



Re: Notarized Lease for Colorado Gravel LLC Pit M2022-053

1 message

PFM Consulting <pfmconsultingcompany@gmail.com>
To: "Gagnon - DNR, Nikie" <nikie.gagnon@state.co.us>

Wed, Jun 21, 2023 at 8:39 AM

Good morning, Nikie.

Attached is the notarized lease with KICT. I believe this was the last missing document. If there is anything else you need for the adequacy review please let me know.

I also wanted to check in on the status of the SO for the Rother Pit in Cheyenne County. Is there anything missing from my end that you are waiting on?

Thank you!

Jodi Schreiber, Owner
PFM Consulting LLC
719-529-0916
pfmconsultingcompany@gmail.com

[PFM Consulting Website](#)

"Success is stumbling from failure to failure with no loss of enthusiasm."
-Winston Churchill

On Mon, Jun 12, 2023 at 9:08 AM Gagnon - DNR, Nikie <nikie.gagnon@state.co.us> wrote:

Hi Jodi. This is good news! Thank you for forwarding the lease to me. Are you still working on the notarized lease with KICT?

Nikie Gagnon

On Sun, Jun 11, 2023 at 8:00 AM PFM Consulting <pfmconsultingcompany@gmail.com> wrote:

Good morning, Nikie.

Please see the notarized copy of the lease between the Cruikshanks, Carolyn Day and Colorado Gravel LLC.

Thank you,

Jodi Schreiber, Owner

PFM Consulting LLC

719-529-0916

pfmconsultingcompany@gmail.com

www.pfmconsultingllc.com

"Success is stumbling from failure to failure with no loss of enthusiasm."

-Winston Churchill



Notarized Lease Colorado Gravel and KICT 6.20.2023.pdf

328K

SAND, GRAVEL AND ROCK MINING LEASE

THIS LEASE is made and entered into on this 20th day of June 2023 by and between KICT LLC, a Delaware Limited Liability Company, having address at 9 West 57th Suite 3000 New York NY 10019, hereinafter referred to as "Lessor" and Colorado Gravel LLC, a Delaware Limited Liability Corporation having address at 9 West 57th Suite 3000, New York, NY 10019 hereinafter referred to as the "Lessee".

WITNESSETH:

WHEREAS, Lessor is the owner of a partial interest in mineral rights and all of the surface rights in real property located within Prowers County ; and

WHEREAS, Lessee desires to provide labor and equipment to mine sand, gravel and rock off said property: and

WHEREAS, the parties desire to enter into this lease to set forth the terms and conditions of said mining arrangement.

NOW, THEREFORE, for and in consideration of the terms, conditions, covenants and appointments herein contained, and for such other and further considerations, the receipt and sufficiency of which is hereby acknowledged, the parties hereto demise and enter into a leasehold estate allowing Lessee the right to mine and produce sand, gravel and rock, effective June 20, 2023 and stipulate and agree as follows:

1. **RELATIONSHIP.** The parties to this agreement intend that the relationship between them created by this lease is that of Lessor and Lessee. No agent, employee of the Lessee shall be or shall be deemed to be the agent, employee of the Lessor. The manner and means of conducting the work set forth herein are under the sole control of the Lessee. The Lessee shall be solely and entirely responsible for its acts and for the acts of the Lessee's agents, employees, and servants during the performance of this contract.
2. **TERM.** The term of this agreement shall be for a period of fifty (50) years beginning on the date of the execution of this lease. Notwithstanding the provisions above, this lease shall automatically lapse at the end of five years from date of lease execution in the event Lessee has not by then obtained all necessary mining permits and regulatory authority, including water rights usage authority, and has not commenced by such date the commercial sales of quarry product at a rate exceeding 2500 tons a month in at least one month.
3. **LEASED PROPERTY TO BE MINED.** The Lessee will obtain a mining permit for certain property wherein the mineral rights are partially owned by Lessor, having legal description as set forth in Exhibit A hereto, Prowers County, Colorado, being 440.26 acres more or less. This lease covers sand, gravel and rock products only, and specifically does not convey to Lessee any rights to oil, gas or other hydrocarbons. The Lessor waives surface use rights for exploration for oil, gas or other hydrocarbons during the life of the quarry or until this lease lapses, whichever comes first, understanding that quarry development will compromise the integrity of the ground surface.

