

RESOLUTION NO. 90 -22

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

Approving the Assignment and Assumption Agreement (“Assignment”) by and among **YAVAPAI-APACHE INVESTMENT COMPANY**, a company formed under the laws of the Yavapai-Apache Nation and owned exclusively by the Yavapai-Apache Nation (the “Assignor” or “YAI”), the **YAVAPAI-APACHE NATION**, a federally recognized Indian tribal government (the “Assignee” or “Nation”), **DRAKE CEMENT, LLC**, a Delaware Limited Liability Company (“Drake”), and **SKANON INVESTMENTS, INC.**, an Arizona corporation (“Skanon”), collectively the “Parties”

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. As authorized under Tribal Council Resolutions Nos. 28-2002, 78-2003, 79-2004, and 206-2008 the Nation, acting through Yavapai-Apache Investment Company, has invested funds of the Nation into the business operations of Drake.

3. 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.

4. YAI currently holds a 4.348% membership interest in the Drake, representing YAI’s entire membership interest in Drake (the “**Redeemed Interest**”).

5. On June 2, 2022, the Council adopted Tribal Council Resolution No. 89 -2022, thereby approving that certain “Redemption Agreement by and among Drake Cement, LLC., Yavapai-Apache Investment Company, and Skanon Investments, Inc. (the “**Redemption Agreement**”) under which YAI sold the Redeemed Interest to Drake and under which Drake purchased the Redeemed Interest from YAI in accordance with the Terms of the Redemption Agreement.

6. As a party to the Redemption Agreement YAI has determined to assign the Redemption Agreement to the Nation and the Nation desires to assume the Redemption Agreement in accordance with the terms and conditions of the Assignment and Assumption Agreement (“**Assignment**”), a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference, under which YAI assigns, transfers, and conveys its entire interest in the Redemption Agreement to the Nation, and under which the Nation’s assumes all of YAI’s duties and obligations under the Redemption Agreement, and under which Drake and Skanon consent to the Assignment and Assumption Agreement.

7. Under Section 9 of the Redemption Agreement YAI may not assign its rights under the Agreement without the prior written consent of Drake and Skanon, which consent Drake and Skanon have determined to give.

8. The Tribal Council has reviewed the attached Assignment and Assumption Agreement with the Nation's Attorney General and has determined that approval of the Assignment and Assumption Agreement, for and on behalf of Yavapai-Apache Investment Company and the Nation, 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, acting for and on behalf of Yavapai-Apache Investment Company, and for and on behalf of the Nation, hereby approves the Assignment and Assumption Agreement in the form attached to this Resolution as **Exhibit A**, which Assignment and Assumption Agreement is hereby incorporated into this Resolution by reference, and the Chairman or Vice Chairwoman (the "Authorized Representative") are hereby authorized to execute and deliver the Agreement to Drake and Skanon on behalf of Yavapai-Apache Investment Company and the Nation.

BE IT FURTHER RESOLVED that the Council, on behalf of Yavapai-Apache Investment Company, and for the Nation, hereby affirms and approves each of the terms and conditions agreed to by YAI and the Nation under the Assignment and Assumption Agreement.

BE IT FURTHER RESOLVED that the Council hereby directs the Nation's Treasurer to arrange, as provided under Section 3.3 of the Assignment and Assumption Agreement, for the payment of funds by Drake under the Redemption Agreement in the amount of \$6,500,000.00 directly to the Yavapai-Apache Nation in accordance with the Assignment and Assumption Agreement and the schedule of payments set out in Section 1 of the Redemption Agreement, and the Treasurer is hereby directed to deposit all such funds when received into the Nation's Economic Development Fund.

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.

Wanaymstacin FOR
Jon Huey, Chairman

ATTEST:

Karla Reimer
Karla Reimer, Council Secretary

Approved as to form:
Scott Canty
Office of the Attorney General

EXHIBIT A

Assignment and Assumption Agreement (“Assignment”) by and among **YAVAPAI-APACHE INVESTMENT COMPANY**, a company formed under the laws of the Yavapai-Apache Nation and owned exclusively by the Yavapai-Apache Nation (the “**Assignor**” or “**YAI**”), the **YAVAPAI-APACHE NATION**, a federally recognized Indian tribal government (the “**Assignee**” or “**Nation**”), **DRAKE CEMENT, LLC**, a Delaware Limited Liability Company (“**Drake**”), and **SKANON INVESTMENTS, INC.**, an Arizona corporation (“**Skanon**”)

June 2, 2022

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (“Assignment”) is made as of June 2, 2022, by and between **YAVAPAI-APACHE INVESTMENT COMPANY**, a company formed under the laws of the Yavapai-Apache Nation and owned exclusively by the Yavapai-Apache Nation (the “Assignor”), the **YAVAPAI-APACHE NATION**, a federally recognized Indian tribal government (the “Assignee”), **DRAKE CEMENT, LLC**, a Delaware Limited Liability Company (“Drake”), and **SKANON INVESTMENTS, INC.**, an Arizona corporation (“Skanon”), collectively the “Parties”.

