

**STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD**

LEASE AND AGREEMENT
With
The Rutherford County Tourism Development
Authority

THIS LEASE AGREEMENT (the "Lease"), made and entered into as of the 1st day of August, 2012 by and between the TOWN OF LAKE LURE, a municipal corporation, party of the first part, "Landlord", (hereinafter also referred to as the "Town"); and the RUTHERFORD COUNTY TOURISM DEVELOPMENT AUTHORITY, party of the second party, "Tenant" (hereinafter also referred to as the "TDA").

WITNESSETH

Whereas, the Town is a municipal corporation established under the laws of the State of North Carolina; and TDA is a political subdivision of the State of North Carolina charged with developing tourism throughout Rutherford County, including in and for the Town of Lake Lure; and

Whereas, TDA, in fulfilling its mission to promote the growth of tourism for and in Rutherford County in accordance with N.C. Session Law 2011-115, desires to operate a facility, located in the Town, for the express purposes of: providing a location for TDA to fulfill this mission and for such other related purposes as TDA feels is in the best interest of fulfilling this mission (the "Visitor Center"); and

Whereas, the Town agrees with this goal of developing tourism and desires to lease space to TDA for the purpose of TDA operating such a Visitor Center; and

NOW, THEREFORE, for and in consideration of their mutual covenants, the Town hereby leases to the TDA, and the TDA hereby leases from the Town, the building commonly known as the Community Center, situated at 2932 Memorial Highway, Lake Lure, NC 28746 (hereinafter the "Premises"), for the express purpose of operating a Visitor Center and an office for TDA, upon the terms, conditions and covenants as set forth herein:

SECTION ONE

TERM OF LEASE

This Lease is for a term commencing on August 1, 2012, and ending on June 30, 2017, unless sooner terminated as hereinafter provided (the "Term"). If the Visitor Center remains closed and unavailable to the public for a period of thirty (30) consecutive days, then the Landlord shall send written notice to the TDA, as provided hereinbelow, of the breach, upon receipt of which the TDA shall have sixty (60) days to cure the breach by opening the Visitor Center on the Premises (the "Cure Period"). If the TDA fails to open the Visitor Center during the Cure Period, then this Lease shall terminate thirty (30) days after the Cure Period.

SECTION TWO

RENT

Beginning on the first day of the Term and then on the first day of July of each year subsequent, the TDA will be obligated to pay to the Town annual rent in the amount of \$1.00 (one dollar and zero cents). In the event TDA fails to pay the rent as provided herein, the Town shall send Notice of the breach to TDA as provided hereinbelow, and TDA shall have thirty (30) days to pay said rent. Should TDA continue to be in breach of this provision after the thirty (30) days have expired, then this Lease shall be considered terminated and the Town may send notice to vacate the Premises to TDA at any time in its sole and complete discretion.

SECTION THREE

OPTION TO RENEW

The Tenant and Town shall have the option to renew this lease agreement for one (1) additional term of five (5) years (the "Option"), for a total potential term of this Lease of ten (10) years. The Option will be deemed exercised automatically unless either party delivers written notice as provided hereinbelow to the other party of its decision not to exercise or agree to the Option. This decision not to agree to the Option shall be sent to the other party no later than ninety (90) days prior to the termination of the original Term. If either party is in breach of this Lease at this time, then that party may not object to the other party's decision to exercise the Option. Either party, so long as that party is not in breach of this Lease, has the right to elect to not exercise the Option as provided herein, with or without cause.

SECTION FOUR

OPERATION OF THE VISITOR CENTER

(a) TDA agrees to operate the Visitor Center in accordance with the Visitor Center Mission and Vision Statements, which are as follows:

Mission & Purpose

The mission of the Hickory Nut Gorge Visitor Center is to accommodate the needs of our visitors in cooperation with surrounding communities by:

- *promoting the area*
- *showcasing our history and heritage*
- *highlighting our family-oriented destinations*
- *sharing our welcoming spirit*

Vision Statement

The Hickory Nut Gorge Visitor Center is an attractive and engaging destination that provides information regarding attractions, accommodations, restaurants and other things to see and do. This fosters overnight stays, encourages return visits and invites potential residents. As a result, social, cultural and economic vitality is enhanced not only in the Hickory Nut Gorge, but also throughout Rutherford County and the region.