4. OBLIGATIONS OF LESSEE UNDER THE TERMS OF THIS LEASE.

a. The following shall be the obligation of the Lessee:

- i. The Lessee shall be responsible to provide the appropriate mining permit.
- ii. The Lessee shall be responsible to provide the appropriate reclamation bonding.
- iii. The Lessee shall be responsible to provide seed and planting of grass associated with reclamation of the mining site.
- iv. The Lessee shall provide all labor, materials, and equipment to properly mine the property set forth herein.
- v. The Lessee shall retain onsite existing topsoil for future reclamation or provide such as and when needed
- vi. The Lessee shall comply with all other local and/or State regulations for operation of a mining permit.
- vii. The Lessee shall be obligated to mine the area in a safe and appropriate manner according to all local, state and Federal regulations.
- viii. The Lessee shall be responsible to properly slope and grade the used mining sites as provided in the application for mining permit as the mining progresses.

5. COMPENSATION. The Lessee hereby agrees to pay the Lessor per ton for all rock or gravel and per ton for all sand removed and sold from the leased property. However, such payment amounts shall be proportionally reduced by the fraction of mineral ownership in the leased property. By way of example, the owner of a 3/8 mineral interest share would receive 3/8 of the sums set forth above, per ton removed and sold. There will be no royalty payments due for tonnage of overburden removed, or unsalable tonnage. Payments shall be made by the 20th of each month following the month the material is removed and sold. Prior to sale, produced products may be moved and stored at a location off the leased property, so long as title remains in the name of the Lessee. All royalty payment amounts due under this lease will be subject to an annual escalation of the greater of two percent (2%) or the increase in Consumer Price Index ("**CPI**") each year. CPI for purposes of this paragraph shall be the percent change from May in the year prior to the year in which the adjustment is to be made, as published in the Consumer Price Index—All Urban Consumers, U.S. City Average, All Items, not seasonally adjusted, (1982-84 Base=100) by the United States Department of Labor, Bureau of Labor Statistics (the "**Index**"). For example, the Index for May 2019 is 257, the Index for May 2020 is 260.5; thus, the CPI for 2021 between those months was $(260.5-257)/257=1.4\%$. If the Index is discontinued or revised during the term of the Lease, such other government index or computation by which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. Lessee shall have the right annually upon request to examine the books and records of the Lessee regarding production and sales, to independently verify that royalty payments have been properly computed and paid. If such inspection should result in a determination that royalties have been underpaid in an amount exceeding one (1) per cent, Lessee shall reimburse Lessor for its audit

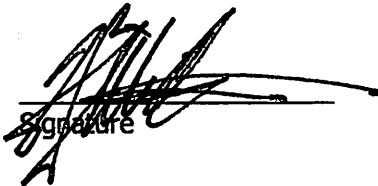
expenses. Lessee is not permitted to comingle the quarry products with products from other mines or quarries before royalty is paid.

