

# EAGLE MATERIALS INC

## FORM 10-Q (Quarterly Report)

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Sector	Basic Materials
Fiscal Year	03/31

United States  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**FORM 10-Q**

**QUARTERLY REPORT**

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934  
For the Quarterly Period Ended

**September 30, 2016**

**Commission File Number 1-12984**



**Eagle Materials Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**75-2520779**

(I.R.S. Employer Identification No.)

**3811 Turtle Creek Blvd., Suite 1100, Dallas, Texas 75219**

(Address of principal executive offices)

**(214) 432-2000**

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

YES  NO

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer   
Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act.)

Yes  No

As of October 21, 2016, the number of outstanding shares of common stock was:

<b>Class</b>	<b>Outstanding Shares</b>
Common Stock, \$.01 Par Value	48,223,617

**Eagle Materials Inc. and Subsidiaries**

**Form 10-Q**

**September 30, 2016**

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**Eagle Materials Inc. and Subsidiaries**  
Consolidated Statements of Earnings  
(dollars in thousands, except share data)  
(unaudited)

	For the Three Months Ended September 30,		For the Six Months Ended September 30,	
	2016	2015	2016	2015
Revenues	\$ 332,658	\$ 328,988	\$ 630,162	\$ 613,951
Cost of Goods Sold	241,448	284,694	466,997	508,560
Gross Profit	91,210	44,294	163,165	105,391
Equity in Earnings of Unconsolidated Joint Venture	12,147	11,680	20,127	19,510
Corporate General and Administrative	(8,832)	(9,364)	(18,665)	(18,355)
Other Income	504	572	1,579	1,007
Interest Expense, Net	(5,656)	(4,342)	(9,557)	(8,828)
Earnings Before Income Taxes	89,373	42,840	156,649	98,725
Income Tax Expense	(29,136)	(13,021)	(51,068)	(31,144)
Net Earnings	\$ 60,237	\$ 29,819	\$ 105,581	\$ 67,581
<b>EARNINGS PER SHARE:</b>				
Basic	\$ 1.26	\$ 0.60	\$ 2.20	\$ 1.36
Diluted	\$ 1.25	\$ 0.59	\$ 2.18	\$ 1.34
<b>AVERAGE SHARES OUTSTANDING:</b>				
Basic	47,809,476	49,828,189	47,911,276	49,797,972
Diluted	48,229,485	50,470,151	48,375,116	50,460,947
<b>CASH DIVIDENDS PER SHARE:</b>	\$ 0.10	\$ 0.10	\$ 0.20	\$ 0.20

*See notes to unaudited consolidated financial statements.*

**Eagle Materials Inc. and Subsidiaries**  
 Consolidated Statements of Comprehensive Earnings  
 (unaudited – dollars in thousands)

	For the Three Months Ended September 30,		For the Six Months Ended September 30,	
	2016	2015	2016	2015
Net Earnings	\$ 60,237	\$ 29,819	\$ 105,581	\$ 67,581
Change in Funded Status of Defined Benefit Plans:				
Amortization of Net Actuarial Loss	500	508	1,000	1,016
Tax Expense	(188)	(188)	(376)	(376)
Comprehensive Earnings	<u>\$ 60,549</u>	<u>\$ 30,139</u>	<u>\$ 106,205</u>	<u>\$ 68,221</u>

*See notes to unaudited consolidated financial statements.*

**Eagle Materials Inc. and Subsidiaries**  
Consolidated Balance Sheets  
(dollars in thousands)

	September 30, 2016 (unaudited)	March 31, 2016
<b>ASSETS</b>		
Current Assets -		
Cash and Cash Equivalents	\$ 54,506	\$ 5,391
Accounts and Notes Receivable	155,241	120,221
Inventories	217,582	243,595
Income Tax Receivable	1,046	5,623
Prepaid and Other Assets	6,761	5,173
Total Current Assets	<u>435,136</u>	<u>380,003</u>
Property, Plant and Equipment -	2,089,499	2,072,776
Less: Accumulated Depreciation	(855,148)	(817,465)
Property, Plant and Equipment, net	<u>1,234,351</u>	<u>1,255,311</u>
Notes Receivable	1,158	2,672
Investment in Joint Venture	47,852	49,465
Goodwill and Intangible Assets	162,506	165,827
Other Assets	27,132	30,357
	<u>\$ 1,908,135</u>	<u>\$ 1,883,635</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current Liabilities -		
Accounts Payable	\$ 62,481	\$ 66,614
Accrued Liabilities	53,793	45,975
Current Portion of Long-term Debt	8,000	8,000
Total Current Liabilities	<u>124,274</u>	<u>120,589</u>
Long-term Debt	461,182	499,714
Other Long-term Liabilities	59,922	61,122
Deferred Income Taxes	164,027	161,679
Total Liabilities	<u>809,405</u>	<u>843,104</u>
Stockholders' Equity -		
Preferred Stock, Par Value \$0.01; Authorized 5,000,000 Shares; None Issued	—	—
Common Stock, Par Value \$0.01; Authorized 100,000,000 Shares; Issued and Outstanding 48,223,617 and 48,526,843 Shares, respectively	482	485
Capital in Excess of Par Value	130,638	168,969
Accumulated Other Comprehensive Losses	(10,785)	(11,409)
Retained Earnings	978,395	882,486
Total Stockholders' Equity	<u>1,098,730</u>	<u>1,040,531</u>
	<u>\$ 1,908,135</u>	<u>\$ 1,883,635</u>

*See notes to the unaudited consolidated financial statements.*

**Eagle Materials Inc. and Subsidiaries**  
Consolidated Statements of Cash Flows  
(unaudited – dollars in thousands)

	For the Six Months Ended September 30,	
	2016	2015
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net Earnings	\$ 105,581	\$ 67,581
Adjustments to Reconcile Net Earnings to Net Cash Provided by Operating Activities -		
Depreciation, Depletion and Amortization	45,249	49,034
Impairment of Intangible Assets	—	28,354
Inventory Adjustment to Net Realizable Value	8,492	9,382
Deferred Income Tax Provision	2,125	(18,413)
Stock Compensation Expense	6,158	8,330
Excess Tax Benefits from Share Based Payment Arrangements	(5,494)	(2,494)
Equity in Earnings of Unconsolidated Joint Venture	(20,127)	(19,510)
Distributions from Joint Venture	21,750	17,250
Changes in Operating Assets and Liabilities:		
Accounts and Notes Receivable	(33,506)	(39,379)
Inventories	17,521	3,806
Accounts Payable and Accrued Liabilities	3,337	(1,536)
Other Assets	(1,005)	534
Income Taxes Payable	10,071	4,650
Net Cash Provided by Operating Activities	<u>160,152</u>	<u>107,589</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Property, Plant and Equipment Additions	(18,231)	(55,869)
Acquisition Spending	—	(32,427)
Net Cash Used in Investing Activities	<u>(18,231)</u>	<u>(88,296)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Repayment of Credit Facility	(382,000)	(3,000)
Issuance of Long-term Debt	350,000	—
Payment of Debt Issuance Costs	(6,637)	—
Dividends Paid to Stockholders	(9,677)	(10,061)
Shares Redeemed to Settle Employee Taxes on Stock Compensation	(2,965)	(1,728)
Purchase and Retirement of Common Stock	(60,013)	(10,744)
Proceeds from Stock Option Exercises	12,992	2,580
Excess Tax Benefits from Share Based Payment Arrangements	5,494	2,494
Net Cash Used in Financing Activities	<u>(92,806)</u>	<u>(20,459)</u>
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	49,115	(1,166)
<b>CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD</b>	5,391	7,514
<b>CASH AND CASH EQUIVALENTS AT END OF PERIOD</b>	<u>\$ 54,506</u>	<u>\$ 6,348</u>

*See notes to the unaudited consolidated financial statements.*

**Eagle Materials Inc. and Subsidiaries**  
**Notes to Unaudited Consolidated Financial Statements**  
**September 30, 2016**

**(A) BASIS OF PRESENTATION**

The accompanying unaudited consolidated financial statements as of and for the three and six month periods ended September 30, 2016 include the accounts of Eagle Materials Inc. (“Eagle” or “Parent”) and its majority-owned subsidiaries (collectively, the “Company”, “us” or “we”) and have been prepared by the Company, without audit, pursuant to the rules and regulations of the Securities and Exchange Commission. These unaudited consolidated financial statements should be read in conjunction with the audited consolidated financial statements and the notes thereto included in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on May 25, 2016.

Certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted pursuant to such rules and regulations, although we believe that the disclosures are adequate to make the information presented not misleading. In our opinion, all adjustments (consisting solely of normal recurring adjustments) necessary to present fairly the information in the following unaudited consolidated financial statements of the Company have been included. The results of operations for interim periods are not necessarily indicative of the results for the full year.

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**Recent Accounting Pronouncements**

In May 2014, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2014-09, “Revenue from Contracts with Customers.” ASU 2014-09 supersedes the revenue recognition requirements in “Revenue Recognition (Topic 605),” and requires entities to recognize revenue in a way that depicts the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled to in exchange for those goods or services. The standard will be effective for us in the first quarter of fiscal 2019. We will adopt the new standard using the modified retrospective approach, which requires the standard be applied only to the most current period presented, with the cumulative effect of initially applying the standard recognized at the date of initial application. We are currently evaluating the impact of this ASU .

In March 2016, the Financial Accounting Standards Board, or FASB, issued Accounting Standards Update, or ASU, 2016-09, “Improvements to Employee Share-Based Payment Accounting,” which provides for simplification of certain aspects of employee share-based payment accounting, including income taxes, classification of awards as either equity or liabilities, and classification on the statement of cash flows. The standard will be effective for us in the first quarter of fiscal 2018 and will be applied either prospectively, retrospectively or using a modified retrospective transition approach depending on the area covered in this update. We are currently assessing the impact of the ASU on our consolidated financial statements and disclosures .

In February 2016, the FASB issued ASU 2016-02, “Leases”, which supersedes existing lease guidance to require lessees to recognize assets and liabilities on the balance sheet for the rights and obligations created by long-term leases and to disclose additional quantitative and qualitative information about leasing arrangements. The standard will be effective for us in the first quarter of fiscal 2020, and we will adopt using the modified retrospective approach. We are currently assessing the impact of the ASU on our consolidated financial statements and disclosures, as well as our internal lease accounting processes.



## **(B) PENDING ACQUISITION**

On September 11, 2016, Eagle Materials Inc. (the “Company”) and Cemex Construction Materials Atlantic, LLC (the “Seller”) entered into an Asset Purchase Agreement (the “Asset Purchase Agreement”) pursuant to which the Company will acquire (the “Fairborn Acquisition”) (i) a cement plant located in Fairborn, Ohio, (ii) a cement distribution terminal located in Columbus, Ohio, and (iii) certain other properties and assets used by the Seller in connection with the foregoing (collectively, the “Fairborn Business”).

The purchase price (the “Purchase Price”) to be paid by the Company in the Fairborn Acquisition is \$400.0 million in cash, subject to a customary post-closing inventory adjustment. In addition, the Company will assume certain liabilities and obligations of the Seller relating to the Fairborn Business, including contractual obligations, reclamation obligations and various other liabilities and obligations arising out of or relating to the Fairborn Business after the closing of the Fairborn Acquisition. The Company expects to fund the payment of the Purchase Price and expenses incurred in connection with the Fairborn Acquisition through a combination of cash on hand and borrowings under the Company’s existing bank credit facility. The Fairborn Acquisition is expected to close in the fourth quarter of calendar 2016, or shortly thereafter.

## **(C) CASH FLOW INFORMATION—SUPPLEMENTAL**

Cash payments made for interest were \$6.8 million and \$8.2 million for the six months ended September 30, 2016 and 2015, respectively. Net payments made for federal and state income taxes during the six months ended September 30, 2016 and 2015, were \$39.3 million and \$43.8 million, respectively.

## **(D) ACCOUNTS AND NOTES RECEIVABLE**

Accounts and notes receivable have been shown net of the allowance for doubtful accounts of \$11.0 million and \$10.2 million at September 30, 2016 and March 31, 2016, respectively. We perform ongoing credit evaluations of our customers’ financial condition and generally require no collateral from our customers. The allowance for non-collection of receivables is based upon analysis of economic trends in the construction industry, detailed analysis of the expected collectability of accounts receivable that are past due and the expected collectability of overall receivables. We have no significant credit risk concentration among our diversified customer base.

We had notes receivable totaling approximately \$4.7 million at September 30, 2016, of which approximately \$3.5 million has been classified as current and presented with accounts receivable on the balance sheet. We lend funds to certain companies in the ordinary course of business, and the notes bear interest, on average, at LIBOR plus 3.5%. Remaining unpaid amounts, plus accrued interest, mature on various dates between 2017 and 2019. The notes are collateralized by certain assets of the borrowers, namely property and equipment, and are generally payable monthly. We monitor the credit risk of each borrower by focusing on the timeliness of payments, review of credit history and credit metrics and interaction with the borrowers.

## ( E ) STOCKHOLDERS' EQUITY

A summary of changes in stockholders' equity follows:

	For the Six Months Ended September 30, 2016 (dollars in thousands)
<b>Common Stock –</b>	
Balance at Beginning of Period	\$ 485
Purchase and Retirement of Common Stock	(9)
Issuance of Restricted Stock	1
Stock Option Exercises	5
Balance at End of Period	482
<b>Capital in Excess of Par Value –</b>	
Balance at Beginning of Period	168,969
Stock Compensation Expense	6,157
Shares Redeemed to Settle Employee Taxes	(2,965)
Stock Option Exercises	18,481
Purchase and Retirement of Common Stock	(60,004)
Balance at End of Period	130,638
<b>Retained Earnings –</b>	
Balance at Beginning of Period	882,486
Dividends Declared to Stockholders	(9,672)
Net Earnings	105,581
Balance at End of Period	978,395
<b>Accumulated Other Comprehensive Loss -</b>	
Balance at Beginning of Period	(11,409)
Change in Funded Status of Pension Plan, net of tax	624
Balance at End of Period	(10,785)
<b>Total Stockholders' Equity</b>	<b>\$ 1,098,730</b>

We repurchased 263,800 shares at an average price of \$79.15 during the three months ended September 30, 2016. At September 30, 2016, we have authorization to purchase an additional 4,817,200 shares.

## (F) INVENTORIES

Inventories are stated at the lower of average cost (including applicable material, labor, depreciation, and plant overhead) or market, and consist of the following:

	As of	
	September 30, 2016	March 31, 2016
	(dollars in thousands)	
Raw Materials and Material-in-Progress	\$ 104,759	\$ 119,060
Finished Cement	17,096	21,834
Gypsum Wallboard	5,939	5,839
Frac Sand	3,375	5,501
Aggregates	8,387	10,660
Paperboard	3,647	7,575
Repair Parts and Supplies	68,777	68,155
Fuel and Coal	5,602	4,971
	<u>\$ 217,582</u>	<u>\$ 243,595</u>

During the three months ended September 30, 2016 we wrote down approximately \$7.7 million and \$0.8 million of raw materials and materials-in-process and frac sand, respectively. During the three months ended September 30, 2015 we wrote down approximately \$9.4 million of raw materials and materials-in-process. These inventories related to our Oil and Gas Proppants segment.

