

LAKE LURE TOWN COUNCIL REGULAR MEETING PACKET

Tuesday, July 9, 2013



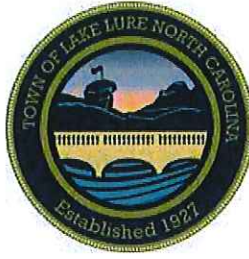
Mayor Bob Keith

Commissioner John Moore

Commissioner Mary Ann Silvey

Commissioner Diane Barrett

Commissioner Bob Cameron



REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL

July 9, 2013

7:00 p.m.

Lake Lure Municipal Center

AGENDA

1. Call to Order Mayor
Bob Keith
2. Invocation Attorney
Chris Callahan
3. Pledge of Allegiance
4. Approve the Agenda Council
5. Public Forum: *The public is invited to speak on any non-agenda and/or consent agenda topics. Comments should be limited to less than five minutes.*
6. Staff Reports
7. Council Liaison Reports & Comments
8. Consent Agenda:
 - a. Approve Minutes of the June 5, 2013 (Special Meeting) and June 11, 2013 (Regular Meeting)
 - b. Approve a Request Submitted by Alissa Exner and Clark Meyer to Suspend the Town Alcohol Ordinance for a Rehearsal Dinner Being Held in the Community Hall on September 6, 2013 From 5:00 p.m. Until 9:00 p.m.
 - c. Approve a Budget Amendment Concerning Projects Not Completed on June 30, 2013

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- d. Approve a Request Submitted by the Parks and Recreation Board Concerning Construction of Stairs and a Footbridge in the Spoils Area
- 9. Unfinished Business
 - a. Other Unfinished Business
- 10. New Business:
 - a. Consider Renewal of a Consolidated Concession Agreement with Lake Lure Tours, Inc. and Authorize the Mayor to Sign the Agreement on Behalf of the Town
 - b. Consider Adoption of Resolution No. 13-07-09 Approving the Purchase of the Property at 104/106 Boys Camp Road. Also, Consider Approval of a Budget Amendment Transferring Funds for the Purchase.
- 11. Adjournment

Agenda Item: 8a

**MINUTES OF THE SPECIAL MEETING OF THE LAKE LURE TOWN COUNCIL
HELD WEDNESDAY, JUNE 5, 2013, 9:00 A.M. AT THE LAKE LURE FIRE
DEPARTMENT**

PRESENT: Mayor Bob Keith
Commissioner Mary Ann Silvey
Commissioner Bob Cameron
Commissioner John W. Moore
Commissioner Diane Barrett

Christopher Braund, Town Manager
Sam Karr, Finance Director
Thadd Hodge, Accountant

ABSENT: J. Christopher Callahan, Town Attorney

CALL TO ORDER

Mayor Bob Keith called the meeting to order at 12:00 p.m.

APPROVE THE AGENDA

A motion was made by Commissioner Diane Barrett to approve the agenda as presented. Commissioner Bob Cameron seconded the motion and the vote of approval was unanimous.

CONSIDER APPROVAL OF RESOLUTION NO. 13-06-05 APPROVING AN INSTALLMENT FINANCING CONTRACT FOR A NEW FIRE TRUCK
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Finance Director Sam Karr gave an overview of his memo to town council dated May 24, 2103 outlining proposed Resolution No. 13-06-05 approving an installment financing contract with BB&T for a new fire truck. (Copy of memo is attached).

After discussion, Commissioner Bob Cameron made a motion to adopt Resolution No. 13-06-05 approving an installment financing contract for a new fire truck. Commissioner Mary Ann Silvey seconded the motion and the vote of approval was unanimous.

RESOLUTION NO. 13-06-05

**A RESOLUTION OF THE TOWN COUNCIL OF TOWN OF LAKE LURE, NORTH
CAROLINA, APPROVING AN INSTALLMENT FINANCING CONTRACT OF A NEW
FIRE TRUCK**

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WHEREAS, the Town of Lake Lure, North Carolina is a duly and regularly created, organized and validly existing political subdivision of the State of North Carolina, existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina;

BE IT THEREFORE RESOLVED, as follows:

1. Town Council, of the Town of Lake Lure, North Carolina, hereby determines to finance the Project through Branch Banking and Trust Company (BB&T), in accordance with the proposal dated May 22, 2013. The amount financed shall not exceed \$425,000.00, the annual interest rate shall not exceed 1.81%, and the financing term shall not exceed ten (10) years from closing.
2. All financing contracts and all related documents for the closing of the financing ("the Financing Documents") shall be consistent with the following terms. All officers and employees of the Town are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and resolution.
3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by Town officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in the final forms as the Finance Officer shall approve, with the Finance Officer's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.
4. The Town shall not take or omit to take any action the taking or omission of which shall cause its interest payments in this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The Town hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b) (3).
5. The Town intends that the adoption of this resolution will be a declaration of the Town's official intent to reimburse expenditures for the project that is to be financed from the proceeds of the BB&T financing described above. The Town intends that funds that have been advanced, or that may be advanced, from the Town's general fund or any other Town fund related to the project, for project costs may be reimbursed from the financing proceeds.
6. All prior actions of Town officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict

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with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL, TOWN OF LAKE LURE, NORTH CAROLINA, AS FOLLOWS:

The motion to adopt this Resolution was made by Council Member Bob Cameron; seconded by Council Member Mary Ann Silvey, and was passed unanimously by those members present at the meeting of the Town Council, Lake Lure, North Carolina, held on the fifth of June, 2013.

REVIEW AND DISCUSSION OF THE DRAFT BUDGET FOR FISCAL YEAR 2013-2014

Town Manager Chris Braund presented a tentative budget and council members continued review of the draft budget for fiscal year 2013-2014.

Commissioner Diane Barrett questioned an increase in projected group insurance premiums in the sewer department. The finance department agreed to investigate the increase and provide an explanation.

Mr. Braund also gave an overview four potential capital improvement project packages, each representing the equivalent if a one cent tax rate increase (\$83,000).

Council members discussed the presented capital improvement project packages and potential funding strategies.

After discussion, Commissioner Bob Cameron made a motion to direct town staff to adjust the draft budget to reflect a tax rate increase of three cent to fund capital improvement projects. Commissioner Mary Ann Silvey seconded the motion. Commissioner Bob Cameron, Commissioner Mary Ann Silvey and Commissioner Diane Barrett voted in favor of the motion. Commissioner John Moore opposed. Therefore, the motion carried with a vote of three to one in favor.

Council members discussed the need to draft a letter to send to town citizens in an effort to explain the proposed tax rate increase. Town Manager Chris Braund agreed to work with the town's communications director to prepare the draft letter.

ADJOURN THE MEETING

With no further items of discussion, Commissioner Bob Cameron made a motion to adjourn the meeting 3:05 p.m. Commissioner John Moore seconded the motion and the vote of

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approval was unanimous.

ATTEST:

Andrea Calvert
Town Clerk

Mayor Bob Keith

**MINUTES OF THE REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL
HELD TUESDAY, JUNE 11, 2013, 7:00 P.M. AT THE LAKE LURE MUNICIPAL
CENTER**

PRESENT: Mayor Bob Keith
Commissioner Mary Ann Silvey
Commissioner Bob Cameron
Commissioner John W. Moore
Commissioner Diane Barrett

Christopher Braund, Town Manager
J. Christopher Callahan, Town Attorney

ABSENT: N/A

CALL TO ORDER

Mayor Bob Keith called the meeting to order at 7:00 p.m.

INVOCATION

Attorney Chris Callahan gave the invocation.

PLEDGE OF ALLEGIANCE

Council members led the pledge of allegiance.

APPROVE THE AGENDA

Commissioner Bob Cameron made a motion to approve the agenda as amended adding the following items:

12d. Approve a Grant Contract Between the Town of Lake Lure and the North Carolina Department of Environmental and Natural Resources for the North Carolina 2012 Recreational Trails Program, Buffalo Creek Trail System. Also, Authorize the Town Manager to Execute the Document on Behalf of the Town

14c. Consider Directing the Zoning and Planning Board to Review the Sign Regulations

14d. Closed Session to Discuss Potential Real Estate Purchase

Commissioner John Moore seconded the motion and the vote of approval was unanimous.

PRESENTATION OF THE TOWN BUDGET AND BUDGET MESSAGE FOR FISCAL YEAR 2013-2014

Town Manager Chris Braund gave a brief overview of the proposed budget for fiscal year 2013-2014 and read excerpts from his budget message.

PUBLIC HEARING - PROPOSED ORDINANCE NO. 13-06-11 REGARDING THE TOWN BUDGET FOR FISCAL YEAR 2013-2014

Mayor Bob Keith opened the public hearing regarding proposed Ordinance No. 13-06-11 pertaining to the town budget for fiscal year 2013-2014 and invited citizens to speak during the public hearing.

Patricia Maringer of 1491 Memorial Highway stated that last year her taxes went up around \$800, even though the tax rate was supposed to be revenue neutral.

Council agreed to close the public hearing.

CONSIDER ADOPTION OF ORDINANCE NO. 13-06-11 REGARDING THE TOWN BUDGET FOR FISCAL YEAR 2013-2014

Public notices were duly given and published in the Forest City Daily Courier newspaper.

After discussion, Commissioner Bob Cameron made a motion to adopt Ordinance No. 13-06-12A as presented. Commissioner Diane Barrett seconded the motion. Commissioner Bob Cameron, Commissioner Diane Barrett, and Commissioner Mary Ann Silvey voted in favor of the motion. Commissioner John Moore opposed. Therefore, the motion passed with a vote of 3 to 1 in favor.

ORDINANCE NO. 13-06-11

AN ORDINANCE ADOPTING THE FISCAL YEAR 2013-2014 BUDGET FOR THE TOWN OF LAKE LURE, NORTH CAROLINA

SECTION 1. In accordance with G.S. 159-13 (a), the Town Council of the Town of Lake Lure adopts this ordinance entitled Town of Lake Lure 2013-2014 Budget.

