

Town of Marble
Ordinance Number 1
Series of 2012

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF MARBLE, COLORADO TO APPROVE THE LEASE BETWEEN THE TOWN OF MARBLE AND COLORADO STONE QUARRIES, INC.

WHEREAS, the Town of Marble is a statutory town organized pursuant to Colorado Law; C.R.S. §31-1-101 *et seq.*; and

WHEREAS, the Board of Trustees finds that entering into the lease attached hereto as Exhibit A and incorporated herein by this reference (the "Lease") is in the best interests of the Town of Marble; and

WHEREAS, C.R.S. § 31-15-713 requires that any lease in excess of one year be approved in a Town ordinance; and

WHEREAS, the Lease is for in excess of one year; and

WHEREAS, publishing the entirety of this ordinance would be prohibitive because of its length; and

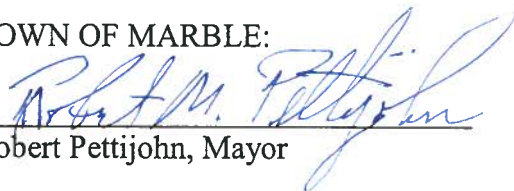
WHEREAS, notice of this ordinance may be given by publication of only the title upon resolution of the Board of Trustees pursuant to C.R.S. § 31-16-105;

NOW, THEREFORE, THE BOARD OF TRUSTEES OF THE TOWN OF MARBLE COLORADO, ORDAINS THAT:

1. The lease between the Town of Marble and Colorado Stone Quarries, Inc. attached hereto as Exhibit A and incorporated herein by this reference is hereby approved and shall be executed by the Mayor on behalf of the Town of Marble.
2. A copy of this ordinance shall be published by title only.

INTRODUCED, READ, ADOPTED AND ORDERED PUBLISHED BY TITLE this 4TH day of OCTOBER, 2012 by a vote of 4 in favor and 0 opposed.

TOWN OF MARBLE:


Robert Pettijohn, Mayor

ATTEST:


Clerk

LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into by and between the Town of Marble, 322 W. Park St., Marble, Colorado 81623 (hereinafter "Town") and Colorado Stone Quarries, Inc., 1 Marble Quarry Road, Marble, Colorado 81623 (hereinafter "Colorado Stone"), to be effective the 1ST day of NOVEMBER, 2012 (the "Effective Date"). The Town and Colorado Stone may be referred to herein individually as a "Party," or collectively as the "Parties."

WITNESSETH:

WHEREAS, the Town owns certain property it wishes to rent to Colorado Stone to use for marble block loading and unloading, temporary storage of sold and inventory blocks net yet sold, and storage of supplies and equipment; and

WHEREAS, the Parties desire to execute this Lease Agreement to determine the terms and conditions set forth herein.

1. Previous Lease Agreement Terminated. The prior lease agreement executed by the Parties on November 4th, 2010 shall be terminated as of the effective date set forth herein.
2. Property. The Town herein leases to Colorado Stone, and Colorado Stone leases from the Town that portion of the Town Park area as indicated in Exhibit A (hereinafter "Premises"), and further described as: the Oil House, and the southwest corner of the Historic Mill Site parking area, south of the Oil House, and the southwest corner of the Historic Mill Site parking area, south of the Oil House, west of 3rd Street, east of the mill site ruins, and north of the Crystal River. Access and use of the Oil House is to be included in the Premises.
3. Terms. The Agreement shall be effective as of the Effective Date, and end on the last day of November, 2027 (the "Initial Term"). This Lease Agreement shall be automatically renewed for successive three (3) year terms unless the Town or Colorado Stone provides written notice of termination. At such time as any term ends the terms and conditions of this Lease Agreement are subject to renegotiation, and either the Town or Colorado Stone may terminate the Lease Agreement if acceptable terms and conditions cannot be agreed upon.
4. Rent. In consideration for the use of the Premises, Colorado Stone shall pay the Town rent ("Rent"), calculated as follows:
 - a. Base Rent. In the first 12 months period of this Lease Agreement, Colorado Stone shall pay as Rent to the Town the total sum of \$2,000.00 per month ("Base Rent").
 - b. Inflation Adjustment. Beginning on the first annual anniversary of the Effective Date, and each annual anniversary thereafter, the monthly Rent payable by Colorado Stone shall be increased by an amount determined by multiplying the Base Rent by a fraction, the denominator of which shall be the most recent Consumer Price Index figure, as hereinafter defined, published prior to the Effective Date, and the numerator of which shall be the most recent Consumer Price Index figure published prior to the applicable anniversary of the Effective Date. As used herein, the term "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers (CPI-U) for the Denver-