## (G) ACCRUED EXPENSES

Accrued expenses consist of the following:

	As of	
	September 30, 2016	March 31, 2016
	(dollars in thousands)	
Payroll and Incentive Compensation	\$ 19,155	\$ 19,956
Benefits	12,028	10,663
Interest	6,202	3,373
Property Taxes	6,799	4,186
Power and Fuel	1,543	1,390
Sales and Use Tax	857	1,486
Legal	2,357	549
Other	4,852	4,372
	<u>\$ 53,793</u>	<u>\$ 45,975</u>

## (H) SHARE -BASED EMPLOYEE COMPENSATION

On August 7, 2013 our stockholders approved the Eagle Materials Inc. Amended and Restated Incentive Plan (the "Plan"), which increased the shares we are authorized to issue as awards by 3,000,000 (1,500,000 of which may be stock awards). Under the terms of the Plan, we can issue equity awards, including stock options, restricted stock units ("RSUs"), restricted stock and stock appreciation rights to employees of the Company and members of the Board of Directors. Awards that were already outstanding prior to the approval of the Plan on August 7, 2013 remain outstanding. The Compensation Committee of our Board of Directors specifies the terms for grants of equity awards under the Plan.

*Long-Term Compensation Plans -*

*Options.* In May 2016, the Compensation Committee approved the granting of an aggregate of 91,074 performance vesting stock options pursuant to the Plan to certain officers and key employees that will be earned if certain performance conditions are satisfied (the “Fiscal 2017 Employee Performance Stock Option Grant”). The performance criterion for the Fiscal 2017 Employee Performance Stock Option Grant is based upon the achievement of certain levels of return on equity (as defined in the option agreements), ranging from 11.0% to 18.0%, for the fiscal year ending March 31, 2017. All stock options will be earned if the return on equity is 18.0% or greater, and the percentage of shares earned will be reduced proportionately to approximately 66.7% if the return on equity is 11.0%. If the Company does not achieve a return on equity of at least 11.0%, all stock options granted will be forfeited. Following any such reduction, restrictions on the earned stock options will lapse ratably over four years, with the first fourth lapsing promptly following the determination date, and the remaining restrictions lapsing on March 31, 2018 through 2020. The stock options have a term of ten years from the date of grant. The Compensation Committee also approved the granting of 75,896 time vesting stock options to the same officers and key employees, which vest ratably over four years (the “Fiscal 2017 Employee Time Vesting Stock Option Grant”). In August 2016, we granted 17,894 options to members of the Board of Directors (the “Fiscal 2017 Board of Directors Stock Option Grant”). Options granted under the Fiscal 2017 Board of Directors Stock Option Grant vest immediately and can be exercised from the date of grant until their expiration on the tenth anniversary of the date of grant. The Fiscal 2017 Employee Performance Stock Option Grant, Fiscal 2017 Employee Time Vesting Stock Option Grant and the Fiscal 2017 Board of Directors Stock Option Grant were valued at the grant date using the Black-Scholes option pricing model.

The weighted-average assumptions used in the Black-Scholes model to value the option awards in fiscal 2017 are as follows:

	Fiscal 2017
Dividend Yield	1.3%
Expected Volatility	36.5%
Risk Free Interest Rate	1.4%
Expected Life	6.0 years

Stock option expense for all outstanding stock option awards totaled approximately \$1.8 million and \$3.0 million for the three and six months ended September 30, 2016, respectively and approximately \$2.1 million and \$4.2 million for the three and six months ended September 30, 2015, respectively. At September 30, 2016, there was approximately \$9.1 million of unrecognized compensation cost related to outstanding stock options, net of estimated forfeitures, which is expected to be recognized over a weighted-average period of 2.7 years.

The following table represents stock option activity for the six months ended September 30, 2016:

	Number of Shares	Weighted- Average Exercise Price
Outstanding Options at Beginning of Period	1,817,763	\$ 53.03
Granted	192,364	\$ 76.29
Exercised	(432,264)	\$ 32.92
Cancelled	(18,662)	\$ 69.82
Outstanding Options at End of Period	<u>1,559,201</u>	<u>\$ 61.27</u>
Options Exercisable at End of Period	<u>1,043,635</u>	<u>\$ 53.01</u>
Weighted-Average Fair Value of Options Granted during the Period	<u>\$ 24.56</u>	

The following table summarizes information about stock options outstanding at September 30, 2016 :

Range of Exercise Prices	Outstanding Options			Exercisable Options	
	Number of Shares Outstanding	Weighted - Average Remaining Contractual Life	Weighted - Average Exercise Price	Number of Shares Outstanding	Weighted - Average Exercise Price
\$23.17 – \$ 30.74	279,429	3.75	\$ 25.91	278,429	\$ 25.90
\$33.08 – \$ 37.95	254,876	5.71	\$ 33.92	248,876	\$ 33.87
\$53.22 – \$ 74.10	451,080	8.05	\$ 69.99	232,467	\$ 67.18
\$79.73 – \$ 93.56	573,816	8.30	\$ 83.79	283,863	\$ 84.79
	<u>1,559,201</u>	6.99	\$ 53.01	<u>1,043,635</u>	\$ 53.01

At September 30, 2016, the aggregate intrinsic value for outstanding and exercisable options was approximately \$25.0 million and \$25.3 million, respectively. The total intrinsic value of options exercised during the six months ended September 30, 2016 was approximately \$18.4 million.

*Restricted Stock.* In May 2016, the Compensation Committee approved the granting of an aggregate of 63,029 shares of performance vesting restricted stock to certain officers and key employees that will be earned if certain performance conditions are satisfied (the “Fiscal 2017 Employee Restricted Stock Performance Award”). The performance criterion for the Fiscal 2017 Employee Restricted Stock Performance Award is based upon the achievement of certain levels of return on equity (as defined in the award agreement), ranging from 11.0% to 18.0%, for the fiscal year ending March 31, 2017. All restricted shares will be earned if the return on equity is 18.0% or greater, and the percentage of shares earned will be reduced proportionately to approximately 66.7% if the return on equity is 11.0%. If the Company does not achieve a return on equity of at least 11.0%, all awards will be forfeited. Following any such reduction, restrictions on the earned shares will lapse ratably over four years, with the first fourth lapsing promptly following the determination date, and the remaining restrictions lapsing on March 31, 2018 through 2020. The Compensation Committee also approved the granting of 52,527 shares of time vesting restricted stock to the same officers and key employees, which vest ratably over four years (the “Fiscal 2017 Employee Restricted Stock Time Vesting Award”). Both of the Fiscal 2017 Employee Restricted Stock Performance Award and the Fiscal 2017 Employee Restricted Stock Time Vesting Award were valued at the closing price of the stock on the date of grant, and are being expensed over a four year period. In August 2016, we awarded 11,173 shares of restricted stock to members of the Board of Directors (the “Board of Directors Fiscal 2017 Restricted Stock Award”). Awards issued under the Board of Directors Fiscal 2017 Restricted Stock Award do not fully vest until the retirement of each director, in accordance with our director retirement policy.

Expense related to restricted shares was approximately \$1.8 million and \$3.2 million for the three and six months ended September 30, 2016, respectively, and approximately \$1.9 million and \$4.2 million for the three and six months ended September 30, 2015, respectively. At September 30, 2016, there was approximately \$19.4 million of unearned compensation from restricted stock, net of estimated forfeitures, which will be recognized over a weighted-average period of 3.0 years.

The number of shares available for future grants of stock options, restricted stock units, stock appreciation rights and restricted stock under the Plan was 4,323,126 at September 30, 2016.

## (I) COMPUTATION OF EARNINGS PER SHARE

The calculation of basic and diluted common shares outstanding is as follows:

	For the Three Months Ended September 30,		For the Six Months Ended September 30,	
	2016	2015	2016	2015
Weighted-Average Shares of Common Stock Outstanding	47,809,476	49,828,189	47,911,276	49,797,972
Common Equivalent Shares:				
Assumed Exercise of Outstanding Dilutive Options	864,378	1,278,908	951,783	1,303,636
Less: Shares Repurchased from Assumed Proceeds of Assumed Exercised Options	(600,322)	(866,236)	(657,730)	(871,354)
Restricted Shares	155,953	229,290	169,787	230,693
Weighted-Average Common and Common Equivalent Shares Outstanding	48,229,485	50,470,151	48,375,116	50,460,947
Shares Excluded Due to Anti-dilution Effects	646,593	596,973	669,406	527,330

## (J) PENSION AND EMPLOYEE BENEFIT PLANS

We sponsor several defined benefit and defined contribution pension plans which together cover substantially all our employees. Benefits paid under the defined benefit plans covering certain hourly employees are based on years of service and the employee's qualifying compensation over the last few years of employment.

The following table shows the components of net periodic cost for our plans:

	For the Three Months Ended September 30,		For the Six Months ended September 30,	
	2016	2015	2016	2015
	(dollars in thousands)		(dollars in thousands)	
Service Cost – Benefits Earned During the Period	\$ 221	\$ 231	\$ 443	\$ 488
Interest Cost of Benefit Obligations	398	381	797	758
Expected Return on Plan Assets	(415)	(430)	(831)	(869)
Recognized Net Actuarial Loss	426	432	851	859
Amortization of Prior-Service Cost	74	75	149	150
Net Periodic Pension Cost	\$ 704	\$ 689	\$ 1,409	\$ 1,386

## (K) INCOME TAXES

Income taxes for the interim period presented have been included in the accompanying financial statements on the basis of an estimated annual effective tax rate. In addition to the amount of tax resulting from applying the estimated annual effective tax rate to pre-tax income, we will, when appropriate, include certain items treated as discrete events to arrive at an estimated overall tax amount. The effective tax rate for the six months ended September 30, 2016 was approximately 33%, which was relatively consistent with the effective tax rate of 32% for the six months ended September 30, 2015.

## (L) LONG-TERM DEBT

Long-term debt consists of the following:

	As of	
	September 30, 2016	March 31, 2016
	(dollars in thousands)	
Credit Facility	\$ —	\$ 382,000
4.500% Senior Unsecured Notes Due 2026	350,000	—
Private Placement Senior Unsecured Notes	125,714	125,714
Total Debt	475,714	507,714
Less: Current Portion of Long-term Debt	(8,000)	(8,000)
Less: Debt Origination Costs	(6,532)	—
Total Long-term Debt	\$ 461,182	\$ 499,714

### *Credit Facility –*

We have a \$500.0 million revolving credit facility (the “Credit Facility”), including a swingline loan sublimit of \$25.0 million, which originally was scheduled to expire on October 30, 2019, but was amended in August 2016 to extend the expiration date to August 2, 2021. Borrowings under the Credit Facility are guaranteed by substantially all of the Company’s subsidiaries. At the option of the Company, outstanding principal amounts on the Credit Facility bear interest at a variable rate equal to (i) The London Interbank Offered Rate (“LIBOR”) for the selected period, plus an applicable rate (ranging from 100 to 225 basis points), which is to be established quarterly based upon the Company’s ratio of consolidated EBITDA, defined as earnings before interest, taxes, depreciation and amortization, to the Company’s consolidated indebtedness (the “Leverage Ratio”), or (ii) an alternative base rate which is the higher of (a) the prime rate or (b) the federal funds rate plus 1/2 % per annum plus an applicable rate (ranging from 0 to 125 basis points). Interest payments are payable, in the case of loans bearing interest at a rate based on the federal funds rate, quarterly, or in the case of loans bearing interest at a rate based on LIBOR, at the end of the applicable interest period. The Company is also required to pay a commitment fee on unused available borrowings under the Credit Facility ranging from 10 to 35 basis points depending upon the Leverage Ratio. The Credit Facility contains customary covenants that restrict our ability to incur additional debt, encumber our assets, sell assets, make or enter into certain investments, loans or guaranties and enter into sale and leaseback arrangements. The Credit Facility also requires us to maintain a consolidated indebtedness ratio (calculated as consolidated indebtedness to consolidated earnings before interest, taxes, depreciation, amortization, certain transaction-related deductions and other non-cash deductions) of 3.5:1.0 or less and an interest coverage ratio (consolidated earnings before interest, taxes, depreciation, amortization, certain transaction-related deductions and other non-cash deductions to consolidated interest expense) of at least 2.5:1.0. There were no borrowings outstanding at September 30, 2016. Based on our Leverage Ratio, we had \$489.3 million of available borrowings, net of the outstanding letters of credit, at September 30, 2016.

The Credit Facility has a \$50.0 million letter of credit facility. Under the letter of credit facility, the Company pays a fee at a per annum rate equal to the applicable margin for Eurodollar loans in effect from time to time plus a one-time letter of credit fee in an amount equal to 0.125% of the initial stated amount. At September 30, 2016, we had \$10.7 million of letters of credit outstanding.

### *4.500% Senior Unsecured Notes Due 2026 –*

On August 2, 2016, the Company issued \$350.0 million aggregate principal amount of 4.500% senior notes (“Senior Unsecured Notes”) due August 2026. Interest on the Senior Unsecured Notes is payable semiannually on February 2 and August 2 of each year until all of the outstanding notes are paid. The Senior Unsecured Notes rank equal to existing and future senior indebtedness, including the Credit Facility and the Private Placement Senior Unsecured Notes. Prior to August 1, 2019, we may redeem up to 40% of the original aggregate principal amount of the Senior Unsecured Notes with the proceeds of certain equity offerings at a redemption price of 104.5% of the principal amount of the notes. Prior to August 1, 2021, we may redeem some or all of the Senior Unsecured

Notes at a price equal to 100% of the principal amount, plus a “make-whole” premium. Beginning on August 1, 2021, we may redeem some or all of the Senior Unsecured Notes at the redemption prices set forth below (expressed as a percentage of the principal amount being redeemed):

	Percentage
2021	102.25%
2022	101.50%
2023	100.75%
2024 and thereafter	100.00%

The Senior Unsecured Notes contain covenants that limit our ability and/or our guarantor subsidiaries' ability to create or permit to exist certain liens; enter into sale and leaseback transactions; and consolidate, merge, or transfer all or substantially all of our assets. The Company's Senior Unsecured Notes are fully and unconditionally and jointly and severally guaranteed by each of our subsidiaries that is a guarantor under the Credit Facility and Private Placement Senior Unsecured Notes. See Footnote (P) to the Unaudited Consolidated Financial Statements for more information on the guarantors of the Senior Public Notes.

*Private Placement Senior Unsecured Notes -*

We entered into a Note Purchase Agreement on November 15, 2005 (the “2005 Note Purchase Agreement”) in connection with our sale of \$200 million of senior, unsecured notes, designated as Series 2005A Senior Notes (the “Series 2005A Senior Unsecured Notes”) in a private placement transaction. The Series 2005A Senior Unsecured Notes, which are guaranteed by substantially all of our subsidiaries, were sold at par and issued in three tranches. At September 30, 2016, the amount outstanding for the remaining tranche is as follows:

	Principal	Maturity Date	Interest Rate
Tranche C	\$ 57.2 million	November 15, 2017	5.48%

Interest for this tranche of Series 2005A Senior Unsecured Notes is payable semi-annually on May 15 and November 15 of each year until all principal is paid.

