

NORTH CAROLINA  
WAKE COUNTY

**OPTION AND  
LEASE AGREEMENT**

This **OPTION AND LEASE AGREEMENT** ("Lease") entered into as of the 1 day of March, 2019, between RALEIGH-DURHAM AIRPORT AUTHORITY, a municipal authority enabled by the General Assembly of North Carolina and established by the Cities of Raleigh and Durham and the Counties of Wake and Durham with its principal office located at 1000 Trade Drive, RDU Airport, North Carolina, hereinafter referred to as "Lessor," and WAKE STONE CORPORATION, a North Carolina corporation, with its principal office in Knightdale, North Carolina, hereinafter referred to as "Lessee";

**W I T N E S S E T H:**

That Lessor, for and in consideration of the sum of ONE DOLLAR, the receipt of which is hereby acknowledged, and in further consideration of the covenants, agreements option payments and the rentals and royalties hereinafter set forth, does hereby grant to Lessee an option to lease to Lessee for the purposes hereinafter described and upon the terms set forth hereinafter, all those certain tracts or parcels of land containing in the aggregate approximately 105 +/- acres ("Premises"), situated in Cedar Fork Township, Wake County, State of North Carolina, said Premises being more particularly described as set forth on Exhibit A, attached hereto and incorporated herein by reference.

**OPTION/TESTING PERIOD**

1. **OPTION PERIOD.** The initial one hundred eighty day option period shall commence upon the execution of this Agreement by all parties and the payment to Lessor by Lessee of an option payment in the amount of Twenty Thousand Dollars (\$20,000). The initial option period may be used by Lessee to conduct such tests (the "Tests") as it deems necessary in its sole and absolute judgment to determine the existence and extent of any commercially minable quantities of crushable stone located on the Premises, as well as to pursue and/or obtain any and all required federal, state, and local mining, operating, zoning, environmental or other permits. Lessor agrees to fully cooperate with Lessee in petitioning for appropriate federal, state, and local permits including any required signatures by Lessor (all costs of said petitions and permits to be borne by Lessee). Failure by either party to obtain necessary permits or approvals during the option period may result in termination of the option period by either party upon written notice to the other party. At any time prior to the end of the initial option period, Lessee may notify Lessor in writing of its intent to terminate the option period, or Lessee may pay to Lessor an additional option payment in the amount of Forty Thousand Dollars (\$40,000) to extend the option for an additional 365 day testing period, and may thereafter, upon payment of an additional Forty Thousand Dollars (\$40,000) prior to the end of such extended option period, extend the testing period for a second 365 day extended option period. If at the end of the second 365 day extended option period there is pending or threatened against Lessor or Lessee any

action or proceeding involving any challenge to, or seeking injunctive or other relief in connection with, any of the applications, approvals, permits or other licensing required or contemplated hereunder ("Approvals") that may have the effect of preventing, delaying, making illegal, or otherwise interfering with any of the Approvals, Lessee shall have the right to further extend the option period for up to two (2) additional 365 day periods, for no additional option payments, upon giving Lessor written notice of such election prior to the expiration of the immediately preceding option period; provided that during any such extended option period, Lessor shall have the right to terminate the extended option period by giving Lessee written notice of its intention to terminate such extended option period. Upon receipt of Lessor's notice of its intention to terminate such extended option period, Lessee shall have thirty (30) days within which to elect to exercise Lessee's option to lease the Premises. Lessee may use the initial testing period and any extensions of such period to conduct testing and to pursue and obtain any and all required permits and approvals for its proposed mining operation. Option payments are non-refundable and may not be credited to any future royalty payments or other amounts that might come due to Lessor from Lessee hereunder. If Lessee fails to timely make all option payments when due, and such failure continues for a period of ten (10) days after written notice from Lessor to Lessee that such option payment has not been received, then the option will terminate and will terminate Lessee's right to lease the Premises. The option to lease the Premises may be exercised by Lessee at any time during the initial and/or extended option/testing period in the manner provided hereinafter.

2. LESSEE'S OBLIGATIONS DURING THE OPTION/TESTING PERIOD. Lessee agrees to conduct its exploratory operations in a prudent and commercially reasonable manner and agrees not to disturb the Premises except to the extent necessary to conduct its exploratory operations. Lessee agrees to cooperate fully with any and all regulatory actions that Lessor may have to undertake in order to obtain approval of the Lease. Lessee hereby indemnifies and holds Lessor harmless from and against any and all claims, causes of action, losses, expenses, attorney's fees or demands of any kind whatsoever arising out of or resulting from any of Lessee's or its agents', representatives' or invitees' acts or actions on the Premises during the option/testing period. Notwithstanding the foregoing, Lessee shall not be obligated to defend or otherwise indemnify Lessor, nor to repair any damage attributable to any one or more of the following: (i) the discovery of hazardous materials on the Premises; (ii) any pre-existing latent defect in the Premises; (iii) the spread of any hazardous materials already present on the Premises despite the use of reasonable care; or (iv) the acts or omissions of Lessor, except that Lessee shall be liable for any loss, costs, fine or expense (including all depreciation in value) incurred by Lessor due to Lessee's release of any hazardous materials brought onto the Premises by Lessee and/or Lessee's agents. If Lessee elects not to exercise its option to lease the Premises, Lessee shall regrade and revegetate as necessary to meet any and all governmental requirements and to restore the Premises as nearly as possible to its original grade and appearance.

