LLT of such default. If the default is not capable of cure within said fifteen (15) calendar days, LLT shall provide written notice to the Town together with a schedule of cure within ten (10) calendar days of the Town's notice of default, shall begin action to cure the default within said fifteen (15) calendar days, and shall diligently proceed to cure the default. The Town may accept LLT's schedule of cure, may make a written demand that LLT cure the default within a time period set by the Town, or may terminate the Agreement at the end of the fifteen-day default period in its sole discretion.

By giving written notice to LLT, the Town may also terminate the Agreement upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any other events of default):

- LLT makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with the Agreement, LLT's proposal, or any covenant, agreement, obligation, term, or condition contained in the Agreement; or
- LLT takes or fails to take any action which constitutes grounds for immediate termination under this Agreement; or
- LLT fails to fulfill or maintain in a timely and proper manner any obligations, duties, or provisions of or under this Agreement; or
- LLT fails to fulfill its material obligations with sufficient diligence to ensure proper services within the term of this Agreement, including any authorized extension; or
- LLT fails to comply with all laws, ordinances, rules, or provisions governing this Agreement; or
- LLT engages in any illegal conduct or otherwise violates any law, rule, regulation, or judicial order applicable to LLT, this Agreement, or LLT's operation of the services; or
- LLT fails to meet the reporting or financial requirements of this Agreement.

Any notice of default shall identify the applicable section of the Agreement, cite the section(s) LLT is not in compliance with, and state the Town's intent to terminate the Agreement if the default is not cured within the specified period, if a cure period shall be applicable.



## B. Obligations Upon Expiration or Termination

Upon expiration or termination of the Contract, LLT shall (i) provide a written statement describing in detail all services and expenses invested in performance of its services in respect to deliverables which are in process as of the date of termination; and (ii) the Town shall have the right to purchase any or all fixtures, equipment, furnishings and inventory from LLT; and (iii) promptly return the premises to the Town free and clear of all fixtures, equipment, furnishing and inventory that has been provided by LLT/or will not be purchased by the Town, leaving the premises in the same or better condition as upon the date of initial occupancy, normal wear and tear only excepted; and (iv) promptly return all keys to the premises to the Town.

## C. Transition Services Upon Termination or Expiration

Upon notice of termination or expiration of the Agreement, LLT shall cooperate with the Town to assist with the orderly transfer of the services, functions and operations provided by LLT hereunder to the Town. Prior to termination or expiration of the Agreement, the Town may require LLT to perform and, if so required, LLT shall perform certain transition services necessary to migrate the work of LLT to the Town as described below (the "Transition Services"). Transition Services shall include but not be limited to the following:

### Pre-migration Services

1. Working with the Town to jointly develop a mutually agreed upon transition services plan
11. Notifying all affected contractors and subcontractors of LLT

### Migration Services

1. Performing activities as required by the transition services plan throughout process and post-migration
11. Answering questions from Town to LLT regarding the work on an as-needed basis
- iii. Providing such other reasonable services needed to effectuate an orderly transition to the Town

### Other Transition Services

- i. LLT shall provide the Town reasonable access to the licensed premises.
- ii. LLT shall provide the Town with copies of all leases, permits, licenses, and other relevant documents.
- iii. LLT shall provide the Town with all maintenance records associated with the licensed premises.

Termination or expiration of the term and extensions of the Agreement shall not relieve LLT of the obligation to pay any fees, taxes, or other charges then due to the Town; to file any daily, monthly, quarterly, or annual reports; or relieve LLT from any claim for damages previously accrued or then accruing against LLT at the time of the termination or expiration.

The remedies set forth in this Section shall be deemed cumulative and not exclusive, and may be

exercised successively or concurrently, in addition to any other remedies available under this Agreement or at law or in equity.

## **25. Modification**

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

## **26. 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 provisions of this Agreement shall remain in full force and effect.

## **27. Governing Law**

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

## **28. Transfer or Assignment**

LLT will agree not to subcontract, or assign, transfer, convey, sublet, or otherwise dispose of the Agreement, LLT's obligations under the Agreement, or any or all of its right, title, or interest, without the Town's prior written consent, which shall be given or denied in the Town's sole discretion. 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 LLT's ownership, the assignee, transferee, or new owner shall operate the services in a fashion substantially similar to LLT's operation and in strict conformance with the terms, conditions and requirements of this Agreement.

LLT shall not, except as otherwise provided for in this Agreement, subcontract the performance of any work under this Agreement without prior written permission of the Town. No permission for subcontracting shall create, between the Town and the subcontractor, any contract or any other relationship.

## **29. Financing**

Any collateralization or mortgage of this Agreement in full or in part, or any of LLT's revenues, financial interests, or rights hereunder, or any other financing agreement in connection with LLT's performance hereunder shall be limited solely to financing in connection with the operation and improvements of the Facilities, and shall be submitted to the Town Attorney for review and subject to the prior approval of the Town Council, which shall not be unreasonably withheld. Under no circumstances shall the Town be liable or responsible for any indebtedness incurred by LLT to any other party in connection with any financing obtained by LLT for the operation and improvements of the Facilities.