We also entered into an additional Note Purchase Agreement on October 2, 2007 (the “2007 Note Purchase Agreement”) in connection with our sale of \$200 million of senior unsecured notes, designated as Series 2007A Senior Notes (the “Series 2007A Senior Unsecured Notes” and together with the Series 2005A Senior Unsecured Notes, the “Private Placement Senior Unsecured Notes”) in a private placement transaction. The Series 2007A Senior Unsecured Notes, which are guaranteed by substantially all of our subsidiaries, were sold at par and issued in four tranches. At September 30, 2016, the amounts outstanding for each of the remaining tranches were as follows:

	Principal	Maturity Date	Interest Rate
Tranche B	\$ 8.0 million	October 2, 2016	6.27%
Tranche C	\$ 24.0 million	October 2, 2017	6.36%
Tranche D	\$ 36.5 million	October 2, 2019	6.48%

Interest for each tranche of Notes is payable semi-annually April 2 and October 2 of each year until all principal is paid for the respective tranche. During October 2016, the \$8.0 million outstanding under Tranche B of the Series 2007A Senior Unsecured Notes matured, and the related notes were repaid and cancelled at that time.

Our obligations under the 2005 Note Purchase Agreement and 2007 Note Purchase Agreement (together, the “Private Placement Note Purchase Agreements”) and the Private Placement Senior Unsecured Notes are equal in right of payment with all other senior, unsecured indebtedness of the Company, including our indebtedness under the Credit Facility and Senior Unsecured Notes. The Private Placement Note Purchase Agreements contain



customary restrictive covenants, including , but not limited to, covenants that place limits on our ability to encumber our assets, to incur additional debt, to sell assets, or to merge or consolidate with third parties .

The Private Placement Note Purchase Agreements require us to maintain a Consolidated Debt to Consolidated EBITDA (calculated as consolidated indebtedness to consolidated earnings before interest, taxes, depreciation, depletion, amortization, certain transaction related deductions and other non-cash charges) ratio of 3.50 to 1.00 or less. The 2007 Note Purchase Agreement requires us to maintain an interest coverage ratio (Consolidated EBITDA to Consolidated Interest Expense (calculated as consolidated EBITDA, as defined above, to consolidated interest expense)) of at least 2.50:1.00. In addition, the 2007 Note Purchase Agreement requires the Company to ensure that at all times either (i) Consolidated Total Assets equal at least 80% of the consolidated total assets of the Company and its Subsidiaries, determined in accordance with GAAP, or (ii) consolidated total revenues of the Company and its Restricted Subsidiaries for the period of four consecutive fiscal quarters most recently ended equals at least 80% of the consolidated total revenues of the Company and its Subsidiaries during such period. We were in compliance with all financial ratios and tests at September 30, 2016.

Pursuant to a Subsidiary Guaranty Agreement, substantially all of our subsidiaries have guaranteed the punctual payment of all principal, interest, and Make-Whole Amounts (as defined in the Private Placement Note Purchase Agreements) on the Private Placement Senior Unsecured Notes and the other payment and performance obligations of the Company contained in the Private Placement Senior Unsecured Notes and in the Private Placement Note Purchase Agreements. We are permitted, at our option and without penalty, to prepay from time to time at least 10% of the original aggregate principal amount of the Private Placement Senior Unsecured Notes at 100% of the principal amount to be prepaid, together with interest accrued on such amount to be prepaid to the date of payment, plus a Make-Whole Amount. The Make-Whole Amount is computed by discounting the remaining scheduled payments of interest and principal of the Private Placement Senior Unsecured Notes being prepaid at a discount rate equal to the sum of 50 basis points and the yield to maturity of U.S. treasury securities having a maturity equal to the remaining average life of the Private Placement Senior Unsecured Notes being prepaid.

We lease one of our cement plants from the city of Sugar Creek, Missouri. The city of Sugar Creek issued industrial revenue bonds to partly finance improvements to the cement plant. The lease payments due to the city of Sugar Creek under the cement plant lease, which was entered into upon the sale of the industrial revenue bonds, are equal in amount to the payments required to be made by the city of Sugar Creek to the holders of the industrial revenue bonds. Because we are the holder of all of the outstanding industrial revenue bonds, no debt is reflected on our financial statements in connection with our lease of the cement plant. At the conclusion of the lease in fiscal 2021, we have the option to purchase the cement plant for a nominal amount.

## **(M) SEGMENT INFORMATION**

Operating segments are defined as components of an enterprise that engage in business activities that earn revenues, incur expenses and prepare separate financial information that is evaluated regularly by our chief operating decision maker in order to allocate resources and assess performance.

We operate in five business segments: Cement, Gypsum Wallboard, Recycled Paperboard, Oil and Gas Proppants and Concrete and Aggregates. These operations are conducted in the U.S. and include the mining of limestone and the manufacture, production, distribution and sale of Portland cement and slag (basic construction materials which are the essential binding ingredient in concrete), the grinding the mining of gypsum and the manufacture and sale of gypsum wallboard, the manufacture and sale of recycled paperboard to the gypsum wallboard industry and other paperboard converters, the sale of readymix concrete and the mining and sale of aggregates (crushed stone, sand and gravel) and sand used in hydraulic fracturing (“frac sand”). The products that we manufacture, distribute and sell are basic materials used with broad application as construction products, building materials, and basic materials used for oil and natural gas extraction. Our construction products are used in residential, industrial, commercial and infrastructure construction and include cement, slag, concrete and

aggregates. Our building materials are sold into similar markets and include gypsum wallboard. Our basic materials used for oil and natural gas extraction include frac sand and oil well cement.

We operate six cement plants, one slag grinding facility, sixteen cement distribution terminals, five gypsum wallboard plants, including the plant idled in Bernalillo, N.M., a gypsum wallboard distribution center, a recycled paperboard mill, seventeen readymix concrete batch plant locations, four aggregates processing plant locations, two frac sand processing facilities, including the mine idled in Utica, Illinois, three frac sand drying facilities, including the facility idled in Corpus Christi, Texas, and six frac sand trans-load locations. The principal markets for our cement products are Texas, northern Illinois (including Chicago), the central plains, the Rocky Mountains, northern Nevada, and northern California. Gypsum wallboard and recycled paperboard are distributed throughout the continental U.S, with the exception of the northeast. Concrete and aggregates are sold to local readymix producers and paving contractors in the Austin, Texas area, north of Sacramento, California and the greater Kansas City, Missouri area, while frac sand is currently sold into shale deposit zones across the United States.

We conduct one of our six cement plant operations, Texas Lehigh Cement Company LP in Buda, Texas, through a Joint Venture. For segment reporting purposes only, we proportionately consolidate our 50% share of the Joint Venture's revenues and operating earnings, which is consistent with the way management reports the segments within the Company for making operating decisions and assessing performance.

We account for intersegment sales at market prices. The following table sets forth certain financial information relating to our operations by segment:

	For the Three Months Ended September 30,		For the Six Months Ended September 30,	
	2016	2015	2016	2015
	(dollars in thousands)		(dollars in thousands)	
<b>Revenues -</b>				
Cement	\$ 166,811	\$ 164,790	\$ 311,603	\$ 292,966
Gypsum Wallboard	122,923	119,701	236,185	234,753
Paperboard	44,459	39,145	87,274	74,463
Oil and Gas Proppants	6,631	18,307	11,727	41,132
Concrete and Aggregates	39,140	36,671	73,891	65,203
Sub-total	379,964	378,614	720,680	708,517
Less: Intersegment Revenues	(20,331)	(20,090)	(38,655)	(38,019)
Net Revenues, including Joint Venture	359,633	358,524	682,025	670,498
Less: Joint Venture	(26,975)	(29,536)	(51,863)	(56,547)
Net Revenues	<u>\$ 332,658</u>	<u>\$ 328,988</u>	<u>\$ 630,162</u>	<u>\$ 613,951</u>
	For the Three Months Ended September 30,		For the Six Months Ended September 30,	
	2016	2015	2016	2015
	(dollars in thousands)		(dollars in thousands)	
<b>Intersegment Revenues -</b>				
Cement	\$ 4,536	\$ 4,232	\$ 8,071	\$ 7,358
Paperboard	15,452	15,596	29,958	30,147
Concrete and Aggregates	343	262	626	514
	<u>\$ 20,331</u>	<u>\$ 20,090</u>	<u>\$ 38,655</u>	<u>\$ 38,019</u>
<b>Cement Sales Volume (in thousands of tons) -</b>				
Wholly-owned Operations	1,200	1,248	2,233	2,239
Joint Venture	242	236	460	448
	<u>1,442</u>	<u>1,484</u>	<u>2,693</u>	<u>2,687</u>

	For the Three Months Ended September 30,		For the Six Months Ended September 30,	
	2016	2015	2016	2015
	(dollars in thousands)		(dollars in thousands)	
<b>Operating Earnings -</b>				
Cement	\$ 50,716	\$ 48,577	\$ 82,316	\$ 74,290
Gypsum Wallboard	41,698	40,002	81,034	80,896
Paperboard	10,220	8,138	21,447	14,168
Oil and Gas Proppants	(4,090)	(44,600)	(10,002)	(50,236)
Concrete and Aggregates	4,813	3,857	8,497	5,783
Other, net	504	572	1,579	1,007
Sub-total	103,861	56,546	184,871	125,908
Corporate General and Administrative	(8,832)	(9,364)	(18,665)	(18,355)
Earnings Before Interest and Income Taxes	95,029	47,182	166,206	107,553
Interest Expense, net	(5,656)	(4,342)	(9,557)	(8,828)
Earnings Before Income Taxes	\$ 89,373	\$ 42,840	\$ 156,649	\$ 98,725
<b>Cement Operating Earnings -</b>				
Wholly-owned Operations	\$ 38,569	\$ 36,897	\$ 62,189	\$ 54,780
Joint Venture	12,147	11,680	20,127	19,510
	\$ 50,716	\$ 48,577	\$ 82,316	\$ 74,290
<b>Capital Expenditures -</b>				
Cement	\$ 5,009	\$ 5,349	\$ 10,254	\$ 13,499
Gypsum Wallboard	2,097	203	3,425	1,700
Paperboard	400	2,424	1,704	3,268
Oil and Gas Proppants	8	16,744	65	32,711
Concrete and Aggregates	1,506	4,027	2,550	4,691
Other	233	—	233	—
	\$ 9,253	\$ 28,747	\$ 18,231	\$ 55,869
<b>Depreciation, Depletion and Amortization -</b>				
Cement	\$ 8,784	\$ 8,629	\$ 17,395	\$ 16,495
Gypsum Wallboard	4,768	4,819	9,530	9,605
Paperboard	2,106	2,063	4,206	4,116
Oil and Gas Proppants	4,261	7,205	9,445	14,764
Concrete and Aggregates	1,920	1,565	3,669	3,070
Other, net	547	489	1,004	984
	\$ 22,386	\$ 24,770	\$ 45,249	\$ 49,034

	As of	
	September 30, 2016	March 31, 2016
	(dollars in thousands)	
<b>Identifiable Assets -</b>		
Cement	\$ 833,219	\$ 819,994
Gypsum Wallboard	378,905	392,523
Paperboard	123,124	127,371
Oil and Gas Proppants	390,915	409,497
Concrete and Aggregates	109,683	106,634
Corporate and Other	72,289	27,616
	\$ 1,908,135	\$ 1,883,635

Segment operating earnings, including the proportionately consolidated 50% interest in the revenues and expenses of the Joint Venture, represent revenues, less direct operating expenses, segment depreciation, and segment selling, general and administrative expenses. Corporate assets consist primarily of cash and cash equivalents, general office assets, miscellaneous other assets and unrecognized tax benefits. The segment breakdown of goodwill is as follows:

	As of	
	September 30, 2016	March 31, 2016
	(dollars in thousands)	
Cement	\$ 9,729	\$ 9,729
Gypsum Wallboard	116,618	116,618
Paperboard	7,538	7,538
	<u>\$ 133,885</u>	<u>\$ 133,885</u>

Summarized financial information for the Joint Venture that is not consolidated is set out below (this summarized financial information includes the total amount for the Joint Venture and not our 50% interest in those amounts):

	For the Three Months Ended September 30,		For the Six Months Ended September 30,	
	2016	2015	2016	2015
	(dollars in thousands)		(dollars in thousands)	
Revenues	\$ 55,558	\$ 59,071	\$ 105,334	\$ 113,094
Gross Margin	\$ 25,588	\$ 25,193	\$ 42,925	\$ 42,204
Earnings Before Income Taxes	\$ 24,294	\$ 23,360	\$ 40,254	\$ 39,020

	As of	
	September 30, 2016	March 31, 2016
	(dollars in thousands)	
Current Assets	\$ 69,699	\$ 70,491
Non-Current Assets	\$ 39,969	\$ 41,464
Current Liabilities	\$ 16,649	\$ 15,964

## (N) INTEREST EXPENSE

The following components are included in interest expense, net:

	For the Three Months Ended September 30,		For the Six Months Ended September 30,	
	2016	2015	2016	2015
	(dollars in thousands)		(dollars in thousands)	
Interest (Income)	\$ (4)	\$ (1)	\$ (4)	\$ (2)
Interest Expense	5,348	4,160	9,096	8,456
Other Expenses	312	183	465	374
Interest Expense, net	<u>\$ 5,656</u>	<u>\$ 4,342</u>	<u>\$ 9,557</u>	<u>\$ 8,828</u>

Interest income includes interest on investments of excess cash. Components of interest expense include interest associated with the Private Placement Senior Unsecured Notes, the Credit Facility, the Senior Unsecured Notes and commitment fees based on the unused portion of the Credit Facility. Other expenses include amortization of debt issuance costs, and credit facility costs.

## **(O) COMMITMENTS AND CONTINGENCIES**

We have certain deductible limits under our workers' compensation and liability insurance policies for which reserves are established based on the undiscounted estimated costs of known and anticipated claims. We have entered into standby letter of credit agreements relating to workers' compensation and auto and general liability self-insurance. At September 30, 2016, we had contingent liabilities under these outstanding letters of credit of approximately \$10.7 million.

In the ordinary course of business, we execute contracts involving indemnifications that are standard in the industry and indemnifications specific to a transaction such as sale of a business. These indemnifications may include claims relating to any of the following: environmental and tax matters; intellectual property rights; governmental regulations and employment-related matters; customer, supplier, and other commercial contractual relationships; construction contracts and financial matters. While the maximum amount to which the Company may be exposed under such agreements cannot be estimated, it is the opinion of management that these indemnifications are not expected to have a material adverse effect on our consolidated financial position, results of operations or cash flows. We currently have no outstanding guarantees.

We are currently contingently liable for performance under \$17.6 million in performance bonds required by certain states and municipalities, and their related agencies. The bonds are principally for certain reclamation obligations and mining permits. We have indemnified the underwriting insurance company against any exposure under the performance bonds. In our past experience, no material claims have been made against these financial instruments.