SECTION 2. This ordinance includes revenues and expenditures in the General Fund, Water/Sewer Fund and Electric Fund. Revenues and expenditures in those funds are as follows:

REVENUES

I. GENERAL FUND

Ad Valorem and Vehicle Taxes	\$2,368,916
State Shared Revenues	\$1,293,275
Installment Loan (police vehicles)	\$56,000
Lake	\$223,875
Beach & Tours	\$83,000
Marina	\$83,500
Facilities Rentals	\$26,240
Miscellaneous Revenues	\$50,165
Land Use Fees	\$18,125
Admin. charge from Water/Sewer Fund	\$10,000
Admin. charge from Electric Fund	\$10,000
Appr. Fund Balance-Bridge Pres	\$10,000
Appr. Fund Balance (debt service)	\$12,300
TOTAL GENERAL	\$4,245,396

II. WATER/SEWER FUND	
Water and Sewer	\$735,988
TOTAL WATER/SEWER	\$735,988

III. ELECTRIC FUND	
Electric Receipts	\$276,007
Appropriated from Fund Balance	\$100,000
TOTAL ELECTRIC	\$376,007

<u>GRAND TOTAL - ALL FUNDS</u>	<u>\$5,357,391</u>
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EXPENDITURES

I. GENERAL FUND	
Governing Board	\$29,210

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Administration	\$671,468
Central Services	\$65,700
Police	\$686,759
Fire	\$689,762
Sanitation	\$207,300
Public Works	\$283,381
Economic Development	\$28,750
Community Development	\$253,471
Parks & Recreation	\$95,533
Beach & Marina	\$12,000
Golf	\$81,000
Lake	\$188,760
Capital Outlay	\$351,457
Debt Service	\$158,195
Non-Governmental	\$143,650
Transfers	\$249,000
Contingency Reserve	\$50,000
TOTAL GENERAL	\$4,245,396

II. WATER/SEWER FUND	
Water	\$189,937
Sewer	\$367,409
Capital Outlay	\$41,931
Debt Service	\$136,711
TOTAL WATER/SEWER	\$735,988

III. ELECTRIC FUND	
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Operations	\$176,007
Capital Outlay	\$200,000
TOTAL ELECTRIC	\$376,007
<u>GRAND TOTAL - ALL FUNDS</u>	<u>\$5,357,391</u>

SECTION 3. To achieve this budget program, the Town Council of the Town of Lake Lure, in accordance with G.S. 159-13 (c), the tax rate shall be 0.276 per \$100.00 of property valuation (municipal services at 0.191 per \$100.00 and fire district tax at 0.085 per \$100.00 of property valuation).

SECTION 4. Pursuant to the authority set forth in Article 20, Chapter 160A of the North Carolina General Statutes, the Town of Lake Lure and Rutherford County have entered into a contractual agreement to provide for centralized and systemized billing and collection of property taxes in Rutherford County. Under this agreement the County will perform for itself and the Town all of the tax collection functions prescribed in Subchapter 50 of Chapter 105 of the North Carolina General Statutes (often referred to as the Machinery Act). This joint tax collection system shall commence with the tax levy for the fiscal year beginning July 1, 2013 In accordance with section V. of this agreement, the Town of Lake Lure hereby adopts the same tax discount schedule as the County for the Town's tax levy for the fiscal year commencing July 1, 2013.

Adopted the 11th day of June, 2013.

PUBLIC HEARING PROPOSED ORDINANCE NO. 13-06-11A AMENDING THE DEFINITION OF PRIVATE DRIVES IN THE SUBDIVISION REGULATIONS AND ADDING THE DEFINITION OF PRIVATE DRIVES TO THE ZONING REGULATIONS

Mayor Bob Keith opened the public hearing regarding proposed Ordinance No. 13-06-11A and invited citizens to speak during the public hearing; no one requested to speak.

Council members agreed to close the public hearing.

CONSIDER ADOPTION OF ORDINANCE NO. 13-06-11A AMENDING THE DEFINITION OF PRIVATE DRIVES IN THE SUBDIVISION REGULATIONS AND ADDING THE DEFINITION OF PRIVATE DRIVES TO THE ZONING REGULATIONS

Public notices were duly published in the Daily Courier newspaper.

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Town Manager Chris Braund gave a brief overview of Ordinance No. 13-06-11A.

After discussion, Commissioner John Moore made a motion to adopt Ordinance No. 13-06-11A as presented. Commissioner Mary Ann Silvey seconded the motion and the vote of approval was unanimous.

ORDINANCE NUMBER 13-06-11A

**AN ORDINANCE AMENDING THE DEFINITION OF PRIVATE DRIVES IN THE
SUBDIVISION REGULATIONS AND ADDING THE DEFINITION OF PRIVATE
DRIVES TO THE ZONING REGULATIONS**

WHEREAS, the Zoning and Planning Board has recommended modifications to Zoning and Subdivision Regulations of the Town of Lake Lure as noted in the title of this ordinance; and

WHEREAS, the Zoning and Planning Board finds that the proposed ordinance is consistent with the 2007-2027 Town of Lake Lure Comprehensive Plan, particularly with regard to “Minimize negative impacts from grading on steep slopes and post-construction stormwater run-off.” contained in the Natural Environment and Open Space Section, Policy NE-3-1. The amended definition allows private drives to access up to 3 lots provided it meets the requirements of § 91.39A of the Subdivision Regulations, thus minimizing impacts to environmentally sensitive areas like steep topography; and

WHEREAS, the Lake Lure Town Council, after due notice, conducted a public hearing on the 11th day of June, 2013, upon the question of amending the Zoning and Subdivision Regulations in this respect.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAKE LURE, NORTH CAROLINA, MEETING IN REGULAR SESSION AND WITH A MAJORITY OF THE COUNCIL MEMBERS VOTING IN THE AFFIRMATIVE:

SECTION ONE. Section 91.06 of the Subdivision Regulations of the Town of Lake Lure, entitled “Definitions”, is hereby amended to revise the definition of private drive as follows:

[ADDITIONS TO TEXT ARE UNDERLINED; DELETIONS ARE ~~STRUCK THROUGH~~.]

Private Drive (Driveway): A private access not intended to be a public ingress or egress. Private drives are intended to provide direct access from one lot or building site to a publicly or privately dedicated and maintained street. However, a private drive may provide access for up to 3 residential lots provided it meets the requirements of § 91.39A of the Subdivision Regulations. Private drives shall be excluded from the definition of street. The term “private drive” shall include the term “driveway”.

SECTION TWO. Sections 92.005 of the Zoning Regulations of the Town of Lake Lure, entitled "Definitions", is hereby amended to add a definition for private drives as follows:

[ADDITIONS TO TEXT ARE UNDERLINED; DELETIONS ARE ~~STRUCK-THROUGH~~.]

Private Drive (Driveway): A private access not intended to be a public ingress or egress. Private drives are intended to provide direct access from one lot or building site to a publicly or privately dedicated and maintained street. However, a private drive may provide access for up to 3 residential lots provided it meets the requirements of § 91.39A of the Subdivision Regulations. Private drives shall be excluded from the definition of street. The term "private drive" shall include the term "driveway".

SECTION THREE. Any person violating the provisions of this ordinance shall be subject to the penalties set forth in Section 92.999 of the Zoning Regulations.

SECTION FOUR. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION FIVE. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION SIX. The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing zoning violations.

SECTION SEVEN. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 11 day of June, 2013.

PUBLIC FORUM

Mayor Bob Keith invited the audience to speak on any non-agenda items and/or consent agenda topics. No one requested to speak.

STAFF REPORTS

Town Manager Chris Braund presented the town manager's report dated June 11, 2013. (Copy of the town manager's report is attached.)

COUNCIL LIAISON REPORTS & COMMENTS

Commissioner Diane Barrett reported the activities of the Parks and Recreation Board.

Commissioner John Moore reported on the activities of Zoning and Planning Board.

Town Manager Chris Braund reported the activities of the Lake Advisory Board.

Commissioner Mary Ann Silvey reported on the activities of the Lake Lure Classical Academy School Board and the Lake Lure ABC Board.

Commissioner Bob Cameron reported on the activities of the Lake Lure Board of Adjustment/Lake Structures Appeal Board.

CONSENT AGENDA

Mayor Bob Keith presented the consent agenda and asked if any items should be removed before calling for action.

Commissioner Bob Cameron moved, seconded by Commissioner John Moore, to approve the consent agenda as amended. Therefore, the consent agenda incorporating the following items was unanimously approved:

- a. minutes of the May 13, 2013 (Special Meeting), May 14, 2013 (Regular Meeting), and May 21, 2013 (Special Meeting);
- b. a request submitted by Janet Coulthart, vice president of the Lake Lure Newcomers, to suspend the town's alcohol ordinance for the Lake Lure Newcomers meeting and dinner being held in the Community Hall on June 29, 2013 from 4:00 p.m. until 8:00 p.m.;
- c. the following budget amendments as submitted by Finance Director Sam Karr outlined in memo dated June 4, 2013 (Copy of memo is attached):
 - transfer \$20,700 from contingency (#970) into the Police Department
 - transfer \$10,000 from contingency (#970) to the Fire Department
 - transfer \$16,500 from Insurance & Bonding (#450) into Central Services-Technology & Telecommunication
 - transfer \$659.00 into the Police Dept. (#220) from the ABC fund
 - transfer \$10,000 to water and \$10,000 to sewer from Water & Sewer Fund
 - increase revenues and expenditures by \$50,000 each should cover the expenses

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- move \$42,500 from General Fund Silt Removal (#697) and \$50,000 from Hydro-electric Fund (#697) for a grand total of \$92,500 into the town's Reserve for Silt Removal Fund
- d. a grant contract between the Town of Lake Lure and the North Carolina Department of Environmental and Natural Resources for the North Carolina 2012 recreational Trails Program, Buffalo Creek Trail System. Also, authorize the town manager to execute the document on behalf of the town.

End of Consent Agenda.

UNFINISHED BUSINESS:

a. OTHER UNFINISHED BUSINESS

There was no other unfinished business.

NEW BUSINESS:

a. BOARD APPOINTMENT – LAKE ADVISORY BOARD

Council members unanimously nominated Gary Hasenfus to fill the remainder of David Efird's position on the Lake Advisory Board with a term expiring December 31, 2013.

NEW BUSINESS:

b. CONSIDER APPROVAL OF SUBDIVISION OF THE BOATHOUSE PROPERTY AT THE DAM & THE DECLARATION OF COVENANTS AND RESTRICTION FOR THE PROPERTY

Town Manager Chris Braund gave a brief overview and background concerning the proposed declaration of covenants and restrictions and proposed subdivision for the town owned boathouse property on Buffalo Shoals Road on the north side of the dam as outlined in a memo dated June 11, 2013 from the town's Planner/Subdivision Administrator Suzy Smoyer. (Copy of memo is attached.)

