

RESOLUTION NO. 89 -22

OF THE YAVAPAI-APACHE TRIBAL COUNCIL,
THE GOVERNING BODY OF THE YAVAPAI-APACHE NATION

Approving the Redemption Agreement by and among **DRAKE CEMENT, LLC**, a Delaware limited liability company (the "**Company**"), **YAVAPAI-APACHE INVESTMENT COMPANY**, a company formed under the laws of the Yavapai-Apache Nation and owned exclusively by the Yavapai-Apache Nation (the "**Seller**"), and **SKANON INVESTMENTS, INC.**, an Arizona corporation (the "**Majority Member**") (the "**Redemption Agreement**").

WHEREAS:

1. The Yavapai-Apache Tribal Council ("**Council**") is the governing body of the Yavapai-Apache Nation ("**Nation**"), and as authorized under Article V of the Constitution of the Yavapai-Apache Nation ("**Constitution**"), the Council is vested with all legislative powers of the Nation and is empowered to represent the tribe and act in all matters that concern the health and welfare of the tribe, to manage all tribal economic affairs and enterprises, to appropriate and regulate the use of tribal funds, and to enact laws, ordinances and resolutions necessary or incidental to the exercise of its legislative powers, all as provided by Article V of the Constitution, subsections (a), (i), (k) and (v), respectively.

2. On June 20, 2002, the Council adopted Tribal Council Resolution No. 28-2002, thereby approving the formation of Yavapai-Apache Investment Company ("**YAI**") as a business enterprise of the Nation and authorizing an appropriation of funds of the Nation for investment in Stirling Bridge, LLC, the predecessor of Drake Cement, LLC ("**Drake**").

3. As authorized under Tribal Council Resolution No. 28-2002 (initial investment), and subsequent Resolutions Nos. 78-2003 (affirming Nation's 10% interest in Drake), 79-2004 (authorizing additional investment and an increased ownership interest in Drake to 20%), and 206-2008 (affirming history of Nation's investment in Drake) the Council authorized the Nation, acting through YAI, to invest funds appropriated by the Council into Drake and its predecessor company Stirling Bridge Cement, LLC.

4. YAI and Drake are currently parties to that certain Third Amended and Restated Limited Liability Company Agreement of Drake Cement LLC, dated as of September 2007 (as the same may be amended or restated from time to time, the "**Company Operating Agreement**"), which Company Operating Agreement was approved by the Council under Tribal Council Resolution No. 100-2007.

5. YAI currently holds a 4.348% membership interest in the Drake, representing YAI's entire membership interest in Drake (the "**Redeemed Interest**").

6. The Nation, acting for and on behalf of Yavapai-Apache Investment Company, has negotiated a Redemption Agreement ("**Redemption Agreement**") (a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference), under which YAI will sell the Redeemed Interest to Drake and under which Drake will purchase the Redeemed Interest from YAI in accordance with the Terms of the Redemption Agreement.

7. The Tribal Council has reviewed the attached Redemption Agreement with the Nation's Attorney General and the Nation's Treasurer and has determined that approval of the Redemption Agreement, for and on behalf of Yavapai-Apache Investment Company, is in the Nation's best interest.

NOW THEREFORE BE IT RESOLVED that the Yavapai-Apache Tribal Council, in Council assembled, at which a quorum is present, hereby approves the Redemption Agreement in the form attached to this Resolution as **Exhibit A**, which Agreement is hereby incorporated into this Resolution by Reference, and the Chairman or Vice Chairwoman (the "Authorized Representative") is hereby authorized to execute and deliver the Agreement to Drake on behalf of Yavapai-Apache Investment Company.

BE IT FURTHER RESOLVED THAT:

1. The Council, on behalf of Yavapai-Apache Investment Company, hereby affirms the Representations and Warranties made by YAI under Section 4 of the Redemption Agreement.