### **EPA Notice of Violation**

On October 5, 2010, Region IX of the EPA issued a Notice of Violation and Finding of Violation ("NOV") alleging violations by our subsidiary, Nevada Cement Company ("NCC"), of the Clean Air Act ("CAA"). The NOV alleges that NCC made certain physical changes to its facility in the 1990s without first obtaining permits required by the Prevention of Significant Deterioration requirements and Title V permit requirements of the CAA. The EPA also alleges that NCC has failed to submit to the EPA since 2002 certain reports required by the National Emissions Standard for Hazardous Air Pollutants General Provisions and the Portland Cement Manufacturing Industry Standards. On March 12, 2014, the EPA Region IX issued a second NOV to NCC. The second NOV is materially similar to the 2010 NOV except that it alleges violations of the new source performance standards ("NSPS") for Portland cement plants. The NOVs state that the EPA may seek penalties although it does not propose or assess any specific level of penalties or specify what relief the EPA will seek for the alleged violations. NCC believes it has meritorious defenses to the allegations in the NOVs. The EPA and NCC remain in discussions regarding a resolution of the alleged violations. If a negotiated settlement cannot be reached, NCC intends to vigorously defend these matters in any enforcement action that may be pursued by the EPA. As a part of a settlement, or should NCC fail in its defense in any enforcement action, NCC could be required to make substantial capital expenditures to modify its facility and incur increased operating costs. NCC could also be required to pay significant civil penalties. Additionally, an enforcement action could take many years to resolve the underlying issues alleged in the NOV. We are currently unable to determine the final outcome of this matter or the impact of an unfavorable determination upon our financial position or results of operations.

### **Domestic Wallboard Antitrust Litigation**

Since late December 2012, several purported class action lawsuits were filed in various United States District Courts, including the Eastern District of Pennsylvania, Western District of North Carolina and the Northern District of Illinois, against the Company's subsidiary, American Gypsum Company LLC ("American Gypsum"), alleging that the defendant wallboard manufacturers conspired to fix the price for drywall sold in the United States in violation of federal antitrust laws and, in some cases related provisions of state law. The complaints allege that the defendant wallboard manufacturers conspired to increase prices through the announcement and implementation of coordinated price increases, output restrictions, and other restraints of trade,

including the elimination of individual “job quote” pricing. In addition to American Gypsum, the defendants in these lawsuits include CertainTeed Corp., USG Corporation and United States Gypsum (together “USG”) , New NGC, Inc., Lafarge North America (“Lafarge”) , Temple Inland Inc. (“TIN”) and PABCO Building Products LLC. On April 8, 2013, the Judicial Panel on Multidistrict Litigation (“JP ML”) transferred and consolidated all related cases to the Eastern District of Pennsylvania for coordinated pretrial proceedings.

On June 24, 2013, the direct and indirect purchaser plaintiffs filed consolidated amended class action complaints. The direct purchasers’ complaint added the Company as a defendant. The plaintiffs in the consolidated class action lawsuits bring claims on behalf of purported classes of direct or indirect purchasers of wallboard from January 1, 2012 to the present for unspecified monetary damages (including treble damages) and in some cases injunctive relief. On July 29, 2013, the Company and American Gypsum answered the complaints, denying all allegations that they conspired to increase the price of drywall and asserting affirmative defenses to the plaintiffs’ claims.

In 2014, USG and TIN entered into agreements with counsel representing the direct and indirect purchaser classes pursuant to which they agreed to settle all claims against them. On August 20, 2015, the court entered orders finally approving USG and TIN’s settlements with the direct and indirect purchaser plaintiffs. Initial discovery in this litigation is complete. Following completion of the initial discovery, the Company and remaining co-defendants moved for summary judgement. On February 18, 2016, the court denied the Company’s motion for summary judgement. On June 16, 2016, Lafarge entered into an agreement with counsel for the direct purchaser class under which it agreed to settle all claims against it. The court entered an order preliminarily approving this settlement on July 18, 2016. On July 28, 2016, Lafarge entered into an agreement with counsel representing the indirect purchaser class under which it agreed to settle all claims against it. Indirect purchaser plaintiffs filed a motion for preliminary approval of this settlement in September 2016. On July 14, 2016, the Company’s motion for permission to appeal the summary judgement decision to the U.S. Court of Appeals for the Third Circuit was denied. Direct purchaser plaintiffs and indirect purchaser plaintiffs filed their motions for class certification on August 3, 2016 and October 12, 2016, respectively. Class certification proceedings are ongoing. We are unable to estimate the amount of any reasonably possible loss or range of reasonably possible losses. We deny the allegations in these lawsuits and will vigorously defend ourselves against these claims.

On March 17, 2015, a group of homebuilders filed a complaint against the defendants, including American Gypsum, based upon the same conduct alleged in the consolidated class action complaints. On March 24, 2015, the JPML transferred this action to the multidistrict litigation already pending in the Eastern District of Pennsylvania. Following the transfer, the homebuilder plaintiffs filed two amended complaints, on December 14, 2015 and March 25, 2016. Discovery in this lawsuit is ongoing.

In June 2015, American Gypsum and an employee received grand jury subpoenas from the United States District Court for the Western District of North Carolina seeking information regarding an investigation of the gypsum drywall industry by the Antitrust Division of the Department of Justice. We believe the investigation, although a separate proceeding, is related to the same subject matter at issue in the litigation described above and we intend to fully cooperate with government officials. Given its preliminary nature, we are currently unable to determine the ultimate outcome of such investigation.

## (P) FAIR VALUE OF FINANCIAL INSTRUMENTS

The fair value of our long-term debt has been estimated based upon our current incremental borrowing rates for similar types of borrowing arrangements. The fair value of our Senior Notes at September 30, 2016 is as follows:

	Fair Value
	(dollars in thousands)
Series 2005A Tranche C	58,814
Series 2007A Tranche B	8,002
Series 2007A Tranche C	24,813
Series 2007A Tranche D	39,730
4.5% Senior Unsecured Notes Due 2026	356,195

The estimated fair value of our long-term debt was based on quoted prices of similar debt instruments with similar terms that are publicly traded (level 2 input). The carrying values of cash and cash equivalents, accounts and notes receivable, accounts payable and accrued liabilities approximate their fair values at September 30, 2016 due to the short-term maturities of these assets and liabilities. There were no borrowings under our Credit Facility at September 30, 2016.

## (Q) FINANCIAL STATEMENTS FOR GUARANTORS OF THE 4.500% SENIOR UNSECURED NOTES

On August 2, 2016, the Company completed a public offering of its Senior Unsecured Notes. The Senior Unsecured Notes are senior unsecured obligations of the Company and were offered under the Company's existing shelf registration statement filed with the Securities and Exchange Commission.

The Senior Unsecured Notes are guaranteed by all of the Company's wholly-owned subsidiaries, and all guarantees are full and unconditional and are joint and several. The following unaudited condensed consolidating financial statements present separately the earnings and comprehensive earnings, financial position and cash flows of the parent issuer (Eagle Materials Inc.) and the guarantors (all wholly-owned subsidiaries of Eagle Materials Inc.) on a combined basis with eliminating entries (dollars in thousands).

### Condensed Consolidating Statement of Earnings and Comprehensive Earnings

For the Three Months Ended September 30, 2016

	Parent	Guarantor Subsidiaries	Eliminations	Consolidated
Revenues	\$ —	\$ 332,658	\$ —	\$ 332,658
Cost of Goods Sold	—	241,448	—	241,448
Gross Profit	—	91,210	—	91,210
Equity in Earnings of Unconsolidated Joint Venture	12,147	12,147	(12,147)	12,147
Equity in Earnings of Subsidiaries	61,469	—	(61,469)	—
Corporate General and Administrative Expenses	(7,497)	(1,335)	—	(8,832)
Other Income (Loss)	(137)	641	—	504
Interest Expense, net	(12,354)	6,698	—	(5,656)
Earnings before Income Taxes	53,628	109,361	(73,616)	89,373
Income Taxes	6,609	(35,745)	—	(29,136)
Net Earnings	<u>\$ 60,237</u>	<u>\$ 73,616</u>	<u>\$ (73,616)</u>	<u>\$ 60,237</u>
Net Earnings	\$ 60,237	\$ 73,616	\$ (73,616)	\$ 60,237
Net Actuarial Change in Benefit Plans, net of tax	312	312	(312)	312
Comprehensive Earnings	<u>\$ 60,549</u>	<u>\$ 73,928</u>	<u>\$ (73,928)</u>	<u>\$ 60,549</u>

**Condensed Consolidating Statement of Earnings and Comprehensive Earnings**

**For the Three Months Ended September 30, 2015**

	Parent	Guarantor Subsidiaries	Eliminations	Consolidated
Revenues	\$ —	\$ 328,988	\$ —	\$ 328,988
Cost of Goods Sold	—	284,694	—	284,694
Gross Profit	—	44,294	—	44,294
Equity in Earnings of Unconsolidated Joint Venture	11,680	11,680	(11,680)	11,680
Equity in Earnings of Subsidiaries	30,255	—	(30,255)	—
Corporate General and Administrative Expenses	(8,040)	(1,324)	—	(9,364)
Other Income (Loss)	(173)	745	—	572
Interest Expense, net	(9,268)	4,926	—	(4,342)
Earnings before Income Taxes	24,454	60,321	(41,935)	42,840
Income Taxes	5,365	(18,386)	—	(13,021)
Net Earnings	<u>\$ 29,819</u>	<u>\$ 41,935</u>	<u>\$ (41,935)</u>	<u>\$ 29,819</u>
Net Earnings	\$ 29,819	\$ 41,935	\$ (41,935)	\$ 29,819
Net Actuarial Change in Benefit Plans, net of tax	320	312	(312)	320
Comprehensive Earnings	<u>\$ 30,139</u>	<u>\$ 42,247</u>	<u>\$ (42,247)</u>	<u>\$ 30,139</u>

**Condensed Consolidating Statement of Earnings and Comprehensive Earnings**

**For the Six Months Ended September 30, 2016**

	Parent	Guarantor Subsidiaries	Eliminations	Consolidated
Revenues	\$ —	\$ 630,162	\$ —	\$ 630,162
Cost of Goods Sold	—	466,997	—	466,997
Gross Profit	—	163,165	—	163,165
Equity in Earnings of Unconsolidated Joint Venture	20,127	20,127	(20,127)	20,127
Equity in Earnings of Subsidiaries	111,172	—	(111,172)	—
Corporate General and Administrative Expenses	(15,728)	(2,937)	—	(18,665)
Other Income (Loss)	(214)	1,793	—	1,579
Interest Expense, net	(22,365)	12,808	—	(9,557)
Earnings before Income Taxes	92,992	194,956	(131,299)	156,649
Income Taxes	12,589	(63,657)	—	(51,068)
Net Earnings	<u>\$ 105,581</u>	<u>\$ 131,299</u>	<u>\$ (131,299)</u>	<u>\$ 105,581</u>
Net Earnings	\$ 105,581	\$ 131,299	\$ (131,299)	\$ 105,581
Net Actuarial Change in Benefit Plans, net of tax	624	624	(624)	624
Comprehensive Earnings	<u>\$ 106,205</u>	<u>\$ 131,923</u>	<u>\$ (131,923)</u>	<u>\$ 106,205</u>

**Condensed Consolidating Statement of Earnings and Comprehensive Earnings**

**For the Six Months Ended September 30, 2015**

	Parent	Guarantor Subsidiaries	Eliminations	Consolidated
Revenues	\$ —	\$ 613,951	\$ —	\$ 613,951
Cost of Goods Sold	—	508,560	—	508,560
Gross Profit	—	105,391	—	105,391
Equity in Earnings of Unconsolidated Joint Venture	19,510	19,510	(19,510)	19,510
Equity in Earnings of Subsidiaries	71,701	—	(71,701)	—
Corporate General and Administrative Expenses	(15,731)	(2,624)	—	(18,355)
Other Income (Loss)	(306)	1,313	—	1,007
Interest Expense, net	(18,484)	9,656	—	(8,828)
Earnings before Income Taxes	56,690	133,246	(91,211)	98,725
Income Taxes	10,891	(42,035)	—	(31,144)
Net Earnings	<u>\$ 67,581</u>	<u>\$ 91,211</u>	<u>\$ (91,211)</u>	<u>\$ 67,581</u>
Net Earnings	\$ 67,581	\$ 91,211	\$ (91,211)	\$ 67,581
Net Actuarial Change in Benefit Plans, net of tax	640	640	(640)	640
Comprehensive Earnings	<u>\$ 68,221</u>	<u>\$ 91,851</u>	<u>\$ (91,851)</u>	<u>\$ 68,221</u>



**Condensed Consolidating Balance Sheet**  
**At September 30, 2016**

	Parent	Guarantor Subsidiaries	Eliminations	Consolidated
<b>ASSETS</b>				
Current Assets -				
Cash and Cash Equivalents	\$ 52,524	\$ 1,982	\$ —	\$ 54,506
Accounts and Notes Receivable	562	154,679	—	155,241
Inventories	—	217,582	—	217,582
Income Tax Receivable	55,316	—	(54,270)	1,046
Prepaid and Other Current Assets	4,273	2,488	—	6,761
Total Current Assets	<u>112,675</u>	<u>376,731</u>	<u>(54,270)</u>	<u>435,136</u>
Property, Plant and Equipment -	2,846	2,086,653	—	2,089,499
Less: Accumulated Depreciation	(870)	(854,278)	—	(855,148)
Property, Plant and Equipment, net	1,976	1,232,375	—	1,234,351
Notes Receivable	—	1,158	—	1,158
Deferred Income Taxes	3,799	—	(3,799)	—
Investment in Joint Venture	42	47,810	—	47,852
Investments in Subsidiaries and Receivables from Affiliates	4,297,977	2,830,083	(7,128,060)	—
Goodwill and Intangible Assets, net	—	162,506	—	162,506
Other Assets	5,979	21,153	—	27,132
	<u>\$ 4,422,448</u>	<u>\$ 4,671,816</u>	<u>\$ (7,186,129)</u>	<u>\$ 1,908,135</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>				
Current Liabilities-				
Accounts Payable	\$ 6,183	\$ 56,298	\$ —	\$ 62,481
Accrued Liabilities	18,047	35,746	—	53,793
Income Tax Payable	—	54,270	(54,270)	—
Current Portion of Long-term Debt	8,000	—	—	8,000
Total Current Liabilities	<u>32,230</u>	<u>146,314</u>	<u>(54,270)</u>	<u>124,274</u>
Long-term Debt	461,182	—	—	461,182
Other Long-term Liabilities	223	59,699	—	59,922
Payables to Affiliates	2,830,083	2,122,882	(4,952,965)	—
Deferred Income Taxes	—	167,826	(3,799)	164,027
Total Liabilities	<u>3,323,718</u>	<u>2,496,721</u>	<u>(5,011,034)</u>	<u>809,405</u>
Total Stockholders' Equity	<u>1,098,730</u>	<u>2,175,095</u>	<u>(2,175,095)</u>	<u>1,098,730</u>
	<u>\$ 4,422,448</u>	<u>\$ 4,671,816</u>	<u>\$ (7,186,129)</u>	<u>\$ 1,908,135</u>