After discussion, Commission Diane Barrett made a motion approve subdivision of the boathouse property at 197 Buffalo Shoals Road and approve the declaration of covenants and restrictions for the property. Commissioner Mary Ann Silvey seconded the motion and the vote of approval was unanimous.

NEW BUSINESS:

**c. CONSIDER DIRECTING THE ZONING AND PLANNING BOARD TO STUDY THE
SIGN REGULATIONS**

Commissioner Bob Cameron suggested that the Zoning and Planning Board work with local restaurants and business owners to review the sign regulations. Mr. Cameron stated that some local restaurants like to post folding signs advertising specials, but these signs are not permitted in the town's zoning regulations.

After discussion, Commissioner Bob Cameron made a motion to direct the Zoning and Planning Board to meet with restaurant owners and then other business owners to look at potential revisions to the Zoning Regulations that might be necessary to make their business easier to operate. Commissioner Mary Ann Silvey seconded the motion and the vote of approval was unanimous.

CLOSED SESSION – ATTORNEY CLIENT PRIVILEGE

Commissioner John Moore made a motion to go into closed session in accordance with G.S. 143-318.11(a) (5) to discuss potential property acquisition.

Commissioner Bob Cameron seconded the motion and the vote of approval was unanimous.

While in closed session, Council members voted to seal the minutes of the closed session meeting in order to avoid frustrating the purpose of the closed session.

Commissioner Diane Barrett made a motion to come out of the closed session meeting and re-enter the regular session of the town council meeting. Commissioner Bob Cameron seconded the motion and the vote of approval was unanimous.

ADJOURN THE MEETING

With no further items of discussion, Commissioner Diane Barrett made a motion to adjourn the meeting at 8:41 p.m. Commissioner Bob Cameron seconded the motion and the vote of approval was unanimous.

ATTEST:

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Andrea H. Calvert
Town Clerk

Mayor Bob Keith

Agenda Item: 8b

TOWN OF LAKE LURE
REQUEST FOR SUSPENSION OF TOWN ORDINANCES
REVIEW BY POLICE DEPARTMENT

Date of Request: September 6, 2013

By: Alissa Exner and Clark Meyer

Describe Request:

Wedding Party is asking for a suspension of the alcohol ordinance during the hours of 5 – 9 pm on Sept. 6, 2013 in the Community Hall for a rehearsal dinner. See attached letter.

Reviewed By: *Acting Chief Sean Humphreys*

Comments from LLPD:

City Council Members,

My fiancé and I have your community center space reserved for September 6th, 2013. The rental time is from 5pm to 9pm. We will be using the space for our wedding rehearsal dinner as we are getting married the following day at the park gazebo. With the councils permission we would like to have beer and wine during our dinner at the center. If you need further information or a guest list we would be more than happy to provide anything council would need. Thank you again for your consideration of this matter.

With the councils permission we would like to have the alcohol ordinance suspended between the hours of 5pm and 9pm on September 6, 2013.

Thank you in advance for your consideration of this matter.

Sincerely,

Alissa Exner and Clark Meyer (Andrea Metts, Mother of Bride)

Cell phone numbers: 513-280-2532 / 513-205-4203

Agenda Item: 8c



Incorporated 1927

Town of Lake Lure

P. O. Box 255 • Lake Lure, NC 28746-0255 • 828/625-9983 • FAX 828/625-8371

MEMORANDUM

To: Town Council
From: Sam A. Karr, Finance Director *SAK*
Subject: Budget Amendment-Uncompleted Projects June 30, 2013
Date: July 2, 2013

The following projects were not completed as of June 30, 2013 and therefore need to be re-appropriated in FY 13-14

	<u>Revenue</u>	<u>Appropriation</u>
<u>General Fund</u>		
Transfer from Fund Balance	\$64,756	
Fire -Brush Truck		\$46,827
Parks & Rec-Morse Park Improvements		\$ 579
Admin -- Asset Management Plan		\$ 9,850
Silt Removal		\$ 7,500

If you have any questions, please feel free to contact me.

CC: Thadd Hodge, Accountant

Agenda Item: 8d

Andi Calvert

From: Ed Dittmer [eddittmer@bellsouth.net]
Sent: Wednesday, July 03, 2013 3:06 PM
To: Andi Calvert
Cc: Chris Braund; 'Dean Givens -LL Lake Operations Administrator'; Sheila Spicer; Diane Barret; Clint Calhoun; Tony Hennessee; Melodie Potter
Subject: Council Agenda

Hi Andi,

As we discussed yesterday, please arrange to put on the Council agenda for next Tuesday night's meeting an item requesting authorization from Council to proceed with plans for a structure (steps) in a GU zoned parcel (the southeast slope of the spoils berm in Morse Park) to provide access for walkers in the park from the top of the berm to the new pathway to be built across the land bridge and around the north side of the large pond in the park. The berm slope at this location is getting badly eroded and it is proposed to build a set of framed steps to control this erosion, extending 35 feet from the base of the berm to its top and have a small footbridge of approximately four feet across the grassy spillway to connect the steps with the stated new walkway. I have coordinated with Dean Givens who is on board with the project and is coordinating with the berm engineering firm to ensure no concern to the integrity to the berm with this project.

Ed Dittmer

Agenda Item: 10a

This is a request for Town Council's consideration of a consolidated and renewed concession agreement. If supportive, the Council should authorize the Mayor to sign the agreement.

Why the revision?

- While the beach, marina and tours concessions have long been the responsibility of a single operator, there are two separate concession agreements. After working with them and referring to them for several years, we all agree that a single agreement (with multiple sections) would be more convenient and efficient.
- The expansion of the new marina caused some of the revenue and cost provisions of the old contract to become undesirable for both parties. This triggered, at a minimum, a revision of this portion of the agreement.
- The current agreements were executed in 2007 and go to 2017 (we must keep a lease of municipal assets under 10 years). We're in the sixth year.
- Lake Lure Tours is considering a series of investments in beach-area improvements intended to enhance the facilities, the customer experience and the business (including the Town's concession revenues). To ensure a return on this investment, he would like the town to extend the contract for another 9-year, 11 month period. Details of these investments are in Exhibit D in the attached contract.
- Stemming from our focus group work on Community Branding, the Town desires greater public access to the beach (without fees) during the off-peak seasons--fall through spring. We'd like to see it as an open, public park. In consideration of an extended contract term, Lake Lure Tours has offered to provide services during the off season free of charge: to open and close the beach daily and to keep it clean. Details are in Exhibit C in the attached contract.
- There are over \$100,000 (estimated) in improvements and services being offered by Lake Lure Tours to extend this contract.

Here is an exchange from Ed Dittmer, chair of the Parks & Recreation Board:

From: Ed Dittmer [mailto:eddittmer@bellsouth.net]
Sent: Wednesday, June 26, 2013 9:51 PM
To: 'Lake Lure Town Manager'
Cc: commissionerbarrett@townoflakelure.com
Subject: RE: Proposed: revised beach/marina/tours concession agreement

Chris,

I had reviewed the proposed new Concession Agreement for Lake Lure Tours, Marina, and the Beach and found it very comprehensive. I have no specific concerns or suggestions to offer.

My only question is concerning the shared revenue formula for the private rental of the beach, pavilion, and the new picnic shelter and wedding pavilion (85% to concessionaire and 15% to Town). How does this differ from our revenue sharing with George of the private rental of the pavilion in Morse Park Gardens for weddings, etc during peak season weekends?

Ed

Ed:

For the gazebo in Morse Park, we don't have a concession agreement with George. He books the gazebo at full retail price for as many days as the council grants. He then re-sells these to his wedding parties...at a pretty good markup because he provides other equipment and services in the package. So, we get the full rental price for these events.

Thanks -

Chris Braund

Town Manager

2948 Memorial Highway

Lake Lure, NC 28746

Office: 828.625.9983, Ext. 101

Web: townoflakelure.com



CONCESSION AGREEMENT

Town of Lake Lure and Lake Lure Tours, Inc,
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CONSOLIDATED CONCESSION AGREEMENT
FOR OPERATION OF TOUR BOATS, MARINA & BEACH ON LAKE LURE

THIS CONCESSION AGREEMENT, made this the #th day of Month, Year by and between:
THE TOWN OF LAKE LURE, Lake Lure, North Carolina, a Municipal Corporation, hereinafter
called "TOWN"; and Lake Lure Tours, Inc., a North Carolina Corporation 625 Oak St., Green Cove
Springs, FL, hereinafter called "CONCESSIONER;"

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

WHEREAS, the mission of Town of Lake Lure is to offer Lake Lure residents and others boat
slips for the permanent mooring of boats and other normal services of a marina; and

WHEREAS, the mission of the Town of Lake Lure is to offer Lake Lure residents and others of all
ages and abilities the opportunity to enjoy a beach facility that is as safe, sanitary, open
year-round and attractive as reasonably possible;

WHEREAS, the Town Council of Lake Lure has previously adopted and approved
Concession Agreements with Concessioner for management and operation of the beach, marina
and tour boat rides; and

WHEREAS, an extension of said contracts and other modifications have been made from time to
time, approved by both Town Council and Concessioner, and the purpose of this revised Agreement is
to incorporate said subsequent approved changes into a one new consolidated Concession Agreement.
All prior written contracts and any written memos and letter agreements, and minutes of the town
council, are superseded and replaced by this consolidated Agreement; and

WHEREAS, Concessioner represents that it is qualified and competent to manage, operate and
maintain the marina and beach facilities; and

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

1. TERM:

The term of this Agreement shall be for a 119-month period beginning on the 1st day of
October, 2013 and ending on the 30th day of August 2023, unless terminated earlier as provided by
the terms of this agreement.