#### **MINERAL LEASE AGREEMENT**

This mineral lease agreement (the Lease") is made and entered into by and between RALEIGH-DURHAM AIRPORT AUTHORITY, a municipal authority enabled by the General



Assembly of North Carolina and established by the Cities of Raleigh and Durham and the Counties of Wake and Durham with its principal office located at 1000 Trade Drive, RDU Airport, North Carolina ("Lessor"), and WAKE STONE CORPORATION, a North Carolina corporation ("Lessee"), effective on the first day of the month following Lessor's receipt of Lessee's written Commencement Date Notice as described hereinafter.

1. In consideration of the covenants, agreements and the rentals, royalties and other payments hereinafter set forth, Lessor hereby leases the Premises, as more particularly described on Exhibit A attached hereto and incorporated herein by reference, to Lessee for a Lease Term of twenty-five (25) years to have and to hold the Premises together with all privileges and appurtenances thereunto belonging unto Lessee for and during the full Lease Term from the date of commencement of the Lease Term as hereinafter set forth, unless said Lease Term is sooner terminated as hereinafter provided, for the sole and only use of Lessee for mining, quarrying, and removal therefrom, by blasting and otherwise, deposits of rock, stone, sand, gravel, soil, and earth (inclusively hereinafter referred to as "Mining") as may exist on, in or under the Premises, in such manner as will interfere no more than is reasonably necessary with the possession of the Premises by Lessor, set forth hereinafter, together with the full and exclusive right, privilege and option of Lessee to construct, operate, and maintain quarrying, washing, crushing and other plants, including, but not limited to machinery, dams, ponds, power lines, telephone lines, roads, stockpile areas, and any other needed facilities or equipment on the Premises (together with Mining, collectively, the "Mining Operation"), and with full right of Lessee to remove at any time any and all of said equipment or facilities of the Mining Operation from the Premises during the Lease Term, and any and all said equipment shall be removed within a period of three hundred sixty five (365) days after termination or expiration of the Lease Term. If Lessee is unable to complete its mining operations during the initial twenty-five year term, the parties agree that the term may be extended from year to year at the request of Lessee, not to exceed a total of ten years, upon the same terms and conditions as the initial term. It is understood and agreed, however, that the bridge to be constructed by Lessee over Crabtree Creek shall not be removed after the termination or expiration of the Lease Term and shall remain on the Premises.

2. It is agreed by Lessor and Lessee that "strippings" or "overburden" (as such terms are customarily used in the mining and quarrying industry) that must be removed from any material to be processed to commence or expand the quarry pit to be constructed by Lessee on the Premises, or material that must be leveled or removed for the construction of any plant site, dams, roads, stockpile areas, or the like are waste material and Lessee is granted the right without liability for payment of royalties to Lessor as hereinafter set out to use the overburden or waste material on the Premises or by wasting or stockpiling it on or off the Premises; provided, however, that Lessor shall have the right, but not the obligation, to accept some or all of these materials to use as fill on Lessor's property for such purposes as Lessor may deem appropriate; provided, further, that the parties will coordinate and cooperate with each other in order to provide Lessor an opportunity to utilize the material without unduly interrupting or inconveniencing Lessee's effort to construct necessary facilities and to proceed with the Mining Operation. Any sale by Lessee of overburden or waste material will be subject to royalty

payments at the rate set forth in Paragraph 4 below. Any sale of merchantable timber from the Premises shall be for the benefit of Lessor and the net proceeds of any such sale shall be promptly paid to Lessor.

3. To the extent permitted by law, Lessee agrees to indemnify and save Lessor harmless from and against any and all claims, actions, losses, liabilities, judgments, fines, penalties, costs and expenses, including reasonable attorneys' fees and costs of litigation (hereinafter collectively referred to as "Liabilities"), (1) resulting from the death or injury of any third persons or damages to property of third persons on the Premises proximately caused by the act or omission of Lessee or of its employees, agents, representatives, contractors, customers or other invitees during the Lease Term or during the 365 day post-termination period or (2) resulting from any breach of any covenant or agreement on the part of Lessee contained in this Lease, except that Lessee's obligation to indemnify Lessor from the Liabilities in accordance with the provisions of this Paragraph 3 shall not apply to the extent any Liabilities are proximately caused by Lessor's negligence or misconduct or by its agents' or employees' negligence or misconduct.