**Condensed Consolidating Balance Sheet  
At March 31, 2016**

	Parent	Guarantor Subsidiaries	Eliminations	Consolidated
<b>ASSETS</b>				
Current Assets -				
Cash and Cash Equivalents	\$ 3,507	\$ 1,884	\$ —	\$ 5,391
Accounts and Notes Receivable	324	119,897	—	120,221
Inventories	—	243,595	—	243,595
Income Tax Receivable	—	6,731	(1,108)	5,623
Prepaid and Other Current Assets	1,365	3,808	—	5,173
Total Current Assets	<u>5,196</u>	<u>375,915</u>	<u>(1,108)</u>	<u>380,003</u>
Property, Plant and Equipment -	2,612	2,070,164	—	2,072,776
Less: Accumulated Depreciation	(814)	(816,651)	—	(817,465)
Property, Plant and Equipment, net	1,798	1,253,513	—	1,255,311
Notes Receivable	—	2,672	—	2,672
Deferred Income Taxes	3,375	—	(3,375)	—
Investment in Joint Venture	33	49,432	—	49,465
Investments in Subsidiaries and Receivables from Affiliates	4,085,806	2,529,480	(6,615,286)	—
Goodwill and Intangible Assets, net	—	165,827	—	165,827
Other Assets	5,557	24,800	—	30,357
	<u>\$ 4,101,765</u>	<u>\$ 4,401,639</u>	<u>\$ (6,619,769)</u>	<u>\$ 1,883,635</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>				
Current Liabilities-				
Accounts Payable	\$ 6,968	\$ 59,646	\$ —	\$ 66,614
Accrued Liabilities	15,708	30,267	—	45,975
Income Tax Payable	1,108	—	(1,108)	—
Current Portion of Long-term Debt	8,000	—	—	8,000
Total Current Liabilities	<u>31,784</u>	<u>89,913</u>	<u>(1,108)</u>	<u>120,589</u>
Long-term Debt	499,714	—	—	499,714
Other Long-term Liabilities	256	60,866	—	61,122
Payables to Affiliates	2,529,480	2,042,633	(4,572,113)	—
Deferred Income Taxes	—	165,054	(3,375)	161,679
Total Liabilities	<u>3,061,234</u>	<u>2,358,466</u>	<u>(4,576,596)</u>	<u>843,104</u>
Total Stockholders' Equity	<u>1,040,531</u>	<u>2,043,173</u>	<u>(2,043,173)</u>	<u>1,040,531</u>
	<u>\$ 4,101,765</u>	<u>\$ 4,401,639</u>	<u>\$ (6,619,769)</u>	<u>\$ 1,883,635</u>

Condensed Consolidating Statement of Cash Flows  
Six Months ended September 30, 2016

	Parent	Guarantor Subsidiaries	Eliminations	Consolidated
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
Net Cash Provided by (Used in) Operating Activities	\$ (78,298)	\$ 238,450	\$ —	\$ 160,152
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>				
Additions to Property, Plant and Equipment	(233)	(17,998)	—	(18,231)
Net Cash Used in Investing Activities	(233)	(17,998)	—	(18,231)
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>				
Net Decrease in Long-term Debt	(32,000)	—	—	(32,000)
Payment of Debt Issuance Costs	(6,637)	—	—	(6,637)
Dividends Paid to Stockholders	(9,677)	—	—	(9,677)
Purchase and Retirement of Common Stock	(60,013)	—	—	(60,013)
Proceeds from Stock Option Exercises	12,992	—	—	12,992
Shares Redeemed to Settle Employee Taxes on Stock Compensation	(2,965)	—	—	(2,965)
Excess Tax Benefits from Share Based Payment Arrangements	5,494	—	—	5,494
Intra-entity Activity, net	220,354	(220,354)	—	—
Net Cash Provided by (Used in) Financing Activities	127,548	(220,354)	—	(92,806)
<b>NET INCREASE IN CASH AND CASH EQUIVALENTS</b>	49,017	98	—	49,115
<b>CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD</b>	3,507	1,884	—	5,391
<b>CASH AND CASH EQUIVALENTS AT END OF PERIOD</b>	<u>\$ 52,524</u>	<u>\$ 1,982</u>	<u>\$ —</u>	<u>\$ 54,506</u>

Condensed Consolidating Statement of Cash Flows  
Six Months ended September 30, 2015

	Parent	Guarantor Subsidiaries	Eliminations	Consolidated
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
Net Cash Provided by (Used in) Operating Activities	\$ (73,242)	\$ 180,831	\$ —	\$ 107,589
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>				
Additions to Property, Plant and Equipment	—	(55,869)	—	(55,869)
Acquisition Spending	—	(32,427)	—	(32,427)
Net Cash Used in Investing Activities	—	(88,296)	—	(88,296)
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>				
Repayment of Credit Facility	(3,000)	—	—	(3,000)
Dividends Paid to Stockholders	(10,061)	—	—	(10,061)
Shares Redeemed to Settle Employee Taxes on Stock Compensation	(1,728)	—	—	(1,728)
Purchase and Retirement of Common Stock	(10,744)	—	—	(10,744)
Proceed from Stock Option Exercises	2,580	—	—	2,580
Excess Tax Benefits from Share Based Payment Arrangements	2,494	—	—	2,494
Intra-entity Activity, net	93,382	(93,382)	—	—
Net Cash Provided by (Used in) Financing Activities	72,923	(93,382)	—	(20,459)
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	(319)	(847)	—	(1,166)
<b>CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD</b>	3,644	3,870	—	7,514
<b>CASH AND CASH EQUIVALENTS AT END OF PERIOD</b>	<u>\$ 3,325</u>	<u>\$ 3,023</u>	<u>\$ —</u>	<u>\$ 6,348</u>

## **Item 2. Management's Discussion and Analysis of Results of Operations and Financial Condition**

### **EXECUTIVE SUMMARY**

Eagle Materials Inc. is a diversified producer of basic building products used in residential, industrial, commercial and infrastructure construction. Information presented for the three and six months ended September 30, 2016 and 2015, respectively, reflects the Company's business segments, consisting of Cement, Gypsum Wallboard, Recycled Paperboard, Oil and Gas Proppants and Concrete and Aggregates. These operations are conducted in the U.S. and include the mining of limestone and the manufacture, production, distribution and sale of Portland cement (a basic construction material which is the essential binding ingredient in concrete) as well as specialty oil well cement; the grinding of slag; the mining of gypsum and the manufacture and sale of gypsum wallboard; the manufacture and sale of recycled paperboard to the gypsum wallboard industry and other paperboard converters; the sale of readymix concrete, the mining and sale of aggregates (crushed stone, sand and gravel) and the mining and sale of sand used in hydraulic fracturing ("frac sand"). The products that we manufacture, distribute and sell are basic materials with broad application as construction products, building materials and basic materials used for oil and natural gas extraction. Our construction products are used in residential, industrial, commercial and infrastructure construction and include cement, slag, concrete and aggregates. Our building materials are sold into similar markets and include gypsum wallboard. Our basic materials used for oil and gas extraction include frac sand and oil well cement. Certain information for each of Concrete and Aggregates is broken out separately in the segment discussions.

We operate in cyclical commodity businesses that are affected by changes in market conditions and the overall construction environment. Our operations, depending on each business segment, range from local in nature to national businesses. We have operations in a variety of geographic markets, which subject us to the economic conditions in those geographic markets as well as economic conditions in the national market. General economic downturns or localized downturns in the regions where we have operations may have a material adverse effect on our business, financial condition and results of operations. Our cement and slag companies focus on the U.S. heartland in Texas, Oklahoma, Missouri, Colorado, Wyoming and Nevada, as well as the Chicago, Illinois metropolitan area. Due to the low value-to-weight ratio of cement, it is usually shipped within a 150 mile radius of the plants by truck and up to 300 miles by rail. Concrete and aggregates are even more regional as our operations serve the areas immediately surrounding Austin, Texas, north of Sacramento, California and the greater Kansas City, Missouri area, while frac sand is currently sold into shale deposit zones across the United States. Cement, concrete and aggregates and frac sand demand may fluctuate more widely because local and regional markets and economies may be more sensitive to changes than the national markets. Our Wallboard and Paperboard operations are more national in scope and shipments are made throughout most of the continental United States, except for the northeast.

On July 10, 2015, we completed the acquisition of a 600,000 ton per year Granulated Ground Blast Furnace Slag ("Slag") plant in South Chicago (the "Skyway Plant") from Holcim (US) Inc. (the "Skyway Acquisition"). Among other applications, slag is used in connection with Portland cement to make lower permeability concrete. The Skyway facility purchases its primary raw material, Slag, pursuant to a long-term supply agreement with a third party. The purchase price (the "Skyway Purchase Price") for the Skyway Acquisition was approximately \$29.9 million, net of \$2.5 million which will be refunded by the seller. We received \$1.5 million of the expected refund in January 2016, and we expect to receive the remaining \$1.0 million in January 2017. We funded the payment of the Skyway Purchase Price and expenses incurred in connection with the Skyway Acquisition through operating cash flow. We also assumed certain liabilities, including contractual obligations, related to the Skyway Plant.

On September 11, 2016, Eagle Materials Inc. (the "Company") and Cemex Construction Materials Atlantic, LLC (the "Seller") entered into an Asset Purchase Agreement (the "Asset Purchase Agreement") pursuant to which the Company will acquire (the "Fairborn Acquisition") (i) a cement plant located in Fairborn, Ohio, (ii) a cement distribution terminal located in Columbus, Ohio, and (iii) certain other properties and assets used by the Seller in connection with the foregoing (collectively, the "Fairborn Business").

The purchase price (the “Purchase Price”) to be paid by the Company in the Fairborn Acquisition is \$400.0 million in cash, subject to a customary post-closing inventory adjustment. In addition, the Company will assume certain liabilities and obligations of the Seller relating to the Fairborn Business, including contractual obligations, reclamation obligations and various other liabilities and obligations arising out of or relating to the Fairborn Business after the closing of the Fairborn Acquisition. The Company expects to fund the payment of the Purchase Price and expenses incurred in connection with the Fairborn Acquisition through a combination of cash on hand and borrowings under the Company’s existing bank credit facility. The Fairborn Acquisition is expected to close in the fourth quarter of calendar 2016 or shortly thereafter.

We conduct one of our cement operations through a joint venture, Texas Lehigh Cement Company LP, which is located in Buda, Texas (the “Joint Venture”). We own a 50% interest in the Joint Venture and account for our interest under the equity method of accounting. We proportionately consolidate our 50% share of the Joint Venture’s revenues and operating earnings in the presentation of our cement segment, which is the way management organizes the segments within the Company for making operating decisions and assessing performance.

## RESULTS OF OPERATIONS

### Consolidated Results

	For the Three Months Ended September 30,			For the Six Months Ended September 30,		
	2016	2015	Change	2016	2015	Change
	(In thousands except per share)			(In thousands except per share)		
Revenues	\$ 332,658	\$ 328,988	1%	\$ 630,162	\$ 613,951	3%
Cost of Goods Sold	(241,448)	(284,694)	(15%)	(466,997)	(508,560)	(8%)
Gross Profit	91,210	44,294	106%	163,165	105,391	55%
Equity in Earnings of Unconsolidated Joint Venture	12,147	11,680	4%	20,127	19,510	3%
Corporate General and Administrative	(8,832)	(9,364)	(6%)	(18,665)	(18,355)	2%
Other Income	504	572	(12%)	1,579	1,007	57%
Interest Expense, net	(5,656)	(4,342)	30%	(9,557)	(8,828)	8%
Earnings Before Income Taxes	89,373	42,840	109%	156,649	98,725	59%
Income Tax Expense	(29,136)	(13,021)	124%	(51,068)	(31,144)	63%
Net Earnings	\$ 60,237	\$ 29,819	102%	\$ 105,581	\$ 67,581	56%
Diluted Earnings per Share	\$ 1.25	\$ 0.59	112%	\$ 2.18	\$ 1.34	63%

**Revenues.** Revenues were \$332.7 million and \$329.0 million for the three months ended September 30, 2016 and 2015, respectively. Revenues increased in all of our segments except our oil and gas proppants segment. The increase in revenues for the three months ended September 30, 2016 was due primarily to increased average net sales prices in all segments except gypsum wallboard and recycled paperboard, which were down approximately 2% and 1%, respectively, compared to the three months ended September 30, 2015. The increase in revenues for the three months ended September 30, 2016, compared to September 30, 2015 was partially offset by decreased sales volumes in our cement, concrete and oil and gas proppants segments. The increase in average net sales prices positively impacted net revenue by approximately \$4.7 million during the quarter ended September 30, 2016, compared to September 30, 2015, partially offset by \$0.2 million reduction in revenue from lower sales volumes.

Revenues were \$630.2 million and \$614.0 million for the six months ended September 30, 2016 and 2015, respectively. Revenues from the Skyway Acquisition positively impacted revenues by approximately \$9.9 million. Net revenues from our legacy businesses increased approximately 1% during the six months ended September 30, 2016, compared to the six months ended September 30, 2015. Revenues increased in all of our segments except our oil and gas proppants segment. The increase in revenues for the six months ended September 30, 2016 was due primarily to increased average net sales prices in all segments except gypsum

wallboard and recycled paperboard, which were down approximately 3% and 1%, respectively, compared to the six months ended September 30, 2016, and increased sales volumes in all segments except our oil and gas proppants segment. Excluding revenues from the Skyway Acquisition, increased net sales prices and sales volumes positively impacted net revenue during the quarter ended September 30, 2016, by approximately \$ 2.3 million and \$ 4.0 million, respectively.

**Cost of Goods Sold.** Cost of goods sold was \$241.4 million and \$284.7 million during the three months ended September 30, 2016 and 2015, respectively. The decrease in cost of goods sold for the three months ended September 30, 2016, compared to the three months ended September 30, 2015, was primarily related to an impairment charge of \$28.4 million and a write-down of \$9.4 million in raw sand inventory values in our oil and gas proppants segment during the three months ended September 30, 2015. The remaining decrease in cost of goods sold was related to decreased sales volumes, primarily in our oil and gas proppants business, which decreased cost of goods sold by approximately \$8.3 million, partially offset by an increase in operating costs of approximately \$3.7 million. The increase in operating costs in the three months ended September 30, 2016, compared to September 30, 2015, was primarily related to our cement business and was approximately \$6.1 million, partially offset by decreased operating costs in our gypsum wallboard business of approximately \$2.5 million.

Cost of goods sold was \$467.0 million and \$508.6 million during the six months ended September 30, 2016 and 2015, respectively. The decrease in cost of goods sold for the six months ended September 30, 2016, compared to the six months ended September 30, 2015, was primarily related an impairment charge of \$28.4 million and a write-down of \$9.4 million in raw sand inventory values in our oil and gas proppants segment during the six months ended September 30, 2015. The remaining \$2.9 million decrease in cost of goods sold was related to decreased sales volumes, which decreased cost of sales by approximately \$10.7 million, partially offset by increased operating cost and cost of goods sold from the Skyway Acquisition of approximately \$2.4 million and \$5.4 million, respectively. Operating costs for the six months ended September 30, 2016, compared to September 30, 2015, increased for our cement business by approximately \$10.2 million, partially offset by decreased operating costs in our gypsum wallboard and recycled paperboard businesses of approximately \$4.0 million and \$3.1 million, respectively.