CONCESSION AGREEMENT

Town of Lake Lure and Lake Lure Tours, Inc,
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2. DUTIES OF CONCESSIONER

Section A: Tour Boat Operation

WITNESSETH, that for and in consideration of the concession fee to be paid by the Concessioner to the Town as hereinafter set out, the Town has this day granted unto the Concessioner, the right to use the waters of Lake Lure for the purpose of operating a concession for carrying on and conducting an scenic passenger boat ride service and for such a business and for no other purpose or purposes,

(A.1) Concessioner, at its own cost and expense, shall comply with all the rules, regulations and requirements of the State of North Carolina and Rutherford County Government or of the Government of the United States or any of the Departments or Bureaus thereof applicable to operation of a scenic passenger boat ride business, and that Concessioner shall moreover comply with all ordinances, rules and regulation of the Town of Lake Lure. Concessioner shall not operate any voice amplification system upon the passenger boats operated by the Concessioner.

(A.2) Concessioner may operate up to four pontoon boats and will be allowed to use Town dock space to moor said boats at an area designated by the Town Manager. Concessioner shall be responsible for proper cleaning and maintenance of their dockage area. Any repairs undertaken to the boat slips used by Concessioner must be pre-approved by the Town Manager.

(A.3) Concessioner will establish and publish a telephone number where complaints about the tour boats operation can be reported. Concessioner will be required to respond to any complaint within five working days. If a complainant does not hear from Concessioner within five working days (defined as Monday through Friday), then the complainant may report the matter to the Town Manager. Concessioner will be required to maintain a log on all complaints and the action/response taken. In addition, Concessioner must have an answering machine with a pre-recorded message relating the information and process for reporting of complaints.

(A.4) Pontoon tour boats shall have large numeral identification to facilitate identification for complaints. The identification numbers shall be approved by the Town Manager.

(A.5) Regular tours will operate during daylight hours up to seven days a week. Dinner cruises will 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.

(A.6) When not in open water, the tour boats will travel at a no-wake speed (except when dangerous weather conditions exist and are so imminent as to require higher speeds to safely return the passengers). The Concessioner hereby agrees to abide by all areas of "no wake" operation,

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Town of Lake Lure and Lake Lure Tours, Inc,
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as established, enforced and potentially modified from time to time by the Town. As may be reasonably requested by the Town, the routes and speeds may be altered to remedy any wake problems that in fact do subsequently arise. At no time will the maximum capacity permitted by law be exceeded in any boat.

(A.7) The Town may publish provisions of this contract and tour boat operating schedule at Town Hall and in the Town's newsletter.

(A.8) Concessioner will not employ any persons under the age of 16 years to drive or operate the boats used in said passenger boat ride business;

Section B: Marina Operation

(B.1) Operate and manage the marina so as to provide services to boat owners and others during reasonable hours of the day during both seasonal and non-seasonal periods. All scheduling shall be determined by Concessioner, in consultation with the Town Manager or his representative, and shall attempt to encourage use of the facility in such a manner as to optimize the facility's economic performance.

(B.2) Make reasonable efforts to prevent unauthorized watercraft from accessing the lake from the Town-owned boat ramp at the marina, but will be held harmless except in the case of negligence.

(B.3) Manage the rentals of short-term (weekly or monthly) boat slip rentals.

(B.4) Act as agent for Town by selling non-resident boat permits from the marina office. The boat permit receipts shall be delivered to Town on a weekly basis. Concessioner shall follow Town procedures in determining the eligibility of boats and boaters to receive a permit.

(B.5) Concessioner will be allowed to use a total of 10 slip spaces at the Town marina docks, 4 to moor tour boats and 6 for rental boats.

Section C: Beach Operation

(C.1) Plan and implement the operation of the beach so as to reasonably make it available for recreational opportunities for all age groups and abilities that can be reasonably accommodated.

(C.2) Open the beach and provide seasonal services in accordance with Exhibit C – Beach Schedule.

(C.2) Assure that the lifeguards shall be in easily identifiable uniforms and maintain on file current Red Cross, or equivalent, lifeguard, CPR and first aid certifications for all lifeguard staff.

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Town of Lake Lure and Lake Lure Tours, Inc,
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(C.3) Supervise/enforce entrance requirements at the beach during the Summer season.

Section D: General Responsibilities (Tours, Marina & Beach)

(D.1) Provide or arrange for routine maintenance of the facilities according to the schedule attached hereto as Exhibit A.

(D.2) Provide for the reasonable care of all business, marina and beach equipment to minimize abuse, misuse or intentional or negligent damage.

(D.3) Provide for the investment in facilities improvements according to the schedule attached hereto as Exhibit D

(D.4) Supervise all events and activities in the marina area and on the beach and surrounding premises.

(D.5) Be responsible for the selection, training, and daily supervision and, if otherwise appropriate or required, certification and licensing of all tours, marina and beach staff.

(D.6) Assure that the Concessioner employees are well groomed and neatly dressed at all times. Concessioner agrees that it will not employ any persons under the age of 16 years to drive or operate any boats used in the operations covered by this agreement.

(D.7) Purchase all supplies, marina gasoline and merchandise, and beach merchandise. Purchase, maintain and/or replace, as deemed necessary by Concessioner, certain business and/or marina and beach equipment, including, but not limited to, those items illustrated in Exhibit B.

(D.8) Provide at its own expense telephone services for Concessioner's employees' use and assume responsibility for all utilities at the marina and the beach.

(D.9) Design, print and distribute informational flyers and promotional materials.

(D.10) Report within two business days, in writing, to the Town Manager or his representative, any serious problems, incidents or accidents at the tours, marina or the beach. "Serious" shall be defined as those events, which involve significant bodily injury or property and/or could lead to financial liability for Concessioner or Town. Any injury known to have required medical or hospital treatment shall be reported. Major incidents shall be reported to the Town Manager or his representative by telephone within two hours of Concessioner becoming aware of the incident. (A list of Town employees with work and home phones will be provided by Town for purposes of such reports.) Concessioner shall follow Town policies on media contacts regarding such incidents.

(D.11) Report promptly all insurable claims to Concessioner's insurance carrier and notify the Town Manager or his representative in writing that such claims have been reported.

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(D.12) Report within two business days, in writing, to the Town Manager or his representative, any problem with the building structure, major equipment, electrical or plumbing systems.

(D.13) Work cooperatively with the Town Manager and notify him of special activities, schedules and attendance levels.

(D.14) Make recommendations for marina or beach improvements and notify the Town Manager or his representative of any building deficiencies.

(D.15) Obtain approval from the Town Manager or his representative for alteration or addition to any structure and for the location or relocation of vending machines or other permanently affixed equipment.

(D.16) Pick up trash from the beach and marina areas daily.

(D.17) Winterize plumbing at the beach & marina facilities as necessary to prevent major repairs and/or replacements.

Except as otherwise provided herein, all Concessioner duties as provided above shall be performed or arranged by Concessioner in Concessioner's sole discretion consistent with the mission of the Town and Concessioner. All decisions regarding purchases and management expenditures shall be made by Concessioner in Concessioner's sole discretion, consistent with the mission of Town and Concessioner.

3. DUTIES OF TOWN:

Town shall:

(1) Purchase, maintain and replace, as deemed necessary by Town, certain equipment necessary to operate the facilities as set forth in Exhibit B.

(2) Be responsible for maintenance, repair and replacement of major capital equipment including, but not limited to, gas pumps and the gas storage tank. (See Exhibit A for a more detailed illustrative list.)

(3) Be responsible for structural repair to the building, including the roof, and to sea walls and banks subject to erosion.

(4) Permit Concessioner to keep the facilities open seven days a week, provided that the facility shall be closed from 11 p.m. to 6 a.m., unless otherwise approved in advance by the Town Manager. Approval shall not be unreasonably withheld.

(5) Provide, at no cost to Concessioner, for outdoor maintenance of the lawns, parking lots, fence, boardwalk, and buildings.

(6) Issue all approved, commercial motorized (>10hp) boat permits to Concessionaire at the first-

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boat fee rather than the multiple-boat escalation on the fee schedule.

4. CONCESSIONS:

In addition to the responsibilities detailed above in section 2, Concessioner shall be permitted to sell swimming accessories (including tee shirts), snack foods (including hotdogs and similar foods) and soft drinks in the beach facility. Merchandise related to boating and fishing, snack foods and soft drinks may be sold at the marina. All vending machines will be provided by Concessioner. The sale of other merchandise must be approved by the Town Manager or his representative, such approval not to be unreasonably withheld.

5. COMPENSATION:

Concessioner is to pay Town as concession fees for the concession to operate the tours, marina and the beach for the term hereinbefore specified, the following:

Tours: 10% of gross receipts, including all ticket sales, refreshments and retail sales

Marina: 90% of all short-term boat slip rentals

90% of boat permit sales

2% of all sales of gasoline, oil and all other merchandise

2% of all rentals of boats and other equipment

Beach: 15% of all revenues, including tickets, shelter rental and gazebo rentals, after-hours beach rentals

~~In addition, the same formula shall be used to establish compensation for revenues from the water activities area which shall be computed separately from the general beach revenues.~~

Payments to Town of its share of all concession revenues shall be made monthly on or before the 15th of the following month and shall include a monthly report of concession revenues in a form to be agreed to annually by Concessioner and Town. In the event the payment is not received on or before the 15th of the month, a penalty of 1% of the balance due shall be assessed for each day the balance is not paid.

6. ANNUAL REPORT AND PROPOSED FEE STRUCTURES:

Concessioner shall provide annually to the Town Manager for transmittal to the Town Council, no later than November 15 of each fiscal year, a proposed fee structure for the coming fiscal year. The fee structure shall reflect the mission for the marina and the beach as set forth on page one of this document. Concessioner shall also provide the Town Manager with sufficient information to evaluate the fees and the programs. Such information shall include a full report of prior years' activity in all categories (to be agreed to by Town and Concessioner annually) and shall, if reasonably available to Concessioner, include an analysis of the type of users of the facilities in the prior year and revenues associated with major categories. The Town Council shall agree on the fee schedule for the beach at the December

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Town of Lake Lure and Lake Lure Tours, Inc,

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meeting of the Town Council of each concession year, applicable to the next concession year.

7. FINANCIAL STATEMENTS:

Concessioner shall keep financial accounts for the marina, the beach and the water activity area separate from all other facilities. Said accounts shall reflect the operations of the marina, the beach and the water activity area for the concession year including daily revenues from all concession activity for the year. Town shall, at its option and its expense, have the right to perform an audit each concession year of the financial operations of the marina, the beach and the water activity area.