## **30. Independent Contractor Status**

The relationship between LLT and the Town is a contractual relationship. It is not intended in

any way to create a legal agency or employment relationship. LLT 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. LLT shall be responsible for providing all required insurance, workers' compensation (regardless of number of employees) and unemployment insurance for all of its employees. LLT also agrees that it shall not, in any manner whatsoever, by its actions or deeds, commit the Town to any financial obligation irrespective of the nature thereof.

### **31. Responsibilities of LLT**

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

LLT and its subcontractors 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, equal opportunity employment laws, O.S.H.A., minimum wage and hour regulation, use of alcohol, noise, and North Carolina State Building Code regulations.

### **32. Terms**

**Agreement to Operate Marina and Tour Boats:** The Term of this Agreement shall be for an initial five (5) year term beginning February 15, 2018 through February 14, 2023, at which date, upon successful completion of the initial five-year term, the Town shall renew the Marina and Tour Boat Concession Agreement for an additional five year period, commencing February 15, 2023 through and ending February 14, 2028.

Successful completion of the initial five-year term shall be defined as meeting the goals of the Town of Lake Lure's Request for Proposal:

- Providing safe and attractive amenities.
- Revenue growth for the operation.
- Enhancement of the public facilities.
- Providing activities that appeal to residents and guests.
- New advertising, marketing, and sales initiatives.
- Other responsibilities and requirements as contained in this Agreement.

**Agreement to Operate Beach:** The Term of this Agreement shall be for an initial five (5) year term beginning February 15, 2018 through February 14, 2023. Upon successful completion of the fourth year of the initial five-year term, the Town and LLT shall timely and fully, during the fourth year of the five-year term, cooperatively discuss the Town's options regarding any extension, modification, or termination of this Agreement. Any extension, modification or termination of this Agreement will be at the sole discretion of the Town.

### **33. Concession Fees**

LLT shall pay the Town fifteen percent (15%) of monthly gross receipts of Marina, Beach and

Tour Boat Operations. Excepting, that (1) the Town shall receive 95% of all non-commercial boat permits sold to third parties at the Marina, and (2) the Town shall receive the full \$50.00 hourly rate for the rental fee charged at the beach. The Town shall receive no discount on fuel purchased by the Town at the Marina.

As part of this Agreement, LLT shall be allowed the use of ten (10) slips at the Marina at no additional cost for use in meeting the requirements of this Agreement.

Gross receipts as used in this Agreement shall mean the total amount received by or accruing to LLT by reason of the privileges granted under this Agreement, including but not limited to from any sales or rentals, the provisions of any food or beverage services, and the provision of any other services authorized by this Agreement. The following shall be excluded or deducted from the gross receipts: (i) Excise, sales or other taxes imposed upon the sale or rental of goods or services, (ii) tips, gratuities, or other charges for services where payment is made to employees or others, provided that any portions of such charges retained by LLT shall be included in the gross receipts, and (iii) fees paid to credit card companies or to outside parties engaged to assist in the collection of accounts receivable.

Payments to the Town shall be made monthly on or before the 15<sup>th</sup> of the following month and shall include a monthly report of concession of gross receipts in a form to be agreed to annually by LLT and the Town. In the event the payment is not received on or before the 15<sup>th</sup> of the month, a penalty of one percent (1%) of the balance due shall be assessed for each day the balance is not paid.

Immediately upon the sale of goods or services subject to concession fees, those fees shall immediately vest in and become owed to the Town, for which LLT shall be responsible until delivered to the Town as provided in this Agreement.

### **34. Future Capital Improvements**

LLT may make additional capital improvements to the Facilities, at its own cost and expense, with no setoff from the Concession Fees paid to the Town, provided that all such capital improvements must be approved by the Town. Design, construction and occupancy of any capital improvements shall be subject to the requirements for review and approval of new construction by the State of North Carolina and the Town, and shall meet all applicable codes, law, regulation, or ordinance. The Town, upon approval, shall waive all Town application and permit fees for said review and approval. LLT agrees that the Town shall have no liability either to LLT or LLT's contractors, subcontractors or suppliers for any expenses in excess of originally estimated costs of the project proposed by LLT and approved by the Town. LLT agrees to obtain, prior to the commencement of any construction projected to cost in excess of \$100,000 a performance bond and a payment bond in the full amount of the cost of construction for any and all capital improvements. Title to all improvements shall vest in the Town brick-by-brick during and following the performance of any work.

In no way, shall this Section limit the ability of the Town and LLT (and its partners) to partner, cooperate, or participate jointly in facility upgrades, improvements or future capital projects. The Town and LLT acknowledge their individual roles in these efforts that enhance the guest experience and that this is an essential tenet to the overall success of the operations. In such a partnership, the Town and LLT shall develop a separate Improvements Agreement that will

outline each entity's roles and responsibilities.