2. The Council, on behalf of Yavapai-Apache Investment Company, hereby approves the "Right of First Refusal" provided to Drake under Section 8 of the Redemption Agreement, except that said Right of First Refusal shall not be operative where such right would be prohibited under federal procurement regulations applicable to federally funded construction projects.

3. The Council, on behalf of Yavapai-Apache Investment Company, hereby grants, in accordance with Article XIII (a) of the Constitution, a limited waiver of YAI's sovereign immunity as originally vested by the Nation in YAI under authority of Tribal Council Resolution No. 28-2002, said limited waiver to be strictly construed in accordance with the terms of Section's 16 and 17 of the Redemption Agreement.

BE IT FINALLY RESOLVED that the Chairman and Vice-Chairwoman, or either of them, are hereby authorized to take such further action as deemed necessary to carry out the intent and purposes of this Resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was adopted by an affirmative vote of the Tribal Council, with a quorum in attendance, presented for approval on June 2 2022, by a vote of 8 in favor, 0 opposed and 0 abstaining, pursuant to the authority contained under the Constitution of the Yavapai-Apache Nation as cited above.

(Signature) FOR
Jon Huey, Chairman

ATTEST:

(Signature)
Karla Reimer, Council Secretary

Approved as to form:

(Signature)
Office of the Attorney General

EXHIBIT A

Redemption Agreement by and among **DRAKE CEMENT, LLC**, a Delaware limited liability company (the “**Company**”), **YAVAPAI-APACHE INVESTMENT COMPANY**, a company formed under the laws of the Yavapai-Apache Nation and owned exclusively by the Yavapai-Apache Nation (the “**Seller**”), and **SKANON INVESTMENTS, INC.**, an Arizona corporation (the “**Redemption Agreement**”)

June 2, 2022

REDEMPTION AGREEMENT

THIS REDEMPTION AGREEMENT (this “**Agreement**”) is made as of June 2, 2022 (the “**Effective Date**”), by and among **DRAKE CEMENT, LLC**, a Delaware limited liability company (the “**Company**”), **YAVAPAI-APACHE INVESTMENT COMPANY**, a company formed under the laws of the Yavapai-Apache Nation and owned exclusively by the Yavapai-Apache Nation (the “**Seller**”), and **SKANON INVESTMENTS, INC.**, an Arizona corporation (the “**Majority Member**”).

WHEREAS, the Seller currently holds a 4.348% membership interest in the Company, representing Seller’s entire membership interest in the Company (the “**Redeemed Interest**”);

WHEREAS, Seller desires to sell the Redeemed Interest to the Company and the Company desires to purchase and redeem the Redeemed Interest from the Seller in accordance with the terms of this Agreement;

WHEREAS, the Company, the Seller and the Majority Member are currently parties to that certain Third Amended and Restated Limited Liability Company Agreement of Drake Cement, LLC, dated as of September 1, 2007 (as the same may be amended or restated from time to time, the “**Company Operating Agreement**”), and under which Seller is referred to as either “Yavapai-Apache Investment Company” or “YAI”; and

WHEREAS, immediately following the sale of the Redeemed Interest by the Seller to the Company, the Majority Member and Minerals & Fuels, Inc. will be the sole members and owners of the Company.

NOW, THEREFORE, in consideration of the respective undertakings, covenants and agreements of the parties set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **PURCHASE AND SALE OF UNITS.** The Seller hereby sells, transfers and assigns to the Company, and the Company hereby purchases from the Seller, all of the Seller’s right, title and interest in and to the Redeemed Interest for an aggregate purchase price of \$6,500,000.00 (the “**Purchase Price**”) paid by the Company to the Seller in cash by wire transfer of immediately available funds as follows: (a) \$1,625,000.00 paid no later than two weeks following the Effective Date; (b) \$1,625,000.00 paid on or before the three month anniversary of the Effective Date; (c) \$1,625,000.00 paid on or before the six month anniversary of the Effective Date; and (d) \$1,625,000.00 paid on or before the nine-month anniversary of the Effective Date. The parties hereby waive any and all provisions of the Company Operating Agreement that would impose any impediment, notice requirement, participation / tag-along right or other restriction on the Seller’s sale of the Redeemed Interest to the Company pursuant to this Agreement.