8. INSURANCE:

Concessioner shall maintain insurance coverage in the operation of the tours, marina and beach under this concession agreement to protect them and Town from damages because of bodily injury, including death, whether such operations be by Concessioner, or by anyone directly or indirectly employed by them as follows:

(1) Worker's Compensation: If user falls under the State of North Carolina worker's compensation law, coverage shall be provided for all employees. The coverage shall be for statutory limits in compliance with the applicable state and federal laws. The policy must include employer's liability with a limit of \$100,000 each accident, \$100,000 bodily injury by disease each employee, and \$500,000 bodily injury by disease policy limit.

(2) Commercial General Liability: Coverage shall have minimum limits of \$1,000,000 general aggregate, personal and advertising injury for each occurrence. This shall include premises and operations, products/completed operations and contractual liability.

(3) Business Auto Policy: Not required unless there is a specific relationship to the concession agreement. If required, a combined single limit equal to the general aggregate limit under CGL shall apply. This shall include owned vehicles, hired and non-owned vehicles and employee non-ownership.

The Town is to be included as an additional insured on both the commercial general liability and business auto liability policies. However, the inability to obtain the inclusion as an additional insured on either of these policies shall not invalidate this agreement.

Current, valid insurance policies meeting the requirements herein identified shall be maintained during the duration of the agreement. Renewal certificates shall be sent to Town 30 days prior to any expiration date. There shall also be a 30 day notification to Town in the event of cancellation, modification of coverage or erosion of aggregate limits of any stipulated insurance coverage.

Certificates of insurance meeting the required insurance provisions shall be forwarded to Town. Wording on the certificate that states that no liability shall be imposed upon the company for failure to provide such notice is not acceptable.

Waiver of Subrogation - Town agrees to maintain fire, extended coverage, and vandalism and malicious mischief insurance on the building and on personal property of Town contained therein to the extent of its

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Town of Lake Lure and Lake Lure Tours, Inc,
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full insurable value; Concessioner shall do the same with respect to its property located in or on Town's premises. Town and Concessioner hereby mutually release and discharge each other from all claims or liabilities arising from or caused by fire or other casualty covered by the above insurance on Town's premises, or property in or on Town's premises.

Town shall provide and maintain an updated certificate of insurance for the coverage heretofore described acceptable to Concessioner.

9. INDEMNIFICATION AND DISPUTE RESOLUTION.

Concessioner shall defend, indemnify and save harmless Town and its elected officials, agents, servants and employees in connection with any and all claims, costs (including without limitation reasonable attorneys' fees) losses, damages, liability or judgments including without limitation those based on the alleged negligence, intentional, willful, wanton or malicious acts and/or omissions of Concessioner and its respective agents, servants, employees and subcontractors for injuries to persons (including guests), injuries to property or financial losses, sustained or alleged to have been sustained by a person or concern including officials, officers, agents, servants and employees and subcontractors of Concessioner or Town arising or alleged to have arisen out of negligent, intentional, willful, wanton, omitted or malicious operations or actions conducted by Concessioner under this agreement. This undertaking shall not be limited by reason of any insurance coverage.

Town shall defend, indemnify and save harmless Concessioner and its officers and employees in connection with any and all claims, costs (including without limitation reasonable attorneys' fees) losses, damages, liability or judgments including without limitation those based on the alleged negligence, intentional, willful, wanton or malicious acts and/or omissions of Town and its respective elected officials, agents, servants, employees and subcontractors for injuries to persons (including guests), injuries to property or financial losses, sustained or alleged to have been sustained by a person or concern including officials, officers, agents, servants and employees and subcontractors of Concessioner or Town arising or alleged to have arisen out of negligent, intentional, willful, wanton, omitted or malicious actions conducted by Town under this agreement. This undertaking shall not be limited by reason of any insurance coverage.

[Chris Callahan & LLT attorney: are additional provisions necessary here to indemnify/defend Concessioner against claims arising from the off-season, unattended use of the public beach area?]

If a dispute should arise regarding any of the provisions of this agreement, and that dispute cannot be resolved by mutual discussions and agreement based upon good faith efforts, then upon agreement of both parties, such dispute shall be resolved by arbitration by an arbitrator appointed by the American Arbitration Association under the current rules of the Association and the Uniform Arbitration Act. In such case, both parties to the agreement agree to be bound by the decision of the appointed arbitrator. If the dispute should result in arbitration, then all reasonable attorneys' fees and administrative costs of the arbitration will be awarded to the prevailing party. The applicable law for such arbitration will be that of the State of North Carolina and the venue shall be in Lake Lure, North Carolina at the Town Municipal Center.

Both Town and Concessioner agree that should any proceeding in local, state or federal court be

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Town of Lake Lure and Lake Lure Tours, Inc,
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undertaken by either party to this agreement, the prevailing party shall be reimbursed for all attorney fees and other costs related to the action.

10. COMPLIANCE WITH LAW:

Concessioner, at its own cost and expense, agrees to comply with all the rules, regulations and requirements of the State of North Carolina and Rutherford County government or of the government of the United States or any of the departments or bureaus thereof which may pertain or apply to the marina and the beach (located on Town property) and its uses and accessory uses including applicable requirements for state sales tax certificates and including any necessary zoning and planning certificates which may arise from future operations. For purposes of this agreement, Concessioner shall not be considered a tax-exempt agency of Town for state or federal tax purposes.

Concessioner further agrees to comply with all ordinances, rules and regulations of the Town of Lake Lure, including the town ordinances prohibiting the use of alcohol on town property unless the prohibition is waived by the Town Council for specific events. Concessioner agrees to contact the Lake Lure Police Department immediately if the violation of any alcohol issues or other altercations cannot be quickly resolved.

Concessioner shall not operate any voice or sound amplification system from the marina or beach areas without specific approval of the Town Manager.

Town agrees to comply with all laws, ordinances, rules and regulations that may pertain or apply to its responsibilities pursuant to this Agreement.

11. TERMINATION:

Town may terminate this agreement on 60 days prior written notice for failure to abide with the terms of this agreement. Prior to issuance of this termination notice, Town must notify Concessioner in writing of the infraction and Concessioner shall be allowed 30 days to correct or to take timely and efficacious efforts to correct the problem if it cannot be corrected within 30 days. In each case, the reason for the possible termination shall be enumerated and documented. Town shall not be arbitrary in its decision to terminate this agreement and shall do so only upon its reasonable determination that the violation(s) is / are serious and have not been adequately corrected after notice.

Concessioner may terminate this Agreement on 60 days prior written notice for Town's failure to abide with the terms of this agreement. Prior to the issuance of this termination notice, Concessioner must notify Town in writing of the reason for the termination and Town shall be allowed 30 days to correct the problem if it cannot be corrected within 30 days. In each case, the reason for the possible termination shall be enumerated and documented. Concessioner shall not be arbitrary in its decision to terminate this agreement and shall do so only upon its reasonable determination that the violation(s) is/are serious and have not been adequately corrected after notice.

Each of the parties hereto agree that in the event of any dispute which cannot be resolved by the parties, and results or may result in an early termination of this agreement, such dispute shall be submitted for

CONCESSION AGREEMENT

Town of Lake Lure and Lake Lure Tours, Inc,

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mediation (and may be submitted to arbitration upon the mutual agreement of the parties), provided that in no event shall the mediation or arbitration process extend the time for termination of this agreement unless the parties mutually agree otherwise in writing.

Property and equipment provided by Town for the use of Concessioner shall be returned to Town upon termination of this agreement, in the same condition as when delivered to Concessioner except for normal wear and tear.

12. OPTION TO RENEW:

At the conclusion of this agreement, Town and Concessioner may mutually agree to extend the agreement for a mutually agreed upon time period. Concessioner shall notify Town of its desire to renew at least 180 days before the conclusion of the contract term. Town shall make every effort to notify Concessioner of its commitment to renew within 90 days of the notice from the Concessioner. Should Town choose not to renew this agreement, it agrees not to hire any full-time Concessioner employees having management or administrative positions for a period of two years from the date of the termination of this agreement unless otherwise mutually agreed by Town and Concessioner in writing.

13. DUE DILIGENCE:

Town may perform background investigations on the officers and employees of Concessioner at its discretion and at its sole expense in fulfilling its due diligence obligation to the citizens of Town.

14. CONTRACT FOR SERVICES:

Town and Concessioner expressly agree that this is a concession agreement as herein above described; that Concessioner is to perform as a concessionaire for the term set forth herein and pursuant to the provisions of this agreement; that Concessioner is an independent contractor, not an employee of Town, for these purposes and as such neither it nor its employees are entitled to any Town employment benefits, including without limitation, life and health insurance, vacation, and sick leave or pension rights.

15. SUBCONTRACTING:

It is understood by both parties that Concessioner will be the managing, marketing and operating entity of both facilities under the terms of this contract and that Concessioner shall not subcontract the overall management, marketing and operation responsibilities to third parties without the written consent of Town. However, it is understood that Concessioner may subcontract certain services such as; cleaning and maintenance services for the cleaning of the facilities; supply, operation and maintenance of the vending machines; and other services which, in its sole discretion, would help to optimize the economic performance of the facilities in a manner consistent with the mission of Town and Concessioner.

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Town of Lake Lure and Lake Lure Tours, Inc,
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16. NOTICES:

Written notices required hereunder shall be sent, except as otherwise specifically required, to:

For Concessioner:

Martha Clark, Contracts Manager
Lake Lure Tours, Inc.
625 Oak Street
Green Cove Springs, FL 32043

George Wittmer, President
Lake Lure Tours, Inc.
PO Box 10
Lake Lure, NC 28746

For Town:

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

All notices shall be hand delivered or deposited in a post office or official depository under the exclusive care and custody of the United States Post Office Department.

17. ASSIGNMENT OF AGREEMENT:

CONCESSIONER shall not assign this agreement to any person, corporation or other entity without the express written approval from the Town Council.

18. ENTIRETY:

This written agreement represents the entire agreement of Concessioner and Town regarding their respective obligations and Concessioner and Town regarding their respective obligations and rights in connection with the marina and beach facilities. Neither Town nor Concessioner may rely on any representations of the other, oral or written, other than this written agreement. Any alterations or modifications to this agreement must be in writing and signed by both Concessioner and Town.