- 6. INDEMNIFICATION.** The Lessee shall indemnify and hold harmless the Lessor from and against all liability, loss, damage, expense, fine or penalty, including but not limited to reasonable attorney's fees, caused by the negligence of the Lessee in connection with the operations on the property being mined. The Lessee shall further indemnify and hold harmless the Lessor against any and all claims or actions based upon or arising out of damage, injury or death to persons or property caused by the negligence of the Lessee on the property being mined or based upon a violation by the Lessee. This indemnification and hold harmless includes any damage caused by the negligence of the Lessee to any structures or facilities located on the mining site or adjacent to the mining site. Lessee shall not be obligated to indemnify and hold harmless the Lessor from and against all liability, loss, damage, expense, fine, penalty or violation of any local, State or Federal statute, ordinance or regulation, or damage to any structures or facilities located on the mining site or adjacent to the mining site, which occurred as a result of the negligence of the Lessor.
- 7. INSURANCE.** The Lessee hereby agrees to maintain, at its expense, appropriate and proper worker's compensation insurance to fully protect the Lessor from all claims for injury or death arising out of the performance of this contract, and unemployment insurance as required by State or Federal law. Further, the Lessee hereby agrees to provide liability insurance coverage at its expense, at all times during the term of this agreement, which policies of insurance insure both the Lessor and Lessee against liability for injury or death to persons, loss or damage to property to be mined (to the extent that said coverage is available under the Lessee's liability insurance policy). The liability coverage under such insurance policy shall be not less than \$2,000,000.00 combined single limit for Comprehensive General Liability. The Lessor shall be named as an additional insured under said policy, and the policy shall provide that the Lessor shall be notified and informed in the event the policy is canceled or premium payment is not made. Lessee further agrees to provide proof of said insurance upon request by the Lessor.
- 8. WAIVER OF BREACH.** The waiver by the Lessor of a breach of any provision of this agreement by the Lessee shall not operate or be construed as a waiver of any subsequent breach of the Lessee.
- 9. CHOICE OF LAW.** This agreement and its provisions shall be interpreted and enforced under the laws of the State of Colorado.
- 10. SEVERABILITY.** All agreements and covenants contained herein are severable, and in the event any of them shall be held to be invalid by any competent Court, this agreement shall be interpreted as if such invalid agreements or covenants were not contained herein.
- 11. ASSIGNMENT.** The Lessee and Lessor may assign their interests in this agreement to a third party without need of consent by the other party.
- 12. ENTIRE AGREEMENT.** This instrument contains the entire agreement of the parties. It may not be changed orally but only by an agreement in writing signed by the parties hereto.
- 13. ATTORNEY'S FEES.** In the event either party is required to seek counsel or seek redress in a Court of law for enforcement of this contract, the prevailing party in such dispute shall

be entitled to reimbursement of reasonable attorney's fees and costs, in addition to any damages found to be due.

IN WITNESS WHEREOF, the parties have executed this agreement to be effective June 20, 2023.

Lessor **KICT LLC**

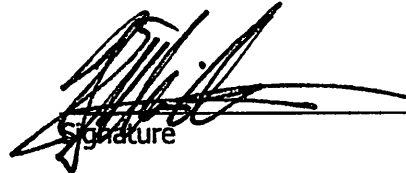

Signature

Printed Name: William Osborn

Title: Attorney-in-Fact

Date: 6.20.23

Lessee **Colorado Gravel LLC**


Signature

Printed Name: William Osborn

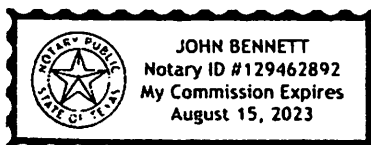
Title: Attorney-in-Fact

Date: 6.20.23

ACKNOWLEDGEMENT

STATE OF Texas §
COUNTY OF Texas §

This instrument was acknowledged before me on this 20th day of June, 2023, by William Osborn in his capacity as Attorney-in-Fact for KICT LLC and Colorado Gravel LLC, for the purpose and consideration therein expressed.




Notary Public in and for the State of Texas

EXHIBIT "A"

TOWNSHIP 22 SOUTH, RANGE 44 WEST OF THE SIXTH PRINCIPAL MERIDIAN

SECTION 36: SE¼

TOWNSHIP 23 SOUTH, RANGE 44 WEST OF THE SIXTH PRINCIPAL MERIDIAN

SECTION 1: ALL THAT PART OF THE N½NE¼ LYING NORTH OF THE NORTH GRANADA DRAINAGE DITCH

TOWNSHIP 22 SOUTH, RANGE 43 WEST OF THE SIXTH PRINCIPAL MERIDIAN

SECTION 31: W $\frac{1}{2}$ SW $\frac{1}{4}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$

TOWNSHIP 23 SOUTH, RANGE 43 WEST OF THE SIXTH PRINCIPAL MERIDIAN

SECTION 6: ALL THAT PART OF THE W½ LYING NORTH OF THE NORTH GRANADA DRAINAGE DITCH, EXCEPT A TRACT CONVEYED IN BOOK 533, PAGE 617, COUNTY OF PROWERS, STATE OF COLORADO.