(b) Information provided in the Visitor Center on tourist amenities like attractions, lodging and dining, will not be limited solely to Rutherford County businesses.

(c) TDA will utilize their established branding and signage, which is subject to modification by the TDA. Currently, this includes “*Lake Lure & The Blue Ridge Foothills*” and the “*Front Porch of the Blue Ridge*” campaign. In signs and references to the Visitor Center, the TDA will include the reference “*Serving the Hickory Nut Gorge.*”

(d) TDA shall maintain a regular forum for area tourism businesses to provide feedback and recommendations on Visitor Center services through the TDA’s Visitor Information Network (VIN) subcommittee. TDA shall appoint two (2) members of the Hickory Nut Gorge Chamber of Commerce to the VIN subcommittee.

SECTION FIVE

UTILITIES

(a) TDA shall pay all of the monthly charges for electricity attributable to the premises.

(b) The Town shall provide water and sewer utility service at no charge to TDA.

(c) The Town shall make available a fiber optic broadband internet connection for use at no cost by TDA. TDA shall be responsible for the purchase of any equipment necessary for this connection.

(d) The Town shall make available voice-over-IP telephone services for use at no cost by TDA. TDA shall be responsible for the purchase of phones and any necessary networking equipment.

(e) The Town shall, from time to time, upon request from TDA, join in the granting of such utility easements as may be reasonably necessary to service TDA's requirements on the Premises.

SECTION SIX

PRE-RENOVATION REPAIRS, MAINTENANCE, AND CLEANING

(a) Prior to commencement of the building renovations and permanent leasehold improvements effected by the TDA on the Premises as set forth as the "Project" in Section Six(b) herein below, the TDA shall be responsible for the maintenance of the interior of the building on the Premises and shall keep said interior in good condition and ordinary repair as when received, ordinary wear and tear excepted. Said interior maintenance shall include regular custodial servicing and cleaning and pest control.

(b) Prior to commencement of the Project, the Town shall be responsible for all repairs to permanent leasehold improvements, including, but not limited to, structural, mechanical, HVAC, exterior including doors, foundation repairs and repairs to the roof, as well as repairs as required because of water entering the Premises from the roof of other parts of the building or from other causes not under the control of the TDA.

(c) The Town and the TDA shall each make all necessary repairs and replacements of the portions of the Premises which are required to maintain and repair as aforesaid, and all repairs and replacements shall be diligently commenced and completed.

(d) The Town shall be responsible for snow removal and parking lot maintenance.

SECTION SEVEN

BUILDING RENOVATION AND IMPROVEMENT

A substantial exterior and interior renovation project is contemplated to be undertaken within the first year of this lease (the "Project"). This Project will be funded and managed by the TDA, who will appoint the VIN subcommittee to be responsible for all recommendations on

design, materials, and costs (the "Project Team"). The VIN subcommittee shall ensure that the Hickory Nut Gorge Chamber of Commerce and the general public will each be given the opportunity to review and make suggestions as to the Project, but final decisions for the proposal to the Town will be made by TDA upon advice of the VIN subcommittee. Upon approval by the TDA, and prior to commencement of any construction, the Project must be approved by the Town, which shall have final authority to approve the proposed Project. The TDA shall submit its first proposal for the design of the Project, as well as a proposed work schedule for the Project, to the Town no later than February 28, 2013. Any future renovations, modifications, or improvements shall also be implemented in accordance with these terms, including being subject to the Town's approval. The Project will include assessment and remediation of the plumbing system for the Community Center. As part of the Project, the Town shall make improvements to the sewer line connecting the building with the nearest manhole.