IN TESTIMONY WHEREOF: the Town of Lake Lure, a municipal corporation has caused this instrument to be signed in its name by its Mayor and attested by its Town Clerk, and the corporate seal to be hereunto affixed, all with approval by its Town Council; and Lake Lure Tours, Inc., a North Carolina Corporation, has caused this instrument to be signed in its corporate name by its president and attested by its secretary, and its corporate seal to be hereunto affixed, after being duly approved by its Board of Directors, on the day and year first written above.

CONCESSION AGREEMENT

Town Marina and Town Beach

Town of Lake Lure and Lake Lure Tours, Inc,

February 13, 2001

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EXHIBIT A

Maintenance Schedule

AREA	DAILY	WEEKLY	MONTHLY
Beach Area	* Pick up trash * Empty Trash Cans * Put away equip.	* Scrape (as needed) * Clean trash cans	
Bathrooms	* Sweep Floors * Empty trash cans * Clean toilets * Clean sinks * Clean showers * Check supplies	* Hose down * Clean trash cans	
Docks & Area	* Inspect for damage * Pick up trash	* Inspect lights/bulbs	
Lobby Areas	* Sweep Floors * Empty trash cans * Sweep steps		* Clean windows (if needed)

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Town of Lake Lure and Lake Lure Tours, Inc,

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EXHIBIT B
Schedule of Buildings & Equipment

EQUIPMENT	PURCHASED BY TOWN	PURCHASED BY CONCESSIONER	MAINTAINED BY TOWN	MAINTAINED BY CONCESSIONER	REPLACED BY TOWN	REPLACED BY CONCESSIONER*
Cash Register		X		X		X
Grounds			X			
Buoys		X		X		X
Office Supplies		X				X
Plumbing	X		X	X	X	
Structures	X		X		X	
Telephone	X			X		X
Paddle Boats		X		X		X
Canoes		X		X		X
Inner Tubes		X		X		X
Retail Products		X		X		X
Stands	X			X	X	
Backboard		X		X		X
First Aid Kit		X		X		X
Replacement Lights		X		X		X

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Town of Lake Lure and Lake Lure Tours, Inc,
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EQUIPMENT	PURCHASED BY TOWN	PURCHASED BY CONCESSIONER	MAINTAINED BY TOWN	MAINTAINED BY CONCESSIONER	REPLACED BY TOWN	REPLACED BY CONCESSIONER*
Gas Tank, Lines, Pump	X		X		X	
Docks	X		X		X	
Boardwalk & Fences	X		X		X	
Water Park (slides, pumps, balloon launches, fountains)		X		X		X
Compressor		X		X		X

BUILDINGS	PURCHASED BY TOWN	PURCHASED BY CONCESSIONER	MAINTAINED BY TOWN	MAINTAINED BY CONCESSIONER	REPLACED BY TOWN	REPLACED BY CONCESSIONER*
Beach House #1 & Picnic Pavilion (by Pool Creek)	X		X	X	X	
Beach House #2 (near water park)	X		X	X	X	
Marina Office, Seawall, Floating Docks	X		X		X	

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Town of Lake Lure and Lake Lure Tours, Inc,

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BUILDINGS	PURCHASED BY TOWN	PURCHASED BY CONCESSIONER	MAINTAINED BY TOWN	MAINTAINED BY CONCESSIONER	REPLACED BY TOWN	REPLACED BY CONCESSIONER*
[NEW] Multi-purpose Gazebo		X		X		X
[NEW] Picnic Shelter at Pool Creek		X		X		X

- All equipment purchased by Concessioner (e.g., to replace town-owned equipment) remain the property of the concessioner.
- Any buildings or structures erected by or improved by the Concessionaire shall remain in place and become the property of the Town upon termination of this agreement.

CONCESSION AGREEMENT

Town of Lake Lure and Lake Lure Tours, Inc,

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EXHIBIT C **Beach Schedule**

SUMMER SEASON

<i>Timeframe</i>	From the weekend prior to Memorial Day (the last week in May) to the weekend following Labor Day (the first week in September). At the discretion of the concessionaire, the beach may be operated additional weekends before or after this period in the manner described below.
<i>Beach Hours</i>	The Beach shall be available and open from no later than 10 a.m. until 6 p.m. every day, weather permitting, excepting weekdays prior to Memorial Day and after Labor Day. This will include both entrances, cashier stands, water park, waterslide tower, all concessions, boat rentals, and swimming at the Beach.
<i>Swimming</i>	Swimming will be permitted and lifeguards are on duty.
<i>Concessionaire Duties</i>	Each morning during the Summer Season, the concessionaire's staff shall maintain all aspects of the Beach operation, including litter collection and removal, table and seating placement and housekeeping, beach sand preparation (mechanical grooming), facility housekeeping, staffing for watercraft rentals, certified staffing for lifeguarding at waterpark and designated swimming areas, and at the close of each open day, Lake Lure Tours staff shall secure the Beach entrances.
<i>Beach User Fees</i>	During the Summer season period, beach admission fees are in effect. Lake Lure residents shall enjoy the Beach by complimentary admission during this season).
<i>Concession Fees</i>	During this height-of-season period, access to the Beach and its amenities will generate revenue via an admission fee, with both Lake Lure Tours and the Town of Lake Lure receiving revenues derived therefrom per the concession agreement.

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Town of Lake Lure and Lake Lure Tours, Inc,

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EXHIBIT C **Beach Schedule**

FALL SEASON

<i>Timeframe</i>	During the period falling approximately at the second week of September and running through the end of November.
<i>Beach Hours</i>	The Beach shall be available and open for use by the public from no later than 10 a.m. until 6 p.m. (or dusk, whichever is first), Sunday through Saturday.
<i>Restrooms</i>	Restrooms will be open.
<i>Activities</i>	Swimming will be permitted at the risk of the patron and no lifeguards shall be provided. Rental paddleboards and kayaks may be available at the discretion of the Concessionaire.
<i>Concessionaire Duties</i>	Each morning during this period, concessionaire's staff shall provide Beach opening personnel, litter collection and removal, table and seating placement. At the close of each Fall season open day, concessionaire staff shall confirm that the Beach area is vacated and secure the Beach entrances for overnight security. [At the option of the concessionaire, the Beach may or may not be staffed during the day, between opening and closing times]. At its sole cost and as needed, the concessionaire shall maintain the Beach by grooming the beach sand mechanically and as needed, providing daily litter collection and removal, provide "Fall Season" beach seating (including 18 all-weather folding 'lounger' chairs, along with providing for their daily set-up, break-down, and maintenance).
<i>Beach User Fees</i>	During the Fall season period, any visitor may access the Beach without an admission fee (excepting special, after-hours private rentals of the dry sand beach by groups or organizations for bonfires-on-the beach, casual receptions; and for use of the Beach pavilion.)
<i>Concession Fees</i>	There shall be no fee to the Town for the Concessionaire's provision of services to the Beach during the Fall Season

CONCESSION AGREEMENT

Town of Lake Lure and Lake Lure Tours, Inc,

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EXHIBIT C

Beach Schedule

WINTER SEASON

<i>Timeframe</i>	During the period from the beginning of December and running through the second week in March.
<i>Beach Hours</i>	The Beach shall be available and open for use by the public Sunday through Saturday from no later than 10 a.m. until 6 p.m. (or dusk, whichever is first).
<i>Restrooms</i>	Closed for the season
<i>Activities</i>	Swimming will be permitted at the risk of the patron and no lifeguards shall be provided.
<i>Concessionaire Duties</i>	Each morning during this period, concessionaire's staff shall provide litter collection and removal, table and seating placement. At the close of each Winter season open day, concessionaire staff shall confirm that the Beach area is vacated and secure the Beach entrances for overnight security. [At the option of the concessionaire, the Beach may or may not be staffed during the day, between opening and closing times]. At its sole cost and as needed, the concessionaire shall maintain the Beach by grooming the beach sand mechanically and as needed, providing daily litter collection and removal, provide "Winter Season" beach seating (including 18 all-weather folding 'lounger' chairs, along with providing for their daily set-up, break-down, and maintenance).
<i>Beach User Fees</i>	During the Winter season period, any visitor may access the Beach without an admission fee (excepting special, after-hours private rentals of the dry sand beach by groups or organizations for bonfires-on-the beach, casual receptions; and for use of the Beach pavilion.) Swimming shall be permitted at the risk of the patron and no lifeguards shall be provided.
<i>Concession Fees</i>	There shall be no fee to the Town for the Concessionaire's provision of services to the Beach during the Winter Season

CONCESSION AGREEMENT

Town of Lake Lure and Lake Lure Tours, Inc,

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EXHIBIT C **Beach Schedule**

SPRING SEASON

<i>Timeframe</i>	During the period falling approximately at the third week in March and running through the second week in May.
<i>Beach Hours</i>	The Beach shall be available and open for use by the public Sunday through Saturday from no later than 10 a.m. until 6 p.m. (or dusk, whichever is first).
<i>Restrooms</i>	Restrooms will be open.
<i>Activities</i>	Swimming will be permitted at the risk of the patron and no lifeguards shall be provided. Rental paddleboards and kayaks may be available at the discretion of the Concessionaire.
<i>Concessionaire Duties</i>	Each morning during this period, concessionaire's staff shall provide litter collection and removal, table and seating placement. At the close of each Spring season open day, concessionaire staff shall confirm that the Beach area is vacated and secure the Beach entrances for overnight security. [At the option of the concessionaire, the Beach may or may not be staffed during the day, between opening and closing times]. At its sole cost and as needed, the concessionaire shall maintain the Beach by grooming the beach sand mechanically and as needed, providing daily litter collection and removal, provide "Spring Season" beach seating (including 18 all-weather folding 'lounge' chairs, along with providing for their daily set-up, break-down, and maintenance).
<i>Beach User Fees</i>	During the Spring season period, any visitor may access the Beach without an admission fee (excepting special, after-hours private rentals of the dry sand beach by groups or organizations for bonfires-on-the beach, casual receptions; and for use of the Beach pavilion.) Swimming shall be permitted at the risk of the patron and no lifeguards shall be provided.
<i>Concession Fees</i>	There shall be no fee to the Town for the Concessionaire's provision of services to the Beach during the Spring Season

CONCESSION AGREEMENT

Town of Lake Lure and Lake Lure Tours, Inc,

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EXHIBIT D

Concessioner's commitment to Lake Lure town asset improvement / maintenance-management investment: 2013 – 2014 and beyond.