2. **REPRESENTATIONS AND WARRANTIES OF SELLER.** The Seller hereby represents and warrants to the other parties hereto that, as of the date of this Agreement:

2.1 Organization. The Seller is a company duly organized, validly existing and in good standing under the laws of the Yavapai-Apache Nation, and Seller is owned exclusively by the Yavapai-Apache Nation.

2.2 Ownership of the Redeemed Interest. The Seller is the record and beneficial owner of and has good and marketable title to the Redeemed Interest, free and clear of any and all restrictions, liens, charges, encumbrances, pledges, security interests, options and adverse claims or rights whatsoever other than (i) restrictions imposed by securities laws generally and (ii) restrictions set forth in the Company's governing documents, including, without limitation, the Company Operating Agreement.

2.3 Seller's Authority. The Seller has the full right, power and authority to enter into this Agreement and to sell the Redeemed Interest pursuant to this Agreement. The execution, delivery and performance of the Seller's obligations under this Agreement have been duly and validly authorized by all necessary company action of the Seller. The Seller's execution and delivery of this Agreement will be approved and ratified by a Resolution of the Yavapai-Apache Tribal Council, acting on behalf of the Yavapai-Apache Nation, the exclusive owner and manager of Seller.

2.4 Enforceability. This Agreement is the valid and binding obligation of the Seller, enforceable in accordance with its terms (except as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, and by laws related to the availability of specific performance, injunctive relief or other equitable remedies) (the "**Enforceability Exceptions**").

2.5 No Conflict. Except for the approval of the Yavapai-Apache Tribal Council, no consent, order, authorization or approval of, or any declaration or filing with any governmental body any other natural person or corporation, limited liability company, partnership, trust or other entity (each, a "**Person**") is required on the part of the Seller for or in connection with the execution, delivery or performance of this Agreement. The execution, delivery and performance of this Agreement by the Seller will not result in any violation of, be in conflict with, constitute a default under, or cause the acceleration of any obligation or loss of any rights under any (a) statutes, laws or judgments applicable to the Seller, or (b) material agreement, contract or organizational document to which the Seller is a party or by which the Seller or its assets are bound.

2.6 Information. The Company has provided to the Seller a full opportunity to meet with, to ask questions of and to receive answers from the Company's executive officers, vendors, customers and others regarding any matters relating to the Redeemed Interest and to the operations, financial condition and prospects of the Company, and has provided full access to such of the Company's books, records, and properties as appropriate to verify the accuracy of the information obtained as specified above. The Seller is entering into this Agreement as a result of such due diligence and its own independent business judgment.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company hereby represents and warrants to the other parties hereto that, as of the date of this Agreement:

3.1 **Organization.** The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.

3.2 **Company's Authority.** The Company has the full right, power and authority to enter into this Agreement and to purchase the Redeemed Interest pursuant to this Agreement. The execution, delivery and performance of the Company's obligations under this Agreement have been duly and validly authorized by all necessary limited liability company action of the Company.

3.3 **Enforceability.** This Agreement is the valid and binding obligation of the Company, enforceable in accordance with its terms (except as limited by the Enforceability Exceptions.

3.4 **No Conflict.** No consent, order, authorization or approval of, or any declaration or filing with any governmental body any other Person is required on the part of the Company for or in connection with the execution, delivery or performance of this Agreement. The execution, delivery and performance of this Agreement by the Company will not result in any violation of, be in conflict with, constitute a default under, or cause the acceleration of any obligation or loss of any rights under any (a) statutes, laws or judgments applicable to the Company, or (b) material agreement, contract or organizational document to which the Company is a party or by which the Company or its assets are bound.