3.1 Lessee covenants and agrees that Lessee's respective uses of the Premises shall comply at all times during the Lease Term with all federal, state, and local laws, rules, regulations, orders, and requirements relating to health, safety or the environment including without limitation, erosion control, storage or use of hazardous materials and reclamation laws and regulations.

Lessee shall indemnify Lessor and save Lessor harmless from and against any and all Liabilities in connection with loss of life, personal injury, and/or damage to the Premises or adjoining property arising from or out of the release of any hazardous material, as defined by any local, state or federal law, code, ordinance, statute or regulation, caused by Lessee.

At Lessee's sole cost and expense, Lessee shall comply with any present or future environmental laws which apply to Lessee's use and occupancy of the Premises, Lessee's operations on the Premises or any conditions arising from Lessee's use and occupancy of the Premises. Lessee covenants, at its sole cost and expense, to remove or take remedial action with regard to any hazardous material unlawfully released by Lessee to the environment on the Premises for which any removal or remedial action is required pursuant to any and all local, state or federal laws, ordinances, orders, rules, regulations or governmental actions.

Provided, however, the foregoing covenants and undertakings of Lessee contained in this Paragraph 3.1 shall not apply to any hazardous or environmental condition or matter constituting a violation of any local, state, or federal law, code, ordinance, statute, or regulation: (i) which existed prior to the commencement of Lessee's use or occupancy of the Premises and was not caused in whole or in part, by Lessee, or (ii) to the extent such violation is caused by, or results from, the acts or negligence of Lessor. All indemnities of Lessee contained in this Paragraph 3.1 shall survive the expiration or earlier termination of the Lease Term for so long as Lessors may be subject to any expense or liability against which Lessee has agreed to indemnify Lessors under this Paragraph 3.1, including during any and all post-termination activities on the Premises.

4. By written notice (the "Commencement Date Notice") by Lessee to Lessors at any time prior to the expiration of the Initial Testing Period or any Additional Testing Period as set forth in the foregoing Option/Testing Agreement, Lessee, at Lessee's sole election, may advise Lessors of Lessee's election to commence the Lease Term and begin construction of the crushing plant and/or development of the mining pit. The first day of the month following the date that Lessor receives the Commencement Date Notice shall be the commencement date ("Commencement Date") of this Lease. Thereafter Lessee will pay the following rents and royalties:

(a) Lessee shall pay Lessor the sum of One Hundred Thousand Dollars (\$100,000.00) per year as an advance annual minimum royalty ("Annual Minimum Royalty") for Lease years 1-5. The Annual Minimum Royalty will increase to Two Hundred Thousand Dollars (\$200,000) for Lease Years 6-10, will increase to Four Hundred Thousand Dollars (\$400,000) for Lease Years 11-20 and will increase to Six Hundred Thousand Dollars (\$600,000) for Lease Years 21-25 and for any extension beyond the 25<sup>th</sup> year. The payment of each year's Annual Minimum Royalty is to be made on or before the commencement of each lease year "Lease Year"). The first Lease Year will commence on the Commencement Date and each subsequent Lease Year will commence on the anniversary date of the Commencement Date. Annual Minimum Royalty payments may only be credited to the Lease Year for which they were paid. Such payments may not be carried back to a prior year or credited to any royalties due for subsequent years.

(b) Lessee shall pay Lessor a sales royalty ("Annual Sales Royalty") the sum of five & one half percent (5.5%) of "Net Sales" from the quarry of Lessee on the Premises during any Lease Year. The Annual Minimum Royalty paid for that Lease Year shall be a credit against the amount of the Annual Sales Royalty payable. "Net Sales" shall include sales of all aggregate products mined from the Premises by Lessee during the Lease Term, but excluding the cost of any delivery charges, taxes, or other expense that causes the Net Sales price to be in excess of the F.O.B. quarry price. When the Annual Sales Royalty earned exceeds the Annual Minimum Royalty paid in any Lease Year, Lessee shall pay the additional Annual Sales Royalty amount monthly in arrears by no later than the twentieth (20<sup>th</sup>) day of the month following the month in which the additional Annual Sales Royalty was earned. (By way of illustration, in year seven the Annual Minimum Royalty is \$200,000, paid in advance, and, if the amount of the Annual Sales Royalty earned exceeds \$200,000 by sometime in August, then Lessee will begin paying the Annual Sales Royalty monthly starting in September and thereafter monthly until the end of the Lease Year.) Lessee will provide a monthly statement of royalty balance to Lessor by the twentieth (20<sup>th</sup>) of the following month. For example, Lessors will receive January's royalty statement not later than the twentieth (20<sup>th</sup>) of February. Lessee agrees that it will afford Lessors and/or its authorized agents all reasonable opportunity to review Lessee's operations conducted on the Premises by examination of such records as may be reasonably necessary for Lessor to determine the amount of Net Sales.