**Gross Profit.** Gross profit was \$91.2 million and \$44.3 million during the three months ended September 30, 2016 and 2015, respectively. The increase in gross profit was primarily related an impairment charge of \$28.4 million and a write-down of \$9.4 million in raw sand inventory values in our oil and gas proppants segment during the three months ended September 30, 2015. The remaining increase in gross profit was due primarily to increased average net sales prices and lower cost of goods sold related to lower sales volumes, as noted above. The gross margin for the three months ended September 30, 2016 increased to 27%, compared to 13% for the three months ended September 30, 2015. Excluding the \$28.4 million impairment of customer contract intangibles and the write-down of \$9.4 million in raw sand inventory during the three months ended September 30, 2015, the gross margin for the three months ended September 30, 2015 would have been approximately 25%. The increase in the gross margin to 27% for the three months ended September 30, 2016, compared to the adjusted gross margin of 25% for the three months ended September 30, 2015 is due primarily to the increase in average net sales prices.

Gross profit was \$163.2 million and \$105.4 million during the six months ended September 30, 2016 and 2015, respectively. The increase in gross profit was primarily related an impairment charge of \$28.4 million and a write-down of \$9.4 million in raw sand inventory values in our oil and gas proppants segment during the six months ended September 30, 2015. The remaining increase in gross profit was due primarily to increased average net sales prices and lower cost of goods sold related to lower sales volumes, as noted above. The gross margin for the six months ended September 30, 2016 increased to 26%, compared to 17% for the six months ended September 30, 2015. Excluding the \$28.4 million impairment of customer contract intangibles and the write-down of \$9.4 million in raw sand inventory during the three months ended September 30, 2015, the gross margin for the six months ended September 30, 2015 would have been approximately 23%. The increase in the gross margin to 26% for the six months ended September 30, 2016, compared to the adjusted gross margin of 23% for

the six months ended September 30, 2015 is due primarily to the increase in average net sales prices and the Skyway Acquisition .

**Equity in Earnings of Joint Venture.** Equity in earnings of our unconsolidated joint venture increased \$0.5 million, or 4%, for the three months ended September 30, 2016, compared to the similar period in 2015. The increase is primarily due to a 3% increase in sales volumes and a decrease in operating costs, partially offset by an 11% decrease in average net sales price. The impact of the increase in sales volumes and decrease in operating costs on equity in earnings of our unconsolidated joint venture during the three months ended September 30, 2016, compared to the three months ended September 30, 2015, was approximately \$0.3 million and \$3.4 million, respectively, partially offset by a decrease in average net sales price of approximately \$3.3 million. The decrease in operating costs was primarily due to a decrease in fuel and power and purchased cement of approximately \$0.8 million and \$2.8 million, respectively, while the decrease in the average net sales prices was due to a reduction in oil well cement sales.

Equity in earnings of our unconsolidated joint venture increased \$0.6 million, or 3%, for the six months ended September 30, 2016, compared to the similar period in 2015. The increase is primarily due to a 3% increase in sales volumes and a decrease in operating costs, partially offset by an 11% decrease in average net sales price. The impact of the increase in sales volumes and decrease in operating costs on equity in earnings of our unconsolidated joint venture during the six months ended September 30, 2016, compared to the six months ended September 30, 2015, was approximately \$0.5 million and \$6.3 million, respectively, partially offset by a decrease in average net sales price of approximately \$6.2 million. The decrease in operating costs was primarily due to a decrease in maintenance, fuel and power and purchased cement costs of approximately \$0.6 million, \$1.1 million and \$4.3 million, respectively, while the decrease in the average net sales prices was due to a reduction in oil well cement sales.

**Corporate General and Administrative.** Corporate general and administrative expenses decreased 6% for the three months ended September 30, 2016, compared to the similar periods in 2015. The approximately \$0.6 million decrease in corporate general and administrative expenses for the three months ended September 30, 2016, compared to 2015, is due primarily to a decrease of approximately \$0.8 million in stock and incentive compensation, partially offset by increased legal expenses of approximately \$0.5 million during the three months ended September 30, 2016, compared to the three months ended September 30, 2015. The decrease in stock and incentive compensation is due primarily to the vesting of grants issued in the prior year, while the increase in legal expense is due primarily to the Fairborn Acquisition.

Corporate general and administrative expenses increased 2% for the six months ended September 30, 2016, compared to the similar periods in 2015. The approximately \$0.3 million increase in corporate general and administrative expenses for the six months ended September 30, 2016, compared to 2015, is due primarily due to increased legal expenses of approximately \$1.2 million during the six months ended September 30, 2016, compared to the similar period in 2015, partially offset by a decrease in stock and incentive compensation of approximately \$0.9 million. The increase in legal expenses is due primarily to the domestic wallboard antitrust litigation and the Fairborn Acquisition, while the decrease in stock and incentive compensation is due to the vesting of grants issued in prior years.

**Other Income.** Other income consists of a variety of items that are non-segment operating in nature and includes non-inventoried aggregates income, gypsum wallboard distribution center income, asset sales and other miscellaneous income and cost items.

**Interest Expense, Net.** Interest expense, net, increased approximately \$1.4 million and \$0.8 million during the three and six months ended September 30, 2016, respectively, compared to the three and six months ended September 30, 2015. The increase in interest expense, net for both of the three and six months ended September 30, 2016, compared to the similar three and six months in the prior fiscal year, is due primarily to our issuance of \$350.0 million of 4.5% senior notes during August 2016. The proceeds from this debt issuance were used to repay the outstanding balance under our Credit Facility, which currently has a lower interest rate. We expect our

interest expense to increase over the next two quarters of fiscal 2017, as we expect to use borrowings under the Credit Facility to fund the Fairborn Acquisition, which is expected to close in the fourth quarter of calendar 2016, or shortly thereafter. See Footnote (B) to the Unaudited Consolidated Financial Statements for more information regarding the Fairborn Acquisition.

**Earnings Before Income Taxes.** Earnings before income taxes were \$89.4 million and \$42.8 million during the three months ended September 30, 2016 and 2015, respectively. The increase was primarily due to an approximately \$46.9 million increase in gross profit, a \$0.4 million increase in equity in earnings of unconsolidated joint venture, an increase in interest expense, net of approximately \$0.4 million and a decrease of approximately \$0.6 million in corporate general and administrative expenses.

Earnings before income taxes were \$156.6 million and \$98.7 million during the six months ended September 30, 2016 and 2015, respectively. The increase was primarily due to an approximately \$57.8 million increase in gross profit, a \$0.6 million increase in equity in earnings of unconsolidated joint venture, an increase in interest expense, net of approximately \$0.8 million and an increase of approximately \$0.3 million in corporate general and administrative expenses.

**Income Taxes.** Income tax expense was \$51.1 million and \$31.1 million for the six months ended September 30, 2016 and 2015, respectively. The estimated effective tax rate for fiscal 2017 was approximately 33%, which is relatively consistent with the tax rate for fiscal 2016.

**Net Earnings and Diluted Earnings per Share.** Net earnings for the quarter ended September 30, 2016 of approximately \$60.2 million increased 102% compared to net earnings for the quarter ended September 30, 2015 of approximately \$29.8 million; while net earnings for the six months ended September 30, 2016 of \$105.6 million increased 56% compared to net earnings for the six months ended September 30, 2015 of \$67.6 million. Diluted earnings per share for the three and six months ended September 30, 2016 were \$1.25 and \$2.18, respectively, compared to diluted earnings per share of \$0.59 and \$1.34 for the three and six months ended September 30, 2015.



The following table highlights certain operating information related to our five business segments:

	For the Three Months Ended September 30,			For the Six Months Ended September 30,		
	2016	2015	Percentage Change	2016	2015	Percentage Change
	(In thousands except per unit)			(In thousands except per unit)		
<b>Revenues (1)</b>						
Cement (2)	\$ 166,811	\$ 164,790	1%	\$ 311,603	\$ 292,966	6%
Gypsum Wallboard	122,923	119,701	3%	236,185	234,753	1%
Recycled Paperboard	44,459	39,145	14%	87,274	74,463	17%
Oil and Gas Proppants	6,631	18,307	(64%)	11,727	41,132	(71%)
Concrete and Aggregates	39,140	36,671	7%	73,891	65,203	13%
Gross Revenues	379,964	378,614	—	720,680	708,517	2%
Less: Intersegment Revenues	(20,331)	(20,090)	1%	(37,851)	(38,019)	—
Less: Joint Venture Revenues	(26,975)	(29,536)	(9%)	(52,667)	(56,547)	(7%)
	<u>\$ 332,658</u>	<u>\$ 328,988</u>	1%	<u>\$ 630,162</u>	<u>\$ 613,951</u>	3%
<b>Sales Volume</b>						
Cement (M Tons) (2)	1,442	1,484	(3%)	2,693	2,687	—
Gypsum Wallboard (MMSF)	650	619	5%	1,237	1,196	3%
Recycled Paperboard (M Tons)	86	75	15%	169	144	17%
Concrete (M Yards)	315	324	(3%)	602	573	5%
Aggregates (M Tons)	1,027	764	34%	1,971	1,431	38%
Frac Sand (M Tons)	111	203	(45%)	185	434	(57%)
<b>Average Net Sales Prices (3)</b>						
Cement (2)	\$ 99.95	\$ 97.21	3%	\$ 100.27	\$ 97.74	3%
Gypsum Wallboard	154.41	157.88	(2%)	155.97	160.57	(3%)
Recycled Paperboard	501.84	505.12	(1%)	500.41	504.49	(1%)
Concrete	95.00	92.07	3%	93.92	92.06	2%
Aggregates	8.64	8.50	2%	8.48	8.24	3%
<b>Operating Earnings</b>						
Cement (2)	\$ 50,716	\$ 48,577	4%	\$ 82,316	\$ 74,290	11%
Gypsum Wallboard	41,698	40,002	4%	81,034	80,896	—
Recycled Paperboard	10,220	8,138	26%	21,447	14,168	51%
Oil and Gas Proppants	(4,090)	(44,600)	91%	(10,002)	(50,236)	80%
Concrete and Aggregates	4,813	3,857	25%	8,497	5,783	47%
Other, net	504	572	(12%)	1,579	1,007	57%
Net Operating Earnings	<u>\$ 103,861</u>	<u>\$ 56,546</u>	84%	<u>\$ 184,872</u>	<u>\$ 125,908</u>	47%

(1) Gross revenue, before freight and delivery costs.

(2) Includes proportionate share of our Joint Venture.

(3) Net of freight and delivery costs.

**Cement Operations.** Cement revenues were \$166.8 million for the three months ended September 30, 2016, which is a 1% increase over revenues of \$164.8 million for the three months ended September 30, 2015. The increase in revenue during the three months ended September 30, 2016, compared to the three months ended September 30, 2015, is primarily due to a 3% increase in average net sales price, partially offset by a 3% decrease in sales volumes. The decrease in sales volumes during the three months ended September 30, 2016, compared to the three months ended September 30, 2015, was primarily due to above average rainfall in our Midwestern markets. The increase in average net sales price during the three months ended September 30, 2016, compared to the three months ended September 30, 2015, positively impacted cement revenues by approximately \$6.0 million, partially offset by the reduction in sales volumes which reduced revenues by approximately \$4.0 million.

Cement operating earnings increased 4% to \$50.7 million from \$48.6 million for the three months ended September 30, 2016 and 2015, respectively. The increase in operating earnings was due primarily to increased average net sales prices, which positively impacted operating earnings by approximately \$6.0 million, partially

offset by reduced sales volumes of approximately \$1.1 million and increased operating costs of approximately \$2.7 million. The increase in operating costs in the three months ended September 30, 2016, compared to September 30, 2015, is primarily related to maintenance and distribution and transfer freight, which negatively impacted operating margin by approximately \$0.8 million and \$1.6 million, respectively. The operating margin increased to 30% for the second quarter of fiscal 2017, compared to 29% for the second quarter of fiscal 2016, primarily due to increased sales average net sales prices.

Cement revenues were \$311.6 million for the six months ended September 30, 2016, which is a 6% increase over revenues of \$293.0 million for the six months ended September 30, 2015. Approximately \$9.9 million of the increase in revenues for the six months ended September 30, 2016, compared to the six months ended September 30, 2015, was related to the Skyway Acquisition. The remaining increase in revenue during the six months ended September 30, 2016, compared to the six months ended September 30, 2015, is primarily due to a 3% increase in average net sales prices and increased sales volume. The increase in average net sales prices and sales volume during the six months ended September 30, 2016, compared to the six months ended September 30, 2015 positively impacted cement revenues by approximately \$7.1 million and \$1.6 million, respectively.

Cement operating earnings increased 11% to \$82.3 million from \$74.3 million for the six months ended September 30, 2016 and 2015, respectively. Approximately \$4.4 million of the increase in operating earnings for the six months ended September 30, 2016, compared to the six months ended September 30, 2015, was related to the Skyway Acquisition. The remaining increase in operating earnings was due primarily to increased average net sales prices, which positively impacted operating earnings by approximately \$7.1 million, partially offset by decreased sales volumes and increased operating costs of approximately \$0.4 million and \$3.9 million. The increase in operating costs in the six months ended September 30, 2016, compared to September 30, 2015, is primarily related to increased maintenance and other purchased raw materials costs, which adversely impacted operating earnings by approximately \$2.2 million and \$0.5 million, respectively. The operating margin increased to 26% for the six months ended September 30, 2016, compared to 25% for the six months ended September 30, 2015, primarily due to increased sales prices.

**Gypsum Wallboard Operations.** Sales revenues increased 3% to \$122.9 million for the three months ended September 30, 2016, from \$119.7 million for the three months ended September 30, 2015, primarily due to a 5% increase in sales volumes, partially offset by a 2% decrease in average net sales price. The increase in sales volumes positively impacted revenues by approximately \$6.0 million, while the decrease in average net sales price negatively impacted revenue by an approximately \$2.8 million. The increased sales volumes are primarily due to increased construction activity in fiscal 2017, compared to fiscal 2016. Our market share was essentially unchanged during the last year.

Operating earnings increased to \$41.7 million for the three months ended September 30, 2016, compared to \$40.0 million for the three months ended September 30, 2015, primarily due to the increase in our sales volumes and reduced operating costs, which positively impacted operating earnings by approximately \$2.0 million and \$2.5 million, respectively, partially offset by reduced average net sales prices, which adversely impacted operating earnings by approximately \$2.8 million. The decrease in operating costs during the three months ended September 30, 2016, compared to the three months ended September 30, 2015, was primarily due to reduced freight, natural gas and maintenance costs, which positively impacted operating earnings by \$0.6 million, \$0.2 million and \$1.0 million, respectively. Our operating margin increased to 34% for the three months ended September 30, 2016, compared to 33% for the three months ended September 30, 2015, primarily due to the decrease in operating costs. Fixed costs are not a significant part of the overall cost of wallboard; therefore, changes in utilization have a relatively minor impact on our operating cost per unit.

Sales revenues increased 1% to \$236.2 million for the six months ended September 30, 2016, from \$234.8 million for the six months ended September 30, 2015, primarily due to a 3% increase in sales volumes. The increase in sales volumes positively impacted revenues by approximately \$8.0 million, partially offset by a decline in average net sales prices, which adversely impacted revenues by approximately \$6.6 million. The

increased sales volumes are primarily due to increased construction activity in fiscal 2017, compared to fiscal 2016. Our market share was essentially unchanged during the last year.

