

NORTH CAROLINA

LEASE AGREEMENT AMENDMENT NO. 1

COUNTY OF WAKE

THIS AMENDMENT, made and entered into this 3rd day of February, 1993, by and between the RALEIGH-DURHAM AIRPORT AUTHORITY, a public body chartered by the General Assembly of North Carolina under Chapter 168 of the 1939 Public-Local Laws, as amended, hereinafter referred to as "LESSOR", and the COUNTY OF WAKE, a political subdivision of the State of North Carolina, hereinafter referred to as "LESSEE".

W I T N E S S E T H:

THAT, WHEREAS, on March 5, 1985 Lessor and Lessee entered into a lease agreement whereby Lessor let and leased unto Lessee a certain tract of land situated, lying and being in Wake County, North Carolina, consisting of 33.185 acres, and located south of the interchange of Interstate 40 with Morrisville Road (S.R. 3015) [said road now being known as Aviation Parkway (S.R. 1002)] on which Lessee later developed and now operates and maintains a public recreational facility known as "Lake Crabtree Regional Park"; and

WHEREAS, Lessee now desires to lease from Lessor that certain hereinbelow described additional tract of land owned by Lessor and, in conjunction with the North Carolina FATS Mountain Bike Club (hereinafter "N.C. FATS"), desires to establish, construct, operate and maintain thereon a system of trails for mountain bike use and general hiking purposes; and

WHEREAS, notwithstanding the current and future effects of noise produced by aircraft operations at and around Raleigh-Durham International Airport, Lessee desires to continue to use both the existing and the additional leased tracts of land for public park purposes; and

WHEREAS, Lessor and Lessee hereby agree to amend the Lease Agreement of March 5, 1985 to include said additional tract of land and permit Lessee to thereon establish, construct, operate and maintain such a system of trails.

NOW, THEREFORE, subject to the terms and conditions hereinafter set forth, Lessor does hereby let and lease unto Lessee, and Lessee does hereby accept as Lessee of Lessor that certain tract of land situated, lying and being in Wake County, North Carolina, consisting of approximately 148 acres, located adjacent to the aforementioned Lake Crabtree Regional Park, and bounded by the southwestern right-of-way line of Interstate 40, the southeastern right-of-way line of Aviation Parkway (S.R. 1002), the northeastern lease line of Lake Crabtree and the access road leading thereto, and Lake Crabtree itself, the same being more particularly shown on the plat attached hereto as Exhibit A and made a part hereof and being hereinafter referred to as the "Leased Premises".

The terms and conditions hereinabove referred to are as follows and shall apply only to the tract of land which is the subject of this Amendment and not to the tract of land leased by Lessee from Lessor under the aforementioned lease agreement of March 5, 1985.

1. TERM. The lease shall be for a term of five (5) years commencing on the 1st day of January, 1994, and, unless sooner terminated as provided herein, shall exist and continue until the 31st day of December, 1998.

2. TERMINATION AND CANCELLATION. Either party may terminate and cancel this lease upon written notice to the other party sent by certified mail specifying the date of termination and cancellation thereof, sent not later than forty-five (45) days in advance of said date. In addition, Lessor shall have the option to terminate and cancel this lease at any time Lessee ceases to use the Leased Premises as a public recreational facility for a period of six (6) consecutive calendar months. In the event Lessor elects to exercise this option, it shall immediately notify Lessee by certified mail of Lessor's intention to declare this lease terminated.

3. RENTAL. As rental for said premises, Lessee shall pay to Lessor, without notice or demand therefor, the sum of One Dollar (\$1.00) per year payable on or before the 1st day of each January for the year then beginning.

4. USE OF PREMISES. It is expressly agreed that the Leased Premises shall, during the term of this lease, be used exclusively for public recreational purposes. Such use shall be limited to establishment, construction, operation and maintenance of the system of trails shown on the plat attached hereto as Exhibit A. Said trails shall be made available for use and used by hikers and mountain bikers only. No other uses shall be permitted. No use of these trails shall be made by horses and riders, automotive vehicles, all-terrain vehicles, trucks, BMX bicycles, skateboards, rollerblades or other types of motorized or non-motorized means of personal transport. Lessee covenants and agrees that it will not institute fees or charges for use of the property and/or facilities located thereon which are discriminatory as to residents of Durham County or restrict use of the property and/or facilities located thereon by residents of Durham County.

5. RESTRICTIONS.

(a) Such restrictions as are made applicable by the terms and conditions of the Memorandum of Agreement Between Wake County, North Carolina and the Raleigh-Durham Airport Authority dated May 22, 1979 and recorded in Book 2738, Page 859 of the Wake County Registry, to which reference is hereby made for a more particular description of the same as applied to Raleigh-Durham Airport Development Plan 523L adopted by the Authority on February 5, 1981 and for which a Finding of No Significant Impact was approved by the Federal Aviation Administration on July 7, 1981.

(b) Lessor reserves an unrestricted right of flight over and above the lands, and said lands shall not hereafter be used for any purpose which creates an Airport hazard, or which otherwise interferes with the present or any future aeronautical use of Raleigh-Durham International Airport. Lessee expressly agrees that it will not assert any use of the property in any manner which could or would restrict existing or any future Airport operations or development.

(c) A 40-year underground petroleum pipeline easement granted June 1, 1987 held by Colonial Pipeline Company and traversing the subject tract of land in a generally east-west direction as shown on the plat attached

hereto as Exhibit A within which a 16-inch pipeline is installed. Lessee shall seek and receive the permission of Colonial Pipeline Company to site trails across said pipeline easement prior to taking any action to establish those trails.

6. TAXES AND UTILITIES. During the term of this lease, Lessee shall be responsible for payment of all taxes and assessments imposed upon the Leased Premises by any lawful authority and shall provide and pay for all electric power, light, heat, water, sewer and other utility charges upon said Leased Premises.

7. IMPROVEMENTS. It is understood and agreed that Lessee accepts the Leased Premises in the same physical condition as exists on the date of this lease agreement. Lessee may, at any time during the term of this lease, establish, construct and install upon such premises the system of trails shown on the plat attached hereto as Exhibit A and any associated improvements of a recreational nature as it may elect subject to the terms and conditions of this lease. Lessor shall review and approve in writing prior to commencement of work all plans and specifications pertaining to said improvements. Such improvements shall be designed and constructed so as to minimize adverse impact on the land and vegetation due to disturbance and loss of ground cover and standing vegetation, acceleration of stormwater drainage flow, soil erosion and sedimentation, etc. Lessor assumes no responsibility for maintenance and/or operation of the trail system and any associated improvements or for user safety and protection, for both of which Lessee shall be fully responsible. On or before the termination of this lease, Lessee shall be required to remove from the Leased Premises any and all improvements made by Lessee during the term of the lease and to restore the premises to a condition at least equal to that existing at the commencement of the lease term, unless Lessor shall, at its sole option, elect to waive this requirement by written notice to Lessee and permit said improvements to remain on the premises.

8. INDEMNIFICATION. To the extent allowed by law, Lessee agrees to indemnify and hold harmless Lessor against any and all claims or liability to third parties arising from Lessee's negligence in its use and occupancy of the Leased Premises or the negligence of any user permitted by Lessee to use the Leased Premises.

9. ASSIGNMENT AND SUBLEASING. Lessee shall not assign this lease nor sublet any part of the Leased Premises without the express prior written consent of Lessor.

10. EXTENSION OF LEASE. Not less than six (6) months nor more than twelve (12) months prior to expiration of the term of the lease, Lessee shall notify Lessor by certified mail of any request to extend the term of this lease for another period of five (5) years. Upon receipt of such notification, Lessor agrees to negotiate with Lessee in good faith for the continuation or extension of this lease under such terms and conditions as may be mutually agreed upon. In the absence of receipt of such notification during the designated period, Lessor shall be free to proceed with other arrangements for use of the property following expiration or earlier termination of the lease term as Lessor shall deem appropriate.

11. NOTICE. All notice to Lessor or Lessee provided herein shall be forwarded by certified mail, return receipt requested, as follows:

LESSOR: Raleigh-Durham Airport Authority
P. O. Box 80001
RDU Airport, North Carolina 27623

LESSEE: County of Wake
Office of the County Manager
Wake County Office Building
P. O. Box 550
Raleigh, North Carolina 27602

IN WITNESS WHEREOF, the parties hereto have caused this Lease Amendment to be executed by their respective duly authorized officials this the day and year first above written.

ATTEST: (SEAL)

RALEIGH-DURHAM AIRPORT AUTHORITY

By: Margaret C. Riddle
Margaret C. Riddle, Secretary

By: F. V. Allison, Jr.
F. V. Allison, Jr., Chairman

ATTEST: (SEAL)

COUNTY OF WAKE

By: Richard Y. Stevens
Richard Y. Stevens, Clerk to the
Wake County Board of Commissioners

By: Vernon Malone
Vernon Malone, Chairman
Wake County Board of Commissioners

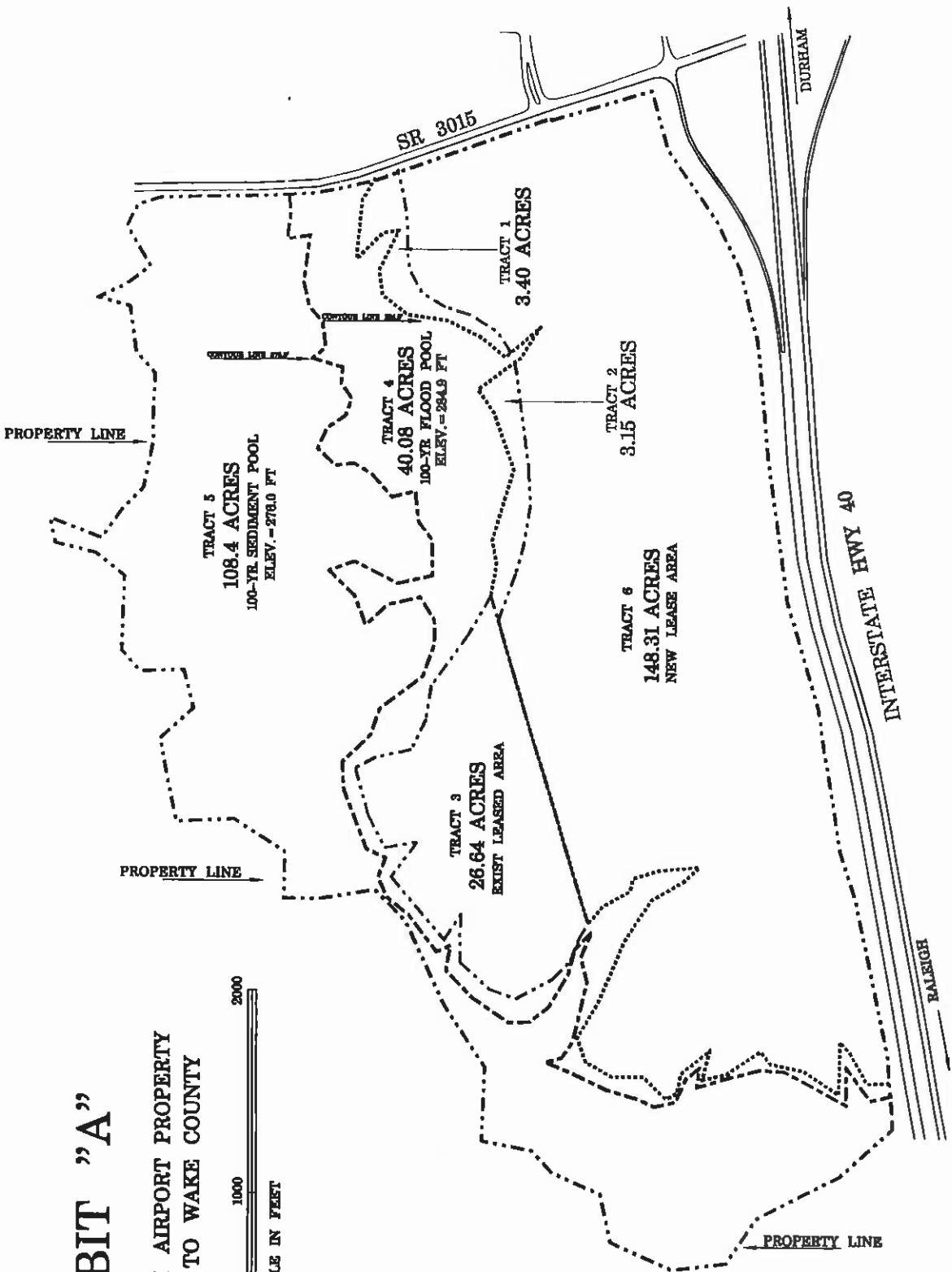
This Instrument Approved as to Form

Asst. Margaret R. Martin
Michael B. Ferrett, County Attorney

Date

EXHIBIT "A"

RALEIGH-DURHAM AIRPORT PROPERTY
LEASED AREAS TO WAKE COUNTY



QSA3:(L)WAKE CO.DGN\1 (REF. FILE)