(c) Lessor has agreed to the concept of a potential lease with a governmental body or qualified non-profit for an approximately 151 acre parcel, to the north and west of the Premises, for use as a mountain bike and related activities recreation area (the "Mountain Bike Lease"). Lessee agrees to make additional payments (the "Additional Payments") to Lessor to subsidize the fair market value rent payable to Lessor by the lessee of the Mountain Bike Lease, whether or not Lessor has entered into the Mountain Bike Lease. Lessee's Additional Payments to subsidize the Mountain Bike Lease will be payable annually in arrears with the first payment due on the last day of the first year of the Mineral Lease and each subsequent payment due on the last day of each year following the previous payment. The amount of Lessee's Additional Payments shall be Three Hundred Sixty Thousand Dollars (\$360,000) per year, regardless of the rental payments due to be paid to Lessor by the lessee under the Mountain Bike Lease. The total Additional Payments by Lessee to Lessor to subsidize the Mountain Bike Lease shall be limited to Three Million Six Hundred Thousand Dollars (\$3,600,000). Such Additional Payments shall immediately cease if Lessee terminates the Mineral Lease Agreement for any reason in accordance with its terms.

5. It is agreed between the parties hereto that should Lessee be in default, beyond any applicable notice and/or cure period, of payment of any rentals and/or royalties accrued, due and unpaid under this Lease, or if Lessee does not shut down the Mining Operation, but closes the quarry operation for a period of two consecutive years with no production or sales, Lessor shall give Lessee written notice of the amount due if any, and Lessor's intention to terminate this Lease. Annual Minimum Royalty payments will continue to accrue and be due and payable as agreed during any period that the quarry is closed, but the Mining Operation is not shut down by Lessee as provided in Paragraph 6 below. If such payments then due, accrued and unpaid are not paid within thirty (30) days from date Lessee receives such notice from Lessor, Lessor may then declare this Lease terminated, but otherwise this Lease is to remain in full force. If terminated in accordance with this Paragraph 5, neither Lessor nor Lessee shall have any further rights or obligations hereunder except for the payment of all amounts due, accrued and unpaid to Lessor or as may be otherwise expressly provided in this Lease. However, Lessee agrees to pay any such rentals and/or royalties that may be accrued and due but unpaid within thirty (30) days after the date Lessee receives such notice of termination and after all such amounts have been paid in full, Lessee shall have no further obligation to Lessor on account of rental or royalty payments or any other monetary payments of any nature under this Lease, excepting only payments under the indemnity provisions hereof.

6. Anything in this Lease to the contrary notwithstanding, should Lessee determine, in good faith, that continuing to mine on the Premises has become impossible or uneconomic for reasons beyond its reasonable control, Lessee shall have the right to terminate this Lease at any time during the Lease Term by giving Lessor a minimum of ninety (90) days' written notice of termination, whereupon this Lease shall terminate on the termination date specified in such notice and neither Lessor nor Lessee shall have any further rights or obligations hereunder (except as may be otherwise expressly provided in this Lease). However, Lessee agrees to pay to

Lessor within thirty (30) days after the termination date specified in such notice any Annual Minimum Royalty amounts due or coming due during such ninety (90) day notice period and any Annual Sales Royalty that may be accrued and due but unpaid during such ninety (90) day notice period and thereafter Lessee shall have no further obligation to Lessor on account of Annual Minimum Royalty or Annual Sales Royalty or any other monetary payments of any nature under this Lease. After the termination date specified in such notice, Lessee shall have no right to mine or remove quarry or mined materials from the Premises, provided that if Lessee should mine or remove quarry or mined materials from the Premises after the termination date specified in such notice, Lessee shall be obligated to account to Lessor for any and all such quarry or mined materials mined and/or removed from the Premises and to pay to Lessor any Annual Sales Royalty that would have become due and payable to Lessor under this Lease on account of such quarry or mined materials mined and/or removed from the Premises. Lessee shall remain fully responsible for reclamation, restoration of the Premises as may be required by governmental regulations. Anything contained in this Paragraph 6 or elsewhere in this Lease to the contrary notwithstanding, if Lessee determines, in good faith, that the quarry is approaching an exhaustion of mineable materials and gives Lessor not less than ninety (90) days' written notice prior to the anniversary date of any Lease Year that Lessee is going to shut down the Mining Operation on the Premises, Lessee shall have a period of two (2) years thereafter in which to shut down Lessee's Mining Operation on the Premises, during which period the Annual Minimum Royalty, but not the Annual Sales Royalty, shall be waived and not payable by Lessee to Lessor, and this Lease shall thereafter terminate effective upon the expiration of the two (2) year period, but Lessee shall remain fully responsible for reclamation and restoration of the Premises as may be required by government regulations.