Boulder-Greeley, Colorado, local area, all items index (1982-84 equals 100), as determined by the United States Department of Labor, Bureau of Labor Statistics (the "Index"). The Town shall notify Colorado Stone of the new Rent amount no more than 60 and no less than 30 days prior to the anniversary date. Should the Town fail to notify Colorado Stone of the new Rent amount in accordance with this paragraph, Colorado Stone shall continue to pay the monthly rent payable immediately prior to the anniversary. As soon as the Town notifies Colorado Stone of the new Rent amount in writing, Colorado Stone shall begin paying the new amount on the first rental payment due subsequent to delivery of such notice. Should the Consumer Price Index as above described cease to be published, a reasonably comparable successor index shall be selected by the Town.

- c. Payment; Late Charge. Rent shall be paid by the tenth day of the month in which it is due, by mail or hand delivery to the Town's address listed above. If the rent is paid after the 10th day of the month, Colorado Stone shall also pay a late charge of \$35.00 per day. In the event Colorado Stone is in default failing to pay the rent for more than sixty days (60), then the Town may provide a notice that within three (3) business days the lease will be terminated. If Colorado Stone pays the entire amount due within three (3) business days after receipt of this notice, then the Agreement shall remain in force for the term specified herein. Any previous default that has been completely cured by Colorado Stone may not be used by the Town as a sole reason to terminate this Agreement at a later date.

5. Use of Premises by Colorado Stone.

- a. Colorado Stone shall have the right to use the Oil House on the Premises for the purposes of storing fuel, oil, parts and supplies for the temporary maintenance of its trucks and other heavy equipment, and as necessary for office and communications. All storage of materials shall conform to the state and federal regulations. The remainder of the Premises shall be used only for the purpose of office space, temporary storage of sold and unsold quarried blocks of marble, and any operation related to the loading and unloading of blocks, associated platforms, trucks used to move quarried marble blocks, and the equipment used to maintain the road to the quarry. No Colorado Stone debris shall be left in the parking area at any time. All trucks, vehicles and equipment must be in regular use. Regular use is defined as being used at least 45 days over a one-year period. Colorado Stone reserves the right to place an office trailer on the Premises for the crew change facilities and transport office, and to construct a moveable building to be used as corporate offices as permitted by the Town (permit # 0-3-12, dated July 5, 2012). Any other permanent or temporary structures may be placed on the premises only upon prior written approval of the Town, and such approval shall not be unreasonably withheld.
- b. In conjunction with the construction of the office facilities, Colorado Stone will pay for the Water Tap fee, and the installation of the approved engineered septic system (Permit #12-01, issued 7-5-12) (the "Septic System"). Colorado Stone will also pay up to \$10,000 for the construction of public restrooms that will use the Septic System (the "Public Restrooms"). The cost of constructing the Septic System shall not count towards

the \$10,000 limit on Colorado Stone's share of the cost of the Public Restrooms. The Town shall be responsible for any cost of construction of the Public Restrooms in excess of the \$10,000 limit on Colorado Stone's share of the cost of the Public Restrooms.

- c. The Septic System shall be designed and constructed to accommodate the Public Restrooms and shall be adequate to serve the Public Restrooms.
 - d. The Town will own the Septic System and the Public Restrooms, both of which shall be placed outside the Premises on Town property.
 - e. Subject to the terms of this paragraph 5, the design, location, and construction of the Public Restrooms shall be subject to approval by the Town, such approval to be given in the Town's sole discretion. The Town shall have the right to review and approve the contract for the construction of the Public Restrooms, and any amendments thereto.
 - f. Colorado Stone will be responsible for the water bill, and the maintenance and service of the Septic System. Colorado Stone will maintain the Public Restrooms from October 1 through May 31st. The Town will be responsible for maintenance and cleaning of the public restrooms from June 1 to September 30.
6. Use of the Premises by Town. The Town shall retain full use of the small wooden structure that was previously used as a bathroom facility located on the Lease premises, which is currently used only for storage. Operation, maintenance, cleaning and repair of this structure shall be the sole responsibility of the Town. The Town shall maintain insurance in accordance with the provisions of this Lease Agreement which includes coverage of this structure.
7. Alterations, Repairs and Maintenance.
- a. All costs of maintenance and/or repairs to the premises incurred due to the negligence or misuse by Colorado Stone, its employees, agents, servants, licensees, contractors, guests or invitees, or by the failure of Colorado Stone to perform its obligations under this Lease shall be paid by Colorado Stone.
 - b. Such repair shall be made promptly and in a good and workmanlike manner. If Colorado Stone does not do so promptly and adequately, the Town may, but need not, make such repairs and replacements and Colorado Stone shall reimburse the Town the reasonable cost thereof.
8. Insurance. Colorado Stone shall obtain and maintain liability insurance for the Premises in a form acceptable to the Town in an amount which equals government liability amounts set by law. Such insurance will provide complete coverage in the event of fire, accidents, vandalism, negligence on the part of Colorado Stone's employees, and all other instances where damage to the property or injury to others may occur. The Town shall be named as an additional insured on the policy. The Town of Marble represents that it has and will maintain general municipal liability insurance which includes the Premises in an amount which equals government liability amounts set by law. Within 30 days of the effective date herein, Colorado Stone shall provide the Town with a copy of its liability insurance policy outlined in this paragraph.