4. **REPRESENTATIONS AND WARRANTIES OF THE MAJORITY MEMBER.** The Majority Member hereby represents and warrants to the other parties hereto that, as of the date of this Agreement:

4.1 **Organization.** The Majority Member is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Arizona.

4.2 **Majority Member's Authority.** The Majority Member has the full right, power and authority to enter into this Agreement and to make the commitments it is making pursuant to this Agreement. The execution, delivery and performance of the Majority Member's obligations under this Agreement have been duly and validly authorized by all necessary limited liability company action of the Majority Member.

4.3 **Enforceability.** This Agreement is the valid and binding obligation of the Majority Member, enforceable in accordance with its terms (except as limited by the Enforceability Exceptions.

4.4 **No Conflict.** No consent, order, authorization or approval of, or any declaration or filing with any governmental body any other Person is required on the part of the Majority Member for or in connection with the execution, delivery or performance of this Agreement. The execution, delivery and performance of this Agreement by the Majority Member will not result in any violation of, be in conflict with, constitute a default under, or cause the acceleration of any obligation or loss of any rights under any (a) statutes, laws or judgments applicable to the Majority Member, or (b) material agreement, contract or organizational document to which the Majority Member is a party or by which the Majority Member or its assets are bound.

5. **COMPANY OPERATING AGREEMENT.** It is hereby acknowledged and agreed that, simultaneously with the Company's redemption of the Redeemed Interest from the Seller, the Seller shall cease to be a party to the Company Operating Agreement for all purposes and shall no longer be subject to the obligations and liabilities of a "Member" of the Company set forth therein. Notwithstanding the foregoing, however, it is hereby further acknowledged and agreed that following the Company's redemption of the Redeemed Interest and at all times hereafter, the Seller and its officers, managers, equity-holders and affiliates shall continue to be entitled to indemnification from the Company to the fullest extent contemplated by Section 6.1 of the Company Operating Agreement (which may not be amended hereafter without the Seller's prior written consent).

6. **FURTHER ASSURANCES.** Each party hereto shall do and perform or cause to be done and performed all further acts and things and shall execute and deliver all other agreements, certificates, instruments and documents as any other party hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transaction contemplated hereby. Seller shall present this Agreement to the Yavapai-Apache Nation Tribal Council for a Tribal Council Resolution approving the Agreement and said approval shall be conclusive evidence of Seller's authority to enter into this Agreement.

7. **MUTUAL RELEASES.**

7.1. **Release of Seller.** The Company and the Majority Member, on behalf of themselves and each of their respective affiliates, officers, directors, managers, equity-holders, employees, agents and representatives (collectively, the "**Company Parties**") hereby forever release and discharge the Seller, of and from any and all claims, demands, obligations, covenants, contracts, agreements, causes of action, liabilities and losses of any kind whatsoever, both in law and equity, whether known or unknown, express or implied, written or unwritten, absolute or contingent, which any Company Party now has or ever had against Seller (the "**Seller Released Claims**"); provided, however, that nothing in this Section 7.1 will operate to release any liability or obligation of Seller from, and the Seller Released Claims shall not include any liability, obligation or claim arising out of or under: (i) the express written obligations of the Seller under this Agreement or any other agreements, instruments or documents executed in connection herewith; or (ii) actual fraud by Seller. To the extent permitted by law, each of the Company and the Majority Member specifically agrees not to commence any legal action against Seller arising out of or in connection with the claims released pursuant to this Section 7.1.