7. Lessor covenants that at the time of execution of this Lease, Lessor has full right to lease the Premises, and that the Premises is free and clear of all encumbrances, and that Lessor will put Lessee in actual possession of the Premises as herein provided and that Lessee during the term hereof shall freely, peaceably, and quietly occupy and enjoy the Premises and the rights and privileges herein granted without molestation or hindrance, lawful or otherwise. Lessor covenants and agrees that Lessor shall do nothing to impair the fee simple title to the Premises during the Lease Term. Lessor further represents and warrants that except as set forth below, to the best of its knowledge and belief, the Premises is free of all hazardous substances and materials, that no hazardous substances and materials have ever been stored, disposed, treated, transported or located on or under the Premises, that the Premises is in compliance with all environmental, health and safety laws, that Lessor has received no correspondence from any regulatory agencies regarding the possible applicability of such laws to the condition of the Premises and that Lessor will promptly notify Lessee of any such correspondence or change in the environmental condition or status of the Premises which become known to Lessor during the Lease Term. Lessor further agrees that during the Lease Term Lessor will fully cooperate with Lessee in petitioning for appropriate federal, state, and local permits including any required signatures by Lessor (all costs of said petitions and permits to be borne by Lessee).

8. In addition to all covenants and agreements set forth herein, Lessee agrees to be bound by the following:

(a) The mining pit established by Lessee on the Premises may not be combined with any other pit operated by Lessee without the prior written approval of Lessor.

(b) Lessee will maintain complete and accurate mining and sales records for the Mining Operation and shall make such records reasonably available to Lessor on request for the purpose of review and/or audit.

(c) Lessee shall be solely responsible to provide fencing, security and all other safeguards to prevent unauthorized entry into the Premises.

(d) For purposes of conducting Lessee's due diligence, including testing and exploratory operations, during the Option/Testing Period, and timber removal upon execution of the Mineral Lease until construction by Lessee of the bridge across Crabtree Creek is complete and operational, Lessee may use Reedy Creek Road to access the Premises. Thereafter Lessee will not use Reedy Creek Road as a primary access point to the Premises and will not haul quarry or excavated or mined materials over this road.

(e) Lessor may undertake to acquire the adjacent properties known as the "Beals" property and the "Dunn" property in order to maximize the mining opportunity on the Premises, and if so acquired by Lessor, such property may thereafter be included in the term, "Premises", and be subject to this Lease.

9. If ownership of the Premises is transferred to another entity/owner, such entity/owner shall be bound by the terms and conditions of this Mining Lease Agreement.

10. Other than as described in Paragraph 9, Lessor covenants and agrees not to transfer, assign or encumber the Premises, or any interest therein, during the Lease Term unless consented to in writing by Lessee, which consent shall not be unreasonably withheld.

11. The parties agree that this Lease is made in order that Lessee, at its election, may enter upon the Premises for the purposes as set out in this Lease, together with the operation of any process to improve the merchantability of mined products of the Mining Operation.

12. Lessor covenants and agrees not to lease the Premises owned by Lessor or grant a license to any person or entity for the purpose of hunting or recreation on the Premises during the Lease Term, and if any hunting or recreational leases or licenses currently exist for the Premises owned by Lessor, such Lessor shall terminate all such leases or licenses upon Lessee's election to commence the Lease Term.

13. Reclamation of the mined portion of the Premises will occur as specified in the Reclamation Plan included in the Mining Permit issued by the Division of Energy, Minerals and Land Management of the Department of Environmental Quality ("DEQ"), as such plan may be modified from time to time by DEQ or by the NC Mining Commission, within one (1) year from



the expiration or earlier termination of this Lease. Documentation confirming existence of the reclamation bond will be provided annually with the Annual Minimum Royalty payment. In addition, during that one (1) year time period, or extensions of such one (1) year time period permitted by the State of North Carolina and agreed to in writing by Lessor, Lessee will design and complete, at no cost to Lessor, additional reclamation of the unmined property within the Premises, expressly including permanent pit security fencing completely surrounding the pit and constructed for the purposes of preventing entry into the pit, and also including, without limitation, such things as paved and natural hiking/biking trails, scenic pit overlook(s), pedestrian walkway(s), trail head signage, parking area(s) with crushed stone surface, and other features, the design and details of which are all subject to the mutual written agreement of Lessor and Lessee to be incorporated into the final design of the additional reclamation improvements.. Such proposed reclamation and enhancement items for the Premises are conceptually as shown on the rendering attached hereto and incorporated as Exhibit B. The reclamation features referenced in this Paragraph 13 and Exhibit B are included in anticipation of a possible recreation lease or other agreement which may be negotiated and entered into between Lessor and a governmental body or qualified non-profit to take effect at the end of the mining operations. The depiction of specific improvements as shown on Exhibit B are intended to provide examples of the scope of Lessee's financial commitment to support the potential future use of the Premises and are not intended to depict or limit the actual improvements to be constructed by Lessee at such time. Lessee estimates the reclamation of the Premises to be valued at Three Million Dollars (\$3,000,000). Any dispute over the design or the cost of such improvements shall be referred to binding arbitration under the rules of the American Arbitration Association (or other equivalent dispute resolution organization as may be agreed to by the parties).

14. Lessee will not assign or sublease the Premises without written consent from Lessor, not to be unreasonably withheld.