TOGETHER WITH ANY AND ALL OF THE OIL, GAS AND MINERAL RIGHTS TO THE ABOVE DESCRIBED PROPERTY THAT THE GRANTORS MAY OWN IF ANY, AND TOGETHER WITH ALL OF GRANTORS 100% HUNTING RIGHTS TO THE ABOVE DESCRIBED PROPERTY

**TOGETHER WITH THE FOLLOWING WATER RIGHTS:
111 AF PRE-COMPACT WATER RIGHT
THE GRANADA WATER ASSOCIATION CERTIFICATE NO. 360
THE LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION, CERTIFICATE NO. 780
WITH 54 SHARES AND 2-IRRIGATION WELLS.**

INITIALS

SAND, GRAVEL AND ROCK MINING LEASE

THIS LEASE is made and entered into on this 15th day of May 2023 by and between Gene and Sharon Cruikshank and Carolyn S. Day, having addresses at Post Office Box 963, Lamar, Colorado 81052 and 1455 La Costa Drive West, Pembroke Pines Florida 33027 respectively, hereinafter referred to as "Lessor" and Colorado Gravel LLC, a Delaware Limited Liability Corporation having address at 9 West 57th Suite 3000, New York, NY 10019 hereinafter referred to as the "Lessee".

WITNESSETH:

WHEREAS, Lessor is the owner of a partial interest in mineral rights in real property located within Prowers County; and

WHEREAS, Lessee desires to provide labor and equipment to mine sand, gravel and rock off said property; and

WHEREAS, the parties desire to enter into this lease to set forth the terms and conditions of said mining arrangement.

NOW, THEREFORE, for and in consideration of the terms, conditions, covenants and appointments herein contained, and for such other and further considerations, the receipt and sufficiency of which is hereby acknowledged, the parties hereto demise and enter into a leasehold estate allowing Lessee the right to mine and produce sand, gravel and rock, effective May 1, 2023 and stipulate and agree as follows:

- 1. RELATIONSHIP.** The parties to this agreement intend that the relationship between them created by this lease is that of Lessor and Lessee. No agent, employee of the Lessee shall be or shall be deemed to be the agent, employee of the Lessor. The manner and means of conducting the work set forth herein are under the sole control of the Lessee. The Lessee shall be solely and entirely responsible for its acts and for the acts of the Lessee's agents, employees, and servants during the performance of this contract.
- 2. TERM.** The term of this agreement shall be for a period of fifty (50) years beginning on the date of the execution of this lease. Notwithstanding the provisions above, this lease shall automatically lapse at the end of five years from date of lease execution in the event Lessee has not by then obtained all necessary mining permits and regulatory authority, including water rights usage authority, and has not commenced by such date the commercial sales of quarry product at a rate exceeding 2500 tons a month in at least one month.
- 3. LEASED PROPERTY TO BE MINED.** The Lessee will obtain a mining permit for certain property wherein the mineral rights are partially owned by Lessor, having legal description as set forth in Exhibit A hereto, Prowers County, Colorado, being 440.26 acres more or less. This lease covers sand, gravel and rock products only, and specifically does not convey to Lessee any rights to oil, gas or other hydrocarbons. The Lessor waives surface use rights for exploration for oil, gas or other hydrocarbons during the life of the quarry or until this lease lapses, whichever comes first, understanding that quarry development will compromise the integrity of the ground surface.