Recitals

WHEREAS, Assignor is a party to the Redemption Agreement (as defined below); and

WHEREAS, Assignor desires to assign the Redemption Agreement, and Assignee desires to assume the Redemption Agreement, each on the terms and conditions set forth herein; and

WHEREAS, Assignor warrants that Assignee is able to fully perform all obligations that exist under the Redemption Agreement; and

WHEREAS, Assignee warrants that it is able to fully perform all obligations that exist under the Redemption Agreement; and

WHEREAS, it is consistent with Drake’s and Skanon’s interest to recognize the Assignee as the successor party to the Redemption Agreement; and

WHEREAS, under Section 9 of the Redemption Agreement, the Assignor may not assign any of its rights interests or obligations under the Redemption Agreement, without the prior written consent of Drake and Skanon; and

WHEREAS, Drake and Skanon desire to consent to the assignment and transfer of the Redemption Agreement based on Assignor’s representations and warranties under the terms provided below.

NOW THEREFORE, in consideration of the respective undertakings, covenants and agreements of the

Article I Definitions

1.1 Agreement

“Redemption Agreement” means that certain Redemption Agreement dated as of June ____, 2022 entered into among Assignor, Drake and Skanon, a copy of which is attached to this Assignment as Appendix A.

1.2 Effective Date

“Effective date” means the first day on which the Assignor is obligated to assume and perform the obligations contained in the Redemption Agreement. The Effective Date shall be the date coterminous with the Parties approval of this Assignment and the consent by Drake and Skanon as provided below. For the avoidance of doubt, the Effective Date shall commence immediately following the redemption of Assignor’s membership interest in Drake as contemplated by the Redemption Agreement.

1.3 Other Terms

Other terms used and not defined in this Assignment shall have the meaning assigned to such terms in the Redemption Agreement.

Article 2 Assignment of Redemption Agreement

2.1 Assignment. Assignor hereby assigns, transfers, and conveys to Assignee all of Assignor’s rights, title, and interest in and to the Redemption Agreement and all of Assignor’s duties and obligations thereunder that will arise on or after the Effective Date.

2.2 Acceptance. Assignee hereby accepts the assignment, transfer and conveyance set forth in Article 2.1 above and agrees to perform all of Assignor’s duties and obligations under the Redemption Agreement that will arise on or after the Effective Date.

2.3 Rights to enforce. Subject to the terms of the Redemption Agreement, this Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their successors and transferees. Nothing in this Assignment, whether express or implied, shall be construed to give any person or entity (other than Drake and Skanon and the parties hereto and their respective successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Assignment or any covenants, conditions or provisions contained herein.

2.4 Consent of Drake and Skanon. Drake and Skanon hereby consent to the assignment, transfer, and conveyance described in this Article 2 based on the facts provided below, which indicates that Assignee is able to fully perform all obligations that may and will exist under the Redemption Agreement. Assignor and Assignee acknowledge that the prior written consent of Drake and Skanon to this Assignment is required under the terms of the Redemption Agreement. Drake and Skanon shall have the right to enforce this Assignment.

2.5 Successor. Drake and Skanon recognize the Assignee as the Assignor’s successor in interest in and to the Redemption Agreement. The Assignee by this Assignment becomes liable for all responsibilities and is entitled to all rights, titles, and interest of the Assignor in and to the Redemption Agreement that will arise on or after the Effective Date. Drake and Skanon will treat the Assignee as if the Assignee were the original party to the Redemption Agreement. Following the Effective Date of this Assignment, the term “Seller” as used in the Redemption Agreement shall refer to the Assignee. The Redemption Agreement shall remain in full force and effect, except as modified by this Assignment. Each party has executed this Assignment as of the day and year first above written.

2.6 Further assurances. From and after the date of this Assignment, Assignor and Assignee agree to do such things, perform such acts, and make, execute, acknowledge, and deliver such documents as may be reasonably necessary or proper and usual to complete the assignment, transfer, and conveyance contemplated by this Assignment or as may be reasonably required by Drake and Skanon.

2.7 Effectiveness. This Assignment shall be effective as of the Date first set forth above.

Article 3 Obligations and Liabilities

3.1 Assignment, Waiver, and Assumption. The Assignor confirms the Assignment of the Redemption Agreement to the Assignee and waives any claims and rights against Drake and Skanon that it now has or may have in the future in connection with the Redemption Agreement. The Assignee agrees to be bound by and to perform the Redemption Agreement in accordance with the conditions contained therein. The Assignee also assumes all obligations and liabilities of, and all claims against, the Assignor under the Redemption Agreement as if the Assignee were the original party to the Redemption Agreement. The Assignee ratifies all previous actions taken by the Assignor with respect to the Redemption Agreement, with the same force and effect as if the action had been taken directly by the Assignee. Except as expressly provided in this Assignment, nothing in it shall be construed as a waiver of any rights of Drake and Skanon against the Assignor.