15.1 **Compliance with Laws.** Lessee shall at all times fully and promptly observe, obey and comply with all statutes, laws, ordinance, orders, rules, directives, regulations and standards, whether now in effect or hereinafter enacted, adopted or promulgated by the Authority, any municipal, state or federal agency, or any other lawful authority having jurisdiction over the Airport, the operation of the Airport, or the business conducted by Lessee at or from the Airport, including, but not limited to, those relating to the safety, cleanliness, occupancy and use of the Airport, to the nature, character and manner of operation of the business conducted in, at or from said Airport, and to the conduct of Lessee's agents and employees while on Airport property. In particular, but without limitation, each party to this Agreement shall perform its respective responsibilities regarding the provision of accessible facilities and services as required by 49 CFR Part 27 and all other applicable laws and regulations.

15.2 **Required Federal Provisions.**

- a. Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity

conducted with or benefiting from Federal assistance. If Lessee transfers its obligation to another, the transferee is obligated in the same manner as Lessee.

- b. This provision obligates Lessee for the period during which the property is owned, used or possessed by Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.
- c. During the performance of this contract, Lessee, for itself, its assignees, and successors in interest, agrees as follows:
  1. Compliance with Regulations: Lessee for itself and any contracted parties will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
  2. Non-discrimination: Lessee, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
  3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Lessee of Lessee's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
  4. Information and Reports: Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
  5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a) Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b) Cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: Lessee will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Lessee will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Lessee becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Lessee may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, Lessee may request the United States to enter into the litigation to protect the interests of the United States.

**15.3 List of Pertinent Nondiscrimination Acts and Authorities.** During the performance of this contract, Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- b. 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- c. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- d. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- e. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- f. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- g. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);



- h. Titles II and III of the American with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- i. The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- l. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**15.4 Fair Labor Standards Act (FLSA).** This Agreement incorporates by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Lessee has full responsibility to monitor compliance to the referenced statute or regulation and must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

**15.5 MSHA.** All contracts and subcontracts shall incorporate by reference the requirements of 30 CFR Part 46 with the same force and effect as if given full text. Lessee must provide a work environment free from recognized hazards that may cause death or serious physical harm to the employee. Lessee retains full responsibility to monitor its compliance and their subcontractors' compliance with the applicable requirements of the Federal Mine Safety and Health Act of 1977 and Mine Improvement and New Emergency Response Act of 2006 (30 CFR Part 46). Lessee must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor - Mine Safety and Health Administration.

## **16. Additional Required Provisions.**

- a. Lessee acknowledges that Lessor operates a public use airport, and that Lessor has or may have plans to construct new structures and improvements on its property or to expand existing structures or improvements. As a consequence, Lessee's leasehold

interest as described herein including, without limitation, its use of and access to the Land for the purpose of exploring, drilling, and quarry operations, and buildings roads and other facilities thereon to mine and extract quarried materials are hereby expressly subordinated in all respects to the use of the Land as a public use airport, and subordinate to Lessor's federal obligations.

- b. All exploratory and quarrying operations and all related operations shall be limited to the designated Premises, an undeveloped area of Lessor's property that is not planned to be developed as detailed in the airport's most recent master plan. Lessee agrees to conduct its operations so as not to interfere with Lessor's use of its property as is consistent with the operations of a public use airport. Lessee shall not make, allow, or permit any operations that involve a use of the surface of the Premises that would or might interfere with any actual or contemplated use of the surface of the Premises by Lessor, without the prior written consent of Lessor.
- c. Lessee's right of ingress and egress to and across Lessor's property, other than to the Premises, shall not be permitted without the prior written consent of Lessor. Such consent shall not be unreasonably withheld, as long as such ingress and egress does not interfere with the use of Lessor's property as a public use airport and the sponsor's federal obligations. Moreover, all access to Lessor's property may only occur so as not to violate security procedures in place at the time the access is sought and so as not to contravene any FAA regulations, rules or orders
- d. Lessee shall construct all facilities, including roads, in strict compliance with all applicable federal, state, and local laws, codes, rules, regulations, ordinances, permits, and the Airport's design criteria and rules.
- e. Lessee shall take no action that could compromise the safe and efficient use of the Land as a public use airport with concurrent commercial development. No signage, other than that required by law and posted so as not to conflict with or distract from required airport signage, shall be allowed without the prior written approval of Lessor.
- f. Lessee shall conduct all operations hereunder in strict compliance with the laws, codes, rules, regulations, ordinances, and permits, as applicable, of the NC DEQ and the FAA, and in accordance with all other federal, state, and local laws, codes, rules, regulations, ordinances, permits, and the Airport's design criteria and rules and Lessor's federal obligations.
- g. Lessor and Lessee expressly agree that the terms of the Lease must comply with Lessor's federal obligations, including abiding by FAA's Policy and Procedures Concerning the Use of Airport Revenue (Revenue Use Policy, 64 FR7696), which sets forth the permitted and prohibited uses of airport revenue, set forth in statute, in accordance with grant assurance 25.
- h. All construction and use of airport property under this Lease shall be subject to the prior approval by Lessor, and must comply with Lessor's rules and regulations, which are incorporated herein by reference. Further, all construction and use of airport property as contemplated by this Lease shall comply with all FAA rules, regulations and orders, including, without limitation, FAA's AC 150/5370-2, *Operational Safety on Airports during Construction* and the requirements of Part 77. Any activities done on airport property must meet FAA requirements for notification and approvals including but not limited to Notice of Proposed Construction or Alteration (FAA Form 7460-1), if applicable, prior to commencing any construction. Finally, all construction and use of airport property as contemplated by this Lease shall be consistent with all the findings and mitigation measures, if any, set forth in the