4. OBLIGATIONS OF LESSEE UNDER THE TERMS OF THIS LEASE.

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- i. The Lessee shall be responsible to provide the appropriate mining permit.
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- iii. The Lessee shall be responsible to provide seed and planting of grass associated with reclamation of the mining site.
- iv. The Lessee shall provide all labor, materials, and equipment to properly mine the property set forth herein.
- v. The Lessee shall retain onsite existing topsoil for future reclamation or provide such as and when needed
- vi. The Lessee shall comply with all other local and/or State regulations for operation of a mining permit.
- vii. The Lessee shall be obligated to mine the area in a safe and appropriate manner according to all local, state and Federal regulations.
- viii. The Lessee shall be responsible to properly slope and grade the used mining sites as provided in the application for mining permit as the mining progresses.

5. COMPENSATION. The Lessee hereby agrees to pay the Lessor per ton for all rock or gravel and per ton for all sand removed and sold from the leased property. However, such payment amounts shall be proportionally reduced by the fraction of mineral ownership in the leased property. By way of example, the owner of a 3/8 mineral interest share would receive 3/8 of the sums set forth above, per ton removed and sold. There will be no royalty payments due for tonnage of overburden removed, or unsalable tonnage. Payments shall be made by the 20th of each month following the month the material is removed and sold. Prior to sale, produced products may be moved and stored at a location off the leased property, so long as title remains in the name of the Lessee. All royalty payment amounts due under this lease will be subject to an annual escalation of the greater of two percent (2%) or the increase in Consumer Price Index ("**CPI**") each year. CPI for purposes of this paragraph shall be the percent change from May in the year prior to the year in which the adjustment is to be made, as published in the Consumer Price Index--All Urban Consumers, U.S. City Average, All Items, not seasonally adjusted, (1982-84 Base=100) by the United States Department of Labor, Bureau of Labor Statistics (the "**Index**"). For example, the Index for May 2019 is 257, the Index for May 2020 is 260.5; thus, the CPI for 2021 between those months was $(260.5-257)/257=1.4\%$. If the Index is discontinued or revised during the term of the Lease, such other government index or computation by which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. Lessee shall have the right annually upon request to examine the books and records of the Lessee regarding production and sales, to independently verify that royalty payments have been properly computed and paid. If such inspection should result in a

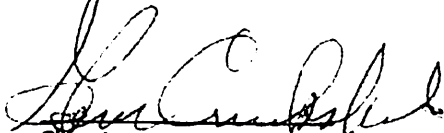
determination that royalties have been underpaid in an amount exceeding one (1) per cent, Lessee shall reimburse Lessor for its audit expenses. Lessee is not permitted to comingle the quarry products with products from other mines or quarries before royalty is paid.

6. **INDEMNIFICATION.** The Lessee shall indemnify and hold harmless the Lessor from and against all liability, loss, damage, expense, fine or penalty, including but not limited to reasonable attorney's fees, caused by the negligence of the Lessee in connection with the operations on the property being mined. The Lessee shall further indemnify and hold harmless the Lessor against any and all claims or actions based upon or arising out of damage, injury or death to persons or property caused by the negligence of the Lessee on the property being mined or based upon a violation by the Lessee. This indemnification and hold harmless includes any damage caused by the negligence of the Lessee to any structures or facilities located on the mining site or adjacent to the mining site. Lessee shall not be obligated to indemnify and hold harmless the Lessor from and against all liability, loss, damage, expense, fine, penalty or violation of any local, State or Federal statute, ordinance or regulation, or damage to any structures or facilities located on the mining site or adjacent to the mining site, which occurred as a result of the negligence of the Lessor.
7. **INSURANCE.** The Lessee hereby agrees to maintain, at its expense, appropriate and proper worker's compensation insurance to fully protect the Lessor from all claims for injury or death arising out of the performance of this contract, and unemployment insurance as required by State or Federal law. Further, the Lessee hereby agrees to provide liability insurance coverage at its expense, at all times during the term of this agreement, which policies of insurance insure both the Lessor and Lessee against liability for injury or death to persons, loss or damage to property to be mined (to the extent that said coverage is available under the Lessee's liability insurance policy). The liability coverage under such insurance policy shall be not less than \$2,000,000.00 combined single limit for Comprehensive General Liability. The Lessor shall be named as an additional insured under said policy, and the policy shall provide that the Lessor shall be notified and informed in the event the policy is canceled or premium payment is not made. Lessee further agrees to provide proof of said insurance upon request by the Lessor.
8. **WAIVER OF BREACH.** The waiver by the Lessor of a breach of any provision of this agreement by the Lessee shall not operate or be construed as a waiver of any subsequent breach of the Lessee.
9. **CHOICE OF LAW.** This agreement and its provisions shall be interpreted and enforced under the laws of the State of Colorado.
10. **SEVERABILITY.** All agreements and covenants contained herein are severable, and in the event any of them shall be held to be invalid by any competent Court, this agreement shall be interpreted as if such invalid agreements or covenants were not contained herein.
11. **ASSIGNMENT.** The Lessee and Lessor may assign their interests in this agreement to a third party without need of consent by the other party.
12. **ENTIRE AGREEMENT.** This instrument contains the entire agreement of the parties. It may not be changed orally but only by an agreement in writing signed by the parties hereto.