Tenant acknowledges that the building is situated within a flood zone as currently designated by the National Flood Insurance Program. As such, the total, cumulative investment in building improvements is limited to fifty percent (50%) of the building's current value unless significant floodproofing measures are implemented. The building is currently valued at \$200,000.

SECTION EIGHT

POST-RENOVATION REPAIRS, MAINTENANCE, AND CLEANING

(a) Subsequent to completion of the Project, the TDA shall be responsible for the maintenance of the interior and exterior of the Premises and shall keep said interior and exterior in good condition and repair, ordinary wear and tear and damages caused by the hazards included within standard fire and extended coverage insurance, or by flood, or extraordinary action of the elements excepted. Said interior maintenance shall include regular custodial servicing and cleaning.

(b) Subsequent to building renovations and permanent leasehold improvements effected by the TDA, the TDA shall be responsible for all repairs to permanent leasehold improvements, including, but not limited to, structural, mechanical, HVAC, exterior including doors, foundation repairs and repairs to the roof. TDA acknowledges that the present condition of the roof on the Visitor Center is not good and accepts it in its present condition as of the date of execution of this Agreement.

(c) The TDA shall make all necessary repairs and replacements of the portions of the Premises which are required to maintain and repair as aforesaid, and all repairs and replacements shall be diligently commenced and completed.

(d) The Town shall continue to be responsible for snow removal and parking lot maintenance.

SECTION NINE

INSURANCE

(a) TDA shall carry throughout the Term, including the Option period, if any, at its own expense, an Owners, Landlords, and Tenants General Public Liability Policy covering both the Town and the TDA with minimum limits of \$1,000,000 for injury to or death of any number of persons in one occurrence, and property damage liability insurance in the amount of \$1,000,000. Certificate evidencing such as insurance shall be furnished to the Landlord, and Tenant will deliver to the Landlord certificates of renewal of such policy not less than ten (10) days in advance of the expirations thereof; such policy shall not be subject to cancellation without at least ten (10) days prior written notice to the Landlord.

The parties hereto shall cooperate and carry throughout the Term, including the Option period, if any, a Policy for flood insurance covering both the Town and the TDA with minimum limits sufficient to cover the cost of replacing the Visitor Center in the event of a flood. TDA will obtain the policy on behalf of the Town and TDA. Certificate evidencing such insurance shall be furnished to the Town, and TDA will deliver to the Town certificates of renewal of such policy not less than ten (10) days in advance of the expirations thereof, at which time Town shall reimburse TDA for one-half (1/2) of the cost of the said policy; such policy shall not be subject to cancellation without at least ten (10) days prior written notice to the Town.

(b) TDA shall maintain and keep in force all employers' compensation insurance required under the laws of the State of North Carolina, and such other insurance as may be necessary to protect the Town against any other liability to person or property arising hereunder by operation of law, whether such law be now in force or adopted subsequent to the execution thereof.

(c) Should the TDA fail to keep in effect and pay for such insurance as it is in this section required to do, the Town may do so, in which event the Town may send receipt of the insurance premiums paid by the Town to TDA at the address shown under the Notice section herein, and such premiums paid shall become immediately due and payable by TDA to the Town.

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Failure of TDA to reimburse such insurance premiums within thirty (30) days shall constitute a breach of this Lease.

(d) Tenant shall secure appropriate fire, theft and casualty insurance coverage on any and all of its contents situated upon said Premises and any and all improvements it makes to said Premises.

(e) The Town shall maintain and carry, throughout the Term at its own expense, hazard insurance on the Premises insuring against loss or damage by fire, earthquake, vandalism and other perils in the amount of the replacement value of the Premises and any leasehold improvements thereto. The TDA shall be named as an additional insured as to any leasehold improvements made by the TDA, if any, pursuant to the terms of this Lease Agreement.

SECTION TEN

FIXTURES

TDA shall have the right to remove Town-authorized improvements that it makes and fixtures that it adds to the Premises at such time as the Lease, or any renewal or extension thereof, concludes or is terminated; provided, however, that:

(a) The Premises are left in as good a state as when received, reasonable wear and tear and damage by fire or other casualty excepted;

(b) No portion of the Community Center shall be demolished or removed by Tenant without the prior, express written consent of Landlord; and

(c) Such removal shall be performed in a satisfactory manner and not weaken or impair the structural strength of the Community Center or any portion of the Premises.

