

**CONCESSION AGREEMENT FOR
Lodge on Lake Lure**

THIS CONCESSION AGREEMENT, made this the 12th day of June, 2018 by and between the Parties: THE TOWN OF LAKE LURE, Lake Lure, North Carolina, a Municipal Corporation, hereinafter called "Town"; and the Lodge on Lake Lure, a North Carolina Corporation, 361 Charlotte Drive, Lake Lure, North Carolina, hereinafter called "LOLL;"

WITNESSETH:

WHEREAS, all land covered by the waters of Lake Lure at full pond is owned by the Town of Lake Lure and is held in trust by the Town of Lake Lure for the benefit of the citizens of the Town; and,

WHEREAS, the Lake Lure Town Council created the Lake Lure Marine Commission, authorized by special act of the General Assembly of the State of North Carolina for the purpose of regulating all activities on Lake Lure; and

WHEREAS, 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, through the Lake Use Regulations, the Town allows Firms wishing to rent and operate tour boats on Lake Lure do so, through a Concession Agreement (the "Agreement"); and,

WHEREAS, it is the general intent and purpose of this Concession Agreement to secure the safe, efficient and beneficial operation of tour boats in the best interests of the Town, its residents and guests; and,

WHEREAS, LOLL is extended the privilege of using the waters of Lake Lure for the purpose of operating a scenic passenger boat ride service.

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

1. Use

LOLL agrees to manage, maintain and operate their tour boat operations for the term set forth herein. LOLL shall use the tour boat for no other purpose than the operation of guided tours of Lake Lure in strict conformance with the terms and conditions of this Agreement.

LOLL agrees to manage the operation of the tour boat 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 facility's economic performance.

2. Facilities

LOLL shall conduct the tour boat operations from the Lodge on Lake Lure area located at 361 Charlotte Dr. Lake Lure, NC.

3. Hours of Operation

LOLL shall, with the approval of the Town, establish its hours of operation and adhere to any regulations regarding operation and wake as set forth in the Lake Use Regulations.

4. Personnel

LOLL agrees to have a sufficient number of trained, qualified staff members and operators on duty for the proper operation of the services. Tour boat operators shall have a current boater safety card issued by North Carolina or a state that complies with NASBLA and/or U.S Coast Guard requirements. All commercial operators shall successfully complete an annual Marine Commission approved boating safety class.

5. Qualifications

LOLL warrants that it has the financial capacity and resources sufficient to provide the operation and maintenance of the operations in compliance with the terms and conditions of this Agreement.

6. Maintenance and Repair

LOLL agrees to keep all boats in good and safe working order and stocked with all necessary safety equipment for staff and passengers. All such Boat operations and equipment shall be operated and maintained in strict accordance with all applicable federal, North Carolina, and Town codes, regulations and requirements, and must be in safe working condition, and provide all necessary safety equipment for vessel and occupants as described in the NC Wildlife Resources Commission Vessel Operators Guide.

The Town shall have the right to enter upon and inspect the Boats at any time during the term of this Agreement. If, as a result of such inspection, the Town determines that any deficiencies exist, the Town shall provide notice to LOLL in writing. LOLL shall commence appropriate corrective work within five (5) business days of the date of such notice. If LOLL 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 terminate this agreement and revoke operating permits with no compensation due.

7. Licenses and Permits

LOLL shall procure, at its own cost and expense, all licenses or permits necessary for the lawful operation of the boats and its business.

If activities related to the performance of this Agreement require specific licenses, certifications, or related credentials, LOLL represents that it and/or its employees, agents, 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.

8. Assumption of Risk

LOLL assumes all risk in the operations 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 lake.

9. Supplies

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

10. Tour Boat Operations

LOLL has the privilege to use the waters of Lake Lure for the purpose of operating a scenic passenger boat ride service. Fees for this privilege are outlined in Section 23 of this Agreement. The monthly payment shall include an activity report and a copy of the daily trip log.

LOLL 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.

LOLL may operate up to one (1) tour boat.

Tour boats shall have a large, clear identification method to facilitate the handling of comments. LOLL will establish and publish a telephone number where comments about the tour boat operation can be reported. LOLL shall respond to any comments within five (5) business days. If a comment is not resolved, then it may be reported to the Lake Operations Director or their designee. LOLL shall maintain a log on all comments and the action/response taken to resolve the comment. In addition, LOLL shall have an answering machine 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. Twilight cruises will operate from approximately 45 minutes before dusk until approximately 30 minutes after sundown. LOLL shall follow the allowances and prohibitions regarding safe operation and wake detailed in the "Lake Use Regulations" which may be amended from time to time. At no time will the maximum capacity permitted by law be exceeded in any boat.

11. Supervision

LOLL 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 Facility. LOLL shall be responsible for the selection, training, certification, licensing, and daily supervision of all staff.

12. Safety

The health and safety of residents, visitors and employees is of the utmost importance to the

Town and LOLL. LOLL 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 on Town Property shall be reported immediately to the Town Manager and Lake Operations Director. "Serious" shall be defined as those events which involve bodily injury or property damage. All claims to LOLL's insurance carrier shall be reported in writing to the Town within one (1) business day. LOLL shall follow the Town's policies and procedures for Media Contact regarding such incidents.

13. Records

LOLL shall keep records and shall maintain records pertinent to this Agreement in a manner so as to clearly document LOLL's performance. LOLL shall permit the Town or its duly authorized representative to inspect the books and records at any reasonable time during normal business hours after giving LOLL twenty-four (24) hours' notice of the time and day of such inspection. LOLL shall retain and keep accessible all 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.