13. ATTORNEY'S FEES. In the event either party is required to seek counsel or seek redress in a Court of law for enforcement of this contract, the prevailing party in such dispute shall be entitled to reimbursement of reasonable attorney's fees and costs, in addition to any damages found to be due.

IN WITNESS WHEREOF, the parties have executed this agreement to be effective May 1, 2023.

Lessor



Signature

Printed Name: Gene Cruikshank

Title: Mineral Owner

Date: 06/09/2023

Lessee Colorado Gravel LLC


Signature

Printed Name: William Osborn

Title: Attorney-in-Fact

Date: 6/9/2023


Signature

Printed Name: Sharon Cruikshank

Title: Mineral Owner

Date: 6/9/23


Signature

Printed Name: Carolyn S. Day

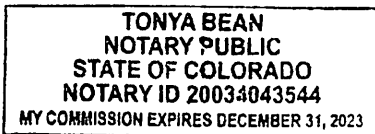
Title: Mineral Owner

Date: 5-31-23

ACKNOWLEDGEMENT

STATE OF Colorado §
COUNTY OF Prowers §

This instrument was acknowledged before me on this 9th day of June, 2023, by Gene Cruikshank, for the purpose and consideration therein expressed.

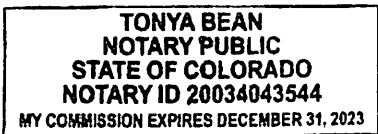


Tonya Bean
Notary Public in and for the State of Colorado

ACKNOWLEDGEMENT

STATE OF Colorado §
COUNTY OF Prowers §

This instrument was acknowledged before me on this 9th day of June, 2023, by Sharon Cruikshank, for the purpose and consideration therein expressed.

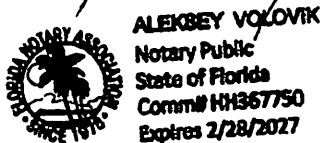


Tonya Bean
Notary Public in and for the State of Colorado

ACKNOWLEDGEMENT

STATE OF Florida §
COUNTY OF Broward §

This instrument was acknowledged before me on this 31 day of May, 2023, by Carlynn Day, for the purpose and consideration therein expressed.

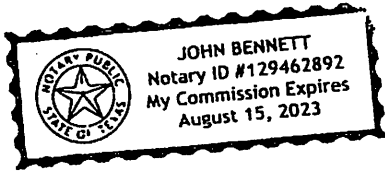


Aleksey Volovik
Notary Public in and for the State of Florida

ACKNOWLEDGEMENT

STATE OF Texas §
COUNTY OF Tarrant §

This instrument was acknowledged before me on this 9th day of June, 2023, by William Osborn, for the purpose and consideration therein expressed.




Notary Public in and for the State of Texas