9. Additional Covenants of Colorado Stone. In addition to the terms, conditions and covenants set forth elsewhere in this Lease Agreement, Colorado Stone covenants with the Town:

- a. To neither commit suffer nor permit waste, damage, disfiguration or injury to the Premises; and
- b. To neither keep, use, store, nor dispose of, nor sell any article or material on the Premises which may be hazardous or otherwise unlawful under federal, state or local law, or prohibited by any insurance policy in force; and Colorado Stone shall indemnify, defend and hold the Town harmless against any and all loss, cost, or damages of any nature whatsoever (including, without limitation, reasonable costs and attorneys' fees) arising out of the introduction of any such hazardous material(s) to the Premises by Colorado Stone, its contractors, agents or employees, including the cost of removing such hazardous material(s).

10. Additional Terms.

- a. All utilities for the Premises shall be paid by Colorado Stone.
- b. Simultaneously with execution hereof, Colorado Stone shall designate in writing to the Town a responsible party as its contact person, whose name and address shall be set forth below.
- c. The fuel and oil to be stored by Colorado Stone on the Premises shall be that for automobiles, trucks, generators and heavy equipment in association with the operation of the quarry only. Such fuel and oil shall be stored in proper containers that meet all governmental and industry standards. Colorado Stone shall ensure that no leakage or spills of fuels, oil or other hazardous materials contaminate the Premises. In the event that any leakage occurs on site Colorado Stone shall immediately clean-up the spill.
- d. The fuel and oil are to be stored by Colorado Stone on the surface of the Premises only; no underground storage is permitted.
- e. Colorado Stone shall have available the necessary hand-held fire extinguishers for immediate use.
- f. Colorado Stone shall comply with all applicable rules and regulations of local, state and federal agencies, including but not limited to Carbondale and Rural Fire Protection District and the Division of Reclamation and Mine Safety.
- g. The Building on the Premises (commonly designated as the Oil House) shall be kept locked at all times except when being accessed by Colorado Stone personnel.
- h. Unless otherwise provided herein, operating hours for the loading and the unloading of blocks at the Premises shall be 7:00 a.m. to 7:00 p.m. Monday through Friday. The Town of Marble agrees that up to twenty (20) overtime periods which are each no more than 4 hours (two periods may be combined for a maximum period of 8 hours on Saturdays from 9:00 a.m. to 5:00 p.m.) per year provided that Colorado Stone shall give

the Town 12 hours prior notice that an overtime period is required. Notice may be given via e-mail or by telephone to the Town of Marble contact person listed below. An overtime period shall be construed as representing a maximum of four (4) hours. There shall be no operations or overtime periods on Sundays. The Parties agree that the limitations provided in this paragraph shall apply only for the operations strictly related to the loading and the unloading of marble blocks at the Premises, being understood that any other operation is allowed including without any restriction any operation related to the removal of snow.

- i. The Town of Marble requires that all commercial carriers that are providing services to Colorado Stone (hereinafter "Carriers") may not turn on, run or idle their motors during the hours from 7:00 p.m. through 6:00 a.m. at any location within the boundaries of the Town of Marble. Colorado Stone shall notify all Carriers of such requirement prior to such Carriers' arrival in Marble.
 - j. Colorado Stone shall allow pedestrian access for the public. If in the future the ice arena is constructed, during winter operations access will be maintained wide enough for 1 vehicle. During business hours this access may be temporarily blocked by loading and block setting operations. Every reasonable effort will be made to accommodate access and minimize waiting to access or exit the skating rink area. CSQ personnel will take immediate action to accommodate emergency vehicles at all times. No public parking is available on the Premises.
 - k. Restoration. At the termination of this Agreement, Colorado Stone shall restore the Premises to its condition as of the date of this Agreement, ordinary wear and tear accepted.
11. Security Deposit. The existing deposit in the amount of \$4,500 will carry over from the last lease to ensure compliance with the terms and conditions of the Agreement, including payment of the rent and the maintenance of the condition of the Premises, provided, however, that this deposit shall in no way limit the Town in pursuit of damages in the event of non-payment of rent or other default, or in the event the deposit is inadequate to complete the restoration work in Paragraph 11 or to restore the premises to its condition as of the date of this Agreement, ordinary wear and tear accepted.
12. Property Encumbrance. This property is encumbered by a deed between the Small Business Administration (SBA) and the Town. Colorado Stone shall limit its use of the property to the area that is within the area described on the attached Exhibit A, and if Colorado Stone should go beyond said boundaries of the "unrestricted area" then Colorado Stone shall be responsible to pay any and all damages incurred by the Town for such encroachment including reasonable attorney fees, costs, and surveying fees. The Town may void/terminate this Agreement in the event that the SBA expressly requires the Town to terminate it. The Town shall prior to a termination of this Agreement endeavor to keep this Agreement effective by trying to convince the SBA that the termination is not required in this case.

13. Mechanics Liens. Colorado Stone agrees that it will not take any action or fail to make any payment that may cause a mechanics lien to be filed on the Premises to the extent that a lien may be allowed on government property.

14. Indemnification.

a. Subject to the terms and conditions of this paragraph 14, Colorado Stone agrees to indemnify, defend and hold harmless Town from, against, for an in respect of any and all losses asserted against or paid, suffered or incurred by Town, including attorney fees and costs, to the extent that such losses result from, are based upon, or arise out of:

i. a material breach of any of Colorado Stone obligations provided herein; or

ii. a failure of Colorado Stone to conduct its business in compliance with federal, state, county and local Environmental, Health & Safety Laws; or

iii. negligence by Colorado Stone in operating on the Premises

b. Subject to the terms and conditions of this paragraph 14, the Town agrees to indemnify, defend and hold harmless Colorado Stone from, against, for and in respect of any and all losses asserted against, or paid, suffered or incurred by Colorado Stone, to the extent that such losses result from, are based upon, or arise out of:

i. a material breach of any of its obligations provided herein; or

ii. any disposal of used oil or of hazardous waste or any environmental incident that occurred upon or at the Premises prior to Colorado Stone's first use of the Premises.

c. A claim for indemnification pursuant to this paragraph 14 shall be made by the Party seeking indemnification hereunder is sought requesting indemnification and specifying in reasonable detail the basis on which indemnification is sought and the amount of asserted losses and, in the case of a third party claim, containing (by attachment or otherwise) such other information as the indemnity shall have concerning such third part claim.

15. Attorney Fees and Costs. In the event of Colorado Stone failure to comply with any obligation provided herein, if such default requires the Town to take any legal action, including the writing of demand letters to collect rent or other moneys due, to effectuate repair, maintenance or purpose, the Town shall be entitled to reasonable attorney fees and costs in such action.

16. Access. The Town and its authorized representatives shall have the right to enter the Premises at all reasonable hours to inspect the same, to make repairs, or for any lawful purpose.

17. Successors and Assigns. The covenants and conditions contained herein, are binding upon each Party's agents, guests, employees, and invitees. This Agreement is not assignable by Colorado Stone without prior written consent of the Town and may be terminated in the event that the property is no longer owned by the Town.

- 18. Counterparts. This Lease may be executed in counterparts, in which case all such counterparts together shall constitute one and the same instrument which is binding on all of the Parties hereto, notwithstanding that all the Parties are not signatory to the original or the same counterpart. Facsimile signatures shall be binding.
- 19. Notice. All Notices as provided for herein shall be given to the contact persons of each Party as written below.
- 20. Entire Agreement; Modification. This Lease Agreement contains the entire agreement of the Parties and all discussions, negotiations and representations are merged herein. This Lease Agreement shall not be amended except by written instrument signed by both Parties.

WHEREFORE, this Agreement is entered into between the Parties as of the date first written above.

TOWN OF MARBLE

COLORADO STONE QUARRIES, INC.

By: Robert M. Pettijohn (sign)
Robert Pettijohn, Mayor

By: Kimberley Perrin (sign)

Attest: [Signature] (sign)
970-963-1938 (print)
LEACH@CARBONJ&FIRE.ORG

Attest: _____ (sign)
_____ (print)

Contact Person for Colorado Stone Quarries, Inc.

Contact Person for Town of Marble

RON LEACH
1 Marble Quarry road
Marble, CO 81623
Load Out Area Phone: 970-704-9002
Load Out Area Fax: 970-704-9022

Kimberley Perrin
Phone: 970-704-9002
Fax: 970-704-9022

Kimberley@coloradostonequarries.co