#	Improvement / Services	Time Frame	Estimated Cost to Concessioner
1	Beach Operations Provide labor and equipment to open, close, & service the beach as a free public park in the off-season (Sept – May)	Fall 2013	\$15,000 (annual)
2	Bridge over Pool Creek Renovate, repair, refinish bridge	Fall 2013	\$ 3,500
3	Arcade Fountain Island Remove utility pole; move electric service underground	Fall 2013	\$4,500
4	Beach House #1 (by Pool Creek) Resurface pavilion concrete slab (approx. 3,000 sq. ft.)	Winter 2013	\$15,000
5	Beach House #1 Refurbish lights, install fans in pavilion structure	Winter 2013	\$14,000
6	[NEW] Gazebo Design and install pedestrian walk and multi-purpose gazebo structure on peninsula between Pool Creek and Beach swimming bay. Replace grass with beach sand to discourage geese. Revenues shared with Town per section 5.	Winter 2013/4	\$11,500
7	“Meadows” Picnic Area East Side of Pool Creek Install potable water & electric service	Spring 2014	\$8,000
8	“Meadows” Picnic Area Design and build picnic shelter house (approx. 20’ x 40’)	Spring 2014	\$22,000
9	[NEW] Beach Entrance Design, build, and install new off-season public entrance to beach at mid-point cross walk. Utilize decorative metal arch and gate.	Winter 2013/4	\$15,500
10	Beach House #1 Renovate public bathrooms and outside gates	Spring 2014	\$5,000

Total: \$114,000, first 12+ months

Agenda Item: 10b

RESOLUTION NO. 13-07-09

**A RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF LAKE LURE, NORTH CAROLINA,
AUTHORIZING PURCHASE OF REAL ESTATE**

WHEREAS, the Town of Lake Lure adopted a Comprehensive Plan in 2007, as a guide, complete with goals, objectives, and policies relative to community appearance and economic development; and

WHEREAS, Lake Lure's appearance, and the image it projects, is determined primarily by the natural and built environments, especially those elements which can be seen initially from public vantage points such as the roadways (2007-2027 Comprehensive Plan, page 8-1); and

WHEREAS, community efforts to maintain and improve the community's appearance are important to Lake Lure's residents (2007-2027 Comprehensive Plan, page 8-1); and

WHEREAS, a sense of arrival to the town coming from the West is improving (as result of the Friends of the Flowering Bridge) but still needs improvement (2007-2027 Comprehensive Plan, page 8-1); and

WHEREAS the 2007-2027 Comprehensive Plan identifies the goal of having "a clear sense of place for Lake Lure" (2007-2027 Comprehensive Plan, CA Goal 1, page 8-4); and

WHEREAS, it is important to "create a 'sense of arrival' at or near Lake Lure's corporate limits" (2007-2027 Comprehensive Plan, Objective CA-1-3, page 8-6); and

WHEREAS it is important to "develop gateways for the entrances to Lake Lure..." (2007-2027 Comprehensive Plan, Policy CA-1-3.1, page 8-6); and

WHEREAS, an opportunity exists to acquire public parking for the Flowering Bridge, an emerging tourist attraction in the Lake Lure Town Center area; and

WHEREAS, an opportunity exists to acquire buildings that could be used, improved, replaced or leased to serve a variety of essential uses, such as a businesses related to the Flowering Bridge, a satellite State Park welcome center, a bicycle rental facility, a restaurant, or other uses identified by officially adopted plans and/or studies; and

WHEREAS, it is in the Lake Lure – Chimney Rock Community's interest to obtain and exercise appropriate control over a key, strategic gateway at the entrance to the Town of Lake Lure, its Town Center, and to the Rumbling Bald access area of the State Park to secure outcomes described above;

NOW, THEREFORE, BE IT RESOLVED THAT THE TOWN COUNCIL OF THE TOWN OF LAKE LURE, NORTH CAROLINA, has determined that purchasing property at 104/106 Boys Camp Road and facilitating improvements and specified outcomes is in keeping with the 2007-2027 Comprehensive Plan;

BE IT FURTHER RESOLVED THAT, THE TOWN COUNCIL OF THE TOWN OF LAKE LURE, NORTH CAROLINA, authorizes the purchase of said property for the price of \$243,000 and the town manager is hereby authorized to perform all necessary acts to carry out the purchase.

ADOPTED, this the 9th day of July 2013.

Attest:

Andrea H. Calvert,
Town Clerk

Mayor Bob M. Keith



Incorporated 1927

Town of Lake Lure

P. O. Box 255 • Lake Lure, NC 28746-0255 • 828/625-9983 • FAX 828/625-8371

MEMORANDUM

To: Town Council
From: Sam A. Karr, Finance Director *SAK*
Subject: Budget Amendment-Purchase of Real Estate
Date: July 2, 2013

According to resolution No. 13-07-09, authorizing purchase of real estate, the following appropriation will need to be made for FY 13-14.

	<u>Revenue</u>	<u>Appropriation</u>
<u>General Fund</u>		
Transfer from Fund Balance	\$243,000	
Purchase Land		\$243,000

If you have any questions, please feel free to contact me.

CC: Thadd Hodge, Accountant



AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between
The Town of Lake Lure

a(n) a municipality in the state of North Carolina ("Buyer"), and
(individual or State of formation and type of entity)

Barbara Carr

a(n) individual ("Seller").
(individual or State of formation and type of entity)

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) **"Property":** (Address) 104/106 Boys Camp Road, Lake Lure, NC 28746

Plat Reference: Lot(s) N/A, Block or Section N/A, as shown on Plat Book or Slide
N/A at Page(s) N/A, N/A County, consisting of N/A acres.

☒ If this box is checked, "Property" shall mean that property described on **Exhibit A** attached hereto and incorporated herewith by reference,

(For information purposes: (i) the tax parcel number of the Property is: 231863; and,
(ii) some or all of the Property, consisting of approximately .29 acres, is described in Deed Book 473,
Page No. 173, Rutherford County.)

together with all buildings and improvements thereon and all fixtures and appurtenances thereto and all personal property, if any, itemized on **Exhibit A**.

\$ 243,000.00 (b) **"Purchase Price"** shall mean the sum of Two hundred forty-three thousand Dollars,

payable on the following terms:

\$ 0.00 (i) **"Earnest Money"** shall mean 0.00 Dollars
or terms as follows: N/A

Upon this Agreement becoming a contract in accordance with Section 14, the Earnest Money shall be promptly deposited in escrow with N/A
(name of person/entity with whom deposited), to be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions of Section 10 herein.

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This form jointly approved by:
North Carolina Bar Association
North Carolina Association of REALTORS®, Inc.

STANDARD FORM 580-T
Revised 1/2011
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☐ ANY EARNST MONEY DEPOSITED BY BUYER IN A TRUST ACCOUNT MAY BE PLACED IN AN INTEREST BEARING TRUST ACCOUNT, AND: (check only ONE box)

☐ ANY INTEREST EARNED THEREON SHALL BE APPLIED AS PART PAYMENT OF THE PURCHASE PRICE OF THE PROPERTY AT CLOSING, OR DISBURSED AS AGREED UPON UNDER THE PROVISIONS OF SECTION 10 HEREIN. (Buyer's Taxpayer Identification Number is: _____)

☐ ANY INTEREST EARNED THEREON SHALL BELONG TO THE ACCOUNT HOLDER IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

\$ _____ N/A (ii) **Proceeds of a new loan** in the amount of _____ Dollars for a term of _____ years, with an amortization period not to exceed _____ years, at an interest rate not to exceed _____% per annum with mortgage loan discount points not to exceed _____% of the loan amount, or such other terms as may be set forth on **Exhibit B**. Buyer shall pay all costs associated with any such loan.

\$ _____ N/A (iii) **Delivery of a promissory note** secured by a deed of trust, said promissory note in the amount of _____ Dollars being payable over a term of _____ years, with an amortization period of _____ years, payable in monthly installments of principal, together with accrued interest on the outstanding principal balance at the rate of _____ percent (_____%) per annum in the amount of \$ _____, with the first principal payment beginning on the first day of the month next succeeding the date of Closing, or such other terms as may be set forth on **Exhibit B**. At any time, the promissory note may be prepaid in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment. (NOTE: In the event of Buyer's subsequent default upon a promissory note and deed of trust given hereunder, Seller's remedies may be limited to foreclosure of the Property. If the deed of trust given hereunder is subordinated to senior financing, the material terms of such financing must be set forth on Exhibit B. If such senior financing is subsequently foreclosed, the Seller may have no remedy to recover under the note.)

\$ _____ N/A (iv) **Assumption** of that unpaid obligation of Seller secured by a deed of trust on the Property, such obligation having an outstanding principal balance of \$ _____ and evidenced by a note bearing interest at the rate of _____ percent (_____%) per annum, and a current payment amount of \$ _____. The obligations of Buyer under this Agreement are conditioned upon Buyer being able to assume the existing loan described above. If such assumption requires the lender's approval, Buyer agrees to use its best efforts to secure such approval and to advise Seller immediately upon receipt of the lender's decision. Approval must be granted on or before _____. On or before this date, Buyer has the right to terminate this Agreement for failure to be able to assume the loan described above by delivering to Seller written notice of termination by the above date, *time being of the essence*. If Buyer delivers such notice, this Agreement shall be null and void and Earnest Money shall be refunded to Buyer. If Buyer fails to deliver such notice, then Buyer will be deemed to have waived the loan condition. Unless provided otherwise in Section 3 hereof, Buyer shall pay all fees and costs associated with any such assumption, including any assumption fee charged by the lender. At or before Closing, Seller shall assign to Buyer all interest of Seller in any current reserves or escrows held by the lender, any property management company and/or Seller, including but not limited to any tenant improvement reserves, leasing commission reserves, security deposits and operating or capital reserves for which Seller shall be credited said amounts at Closing.

\$ 243,000.00 (v) **Cash, balance of Purchase Price**, at Closing in the amount of Two hundred forty-three thousand Dollars.