LLT and the Town will jointly develop a capital improvements/reinvestment/facility improvement plan to be used as a guide for the development of future capital improvement projects. This plan will be developed alongside and made part of the Capital Improvements Plan for the Town. LLT agrees to invest financially in public-private Town enhancement projects during the term of this Agreement and for projects mutually agreed upon by LLT and the Town. Any such investment by LLT in public-private projects shall be in addition to all fees paid to the Town as required by Section 33 of this Agreement.

### **35. Disputes**

All claims, disputes, and other matters in question between LLT and Town arising out of, or relating to, the Agreement or breach thereof, shall be decided by a civil action or civil actions, which shall be commenced and tried only in Rutherford County, North Carolina. Each party hereby waives any right or claim for a change of venue from Rutherford County, North Carolina.

This section shall be effective notwithstanding any other provisions to the contrary in the Agreement or supplements thereto. Nothing herein shall prevent LLT and Town from mutual agreement to submit claims, disputes, or other matters in question to arbitration, either binding or non-binding, or to mediation.

### **36. Bailment**

LLT agrees to be responsible for loss of or damage to personal property turned over to it by any patron of the Facilities. LLT may limit its liability for any such loss or damage as provided under applicable law.

### **37. Indemnification**

LLT shall indemnify, defend, and hold harmless the Town and its subsidiaries, divisions, officers, elected officials, 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 LLT or any employee, agent, subcontractor or assign of LLT. This provision is not applicable to any claim arising out of or related to any active or primary negligence of or by Town, its officers or employees.

To the extent permitted by applicable law, the Town shall indemnify, defend, and hold harmless LLT and its subsidiaries, divisions, officers, 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 the Town or any employee, agent, subcontractor or assign of the Town. This provision is not applicable to any claim arising out of or related to any active or primary negligence of or by LLT, its officers or employees.

The Town understands and agrees that LLT shall provide no personnel or supervision during off season hours, except for routine beach maintenance, and to the extent permitted by applicable law, explicitly relieves LLT from all liability arising from the public use of the beach during this

time.

### **38. Waiver of Claims**

LLT waives any and all claims for compensation from the Town for any and all loss or damage sustained by reason of any defect, deficiency, or impairment of the structures, equipment, utilities, furnished for the premises, or by reason of any loss of any utility service, which may occur from time to time from any cause, or for any loss or damage resulting from fire, water, tornado, wind, or storm of any kind, civil commotion, or riot, and LLT releases and discharges the Town and its agents from any and all demands, claims, actions, and causes of action arising from any of the causes aforesaid, unless caused by the negligence of the Town, its agents, or employees or by virtue of the Town's failure to comply with the terms and conditions set forth in this Agreement.

### **39. Americans with Disability Act**

LLT shall comply with the provisions of the Americans with Disabilities Act (ADA) and all rules and regulations promulgated thereunder. LLT hereby agrees to indemnify the Town from and against all claims, suits, damages, costs, losses and expenses in any manner arising out of or connected with the failure of LLT, its agents, successors, assigns, officers or employees to comply with the provisions of the ADA or the rules and regulations promulgated thereunder.

### **40. 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 LLT: Julie Belcher, Comptroller  
Lake Lure Tours, Inc.  
P.O. Box 10043  
Fleming Island, FL 32006

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. Either party may from time to time change its mailing address hereunder.

### **41. Miscellaneous**

Wherever herein the singular number is used, the same shall include the plural and the masculine

gender shall include the feminine and neuter genders.

The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the respective parties and their successors and permitted assigns.

The section and marginal headings herein 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.

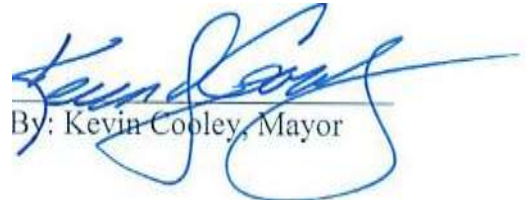
#### **42. Entire Agreement**

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 LLT and the Town.


IN WITNESS WHEREOF, Lake Lure Tours, Inc. and the Town of Lake Lure have respectively executed and delivered this Agreement as of the date first above written.

(Town Seal)

**Town of Lake Lure**  
A Municipal Corporation

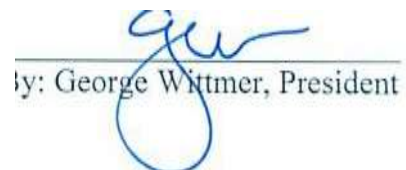
  
By: Kevin Cooley, Mayor

ATTEST:

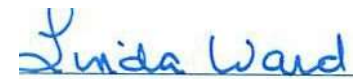
  
Michelle Jolley, Interim Town Clerk

(Corporate  
Seal)

**Lake Lure Tours, LLC**  
A North Carolina Corporation

  
By: George Whitmer, President

ATTEST:

  
Linda Ward  
Witness

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