7.2. **Release of Company Parties.** The Seller, on behalf of itself and each of its respective affiliates, officers, directors, managers, equity-holders, employees, agents and representatives (collectively, the "**Seller Parties**"), hereby forever releases and discharges the Company, the Majority Member and the other Company Parties, of and from any and all claims, demands, obligations, covenants, contracts, agreements, causes of action, liabilities and losses of any kind whatsoever, both in law and equity, whether known or unknown, express or implied, written or unwritten, absolute or contingent, which any Seller Party now has or ever had against any Company Party (the "**Company Released Claims**"); provided, however, that nothing in this Section 7.2 will operate to release any liability or obligation of any Company Party from, and the Company Released Claims shall not include any liability, obligation or claim arising out of or under: (i) the express written obligations of the Company or the Majority Member under this

Agreement or any other agreements, instruments or documents executed in connection herewith; (ii) any claim by any Seller Party brought to enforce such Seller Party's rights to indemnification and/or reimbursement or advancement of expenses pursuant to Section 6.1 of the Company Operating Agreement; or (iii) actual fraud by such Company Party. To the extent permitted by law, the Seller specifically agrees not to commence any legal action against any of the Company Parties arising out of or in connection with the claims released pursuant to this Section 7.2.

7.3. Acknowledgment. Each of the parties hereby acknowledges and agrees that it understands the meaning of this Agreement and freely and voluntarily enters into it and the respective releases contained in this Section 7.3. Each party further agrees that no fact, evidence, event or transaction occurring before the execution of this Agreement, which is either now known to such party, or may hereafter become known to such party, shall affect in any manner the final and unconditional nature of the agreements and releases set forth herein. Each of the parties acknowledges that it has read each word of this Agreement and understands it is agreeing not to bring any legal action against any party released herein based on anything that has happened before the date of this Agreement (except to the extent such claims are expressly retained by such party pursuant to the provisos set forth in Sections 7.1 and 7.2, respectively).

8. RIGHT OF FIRST REFUSAL. As partial consideration for the Company's purchase of the Redeemed Interest in accordance with the terms of this Agreement, which the Company would not otherwise have agreed to but for the grant of this right of first refusal, and for other agreements and considerations made and received concurrently herewith, Seller, on its own behalf, and on behalf of the other Seller Parties, grants the Company Parties the right of first refusal ("**Right of First Refusal**") to supply Construction Materials to the Seller Parties in connection with any and all of the Seller Parties' construction projects that are commenced during the time period commencing on the date of this Agreement and ending on the fifth anniversary of this Agreement. "**Construction Materials**" shall include (i) cement, (ii) concrete, and (iii) aggregates, sand and gravel. The Company shall exercise its Right of First Refusal as follows:

(a) No less than thirty (30) days prior to the anticipated commencement of a construction project ("**Notice Period**"), Seller shall present to the Company a *bona fide* offer, bid or quote from a third party to supply Construction Materials that it intends to accept. The "**Third Party Offer**" shall be in the form of a bid, a quote, or an unexecuted written contract that states the terms and conditions upon which the third party is willing to supply Construction Materials, including, but not limited to, a description of the Construction Materials and the price such third party is willing to supply such Construction Materials.

(b) Upon receipt by the Company of the Third-Party Offer, the Company shall have ten (10) business days to deliver written notice to the Seller Parties either agreeing to match the terms of the Third Party Offer or decline to exercise its Right of First Refusal ("**Company Notice**"). If the Company elects to exercise its Right of First Refusal, the parties will in good faith negotiate mutually agreed written agreements that include the terms set forth in the Third-Party Offer. A Right of First Refusal with respect to any Construction Materials in a Third-Party Offer shall be deemed terminated if the Company either declines to match the Third Party Offer or fails to provide the Seller Parties the Company Notice.

(c) The Company acknowledges that the Seller Parties own and/or operate certain sand, gravel and aggregates quarries and production operations through Yavapai-Apache Sand and Rock, a Subordinate Economic Organization of Seller's owner, the Yavapai-Apache Nation. The Right of First Refusal contemplated by this Section 8, will not apply to any sand, gravel or aggregates supplied by any Seller Party to any of the Seller Parties' construction projects.

9. **AMENDMENT; ASSIGNMENT.** No amendment or alteration of the terms of this Agreement shall be valid or binding unless made in writing signed by the parties hereto which specifically refers to this Agreement. This Agreement may not be assigned by any party without the prior written consent of the other parties, which consent shall not be unreasonably withheld.