14. Insurance and Workers' Compensation

LOLL agrees to keep and maintain insurance for the duration of this Agreement, including commercial general 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
Workers' Compensation:	Statutory
Employer's Liability:	\$1,000,000

LOLL 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 LOLL's general liability policy and provide a waiver of subrogation on LOLL's general liability and workers' compensation policies. In the event of bodily injury or property damage loss caused by LOLL's acts or omissions in connection with LOLL's services performed under this Agreement, LOLL'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, LOLL and LOLL's insurance carrier shall give the Town at least thirty (30) days prior written notice. No work, service or operation shall be performed until LOLL has furnished to the Town the above reference certificates of insurance and associated endorsements, in a form suitable to the Town.

15. Termination of Agreement

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

The Town may terminate the Agreement upon LOLL's default of any material duty or obligation of LOLL under the Agreement and LOLL's failure to cure such default within fifteen (15)

calendar days of the Town's written notice to LOLL of such default. If the default is not capable of cure within said fifteen (15) calendar days, LOLL 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 LOLL's schedule of cure, may make a written demand that LOLL 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 LOLL, 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):

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

Termination of the Contract shall not relieve LOLL 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 LOLL from any claim for damages previously accrued or then accruing against LOLL.

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.

16. Modification

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

17. 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.

18. 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.

19. Transfer or Assignment

LOLL will agree not to subcontract, or assign, transfer, convey, sublet, or otherwise dispose of the Agreement, LOLL's obligations under the Agreement, or any or all of its privilege, 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 LOLL's ownership, the assignee, transferee, or new owner shall operate the services in a fashion substantially similar to LOLL's operation and in strict conformance with the terms, conditions and requirements of this Agreement.

LOLL 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.

20. Independent Contractor Status

The relationship between LOLL and the Town is a contractual relationship. It is not intended in any way to create a legal agency or employment relationship. LOLL 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. LOLL shall be responsible for providing all required insurance, workers' compensation (regardless of number of employees) and unemployment insurance for all of its employees. LOLL 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.

21. Responsibilities of LOLL

LOLL shall be properly licensed in North Carolina and skilled in their respective trade. LOLL 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 LOLL's services are performed.

LOLL 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.

22. Term

The Term of this Agreement shall be for a five (5) year term beginning June 12, 2018 through June 11, 2023.

23. Concession Fees

LOLL shall pay the Town fifteen percent (15%) of monthly gross receipts of all tour boat ticket sales for the five-year term. Gross receipts as used in this Agreement shall mean the total amount received by or accruing to LOLL by reason of the privileges granted under this Agreement, including but not limited to from any sales or rentals, 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 LOLL 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 15th of the following month and shall include a monthly report of gross receipts in a form to be agreed to annually by LOLL and the Town. In the event the payment is not received on or before the 15th 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 services subject to concession fees, those fees shall immediately vest in and become owed to the Town, for which LOLL shall be responsible until delivered to the Town as provided in this Agreement.

24. Disputes

All claims, disputes, and other matters in question between LOLL 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 privilege 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 LOLL and Town from mutual agreement to submit claims, disputes, or other matters in question to arbitration, either binding or non-binding, or to mediation.

25. Indemnification

LOLL 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 LOLL or any employee, agent, subcontractor or assign of LOLL. 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 LOLL 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 LOLL, its officers or employees.

26. Waiver of Claims

LOLL waives any and all claims for compensation from the Town for any and all loss or damage sustained by the Town's operation or maintenance activities at the lake, dam or other structures, or for any loss or damage resulting from fire, water, tornado, wind, or storm of any kind, natural disaster, civil commotion, or riot, and LOLL 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.

27. Americans with Disability Act

LOLL shall comply with the provisions of the Americans with Disabilities Act (ADA) and all rules and regulations promulgated thereunder. LOLL 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 LOLL, its agents, successors, assigns, officers or employees to comply with the provisions of the ADA or the rules and regulations promulgated thereunder.

28. 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 LOLL: Managing Director
 Lodge on Lake Lure,
 361 Charlotte Dr.
 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. Either party may from time to time change its mailing address hereunder.

Any day-to-day service or operational matters, requests, concerns or other communications shall be directed to the Lake Operations Director.

29. 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.

30. Entire Agreement

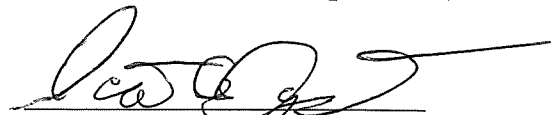
This Agreement contains the entire understanding and agreement by and between the parties, and all prior and contemporaneous understandings, agreements and negotiations are herein merged. This Agreement shall not be modified, terminated (except for in accordance with the express provisions of this Agreement),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

[Signature Page Follows]

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

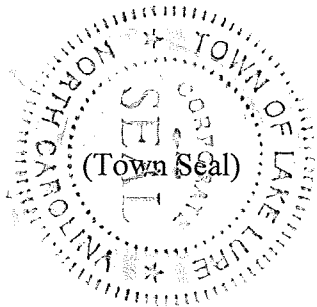
(Corporate Seal)

Lodge on Lake Lure
A North Carolina Corporation,


By: Scott A. Daggett

ATTEST:

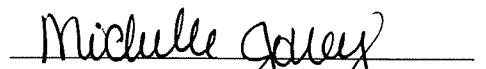

Witness



Town of Lake Lure
A Municipal Corporation


By: Kevin Cooley, Mayor

ATTEST:


Michelle Jolley, Interim Town Clerk