3.2 No Release of Assignor. Neither this Assignment, nor the consent of Drake and Skanon, shall release Assignor in whole or in part from any of its obligations or duties under the Redemption Agreement if Assignee fails to perform or observe any such obligation or duty. Assignor has entered into this Assignment and obtained such consent of Drake and Skanon based solely upon Assignor's independent investigation of Assignee's ability to perform under the Redemption Agreement, and Assignor assumes full responsibility for obtaining and sharing with Drake and Skanon any further information with respect to Assignee or the conduct of its business after the date of this Assignment. Assignor waives any right to require Drake and Skanon (i) to one proceed against any person or entity including Assignee, (ii) proceed against or exhaust any security now or hereafter held in connection with the Redemption Agreement, or (iii) pursue any other remedy in Drake or Skanon's power.

3.3 Payments under the Agreement. Section 1 of the Redemption Agreement provides for the payment by Drake to Seller (here the Assignor) of funds in the amount of \$6,500,000.00 in cash by wire transfer in accordance with the schedule of payments set out in Section 1 of the Redemption Agreement ("Payment Obligation"). Drake and Skanon agree that upon the Effective Date of this Assignment the Payment Obligation shall be and is assigned, transferred, and conveyed to Assignee, and Assignee shall thereafter be entitled to receive the payments that would have been made to Assignor in the absence of this Assignment. All such payments shall be made in cash by wire transfer to the Yavapai-Apache Nation in accordance with such wire instructions as provided to Drake by Assignee acting through its Chairman and Treasurer.

Article 4 Indemnification

4.1 Drake and Skanon. Assignor and Assignee shall, to the fullest extent permitted by law, indemnify, defend and protect Drake and Skanon and hold Drake and Skanon harmless from and against any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of Assignor and/or Assignee's failure to comply with any term or obligation under this Assignment or the Redemption Agreement.

4.2 Assignor. Assignor shall indemnify defend and protect Assignee, and hold Assignee harmless from and against, any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of any breach by Assignor of the Redemption Agreement or any other failure to perform or observe any of its duties or obligations of Assignor thereunder to the extent such breach or failure arises prior to the Effective Date of this Assignment.

4.3 Assignee. Assignee shall indemnify, defend and protect Assignor, and hold Assignor harmless from and against, any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of any breach by Assignee of the Redemption Agreement or any other failure to perform or observe any of the duties or obligations thereunder assumed by Assignee pursuant to this Assignment.

Article 5 General Provisions

5.1 Governing Law. This Assignment shall be governed by the laws of the State of Arizona, without regard to its conflicts of laws principles

5.2 Headings. All section headings and captions contained in this Assignment are for reference only and shall not be considered in construing this Assignment.

5.3 Notices. All notices, consents, directions, approvals, instructions, requests and other communications regarding this Assignment or the Redemption Agreement shall be in writing, shall be addressed to the person in an address set forth below and shall be (i) deposited in the US mail, first class, certified with return receipt requested with appropriate postage, and delivered, or (ii) hand delivered, or (iii) sent via email with a return receipt. All communications sent in accordance with this section 5.3 shall become effective on the date of receipt. From time-to-time Assignor, Assignee, Drake and Skanon may designate a new address for purposes of this section by notice to the other signatories to this assignment.

If to Assignor:

Yavapai-Apache Investment Company
C/O Office of the Chairman
2400 West Datsi Street
Camp Verde, Arizona 86322

If to Assignee:

Yavapai-Apache Nation
Office of the Chairman
2400 West Datsi Street

Camp Verde, Arizona 86322

If to Drake/Skanon:

21803 N Scottsdale Rd.
Suite 220
Scottsdale, AZ 85255
Attention: Enrique Rozas

5.4 Entire Agreement. This Assignment sets forth the entire agreement between Assignor and Assignee relating to the Redemption Agreement and supersedes all other oral or written provisions.

5.5 Severability. Should the application of any word, phrase, clause, sentence, paragraph and or provision of this Assignment to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other words, phrases, clauses, sentences, paragraphs and/or provisions of this Assignment shall not be affected or impaired thereby and (ii) such words, phrases clauses, sentences, paragraphs and/or provisions shall be enforced to the maximum extent possible so as to affect the intent of Assignor, Assignee and Drake and Skanon.


5.6 Counterparts. This Assignment may be executed in one or more counterparts, including counterparts send by email and electronic signature (PDF format), each of which shall be deemed to be an original copy of this Assignment, and all of which, when taken together, shall be deemed to constitute one and the same agreement. Delivery of such counterparts by facsimile or email (in PDF format) shall be deemed effective as manual delivery.

[Signature Page Follows]

IN WITNESS WHEREOF, Assignor and Assignee have each duly executed this Assignment as of the first day referenced above.

Assignor:
Yavapai-Apache Investment Company

Assignee:
Yavapai-Apache Nation

By: 
Name: TANYA M. UENIS
Title: VICE CHAIRPERSON

By: 
Name: Jon Huey
Title: Chairman

Drake and Skanon hereby consent to the Assignment described in Article 2 of this Assignment.

DRAKE CEMENT, LLC

By: _____
Name:
Title:

SKANON INVESTMENTS, INC.

By: _____
Name:
Title: