

North Carolina
Rutherford County

LEASE AND AGREEMENT

THIS LEASE AGREEMENT, made and entered into as of 11th day of October, 2011, by and between TOWN OF LAKE LURE, a municipal corporation located in Rutherford County, North Carolina, party of the first part, "Landlord", (hereinafter also referred to as the "Town"); and the TOWN OF LAKE LURE BOARD OF ALCOHOLIC BEVERAGE CONTROL, party of the second part, "tenant" (hereinafter also referred to as "ABC Board").

WITNESSETH:

That for and in consideration of their mutual covenants, the Town hereby leases and demises to the ABC Board, and the ABC Board hereby hires and rents from the Town, a building, adjacent parking, which is currently located on the following tract or parcel of land:

Situate, lying and being in the Town of Lake Lure, Chimney Rock Township, Rutherford County, North Carolina, and being more particularly described as follows:

BEGINNING at a point located South 75 deg. 24 min. 31 sec. West 165.28 feet from an iron bar beside an axle, said iron bar being located in the Southernmost corner of lots 69 and 70, Block 3, Luremont Section of Chimney Rock Mountains Inc., said beginning point also being located in the Westernmost right of way of Jack London Road, and running thence from said beginning point thus established South 73 deg. 05 min. 15 sec. West 120 ft to an iron pin; thence running South 16 deg. 54 min. 45 sec. East 81.30 feet to an iron pin in the Northern margin of the right of way for U.S. Highway 74; thence running with said margin of said right of way curving to the right on a radius of 319.48 feet an arc distance of 110. 39 feet (Cord North 71 deg. 07 min. 54 sec. East 109.85 feet); thence leaving said right of way of U.S. Highway 74 and running with the right of way of Jack London Road on a curve to the left on a radius of 15.64 feet an arc distance of 29.42 feet (Cord North 27 deg. 08 min. 56 sec. East 25.27 feet); thence continuing with the right of way of Jack London Road North 26 deg. 44 min. West 21.97 feet to a stake; thence continuing with said right of way on a curve to the right on a radius of 249.19 feet an arc distance of 37.95 feet (Cord North 22 deg. 22 min. 13 sec. West 37.92 feet) to the place and point of BEGINNING. Containing .216 acres, more or less.

Said property being that shown on a survey by Roger M. Lyda, R.L.S. entitled "Property of Town of Lake Lure" dated January 9, 1980.

This property is conveyed subject to easements, restrictions and rights of way of record.

Being the same and identical property which was conveyed by the Town of Lake Lure Board of Alcoholic Beverage Control to the Town of Lake Lure, a municipal corporation of Rutherford County, by deed dated March 1, 1986, and of record in Deed Book 482, at page 756, Rutherford County Registry.

This Lease is made upon the following terms, conditions and covenants:

SECTION ONE

TERM OF LEASE

This Lease is for a term commencing on October 11, 2011 lasting twelve (12) months and shall be automatically renewed annually unless either party gives written notice sixty (60) days prior to the end of the lease period.

SECTION TWO

RENT

Tenant shall pay to Landlord an annual rent of \$6,030.00 Dollars during the term of the lease, payable in equal monthly installments of \$502.50 Dollars in advance on or before the first day of each month during the term hereof.

SECTION THREE

TAXES AND LIENS

In the event the Town is exempt from any taxes or assessment, but the ABC Board is not, then the ABC Board covenants and agrees to pay promptly all taxes and assessments of every kind or nature which are now or may hereafter be imposed or assessed upon the premises, except as otherwise expressly provided in this Lease

Agreement, and tenant agrees that it will promptly pay all such taxes or assessments as the same become due.

SECTION FOUR

UTILITIES

(a) Tenant shall pay all monthly charges for heat, air conditioning, gas, and electricity attributable to the premises for each month.

(b) Landlord shall, from time to time, upon request from tenant, join in the granting of such utility easements as may be reasonably necessary to service tenant's requirements on the premises.

SECTION FIVE

REPAIRS AND MAINTANANCE

(a) The Tenant shall be responsible for the maintenance of the interior of the leased premises and shall keep said interior in as good condition and repair as when received, 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.

(b) Landlord shall be responsible for all exterior repairs, including, but not limited to, repairs of a structural nature, foundation repairs and repairs to the roof, as well as repairs as required because of water entering the premises from the roof or other parts of the building or from other causes not under the control of Tenant.

(c) The Tenant shall replace, at its own expense, all plate glass and other glass in the leased premises, both interior and exterior, which may become damaged or broken.

(d) Landlord and Tenant shall each make all necessary repairs and replacements of the portions of the premises which they are respectively required to maintain and repair as aforesaid, and all repairs and replacements shall be diligently commenced and completed.

SECTION SIX

INSURANCE

(a) Tenant shall carry throughout the term, at its own expense, as Owners, Landlords, and Tenants General Public Liability Policy covering both the Landlord and the Tenant with minimum limits of \$500,000.00 for injury to or death of any one person, and \$500,000.00 for injury to or death of any number of persons in one occurrence, and property damage liability insurance in the amount of \$500,000.00. Certificate evidencing such 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 expiration thereof; such policy shall not be cancelable without at least ten (10) days prior written notice to the Landlord.

(b) Tenant 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 Landlord 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 hereof.

(c) Should tenant fail to keep in effect and pay for such insurance as it is in this section required to do, Landlord may do so, in which event the insurance premiums

paid by Landlord shall become due and payable forthwith and failure of Tenant to pay some on demand shall constitute a breach of this Lease.

SECTION SEVEN

FIXTURES

All fixtures installed by tenant in the demised premises shall be and remain the property of Tenant and may be removed by it at any time during the term of this Lease or at the expiration thereof. Any such fixtures remaining in the premises after the expiration of the term of the Lease shall be deemed abandoned by Tenant and shall become the property of Landlord. Any damage to the demised premises caused by the removal of such fixtures shall be repaired by Tenant.

SECTION EIGHT

ASSIGNMENT

Tenant shall not assign or in any manner transfer this Lease or any estate, interest or benefit therein or sublet the leased premises or any part thereof or permit the use of the same or any part thereof by anyone other than Tenant without the prior written consent of the Landlord.

SECTION NINE

DAMAGE TO PREMISES

(a) If the improvements on the leased premises shall be damaged or destroyed by fire or by any other hazard insurable by fire insurance with what is commonly referred to as extended coverage, Landlord shall proceed with due diligence to repair or restore said improvements to substantially the same condition which existed before such damage or destruction.

(b) In the event that any damage from the causes aforesaid shall render the leased premises totally or partially untenable for the Tenant's purposes, rent under this Lease shall be abated in proportion to the Lessee's loss of effective use of the premises until such time as full effective use shall be restored. Lessee shall be entitled to receive a pro rata refund out of any advance rent paid by it for the period during which the premises were unusable by reason of destruction or damage.

(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 Tenant shall, within said thirty (30) day period, or within ten (10) days after notice of termination by Landlord, send Landlord written notice of its election to continue this Lease commencing four (4) weeks after the date that restoration by Landlord shall be completed and available to Tenant for the conduct of its business; and in such event this Lease shall continue in effect, except that until the restoration by Landlord shall be completed, the rent shall abate in the manner provided in paragraph (b) of this Section Nine. 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 Tenant shall be adjusted as of said date.

SECTION TEN

EMINENT DOMAIN

(a) If the whole of the leased premises shall, at any time while this Lease is in effect, be taken under the power of eminent domain, this Lease shall terminate and neither party shall have any further responsibility or obligation to the other hereunder as of the date of such thing. The award for such taking of the demised premises shall belong to Landlord; provided, however, Tenant shall be permitted to make claim to the condemning authorities for the loss of its leasehold estate, leasehold improvements, fixtures, equipment, loss of business and moving expenses.

(b) If such taking shall be of only a portion of the leased premises and the consequent reduction in the area of said premises be such as to render the remainder unsuitable, in the reasonable opinion of Tenant, for the purposes for which they are rented, then this Lease shall terminate from the time when possession thereof shall be required by the condemning authority, and the payment of future rent hereunder shall cease at such time. Should, however, only a portion of the demised premises be so condemned and the consequent reduction of the area of said premises be not such as to render the remainder unsuitable for the purposes for which they are leased, this Lease shall continue in full force and effect as to the remaining portion of the demised premises and there shall be an equitable abatement of rent during the remaining term shall be without prejudice to the rights of either Landlord or Tenant to recover compensation and damages caused by such taking on condemnation from the condemning authority. Landlord and Tenant shall request separate awards and neither shall have any rights in any award made to the other.

SECTION ELEVEN

INDEMNIFICATION OF LANDLORD

Tenant during the term hereof shall indemnify Landlord against all claims and demands, whether for injuries to persons, loss of life, or damage to property occurring within the demised premises and arising out of the use and occupancy of the demised premises by Tenant, excepting, however, such claims and demands caused by acts or omissions of Landlord. Nothing contained in this section shall, however, detract from Tenant's rights to protection under the liability insurance policy to be paid for by the Tenant as specified in Section Six hereof.