environmental documentation prepared in compliance with the National Environmental Protection Act.

- i. Lessor and Lessee expressly agree that this Lease does not convey or transfer to Lessee title to the Premises, in whole or in part, or any legal interest therein not expressly granted herein. Lessor makes no warranty or assurance of any kind with respect to title to the Premises. By its acceptance of this Lease, Lessee acknowledges that it has been afforded full opportunity to investigate and has conducted sufficient investigation to satisfy itself as to the title to the Premises, and Lessee assumes all risks of title issues.
  - j. Lessee expressly agrees and acknowledges that Lessor retains aviation rights with respect to the Premises including an unlimited right to conduct aeronautical activities over the Premises consistent with its operation of the Airport.
- 

#### **17. Miscellaneous:**

(a) Binding Effect. This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors, and permitted assigns.

(b) Entire Agreement. This Lease constitutes the entire agreement between the parties hereto and may not be changed, modified, or amended except by an amendment in writing signed by the party or parties against whom such change, modification or amendment is asserted.

(c) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of North Carolina.

(d) Headings and Exhibits. The headings of some of the paragraphs herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. Any exhibits referred to in this Lease are an integral part of this Lease.

(e) In the event that any other party shall become the owner of the interest of Lessor in the Premises and therefore are entitled to receive the rental and royalty payments as herein provided, Lessee shall be entitled to reasonable proof of the right of such person to receive such rental and royalty payments.

(f) Time is of the essence with respect to each and every provision of this Lease.

(g) The designation Lessor and Lessee as used herein shall include said parties, their directors, officers, employees, representatives, heirs, successors, and permitted assigns and shall include singular, plural, masculine, feminine, or neuter as required by context.

(h) All stockpiles of material, improvements, including specifically designed components thereof, trade fixtures, equipment, signs and any and all accessories related thereto constructed upon, placed in or placed upon the Premises by Lessee shall remain the property of Lessee and Lessee shall have the unqualified and absolute right to remove the same at any time during the Lease Term or at any time within three hundred sixty five (365) days after termination or expiration of this Lease, and all stockpiles of materials, equipment and facilities not so removed within the 365 days after termination or expiration of this Lease shall become the property of Lessor. All royalties shall be paid to Lessor by Lessee during such 365-day period as to any mined material removed from



stockpiles on the Premises during the 365-day period and for which payment of royalty was earned and had not previously been paid. Any stockpiles of material remaining on the Premises after the expiration of the 365-day period shall become the property of Lessor and may be disposed of by Lessor, or Lessor may require Lessee to remove said stockpiles, or Lessor may cause stockpiles to be removed at Lessee's expense. Lessor shall pay all real estate taxes and assessments on the Premises during the Lease term, but not on the value of any improvement, fixture or equipment constructed, installed or located on the Premises by Lessee.

(i) No waiver of any condition or covenant of this Lease by any party shall be deemed to nullify or constitute a further waiver of the same or any other condition or covenant of this Lease.

(j) On or before the execution of this Option and Lease Agreement, Lessee shall provide to Lessor a Certificate of Insurance for a Commercial General Liability policy with minimum coverage of Three Million Dollars (\$3,000,000.00), together with copies of policy declarations and or endorsements naming Lessor as an additional insured and providing that Lessor shall be entitled to receive 30 days written notice from the issuer of the policy of any cancellation, reduction coverage or non-renewal of such policy. Coverage provided Lessor shall be primary and non-contributory. Certificates and policy documents must be reasonably satisfactory to Lessor and shall be provided annually on or before the anniversary of the date of execution of this Lease.

(k) There shall be no merger of this Lease nor of the leasehold estate created thereby with the fee estate in the Premises by reason of the fact that this Lease, or the leasehold estate created hereunder, or any interest in either thereof, may be held directly or indirectly by or for the account of any person who shall own the fee estate in the Premises, or any portion thereof, without the written consent of Lessee.

(l) If any party shall bring an action for any relief against the other arising out of this Lease, including any action by Lessor for recovery of rent or royalty or possession of the Premises, the losing party shall pay the prevailing party a reasonable sum for attorney's fees in such action.

(m) Lessor and Lessee warrant and represent to each other that they have the power and authority to enter into this Lease and that the person duly executing this Lease on behalf of such party has the requisite power and authority to do so.