Failure to remove such improvements or fixtures on or before the final day TDA holds possession of the Premises shall not be deemed a holding over under the terms of this Lease, but shall be deemed an abandonment of the improvements or fixtures, and TDA shall not then incur any costs for the removal thereof. Nothing in this Section Ten shall permit TDA to seek or compel reimbursement from the Town for the Project but is intended by the parties hereto to permit TDA to remove and take its equipment and personal property whether or not attached to the Visitor Center.

SECTION ELEVEN

ASSIGNMENT

TDA shall not assign or in any manner transfer this Lease or any estate, interest or benefit therein or sublet the Premises or any part thereof or permit the use of the same or any part thereof not anyone other than TDA without the prior written consent of the Town.

SECTION TWELVE
DAMAGE TO PREMISES

(a) If the improvements on the Premises shall be damaged or destroyed by fire or by any other hazard insured by hazard insurance, then the party responsible for such damage through insurance coverage as set forth in Section Nine above shall work with such insurance company to effect such repairs or restore said improvements to substantially the same condition which existed before such damage or destruction.

(b) Since the annual rent is \$1.00, in the event that any damage from the causes aforesaid shall render the Premises totally or partially unusable for TDA's purposes under this Lease shall not be abated in proportion to the loss of effective use of the Premises.

(c) If the destruction or damage amounts to more than seventy-five percent (75%) of the insurable value of the Premises, then either party may terminate this Lease by written notice to the other party within thirty (30) days after the date of such occurrence. Provided, however, that this Lease shall not thereby terminate if the damage shall have resulted from a hazard included in standard fire and extended coverage insurance and if TDA shall, within said thirty (30) day period, or within ten (10) days after notice of termination by the Town, send the Town written notice of its election to continue this Lease commencing four (4) weeks after the date that restoration by the Town shall be completed and available to the TDA for the conduct of its business; and in such event this Lease shall continue in effect, except that until the restoration by the Town shall be completed, the rent shall abate in the manner provided in paragraph (b) of this Section Twelve. In the event of any termination under this paragraph (c), this Lease shall terminate as of the date of the occurrence, and the rent and all other payments owing or already paid by the TDA shall be adjusted as of said date.

SECTION THIRTEEN
INDEMNIFICATION OF LANDLORD

TDA during the term hereof shall indemnify the Town against all claims and demands, whether for injuries to persons, loss of life, or damage to property occurring with the Premises and arising out of the use and occupancy of the Premises by TDA, excepting, however, such claims and demands caused by acts or omissions of the Town. Nothing contained in this section

shall, however, detract from TDA's rights to protection under the liability insurance policy to be paid for by TDA as specified in Section Nine hereof.

SECTION FOURTEEN

DEFAULT

If at any time during the term or extensions of this Lease there shall be a default within the provisions of this Agreement, except as stated in Section One, and if TDA fails to cure such default within the Cure Period, then the Town may remedy or attempt to remedy any such default or other noncompliance and expend any sums necessary therefore at the cost and expense of TDA, and the sums so expected shall be payable to the Town on demand with lawful interest thereon and may be added by the Town to any rents or other sums due or to become due hereunder. On termination, the Town may recover from TDA all damages proximately resulting from the breach, including the worth of the balance of the Lease over the reasonable rental value for the Premises for the remainder of the Lease term, which such shall be immediately due the Town from TDA.

SECTION FIFTEEN

NOTICES

It is agreed that all notices regarding this Lease shall be sent by certified or registered mail to:

If to Town:

The Town of Lake Lure
Authority

If to TDA:

Rutherford County Tourism Development

Either party may designate by written notice to the other party a change in address to which notices may be directed to said party.

SECTION SIXTEEN

OTHER MATTERS

(a) The failure by the Town to insist upon the strict performance of any agreement, term or condition of this Lease or to exercise any right or remedy consequent upon an unremedied breach thereof, and the acceptance of full or partial rent during the continuance of any

unremedied breach, shall not constitute a waiver of any such unremedied breach or the performance of such agreement, term or condition of this Lease to be performed or complied with by TDA, and no unremedied breach thereof shall be deemed waived, altered or modified except by written instrument executed by the Town. The waiver of any breach shall not affect or alter this Lease, but each and every agreement, term or condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

(b) Each right and remedy of the Town provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity, by statute or otherwise and the exercise or beginning of the exercise by the Town of any one or more of the rights or remedies provided for in this Lease as now or hereafter existing at law or in equity, by statute or otherwise, shall be precluded the simultaneous or later exercise by the Town of any or all other rights or remedies for any then existing breach which has not then been remedied or in the course of being remedied provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

(c) In the event of default, the Town shall use its best efforts to mitigate damages.

(d) All parties hereto agree that in no event shall either the Town or the TDA be liable or responsible to each other, or to other persons, due to any stoppage or delay in operation of the Visitor Center or in any work contemplated by the Project, where such stoppages or delays result from acts of God, fire, war, legal, or equitable proceeding, or any other cause which is outside the control of either party hereto.

(e) It is agreed by the parties hereto that visitors and TDA volunteers and employees to the Visitor Center shall have the right to park in parking lots owned by the Town. The Town will be solely responsible for maintenance of any said parking lots.

SECTION SEVENTEEN

NO WAIVER OF IMMUNITY

No portion of this Lease shall be deemed to constitute a waiver of any immunities which the Town or the TDA or their officers or employees may possess, nor shall any portion of this Lease be deemed to have created a duty of care on the part of either party to any persons not a party to this Lease.

SECTION EIGHTEEN

NON-APPROPRIATION

No portion of this Agreement shall be deemed to create an obligation on the part of TDA or Town to expend funds not otherwise appropriated in each succeeding year.

SECTION NINETEEN
ENTIRE AGREEMENT

This Lease sets forth all the promises, agreements, conditions, and undertakings between the Town and TDA relative to the Premises, and there are not promises, agreements, conditions, undertakings, warranties or representations, oral or written expressed or implied, between then varying the terms of this Lease.

SECTION TWENTY
SEVERABILITY

If any section, subsection, paragraph, sentence, clause or phrase of this Agreement is for any reason held or decided to be invalid or unconstitutional, such a decision shall not affect the validity of the remaining portions. The parties hereto declare that they would have entered into this Agreement and each and every section, subsection, paragraph, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses or phrases might be declared to be unconstitutional or invalid.

SECTION TWENTY-ONE
AMENDMENTS AND TERMINATION

This Lease shall be modified, altered, amended, or changed, only by written instrument executed by all the parties hereto. The parties hereto may agree to terminate this Lease at any time by written instrument executed by all the parties hereto.

SECTION TWENTY-TWO
OBLIGATIONS AND SUCCESSORS

The Town and TDA agree that all the provisions hereof are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate paragraph hereof, and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors, and assigns.

SECTION TWENTY-THREE
EXPIRATION OF LEASE

Upon termination or expiration of this Lease or the Option period, as appropriate, or any extension or renewal thereof, TDA shall deliver to the Town physical possession of the Premises in as good condition as the Premises are at the commencement of the Term, ordinary wear and tear and damage by fire or other casualty excepted. The Town acknowledges it is contemplated by the Lease that alterations may be made to the Premises through the Project as set forth herein.

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IN WITNESS WHEREOF, said parties have hereunto set their hands and seals to this Agreement and Lease, in duplicate, the day and year first above written.

TOWN OF LAKE LURE, a municipal
corporation

By: _____(SEAL)

Robert M. Keith, Mayor

ATTEST:

Town Clerk

APPROVED:

Town Attorney

RUTHERFORD COUNTY TOURISM
DEVELOPMENT AUTHORITY

By: _____(SEAL)

By: _____(SEAL)