SECTION TWELVE

DEFAULT

(a) If at any time during the term or extensions of this Lease there shall be a default within the provisions of this Agreement, and if Tenant fails to cure such default following thirty (30) days written notice from Landlord, then Landlord may remedy or attempt to remedy any such default or other noncompliance and expend any sums necessary therefore at the cost and expense of Tenant, and the sums so expended shall be payable to Landlord on demand with lawful interest thereon and may be added by Landlord to any rents or other sums due or to become due hereunder. On termination, Landlord may recover from Tenant all damages proximately resulting from the breach, including the worth of the balance of the Lease over the reasonable rental value of the premises for the remainder of the Lease term, which such shall be immediately due Landlord from Tenant.

(b) After re-entry as set out in Paragraph (a) hereinabove, Landlord may relet the premises or any part thereof without terminating the Lease, at the rent and on the terms as Landlord may choose. Landlord may make alterations and repairs to the

premises. The duties and liabilities of the parties if the premises are relet as provided herein shall be as follows:

(1) In addition to Tenant's liability to Landlord for breach of the Lease, Tenant shall be liable for all expenses of the reletting, and for the difference between the rent received by Landlord under the new Lease Agreement and the rent installments that are due for the same period under this Lease.

(2) Landlord shall have the right to apply the rent received from reletting the premises (a) to reduce Tenant's indebtedness to Landlord under the Lease, not including indebtedness for rent, (b) to expenses involved in the reletting, (c) to rent due under this Lease, or (d) to payment of future rent under this Lease as it becomes due.

SECTION THIRTEEN

CAPTIONS

The captions of each Section of this Lease are for convenience only and are not a part of this Lease, and do not in any way limit or amplify the terms and provisions of this Lease.

SECTION FOURTEEN

SHORT FORM LEASE

The parties hereto agree that upon the demand of either party they will execute and deliver a short form lease for the purpose of recording. Such short form of Lease shall include a description of the leases premises, the term of the Lease, and such other provisions as the parties may agree upon and referring to this Lease as containing the entire agreement between the parties.

SECTION FIFTEEN

REMEDIES CUMULATIVE NON-WAIVER

(a) The failure by Landlord 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. No agreement, term or condition of this Lease to be performed or complied with by Tenant, and no unremedied breach thereof shall be deemed waived, altered or modified except by a written instrument executed by Landlord. 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 Landlord 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 or by statute or otherwise, and the exercise or beginning of the exercise by Landlord 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 not preclude the simultaneous or later exercise by Landlord 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.

SECTION SIXTEEN

ENTIRE AGREEMENT

This Lease sets forth all the promises, agreements, conditions, and undertakings between Landlord and Tenant relative to the leased premises, and there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written,

expressed or implied, between them varying the terms of this Lease. This Lease shall not be modified, altered, amended or changed, nor shall it be terminated except as expressly provided herein except by an instrument in writing executed by the parties.

SECTION SEVENTEEN

OBLIGATIONS ON SUCCESSORS

Landlord and Tenant 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 EIGHTEEN

EXPIRATION OF LEASE

Tenant shall deliver to Landlord physical possession of the leased premises upon the termination of this Lease in as good condition as the premises are at the commencement of the term of this Lease, except for ordinary wear and tear and damage by fire or other casualty over which Tenant had no control.

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)

S. Christopher Braund, Town Manager





Andrea H. Calvert, Town Clerk

TOWN OF LAKE LURE BOARD OF
ALCOHOLIC BEVERAGE CONTROL

TOWN OF LAKE LURE BOARD OF
ALCOHOLIC BEVERAGE CONTROL

By:  (SEAL)

Stuart W. Richardson, Chairman

By:  (SEAL)

Alan Griswold, Board Member

By:  (SEAL)

William Keller, Board Member



NORTH CAROLINA
RUTHERFORD COUNTY

I, Andrea H. Calvert a Notary Public of the County and State aforesaid, certify that S. Christopher Braund, who, being by me duly sworn says that he is the Town Manager of the Town of Lake Lure, a Municipal Corporation, and that the seal affixed to the foregoing instrument in writing is the corporate seal of the corporation and that the said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And that the said S. Christopher Braund acknowledged the said writing to be the act and deed of said corporation.

Witness my hand and notarial seal, this the 15th day of November, 2011.

Andrea H. Calvert
Notary Public

My Commission Expires:

March 24, 2016

STATE OF NORTH CAROLINA
RUTHERFORD COUNTY

I, Andrea H. Calvert, a Notary Public of the County and State aforesaid, certify that Stuart W. Richardson, Alan Griswold, and William Keller, who are all duly appointed members of the Town of Lake Lure Board of Alcoholic Beverage Control, personally appeared before me this day and acknowledge the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 15th day of November, 2011.

Andrea H. Calvert
Notary Public

My Commission Expires:

3/24/2016