10. **NOTICES.** All notices required hereunder shall be in writing and shall be delivered personally, sent by prepaid overnight courier or sent by registered or certified mail, postage prepaid, return receipt requested, to the addresses set forth below:

If to Seller: **Yavapai-Apache Investment Company**
C/O Yavapai-Apache Nation
Office of the Chairman
2400 West Datsi Street
Camp Verde, Arizona, 86322
Attention: Karla Reimer, Council Secretary

If to the Company and
The Majority Member: **Drake Cement, LLC**
21803 N Scottsdale Rd.
Suite 220
Scottsdale, AZ 85255
Attention: Enrique Rozas

or to such other address as the party to whom notice is to be given may have furnished to the other party by notice in accordance with this Section 10. Notices shall be deemed to have been given: (a) when delivered if personally delivered, (b) on the business day after dispatch if sent by overnight courier and (c) on the third business day following the date of the mailing if sent by mail.

11. **ENTIRE AGREEMENT; BINDING EFFECT.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral, written or in electronic form. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors, assigns, heirs, administrators and executors.

12. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts (which counterparts may be exchanged electronically), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13. **SEVERABILITY.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

14. **EXPENSES.** The parties hereto shall bear their own expenses with respect to the transactions contemplated by this Agreement.

15. **HEADINGS AND CAPTIONS.** The section headings and captions contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

16. **GOVERNING LAW; VENUE.** This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Arizona without giving effect to choice or conflict of law principles that would cause the application of the domestic substantive laws of any other jurisdiction. The parties hereby consent and submit to the exclusive jurisdiction of the courts of the State of Arizona, in the County of Maricopa, for the purpose of any action or proceeding brought to enforce this Agreement.

17. **LIMITED WAIVER OF SOVEREIGN IMMUNITY.** For purposes of this Agreement, Seller is granting and does hereby grant, consent and agree to a limited waiver of its sovereign immunity from suit and consents to be sued as set forth in Section 16. This waiver is specifically limited to the following actions and judicial remedies: (a) an award against Seller for monetary damages to compensate for injury received or losses incurred; and (b) equitable relief provided for in this Agreement and otherwise where appropriate to mandate Seller to perform specifically any obligation under this Agreement. Seller hereby represents and warrants to and agrees with all other parties to this Agreement that all applicable and necessary consents, approvals and authorizations necessary for Seller to enter into, execute and deliver this Agreement (including, among others, all provisions relating to the limited waiver of sovereign immunity as set forth herein) have been and were obtained. Seller waives and agrees not to assert any defense, claim or doctrine requiring or purporting to require jurisdiction before the Yavapai-Apache Nation tribal courts or requiring or purporting to require exhaustion of Yavapai-Apache Nation tribal court remedies prior to proceeding in the manner set forth in this Agreement. Seller is not waiving its right to assert the defense of sovereign immunity except as set forth, referred to and provided for in this Agreement. This limited waiver is enforceable by the parties to this Agreement (including the Company and the Majority Member) and their respective successors and assigns and does not create any additional third-party beneficiary rights to suits or private causes of action in favor of third parties. Other than as expressly set forth herein, Seller does not waive its sovereign immunity. The Yavapai-Apache Nation has absolutely no liability or obligations, as the sole shareholder of Seller or otherwise, to the Company, its members or its creditors.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Redemption Agreement, under seal, as of the date first set forth above.

COMPANY:

DRAKE CEMENT, LLC

By: _____
Name:
Title:

SELLER:

**YAVAPAI-APACHE INVESTMENT
COMPANY**

By: Tanya M. Lewis
Name: TANYA M. LEWIS
Title: VICE CHAIRPERSON

MAJORITY MEMBER:

SKANON INVESTMENTS, INC.

By: _____
Name:
Title: