

STATE OF  
COLORADO

Cazier - DNR, Tim &lt;tim.cazier@state.co.us&gt;

---

**FW: M-1977-376 SO-04 Incomplete Letter**

1 message

**Dan Tezak** <DTezak@tezakheavyequipment.com>

Fri, Nov 15, 2019 at 2:57 PM

To: "Cazier - DNR, Tim (tim.cazier@state.co.us)" &lt;tim.cazier@state.co.us&gt;

Cc: Randy DiLuzio &lt;RDiluzio@tezakheavyequipment.com&gt;, Rhonda Lewis &lt;RLewis@tezakheavyequipment.com&gt;

Tim-

I thought we had included this Assignment and Assumption, which grants Canon Dolomite Quarry the right to access the property, but it appears we may have not included the document.

Let me know if this will suffice to satisfy requirement number 2 of your letter.

Thanks,

Danny Tezak  
Tezak Heavy Equipment Co Inc.  
205 Tunnel Drive  
Canon City, CO 81212

[Tezak HE logo est 1989 email]

"It's kind of fun to do the impossible." – Walt Disney

From: Cazier - DNR, Tim [mailto:tim.cazier@state.co.us]

Sent: Friday, November 15, 2019 2:29 PM

To: Randy DiLuzio <RDiluzio@tezakheavyequipment.com> [mailto:RDiluzio@tezakheavyequipment.com]>>

Subject: M-1977-376 SO-04 Incomplete Letter

Randy,

Here's the letter we sent Jerry.

Tim Cazier, P.E.  
Environmental Protection Specialist

[image.png]

P 303.866.3567 x8169 | F 303.832.8106 | C 303.328.5229

1313 Sherman St., Room 215, Denver, CO 80203

tim.cazier@state.co.us [mailto:tim.cazier@state.co.us] | [www.mining.state.co.us](http://www.mining.state.co.us) [http://www.mining.state.co.us/]

---

**4 attachments****image004.jpg**  
7K**COLORADO**  
Division of Reclamation,  
Mining and Safety  
Department of Natural Resources**image005.png**  
22K**IncompleteLtr\_2019-10-29\_REVISION - M1977376.pdf**

11/18/2019

State.co.us Executive Branch Mail - FW: M-1977-376 SO-04 Incomplete Letter

956K



**Assignment and Assumption - Executed.pdf**

410K

**ASSIGNMENT AND ASSUMPTION OF  
AND CORRECTION TO LANDSCAPE MATERIAL LEASE AGREEMENT  
(Cañon Dolomite Quarry)**

THIS ASSIGNMENT AND ASSUMPTION OF AND CORRECTION TO LANDSCAPE MATERIAL LEASE AGREEMENT (Cañon Dolomite Quarry) (the "Assignment") is entered into by and between CASTLE CONCRETE COMPANY, a Colorado corporation (the "Castle"), CAÑON DOLOMITE QUARRY, LLC, a Colorado limited liability company (the "Assignee"), and ROCKY MOUNTAIN LANDSCAPE MATERIALS, LLC, a Colorado limited liability company ("Assignor") as of this 19<sup>th</sup> day of September, 2019 (the "Effective Date"), all with respect to the following:

**RECITALS**

A. Castle and Assignor entered into that certain "Landscape Material Lease Agreement (Cañon Dolomite Quarry)" dated August 8, 2016, a copy of which Quarry Lease is attached hereto as Exhibit A and is incorporated herein by this reference (the "Quarry Lease");

B. Castle and Assignor have each recognized that the Quarry Lease (i) was inadvertently signed by and named the "Lessor" as being "Transit Mix Concrete, Inc.", when in fact the actual "Lessor" was Castle, and (ii) inadvertently referenced on the signature page "Rocky Mountain Landscape Supply, Inc." as the "Lessee", when in fact the actual "Lessee" was Assignor, and Castle and Assignor are executing this Assignment in part to correct such typographical errors; and

C. In addition to correcting the typographical errors identified in Recital B above, Assignor now desires to assign to Assignee, and Assignee now desires to assume from Assignor, all of the right, title and interest of "Lessee" in and to the Quarry Lease, and Castle in its capacity as "Lessor" under the Quarry Lease now desires to consent to such assignment of the Quarry Lease, and the parties are now entering into this Assignment in furtherance thereof.

**AGREEMENT**

NOW, THEREFORE, in furtherance of the Recitals set forth above, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties each agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are incorporated into this Assignment by this reference.
2. **Correction of Typographical Errors.** The parties each hereby understand, acknowledge and agree that the typographical errors described in Recital B above were inadvertently incorporated into the Quarry Lease and are hereby corrected such that, as of the effective date of the Quarry Lease and for all times thereafter through the Effective Date of this Assignment, the "Lessor" under the Quarry Lease is and has been Castle, and the "Lessee" under the Quarry Lease is and has been Assignor.

3. **Assignment and Assumption of Quarry Lease; Consent by Castle.** Assignor hereby assigns and transfers to Assignee all of Assignor's right, title and interest as "Lessee" under the Quarry Lease, which assignment shall take effect as of the Effective Date of this Assignment. Assignee hereby assumes and agrees to perform, from and after the Effective Date of this Assignment, all the covenants and obligations of the "Lessee" under the terms of the Quarry Lease. Castle hereby consents to the foregoing assignment and assumption of the Quarry Lease. This Assignment shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

4. **Indemnity.** Assignor shall be solely liable for all obligations under the Quarry Lease arising prior to the Effective Date, and Assignor shall and hereby does indemnify, defend and hold Assignee harmless from and against any and all loss, cost, damage and expenses arising from or related to such obligations to the extent arising prior to the Effective Date. Assignor agrees that Assignee shall have no liability to Assignor under the Quarry Lease for obligations arising prior to the Effective Date. Assignee shall be solely liable for all obligations under the Quarry Lease arising from and after the Effective Date, and Assignee shall and hereby does indemnify, defend and hold Assignor harmless from any damage or liability arising from or related to such obligations to the extent arising from and after the Effective Date. Assignee agrees that Assignor shall have no liability to Assignee under the Quarry Lease for obligations arising from and after the Effective Date.

5. **Miscellaneous.**

(a) This Assignment shall be interpreted and enforced according to the laws of the State of Colorado, without reference to its conflict of laws rules. The venue of any litigation arising out of this Assignment shall lie exclusively with the state or federal court in whose district the Property is located.

(b) All headings and section designations of this Assignment are inserted for convenience only and do not form a part of this Assignment or limit, expand or otherwise alter the meaning of any provisions hereof.

(c) This Assignment and any amendments hereto may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. The parties agree that signatures scanned and emailed shall have the legal effect of original signatures. At the request of either party, the parties shall promptly exchange executed original counterparts of this Assignment or any amendment.

(d) The provisions of this Assignment are intended to be for the sole benefit of the parties and their respective successors and assigns, and none of the provisions of this Assignment are intended to be, nor shall they be construed to be, for the benefit of any third party.

(e) This Assignment represents the entire agreement between the parties covering everything agreed upon or understood in this transaction. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition shall be made to this Assignment except by a written agreement duly executed by the parties.

(f) No failure by any party, at any time, to require the performance by the other of any term of this Assignment, shall in any way affect the rights of and of the parties to enforce such terms, nor shall any waiver by any party of any term hereof be taken or held to be a waiver of any other provision of this Assignment. No waiver of any term or provision of this Assignment shall be effective unless the same is in writing and signed by the party granting such waiver.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the Effective Date.

CASTLE:

CASTLE CONCRETE COMPANY, a  
Colorado corporation

By: [Signature]  
Name: Jerald Schnabel  
Title: President

ASSIGNOR:

ROCKY MOUNTAIN  
LANDSCAPE MATERIALS, LLC, a  
Colorado limited liability company

By: [Signature]  
Name: Daniel E. Tezak  
Title: Member

ASSIGNEE:

CAÑON DOLOMITE QUARRY, LLC, a  
Colorado limited liability company

By: [Signature]  
Name: Daniel E. Tezak  
Title: member

**EXHIBIT A**  
**(Copy of Quarry Lease)**

**LANDSCAPE MATERIAL LEASE AGREEMENT**  
**(Canon Dolomite Quarry)**

This Lease Agreement made and entered into this 8 day of AUGUST, 2016, by Translt Mix Concrete, Inc., hereinafter referred to as the "Lessor" and Rocky Mountain Landscape Materials, LLC, hereinafter referred to as the "Lessee".

WITNESSETH:

1. GRANT. The Lessor, in consideration of the terms of this Lease Agreement, does hereby grant unto the Lessee, its successors, and assigns, the exclusive right to investigate, explore, prospect, mine, produce, clean, treat, extract, remove and dispose of landscape material commonly known as "Canon Sunset" and "breeze material" hereinafter collectively referred to as "landscape materials" from the Canon Dolomite Quarry described in Colorado Division of Minerals and Geology Permit M1977376 and as more fully described on the attached Exhibit A (hereinafter the "Property").

The exclusive right to mine and dispose of landscape material is strictly limited to landscaping rock commonly known as "Canon Sunset" and "breeze material" in the size of 5/16" which may be sold for path construction. This Lease Agreement does not include the investigation, exploration, prospecting, mining, extraction or production of any other materials, including but not limited to, construction aggregates or sand, gravel, soil, or any other mineral or material located on the Property, whether known or unknown.

In the event Lessee fails to mine and dispose of landscape material during any six (6) month period during the term of this Lease Agreement Lessor, in Lessor's sole and absolute discretion, shall be entitled to terminate this Lease Agreement. Further, this Lease Agreement may be terminated at the election of Lessor at any time Daniel E. Tezak fails to be or is no longer actively engaged in the day-to-day business operations of Lessee.

2. TERM. This initial term of this Lease Agreement shall be for five (5) years starting on the date first written above. Further, Lessor grants to the Lessee the option to extend this Lease Agreement for one (1) additional five (5) year period on the same terms and conditions as set forth herein, provided that Lessee is not in default of any provision of this Lease Agreement, that the Lessee is pursuing mining operations on the Property, and further provided that Lessee has notified the Lessor in writing of the Lessee's intentions to exercise the option to extend no less than ninety (90) days prior to the expiration of the initial term.
3. CONSIDERATION. During the first year of this Lease Agreement Lessee shall pay to Lessor "base tonnage payments" of One Dollar and Fifty Cents (\$1.50) per ton for landscape material larger than 5/16" and Fifty Cents (\$.50) per ton for "breeze material" 5/16" or less. During each successive year of this Lease Agreement the

base tonnage payments shall increase in an amount equal to the annual percentage increase of the "Retail Price" of the landscape material from any prior year. The "Retail Price" shall be the highest sales price of the landscape material sold by Lessee during the prior lease year. In no event shall the base tonnage payment for any year be less than any prior year base tonnage payment.

Lessee shall pay Lessor the base tonnage payment for the amount of landscape materials removed on a monthly basis, payable on the last day of the month following the month during which the landscape materials were removed. Lessee shall provide Lessor a sales report detailing all sales in any calendar month no later than the 10<sup>th</sup> day of the preceding month. Payments shall be paid based upon Lessee's prior months sales of landscape material. However, Lessee shall keep daily records of the amount of landscape materials removed from the Property. The Lessor shall have the right to audit Lessee's records of landscape materials removed at any reasonable time. In the event of a discrepancy between the amount of landscape material sold detailed in the sales reports and the actual amount of landscape material removed Lessee shall pay within ten (10) days from the date of notification any additional amount due for landscape materials removed but not sold.

All stockpiles shall be measured by either electronic survey or belt scale at the time of production. Further, a year-end electronic survey of all stockpiles shall be performed as a check and balance and a year-end adjustment shall be made in December of each calendar year. In the event of a discrepancy between the electronic survey or belt scale measurements made at the time of production with the year-end electronic survey, the year-end survey shall control.

4. INDEMNIFICATION. Lessee agrees to defend, hold harmless and indemnify Lessor from any liability arising out of Lessee's use and possession of the Property, the mining activities thereon or the sale of landscape materials. This indemnification shall include indemnification for all valid claims and demand of whatsoever kind and character, including O.S.H.A. and/or M.S.H.A. violations.
5. SPECIAL USE PERMIT. Lessee shall obtain at its sole cost and expense any and all permits, licenses and approvals from Fremont County or any other government agency, including a special use permit permitting the extraction of the landscape material from the Property, and/or access to Highway 50 through property known as the "Atwood Property". Upon obtaining any such permits, licenses or approvals, Lessee shall assign or otherwise transfer said permits, licenses or approvals to Lessor. During the term of this Lease Agreement or any extension thereof, Lessee, at its sole cost and expense, shall renew all said permits and obtain any reclamation bond required by the approvals and mining permits, and file any required annual reports, and pay any fees therefor. All approvals and mining permits shall remain the property of and in Lessor's name. Lessee must obtain the express written consent from Lessor prior to making or requesting any changes or modifications to any mining permit or reclamation.

6. PLAN OF MINING. Lessee shall mine or extract all landscape materials in conformance with the Mining Plan approved by the State Mine Land Reclamation Board and the requirements of Fremont County and all generally accepted mining practices. The operations of Lessee shall at all times be carried out in a manner that will not unduly interfere with the balance of the property. Lessee shall at its expense complete reclamation of all areas disturbed by Lessee.
7. ACCESS. Lessor grants to Lessee an easement for purposes of ingress and egress. Lessee shall be responsible for the safe operation of the mining and the Property and take normal precautions to secure the Property from trespassing and vandalism.
8. MACHINERY EQUIPMENT AND STRUCTURES. Lessee may place on the Property all machinery, appliances, equipment, structures and buildings necessary to carry out the activities contemplated herein. Lessee shall provide a certified truck scale on the Property and weigh all materials removed from the Property.
9. TITLE. Lessor covenants that it is the sole owner of the Property described herein, that it has the right and authority to enter into this Lease Agreement on the terms and conditions as stated herein, that the sums paid by Lessee to Lessor hereunder shall be the total sums paid for the landscape materials and other considerations contained herein, that no other individual or entity has any right or authority to enter into a contract or agreement on the terms and conditions stated herein as to the Property.
10. INSURANCE. Lessee shall maintain any and all such insurance policies as will protect Lessee and Lessor from claims for bodily injuries, death, or property damage, which may arise from operations under this Lease Agreement. Lessee also agrees to maintain such Worker's Compensation Insurance as shall be required by law.
11. ASSIGNABILITY. This Lease Agreement shall not be assignable by Lessee without the prior written consent of Lessor, which consent may be withheld for any reason.
12. DEFAULT. In the event Lessee defaults on any term or obligation contained herein, Lessor, upon thirty (30) days written notice to Lessee, shall be entitled to terminate this Lease Agreement and seek damages arising therefrom.
13. LIMITATION OF LIABILITY. In no event shall Lessor be obligated to pay Lessee any damages or payments of any kind related to lost profits, lost opportunity, lost revenues, mobilization costs, or any cost or damage of any kind incurred by Lessee arising from this Lease Agreement or Lessee's use or possession of the Property or mining of landscape material.



14. RIGHT OF FIRST OFFER. In the event that Transit Mix Aggregates desires to sell subject property, Transit Mix will provide written notification of Transit Mix's intention to sell subject property, to Daniel E. Tezak and/or Rocky Mountain Landscape Materials LLC, who shall have the right to exercise a right of first offer. The failure of Daniel E. Tezak and/or Rocky Mountain Landscape Materials LLC to so notify Transit Mix of their desire to exercise this right of first offer within thirty (30) days shall result in the termination of the right of first offer.

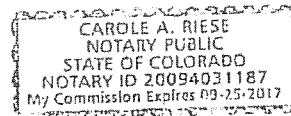
LESSOR:  
TRANSIT MIX CONCRETE, INC.

M. L. Shafer  
By: M. L. Shafer  
Its: VICE PRESIDENT

SUBSCRIBED and SWORN to me this 11 day of October, 2016, by M. L. Shafer, Vice President (officer/position) of Transit Mix Concrete, Inc., a Colorado Corporation.

My Commission expires 09-25-2017

Carole A. Riese  
Notary Public



LESSEE:  
ROCKY MOUNTAIN LANDSCAPE SUPPLY

Daniel E. Tezak  
By: Daniel E. Tezak  
Its: Member

SUBSCRIBED and SWORN to me this 8th day of August, 2016, by Daniel E. Tezak, Member (officer/position) of Rocky Mountain Landscape Supply, Inc., a Colorado Corporation.

My Commission expires 2/1/20

Rhonda K. Lewis  
Notary Public

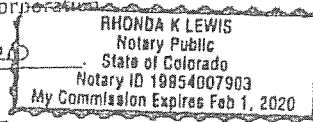


EXHIBIT A  
(Property Description)