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Buyer Initials

SCB

Seller Initials

[Signature]

STANDARD FORM 580-T

Revised 1/2011

© 7/2012

- (c) **"Closing"** shall mean the date and time of recording of the deed. Closing shall occur on or before 7/16/2013 or N/A
- (d) **"Contract Date"** means the date this Agreement has been fully executed by both Buyer and Seller.
- (e) **"Examination Period"** shall mean the period beginning on the Contract Date and extending through 7/10/2013.
TIME IS OF THE ESSENCE AS TO THE EXAMINATION PERIOD.
- (f) **"Broker(s)"** shall mean:
Steven Gale Realty ("Listing Agency"),
Steve Gale ("Listing Agent"- License # 62189)
 Acting as: ☒ Seller's Agent; ☐ Dual Agent
 and Pinnacle Sotheby's International Realty ("Selling Agency"),
Michael K. Holden ("Selling Agent"- License # 213079)
 Acting as: ☒ Buyer's Agent; ☐ Seller's (Sub) Agent; ☐ Dual Agent
- (g) **"Seller's Notice Address"** shall be as follows:
PO Box 36, Chlmney Rock, NC 28720-0036
 except as same may be changed pursuant to Section 12.
- (h) **"Buyer's Notice Address"** shall be as follows:
PO Box 225, Lake Lure, NC 28746
 except as same may be changed pursuant to Section 12.
- ☐ (i) If this block is marked, additional terms of this Agreement are set forth on **Exhibit B** attached hereto and incorporated herein by reference. (Note: Under North Carolina law, real estate agents are not permitted to draft conditions or contingencies to this Agreement.)

Section 2. Sale of Property and Payment of Purchase Price: Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

Section 3. Proration of Expenses and Payment of Costs: Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments and utilities or any other assumed liabilities as detailed on attached **Exhibit B**, if any, shall be prorated as of the date of Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Agreement, excise tax (revenue stamps), any deferred or rollback taxes, and other conveyance fees or taxes required by law, and the following:

N/A

Buyer Initials SES Seller Initials AKH

Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement and the following:

N/A

Each party shall pay its own attorney's fees.

Section 4. Deliveries: Seller agrees to use best efforts to deliver to Buyer as soon as reasonably possible after the Contract Date copies of all information relating to the Property in possession of or available to Seller, including but not limited to: title insurance policies, surveys and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller's request, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, and shall deliver to Seller, upon the release of the Earnest Money, copies of all of the foregoing without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof.

Section 5. Evidence of Title: Seller agrees to convey fee simple marketable and insurable title to the Property free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, (b) Leases (if applicable) and (c) matters of record existing at the Contract Date that are not objected to by Buyer prior to the end of the Examination Period ("Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property (or any personal property listed on **Exhibit A**) after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 6. Conditions: This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) **New Loan:** The Buyer must be able to obtain the loan, if any, referenced in Section 1(b)(ii). Buyer must be able to obtain a firm commitment for this loan on or before N/A, effective through the date of Closing. Buyer agrees to use its best efforts to secure such commitment and to advise Seller immediately upon receipt of lender's decision. On or before the above date, Buyer has the right to terminate this Agreement for failure to obtain the loan referenced in Section 1(b)(ii) by delivering to Seller written notice of termination by the above date, *time being of the essence*. If Buyer delivers such notice, this Agreement shall be null and void and Earnest Money shall be refunded to Buyer. If Buyer fails to deliver such notice, then Buyer will be deemed to have waived the loan condition. Notwithstanding the foregoing, after the above date, Seller may request in writing from Buyer a copy of the commitment letter. If Buyer fails to provide Seller a copy of the commitment letter within five (5) days of receipt of Seller's request, then Seller may terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not then received a copy of the commitment letter, and Buyer shall receive a return of Earnest Money.

(b) **Qualification for Financing:** If Buyer is to assume any indebtedness in connection with payment of the Purchase Price, Buyer agrees to use its best efforts to qualify for the assumption. Should Buyer fail to qualify, Buyer shall notify Seller in writing immediately upon lender's decision, whereupon this Agreement shall terminate, and Buyer shall receive a return of Earnest Money.

(c) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not fee simple marketable and insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(d) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

(e) **Inspections:** Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, performing soil boring and other testing, conducting timber cruises, and surveying the Property. Buyer shall conduct all such on-site inspections, examinations, soil boring and other testing, timber cruises and surveying of the Property in a good and workmanlike manner, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours any tenant's business is open to the public and shall give prior notice to any tenants of any entry onto any tenant's portion of the Property for the purpose of conducting inspections. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Section 6(e) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Buyer shall, at Buyer's expense, promptly repair any damage to the Property caused by Buyer's entry and on-site inspections. Except as provided in Section 6(e) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.**

Section 7. Leases (Check one of the following, as applicable):

☒ If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.

☐ If this box is checked, Seller discloses that there are one or more leases affecting the Property (oral or written, recorded or not - "Leases") and the following provisions are hereby made a part of this Agreement.

(a) All Leases shall be itemized on **Exhibit B**;

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 4 as if the Leases were listed therein;

(c) Seller represents and warrants that as of the Contract Date there are no current defaults (or any existing situation which, with the passage of time, or the giving of notice, or both, or at the election of either landlord or tenant could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with Section 4. Seller agrees not to commit a Lease Default as Landlord after the Contract Date, and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted or threatened to be asserted by either Seller or a tenant under the Lease.

(d) In addition to the conditions provided in Section 6 of this Agreement, this Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon the assignment of Seller's interest in any Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease), and Seller agrees to use its best efforts to effect such assignment. Any assignment required under this Section 7 shall be required to be delivered at or before Closing by Seller in addition to those deliveries required under Section 11 of this Agreement.

(e) Seller agrees to deliver an assignment of any Lease at or before Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at or before Closing. Seller also agrees to execute and deliver (and work diligently to obtain any tenant signatures necessary for same) any estoppel certificates and subordination, nondisturbance and attornment agreements in such form as Buyer may reasonably request.

Section 8. Environmental: Seller represents and warrants that it has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the

Buyer Initials SES Seller Initials MR

Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

Section 9. Risk of Loss/Damage/Repair: Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 10. Earnest Money Disbursement: In the event that any of the conditions hereto are not satisfied, or in the event of a breach of this Agreement by Seller, then the Earnest Money shall be returned to Buyer, but such return shall not affect any other remedies available to Buyer for such breach. In the event this offer is accepted and Buyer breaches this Agreement, then the Earnest Money shall be forfeited, but such forfeiture shall not affect any other remedies available to Seller for such breach. NOTE: In the event of a dispute between Seller and Buyer over the return or forfeiture of Earnest Money held in escrow by a licensed real estate broker, the broker is required by state law to retain said Earnest Money in its trust or escrow account until it has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction, or alternatively, the party holding the Earnest Money may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A-12.

Section 11. Closing: At or before Closing, Seller shall deliver to Buyer a general warranty deed unless otherwise specified on Exhibit B and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, a bill of sale for any personalty listed on Exhibit A, an owner's affidavit, lien waiver forms and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall pay to Seller the Purchase Price. At Closing, the Earnest Money shall be applied as part of the Purchase Price. The Closing shall be conducted by Buyer's attorney or handled in such other manner as the parties hereto may mutually agree in writing. Possession shall be delivered at Closing, unless otherwise agreed herein. The Purchase Price and other funds to be disbursed pursuant to this Agreement shall not be disbursed until Closing has taken place.

Section 12. Notices: Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given and received on the date delivered in person or deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out in Section 1(g) as to Seller and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith.

Section 13. Entire Agreement: This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto.

Section 14. Enforceability: This Agreement shall become a contract when signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that the notice described in Section 12 is not required for effective communication for the purposes of this Section 14. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 15. Adverse Information and Compliance with Laws:

(a) **Seller Knowledge:** Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; or (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows (Insert "None" or the identification of any matters relating to (i) through (iv) above, if any):

NONE

Note: For purposes of this Agreement, a "confirmed" special assessment is defined as an assessment that has been approved by a governmental agency or an owners' association for the purpose(s) stated, whether or not it is fully payable at time of closing. A "pending" special assessment is defined as an assessment that is under formal consideration by a governing body. Seller shall pay all owners' association assessments and all governmental assessments confirmed as of the date of Closing, if any, and Buyer shall take title subject to all pending assessments disclosed by Seller herein, if any.

Seller represents that the regular owners' association dues, if any, are \$ 0.00 per year.

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(b) **Compliance:** To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

Section 16. Survival of Representations and Warranties: All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

Section 17. Applicable Law: This Agreement shall be construed under the laws of the state in which the Property is located. This form has only been approved for use in North Carolina.

Section 18. Assignment: This Agreement is freely assignable unless otherwise expressly provided on Exhibit B.

Section 19. Tax-Deferred Exchange: In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

Section 20. Memorandum of Contract: Upon request by either party, the parties hereto shall execute a memorandum of contract in recordable form setting forth such provisions hereof (other than the Purchase Price and other sums due) as either party may wish to incorporate. Such memorandum of contract shall contain a statement that it automatically terminates and the Property is released from any effect thereby as of a specific date to be stated in the memorandum (which specific date shall be no later than the date of Closing). The cost of recording such memorandum of contract shall be borne by the party requesting execution of same.

Section 21. Authority: Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

Section 22. Brokers: Except as expressly provided herein, Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer. Buyer and Seller represent and warrant to each other that: (i) except as to the Brokers designated under Section 1(f) of this Agreement, they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements entered into as amongst the Brokers, the Buyer and/or the Seller.

☐ **EIFS/SYNTHETIC STUCCO:** If the adjacent box is checked, Seller discloses that the Property has been clad previously (either in whole or in part) with an "exterior insulating and finishing system" commonly known as "EIFS" or "synthetic stucco". Seller makes no representations or warranties regarding such system and Buyer is advised to make its own independent determinations with respect to conditions related to or occasioned by the existence of such materials at the Property.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

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Buyer Initials SCS Seller Initials [Signature]

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BUYER:

Individual

Date: _____

Date: _____

Business Entity

_____ The Town of Lake Lure
(Name of Entity)

By: _____

Name: _____ Chris Braund

Title: _____ Town Manager

Date: _____ 6/18/2013

SELLER:

Individual

_____ *Barbara Carr*

Barbara Carr
Date: _____ 6/18/2013

Date: _____

Business Entity

_____ (Name of Entity)

By: _____

Name: _____

Title: _____

Date: _____

The undersigned hereby acknowledges receipt of the Earnest Money set forth herein and agrees to hold said Earnest Money in accordance with the terms hereof.

_____ N/A
(Name of Firm)

Date: _____ N/A

By: _____ N/A