(n) This Lease may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument.

(o) As long as such use by Lessor does not impair Lessee's use of the Premises for Lessee's Mining Operation, Lessor will have the right to continue use of the Premises for agriculture and forestry with Lessee's consent not to be unreasonably withheld. Anything in this Paragraph 15(o) or elsewhere in this Lease to the contrary notwithstanding, Lessee will be responsible for procuring the sale of timber, supervising the logging operation, and maintaining all best management practices for forestry and timber operations on the Premises with all net proceeds from all timber sales to be

distributed by Lessee to Lessor within thirty (30) days after collection and receipt by Lessee.

18. Notices. Any notice or other communication required or permitted hereunder shall be in writing and personally served or mailed by express, registered or certified mail, return receipt requested, postage prepaid, or delivered by recognized receipted overnight delivery service, all fees prepaid, addressed as hereafter set forth, or to such other address or addresses as may be hereafter furnished by one party or another in compliance with the terms hereof. All such notices or other communications shall be deemed given, delivered and received on the earlier of: the date of actual delivery or refusal to accept delivery, or three (3) business days after mailing by express, certified or registered mail or the next business day after sending by overnight delivery service, as the case may be.

Unless the parties are otherwise notified, all written notices which are mailed to Lessor shall be addressed as follows:

Raleigh-Durham Airport Authority  
PO Box 80001  
1000 Trade Drive  
RDU Airport, NC 27623  
Attn: Mr. Michael Landguth, CEO  
(919) 840-7702

All notices sent to Lessee shall be addressed as follows:

Wake Stone Corporation  
P.O. Box 190  
Knightdale, NC 27545  
Attn: Sam Bratton, President  
(919) 266-1100

18. No Third Party Beneficiary Rights. The provisions of this Lease are for the sole benefit of the Lessor and Lessee and their successors and permitted assigns, and they will not be construed as conferring any rights to any third party (including any third party beneficiary rights). No entity, other than Lessor and Lessee, shall have any right to enforce any provision of this Lease, even if indirectly benefited by it.

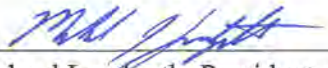
19. Upon written request of either Lessee or Lessor, the parties hereto shall execute an appropriate memorandum of option and/or memorandum of lease, setting forth the provisions hereof which are appropriate to such memorandum, and cause it to be recorded in the Wake County Registry.

20. Counterparts. This Contract may be executed in counterparts, which shall be construed together as one instrument.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and year first written above.

LESSOR:

RALEIGH DURHAM AIRPORT AUTHORITY

By:  (SEAL)  
Michael Landguth, President and CEO

LESSEE:

WAKE STONE CORPORATION

By:  (SEAL)  
Samuel T. Bratton, President



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

I, the undersigned, a Notary Public of the County and State aforesaid, certify that the following person(s) personally appeared before me this day, and

☒ I have personal knowledge of the identity of the principal(s)  
☐ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a \_\_\_\_\_

☐ A credible witness has sworn to the identity of the principal(s);  
each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Michael Landguth, President & CEO, Raleigh-Durham Airport Authority.



Date: March 1, 2020

Erin M. Locklear

ERIN M. LOCKLEAR, Notary Public  
(print name)

My commission expires: March 24, 2020

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

I, the undersigned, a Notary Public of the County and State aforesaid, certify that the following person(s) personally appeared before me this day, and

☒ I have personal knowledge of the identity of the principal(s)  
☐ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a \_\_\_\_\_

☐ A credible witness has sworn to the identity of the principal(s);  
each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Samuel T. Bratton, President, Wake Stone Corporation.

Date: 3-1-2019



Christopher A. Moore

Chris, Notary Public  
(print name)

My commission expires: 2-6-20



# Exhibit A



0 425 850 1,700 ft



# EXHIBIT B CONCEPTUAL PLAN FOR THE SITE AFTER MIN TRIANGLE TRAIL C

**RDU Mountain  
Bike Center**  
150 Acres +/-

Parking for  
RDU Mountain Bike  
Center

Umstead State Park

Trail

RDU

Old Ready Creek Road

42 Acres +/-

78 Acres +/-

Connect to  
Cary Greenway  
System

Parking  
for Lake  
Crabtree &  
Umstead

Trail

I-40

Trail

Road

Inspiration  
Trail

Connect to  
Umstead Trail  
System &  
Lobby Trail

Umstead State Park

Umsh  
Cree

## PLAN KEY

- |   |                         |
|---|-------------------------|
| 1 Parking                                       | 6 Canopy Walk           |
| 2 Trail Center (Brewpub, Hospitality, & Retail) | 7 Suspended Foot Bridge |
| 3 Conceptual Commercial Development             | 8 Trailhead             |
| 4 Scenic Overlook                               |                         |
| 5 Pedestrian/Bike Bridge                        |                         |



Conceptual  
Commercial  
Development  
77 Acres +/-