Operating earnings increased to \$81.0 million for the six months ended September 30, 2016, compared to \$80.9 million for the six months ended September 30, 2015, primarily due to the increase in our sales volumes and reduced operating costs, which positively impacted operating earnings by approximately \$2.8 million and \$3.9 million, respectively, partially offset by reduced average net sales prices, which adversely impacted operating earnings by approximately \$6.6 million. The decrease in operating costs during the six months ended September 30, 2016, compared to the six months ended September 30, 2015, was primarily due to reduced freight, natural gas and maintenance costs, which positively impacted operating earnings by \$0.9 million, \$1.0 million and \$1.2 million, respectively. Our operating margin remained consistent at 34% for both of the six months ended September 30, 2016 and 2015. Fixed costs are not a significant part of the overall cost of wallboard; therefore, changes in utilization have a relatively minor impact on our operating cost per unit.

**Recycled Paperboard Operations.** Revenues increased 14% to \$44.4 million during the three months ended September 30, 2016, compared to \$39.1 million for the three months ended September 30, 2015. The increase in revenues during the quarter ended September 30, 2016, compared to September 30, 2015, is due primarily to the 15% increase in sales volumes, which positively impacted revenue by approximately \$5.6 million, partially offset by a 1% reduction in average net sales prices, which adversely impacted revenues by approximately \$0.3 million. The increase in sales volumes is primarily due to the increase in demand for gypsum liner due to both improving demand for gypsum wallboard and an increase in demand from certain customers.

Operating earnings increased to \$10.2 million for the second quarter of fiscal 2017, compared to \$8.1 million for the second quarter of fiscal 2016. The increase in operating earnings is primarily due to increased sales volumes and decreased operating costs, which positively impacted operating earnings by approximately \$1.1 million and \$1.1 million, respectively, partially offset by decreased average net sales prices, which adversely impacted operating earnings by approximately \$0.1 million. The decrease in operating costs is primarily related to decreased recycled fiber and energy costs, which positively impacted operating earnings by approximately \$0.8 million and \$0.6 million, partially offset by an increase in repair and maintenance costs, which adversely impacted operating earnings by approximately \$0.7 million. The increase in sales volume was the primary reason operating margin increased to 23% during the second quarter of fiscal 2017, compared to 21% during the second quarter of fiscal 2016.

Revenues increased 17% to \$87.3 million during the six months ended September 30, 2016, compared to \$74.5 million for the six months ended September 30, 2015. The increase in revenues during the six months ended September 30, 2016, compared to the six months ended September 30, 2015, is due primarily to the 17% increase in sales volume, which positively impacted revenue by approximately \$12.9 million partially offset by a 1% reduction in average net sales prices, which adversely impacted revenues by approximately \$0.1 million. The increase in sales volumes is primarily due to the increase in demand for gypsum liner due to both improving demand for gypsum wallboard and an increase in demand from certain customers.

Operating earnings increased to \$21.4 million for the six months ended September 30, 2016, compared to \$14.2 million for the six months ended September 30, 2015. The increase in operating earnings is primarily due to increased sales volumes and reduced operating costs, which positively impacted operating earnings by approximately \$2.5 million and \$4.8 million, respectively, partially offset by decreased average net sales prices, which adversely impacted operating earnings by \$0.1 million. The decrease in operating costs is primarily related to a decrease in recycled fiber, energy and repair and maintenance costs, which positively impacted operating earnings by approximately \$0.9 million, \$1.9 million and \$1.5 million, respectively, partially offset by increased chemical costs of approximately \$0.7 million. The increase in sales volumes and decrease in operating cost was the primary reason operating margin increased to 25% during the six months ended September 30, 2016, compared to 19% during the six months ended September 30, 2015.

**Oil and Gas Proppants .** Revenues for our oil and gas proppants segment decreased to approximately \$ 6.6 million during the three months ended September 30 , 201 6 , compared to \$ 18.3 million during the three months ended September 30 , 201 5 . The decrease in sales revenue for the three months ended September 30, 2016, compared to September 30, 2015, was due to a decrease in both average net sales prices and sales volumes. The decrease in average net sales prices and sales volumes during the three months ended September 30, 2016, compared to the three months ended September 30, 2015, adversely impacted revenues by approximately \$3.4 million and \$8.3 million, respectively .

Operating loss for the three months ended September 30, 2016 was approximately \$4.1 million, compared to an operating loss of approximately \$44.6 million during the three months ended September 30, 2015. Operating loss for the quarter ended September 30, 2016 was primarily due to the continued decline in the oil and gas industry, which negatively impacted sales volumes. The decrease in operating loss during the three months ended September 30, 2016, compared to the three months ended September 30, 2015, is due primarily to the recognition of an impairment charge of \$28.4 million of intangible assets (customer contracts) associated with the CRS Acquisition and a write-down of \$9.4 million in raw sand inventory values associated primarily with downward revaluation of raw sand inventory during the three months ended September 30, 2015. Operating loss for the three months ended September 30, 2016 includes a write-down of finished and raw sand inventories at our Corpus Christi location of approximately \$8.5 million. This write-down is based upon the current sales price of proppants in the associated shale basin. From time to time, we have sales contracts with drilling companies that specify the purchase of a certain amount of tonnage at stated sales prices. During the quarter ended September 30, 2016, sales contracts with two of our customers expired, or were terminated. These customers had not purchased their contractually required amounts at the time the contracts expired or were terminated. During the quarter ended September 30, 2016, we entered into settlement agreements with such customers in connection with their failure to purchase the required amounts and received settlement payments of approximately \$8.8 million in exchange for releasing our claims against such customers. These payments were recorded in our income statement as a reduction of cost of sales.

Revenues for our oil and gas proppants segment decreased to \$11.7 million during the six months ended September 30, 2016, compared to \$41.1 million during the six months ended September 30, 2015. The decrease in sales revenue for the six months ended September 30, 2016, compared to September 30, 2015, was due to a decrease in both average net sales prices and sales volumes. The decrease in average net sales prices and sales volumes during the six months ended September 30, 2016, compared to the six months ended September 30, 2015, adversely impacted revenues by approximately \$5.8 million and \$23.6 million, respectively.

Operating loss for the six months ended September 30, 2016 was approximately \$10.0 million, compared to operating loss of approximately \$50.2 million during the six months ended September 30, 2015. Operating loss for the quarter ended September 30, 2016 was primarily due to the continued decline in the oil and gas industry, which negatively impacted sales volumes. The decrease in operating loss during the six months ended September 30, 2016, compared to the six months ended September 30, 2015, is due primarily to the recognition of an impairment charge of \$28.4 million of intangible assets (customer contracts) generated from the CRS Acquisition and a write-down of \$9.4 million in raw sand inventory values associated primarily with downward revaluation of raw sand inventory during the six months ended September 30, 2015. Operating loss for the six months ended September 30, 2016 includes the write-off of a customer contract valued at approximately \$1.3 million and a write-down of finished and raw sand inventories at our Corpus Christi location of approximately \$8.5 million. The write-down of finished and raw sand inventories is based upon the current sales price of proppants in the associated shale basin. From time to time, we have sales contracts with drilling companies that specified the purchase of a certain amount of tonnage at stated sales prices. During the six months ended September 30, 2016, sales contracts with two of our customers expired, or were terminated. These customers had not purchased their contractually required amounts at the time the contracts expired or were terminated. During the six months ended September 30, 2016, we entered into settlement agreements with such customers in connection with their failure to purchase the required amounts and received settlement payments of approximately \$8.8 million in exchange for releasing our claims against such customers. We also recognized \$2.0 million related to the forfeiture of a

customer prepayment upon the expiration of the related contract . These payments and forfeiture were recorded in our income statement as a reduction of cost of sales.

**Concrete and Aggregates Operations.** Concrete and aggregates revenues increased 7% to \$39.1 million for the three months ended September 30, 2016, compared to \$36.7 million for the three months ended September 30, 2015. The primary reason for the increase in revenue for the three months ended September 30, 2016, compared to the three months ended September 30 2015, was the 3% and 2% increase in average net sales prices for concrete and aggregates, respectively, which positively impacted revenues by approximately \$0.9 million. The increase in sales volumes by our aggregates business was partially offset by lower sales volumes in our concrete during the second quarter of fiscal 2017, compared to the second quarter of fiscal 2016, and positively impacted revenues by approximately \$1.5 million.

Operating earnings increased 25% to approximately \$4.8 million for the three months ended September 30, 2016, compared to \$3.9 million for the three months ended September 30, 2015. Operating earnings were positively impacted by increased average net sales prices and sales volumes, which positively impacted operating earnings by approximately \$0.9 million and \$0.1 million, respectively, partially offset by increased operating costs of approximately \$0.1 million during the three months ended September 30, 2016, compared to the three months ended September 30, 2015.

Concrete and aggregates revenues increased 13% to \$73.9 million for the six months ended September 30, 2016, compared to \$65.2 million for the six months ended September 30, 2015. The primary reason for the increase in revenue for the six months ended September 30, 2016, compared to the six months ended September 30, 2015, was the 2% and 3% increase in average net sales prices for concrete and aggregates, respectively, which positively impacted revenues by approximately \$1.4 million and the 5% and 38% increase in sales volumes for concrete and aggregates, respectively, which positively impacted revenues by approximately \$7.3 million.

Operating earnings increased 47% to approximately \$8.5 million for the six months ended September 30, 2016, compared to \$5.8 million for the six months ended September 30, 2015. Operating earnings were positively impacted by increased average net sales prices and sales volumes, which positively impacted operating earnings by approximately \$1.3 million and \$0.6 million, respectively. Operating earnings were also positively impacted by a decrease in operating costs, which positively impacted operating earnings by approximately \$0.8 million. The decrease in operating costs during the six months ended September 30, 2016, compared to the six months ended September 30, 2015, was primarily related to purchased materials, which positively impacted operating earnings by approximately \$0.4 million.

## **GENERAL OUTLOOK**

The drivers of construction products demand continue to improve incrementally, supporting the notion that a cyclic recovery is underway. The recovery continues to hinge on the pace of growth in the U.S. economy. In December 2015, the Fixing America's Surface Transportation Act, or "FAST Act" was signed into law. This is the first significant transportation act enacted in ten years. The FAST Act is legislation to improve the nation's surface transportation infrastructure, including roads, bridges, transit systems and rail transportation network over a five year period. Increased infrastructure spending in the future should positively impact both our cement and concrete and aggregates businesses.

Our cement sales network stretches across the central U.S., both east to west and north to south. While we anticipate construction grade cement consumption to continue to increase during calendar 2016, each region will increase at a different pace. Cement markets are affected by infrastructure spending, industrial construction and residential building activity. We expect volume and pricing improvements to vary in each of our cement markets.

We expect aggregate volumes to continue to increase during the remainder of fiscal 2017, while concrete volumes are expected to remain relatively consistent throughout the rest of the fiscal year as compared to the prior year.

Wallboard demand is heavily influenced by new residential housing construction as well as repair and remodeling. Most forecasts point to a continued pick-up in demand in both of these areas throughout calendar 2016. Industry shipments of gypsum wallboard were approximately 22.0 billion square feet in calendar 2015, and have improved by approximately 12% through September 30, 2016 on a year-to-date basis.

We anticipate increased demand for gypsum wallboard to positively impact our recycled paperboard business as sales of higher priced gypsum paper are expected to continue to increase throughout the remainder of fiscal 2017, both in gross tons and as a percentage of total sales volumes.

The decline in oil and gas rig count and well completion activity has adversely impacted oil and gas activity, leading to reduced demand and pricing for proppants. In connection with the reduction in demand and pricing, during fiscal 2017, we reduced the value of our sand inventories by approximately \$8.5 million. We anticipate that these conditions will persist throughout calendar 2016 and into calendar 2017; however, we remain focused on strengthening our low-cost position and continuing to improve our low delivered cost position to targeted shale plays.

We will continue to consider the impact reduced oil prices and rig counts have on the operating performance of our oil and gas proppants business and, if necessary, determine whether these trends indicate additional impairment in the value of the tangible and intangible assets of this business. If market conditions continue to deteriorate, both in terms of oil pricing and reduced rig counts, we will perform impairment tests to determine if any actual impairment has occurred.

## **CRITICAL ACCOUNTING POLICIES AND ESTIMATES**

The preparation of financial statements in accordance with accounting principles generally accepted in the United States requires management to adopt accounting policies and make significant judgments and estimates to develop amounts reflected and disclosed in the financial statements. In many cases, there are alternative policies or estimation techniques that could be used. We maintain a thorough process to review the application of our accounting policies and to evaluate the appropriateness of the many estimates that are required to prepare our financial statements. However, even under optimal circumstances, estimates routinely require adjustment based on changing circumstances and the receipt of new or better information.

Information regarding our “Critical Accounting Policies and Estimates” can be found in our Annual Report. The five critical accounting policies that we believe either require the use of the most judgment, or the selection or application of alternative accounting policies, and are material to our financial statements, are those relating to long-lived assets, goodwill, environmental liabilities, accounts receivable and income taxes. Management has discussed the development and selection of these critical accounting policies and estimates with the Audit Committee of our Board of Directors and with our independent registered public accounting firm. In addition, Note (A) to the financial statements in our Annual Report contains a summary of our significant accounting policies.

### **Recent Accounting Pronouncements**

Refer to Note (A) in the Notes to Unaudited Consolidated Financial Statements of the Form 10-Q for information regarding recently issued accounting pronouncements that may affect our financial statements.

## LIQUIDITY AND CAPITAL RESOURCES

### Cash Flow.

The following table provides a summary of our cash flows:

	For the Six Months Ended September 30,	
	2016	2015
	(dollars in thousands)	
Net Cash Provided by Operating Activities	\$ 160,152	\$ 107,589
Investing Activities:		
Capital Expenditures	(18,231)	(55,869)
Acquisition Spending	—	(32,427)
Net Cash Used in Investing Activities	(18,231)	(88,296)
Financing Activities:		
Repayment of Credit Facility	(382,000)	(3,000)
Issuance of Long-term Debt	350,000	—
Payment of Debt Issuance Costs	(6,637)	—
Dividends Paid	(9,677)	(10,061)
Shares Repurchased to Settle Employee Taxes on Stock Compensation	(2,965)	(1,728)
Purchase and Retirement of Common Stock	(60,013)	(10,744)
Proceeds from Stock Option Exercises	12,992	2,580
Excess Tax Benefits from Share Based Payment Arrangements	5,494	2,494
Net Cash Used In Financing Activities	(92,806)	(20,459)
Net Increase (Decrease) in Cash	\$ 49,115	\$ (1,166)

Cash flows from operating activities increased to \$160.2 million during the six months ended September 30, 2016, compared to \$107.6 million during the similar period in 2015. This increase was primarily attributable to increased net earnings and distributions from Joint Venture, and an increase in cash from changes in working capital, which positively impacted cash flows from operations by approximately \$9.7 million, \$4.5 million and \$28.3 million, respectively. The increase in cash flows from increased net earnings is shown net of the \$28.4 million non-cash impairment expense recognized during the six months ended September 30, 2015. The increase in cash flows from changes in working capital are primarily due to changes in inventory, accounts receivable and income taxes payable, which increased cash flows by approximately \$13.0 million, \$5.9 million and \$5.4 million, respectively.

Working capital increased to \$310.9 million at September 30, 2016, compared to \$259.4 million at March 31, 2016, primarily due to the increased cash and accounts and notes receivable and decreased accounts payable of approximately \$49.1 million, \$35.0 million and \$4.1 million, respectively, partially offset by decreased inventory and income taxes payable and increased accrued liabilities of approximately \$26.0 million, \$4.6 million and \$7.8 million, respectively. The increase in cash is due to improved operating earnings during the three months ended September 30, 2016, as well as the issuance of \$350 million in long-term debt and the related repayment of outstanding amounts under the Credit Facility. The increase in accounts receivable is due primarily to the increase in revenues during the six months ended September 30, 2016, compared to the six months ended September 30, 2015. The changes in accounts payable and accrued liabilities are primarily due to timing of payments.

The increase in accounts and notes receivable at September 30, 2016, compared to March 31, 2016, is primarily due to increased sales revenue during the three months ended September 30, 2016, compared to the three months ended March 31, 2016. As a percentage of quarterly sales generated in the quarter then ended, accounts receivable were approximately 47% at September 30, 2016 and 48% at March 31, 2016. Management measures the change in accounts receivable by monitoring the days sales outstanding on a monthly basis to determine if any deterioration has occurred in the collectability of the accounts receivable. No significant deterioration in the collectability of our accounts receivable in our construction products and building materials

businesses was identified at September 30, 2016. Notes receivable are monitored on an individual basis, and no significant deterioration in the collectability of notes receivable was identified at September 30, 2016.

Our inventory balance at September 30, 2016 declined approximately \$26.0 million from our inventory balance at March 31, 2016. Within our inventory, raw materials and materials-in-progress, finished cement and frac sand decreased approximately \$14.3 million, \$4.7 million and \$2.1 million, respectively. Included in the decrease in raw materials and materials-in-progress and frac sand inventory is a write-down of approximately \$7.7 million and \$0.8 million, respectively, of frac sand at our Corpus Christi location. This write-down is based on the current sales price of proppants in the associated shale basin, which was lower than the value of our inventory. The decline in finished cement is consistent with our business cycle as we generally build inventory over the winter to meet the demand in the spring and summer. The largest individual balance in our inventory is our repair parts. These parts are necessary given the size and complexity of our manufacturing plants, as well as the age of certain of our plants, which creates the need to stock a high level of repair parts inventory. We believe all of these repair parts are necessary and we perform semi-annual analyses to identify obsolete parts. We have less than one year's sales of all product inventories, and our inventories have a low risk of obsolescence due to our products being basic construction materials.

Net cash used in investing activities during the six months ended September 30, 2016 was approximately \$18.2 million, compared to net cash used in investing activities of approximately \$88.3 million during the similar period in 2015, a decrease of \$70.1 million. The decrease in cash used in investing activities for the six months ended September 30, 2016, compared to the six months ended September 30, 2015, is primarily due to \$32.4 million for the Skyway Acquisition, and capital expenditures to complete certain projects in our oil and gas proppants segment during the six months ended September 30, 2015. We anticipate spending between \$30.0 million and \$35.0 million on sustaining capital expenditures for all of our businesses during fiscal 2017.

Net cash used in financing activities was approximately \$92.8 million during the six months ended September 30, 2016, compared to net cash used in financing activities of approximately \$20.5 million during the similar period in 2016. This \$72.3 million increase in net cash used in financing activities is primarily due to the repurchase and retirement of common stock and the repayment of long term debt, net of new borrowings, which increased net cash used in financing by \$49.3 million and \$36.0 million, partially offset by increased proceeds from stock option exercises of approximately \$10.4 million. Our debt-to-capitalization ratio and net-debt-to-capitalization ratio was 30.0% and 27.4%, respectively, at September 30, 2016, compared to 32.8% and 32.6%, respectively, at March 31, 2016.

### ***Debt Financing Activities.***

#### ***Bank Credit Facility***

We have a \$500.0 million revolving credit facility (the "Credit Facility"), including a swingline loan sublimit of \$25.0 million, which originally was scheduled to expire on October 30, 2019, but was amended in August 2016 to extend the expiration date to August 2, 2021. Borrowings under the Credit Facility are guaranteed by substantially all of the Company's subsidiaries. At the option of the Company, outstanding principal amounts on the Credit Facility bear interest at a variable rate equal to (i) The London Interbank Offered Rate ("LIBOR") for the selected period, plus an applicable rate (ranging from 100 to 225 basis points), which is to be established quarterly based upon the Company's ratio of consolidated EBITDA, defined as earnings before interest, taxes, depreciation and amortization, to the Company's consolidated indebtedness (the "Leverage Ratio"), or (ii) an alternative base rate which is the higher of (a) the prime rate or (b) the federal funds rate plus 1/2% per annum plus an applicable rate (ranging from 0 to 125 basis points). Interest payments are payable, in the case of loans bearing interest at a rate based on the federal funds rate, quarterly, or in the case of loans bearing interest at a rate based on LIBOR, at the end of the applicable interest period. The Company is also required to pay a commitment fee on unused available borrowings under the Credit Facility ranging from 10 to 35 basis points depending upon the Leverage Ratio. The Credit Facility contains customary covenants that restrict our ability to incur additional debt, encumber our assets, sell assets, make or enter into certain investments, loans or



guaranties and enter into sale and leaseback arrangements. The Credit Facility also requires us to maintain a consolidated indebtedness ratio (calculated as consolidated indebtedness to consolidated earnings before interest, taxes, depreciation, amortization, certain transaction-related deductions and other non-cash deductions) of 3.5:1.0 or less and an interest coverage ratio (consolidated earnings before interest, taxes, depreciation, amortization, certain transaction-related deductions and other non-cash deductions to consolidated interest expense) of at least 2.5:1.0. There were no borrowings outstanding at September 30, 2016. Based on our Leverage Ratio, we had \$ 489.3 million of available borrowings, net of the outstanding letters of credit, at September 30, 2016.

The Credit Facility has a \$50.0 million letter of credit facility. Under the letter of credit facility, the Company pays a fee at a per annum rate equal to the applicable margin for Eurodollar loans in effect from time to time plus a one-time letter of credit fee in an amount equal to 0.125% of the initial stated amount. At September 30, 2016, we had \$10.7 million of letters of credit outstanding.

*4.500% Senior Unsecured Notes Due 2026 –*

On August 2, 2016, the Company issued \$350.0 million aggregate principal amount of 4.500% senior notes ("Senior Unsecured Notes") due August 2026. Interest on the Senior Unsecured Notes is payable semiannually on February 2 and August 2 of each year until all of the outstanding notes are paid. The Senior Unsecured Notes rank equal to existing and future senior indebtedness, including the Credit Facility and the Private Placement Senior Unsecured Notes. Prior to August 1, 2019, we may redeem up to 40% of the original aggregate principal amount of the Senior Unsecured Notes with the proceeds of certain equity offerings at a redemption price of 104.5% of the principal amount of the notes. Prior to August 1, 2021, we may redeem some or all of the Senior Unsecured Notes at a price equal to 100% of the principal amount, plus a "make-whole" premium. Beginning on August 1, 2021, we may redeem some or all of the Senior Unsecured Notes at the redemption prices set forth below (expressed as a percentage of the principal amount being redeemed):

	Percentage
2021	102.25%
2022	101.50%
2023	100.75%
2024 and thereafter	100.00%

The Senior Unsecured Notes contain covenants that limit our ability and/or our guarantor subsidiaries' ability to create or permit to exist certain liens; enter into sale and leaseback transactions; and consolidate, merge, or transfer all or substantially all of our assets. The Company's Senior Unsecured Notes are fully and unconditionally and jointly and severally guaranteed by each of our subsidiaries that is a guarantor under the Credit Facility and Private Placement Senior Unsecured Notes. See Footnote (P) to the Unaudited Consolidated Financial Statements for more information on the guarantors of the Senior Public Notes.

*Private Placement Senior Unsecured Notes –*

We entered into a Note Purchase Agreement on November 15, 2005 (the "2005 Note Purchase Agreement") in connection with our sale of \$200.0 million of senior unsecured notes, designated as Series 2005A Senior Notes (the "Series 2005A Senior Notes") in a private placement transaction. The Series 2005A Senior Notes, which are guaranteed by substantially all of our subsidiaries, were sold at par and issued in three tranches. At September 30, 2016, the amount outstanding for the remaining tranche was as follows:

	Principal	Maturity Date	Interest Rate
Tranche C	\$ 57.2 million	November 15, 2017	5.48%

Interest for this tranche of Series 2005A Senior Notes is payable semi-annually on May 15 and November 15 of each year until all principal is paid.

We also entered into an additional Note Purchase Agreement on October 2, 2007 (the “2007 Note Purchase Agreement”) in connection with our sale of \$200.0 million of senior unsecured notes, designated as Series 2007A Senior Notes (the “Series 2007A Senior Notes”) and together with the Series 2005A Senior Notes, the “Private Placement Senior Unsecured Notes”) in a private placement transaction. The Series 2007A Senior Notes, which are guaranteed by substantially all of our subsidiaries, were sold at par and issued in four tranches on October 2, 2007. At September 30, 2016, the amounts outstanding for each of the remaining tranches are as follows:

	Principal	Maturity Date	Interest Rate
Tranche B	\$ 8.0 million	October 2, 2016	6.27%
Tranche C	\$ 24.0 million	October 2, 2017	6.36%
Tranche D	\$ 36.5 million	October 2, 2019	6.48%

Interest for each tranche of Series 2007A Senior Notes is payable semi-annually on April 2 and October 2 of each year until all principal is paid for the respective tranche. During October 2016, the \$8.0 million outstanding under Tranche B of the Series 2007A Senior Unsecured Notes matured, and the related notes were repaid and cancelled at that time.

Our obligations under the 2005 Note Purchase Agreement and 2007 Note Purchase Agreement (together, the “Private Placement Note Purchase Agreements”) and the Private Placement Senior Unsecured Notes are equal in right of payment with all other senior, unsecured indebtedness of the Company, including our indebtedness under the Credit Facility and Senior Unsecured Notes. The Private Placement Note Purchase Agreements contain customary restrictive covenants, including, but not limited to, covenants that place limits on our ability to encumber our assets, to incur additional debt, to sell assets, or to merge or consolidate with third parties.

The Private Placement Note Purchase Agreements require us to maintain a Consolidated Debt to Consolidated EBITDA (calculated as consolidated indebtedness to consolidated earnings before interest, taxes, depreciation, depletion, amortization, certain transaction related deductions and other non-cash charges) ratio of 3.50 to 1.00 or less. The 2007 Note Purchase Agreement requires us to maintain an interest coverage ratio (Consolidated EBITDA to Consolidated Interest Expense (calculated as consolidated EBITDA, as defined above, to consolidated interest expense)) of at least 2.50:1.00. In addition, the 2007 Note Purchase Agreement requires the Company to ensure that at all times either (i) Consolidated Total Assets equal at least 80% of the consolidated total assets of the Company and its Subsidiaries, determined in accordance with GAAP, or (ii) consolidated total revenues of the Company and its Restricted Subsidiaries for the period of four consecutive fiscal quarters most recently ended equals at least 80% of the consolidated total revenues of the Company and its Subsidiaries during such period. We were in compliance with all financial ratios and tests at September 30, 2016.

Pursuant to a Subsidiary Guaranty Agreement, substantially all of our subsidiaries have guaranteed the punctual payment of all principal, interest, and Make-Whole Amounts (as defined in the Private Placement Note Purchase Agreements) on the Private Placement Senior Unsecured Notes and the other payment and performance obligations of the Company contained in the Senior Notes and in the Private Placement Note Purchase Agreements. We are permitted, at our option and without penalty, to prepay from time to time at least 10% of the original aggregate principal amount of the Private Placement Senior Unsecured Notes at 100% of the principal amount to be prepaid, together with interest accrued on such amount to be prepaid to the date of payment, plus a Make-Whole Amount. The Make-Whole Amount is computed by discounting the remaining scheduled payments of interest and principal of the Private Placement Senior Unsecured Notes being prepaid at a discount rate equal to the sum of 50 basis points and the yield to maturity of U.S. treasury securities having a maturity equal to the remaining average life of the Private Placement Senior Unsecured Notes being prepaid.

We lease one of our cement plants from the city of Sugar Creek, Missouri. The city of Sugar Creek issued industrial revenue bonds to partly finance improvements to the cement plant. The lease payments due to the city of Sugar Creek under the cement plant lease, which was entered into upon the sale of the industrial revenue bonds, are equal in amount to the payments required to be made by the city of Sugar Creek to the holders of the industrial revenue bonds. Because we are the holder of all of the outstanding industrial revenue bonds, no debt is

reflected on our financial statements in connection with our lease of the cement plant. At the conclusion of the lease in fiscal 2021, we have the option to purchase the cement plant for a nominal amount.

Other than the Credit Facility, we have no other source of committed external financing in place. In the event the Credit Facility should be terminated, no assurance can be given as to our ability to secure a new source of financing. Consequently, if any balance were outstanding on the Credit Facility at the time of termination, and an alternative source of financing could not be secured; it would have a material adverse impact on us. None of our debt is rated by the rating agencies.

We do not have any off balance sheet debt, except for approximately \$50.0 million of operating leases, which have an average remaining term of approximately fifteen years. Also, we have no outstanding debt guarantees. We have available under the Credit Facility a \$50.0 million Letter of Credit Facility. At September 30, 2016, we had \$10.7 million of letters of credit outstanding that renew annually. We are contingently liable for performance under \$17.6 million in performance bonds relating primarily to our mining operations.

We believe that our cash flow from operations and available borrowings under our Credit Facility should be sufficient to meet our currently anticipated operating needs, capital expenditures and dividend and debt service requirements for at least the next twelve months. However, our future liquidity and capital requirements may vary depending on a number of factors, including market conditions in the construction industry, our ability to maintain compliance with covenants in our Credit Facility, the level of competition and general and economic factors beyond our control. These and other developments could reduce our cash flow or require that we seek additional sources of funding. We cannot predict what effect these factors will have on our future liquidity.

As market conditions warrant, the Company may from time to time seek to purchase or repay its outstanding debt securities or loans, including the Private Placement Senior Unsecured Notes, Senior Unsecured Notes and borrowings under the Credit Facility, in privately negotiated or open market transactions, by tender offer or otherwise. Subject to any applicable limitations contained in the agreements governing our indebtedness, any purchases made by us may be funded by the use of cash on our balance sheet or the incurrence of new debt. The amounts involved in any such purchase transactions, individually or in the aggregate, may be material. Any such purchases of the notes offered hereby may be with respect to a substantial amount of such notes, with an attendant reduction in the trading liquidity of such notes.

#### ***Dividends.***

Dividends paid were \$9.7 million and \$10.1 million for the six month periods ended September 30, 2016 and 2015, respectively. Each quarterly dividend payment is subject to review and approval by our Board of Directors, who will continue to evaluate our dividend payment amount on a quarterly basis.

#### ***Share Repurchases.***

	Common Stock	
	Shares Purchased	Average Price Paid Per Share
April 1 through April 30, 2016	230,000	\$ 69.80
May 1 through May 31, 2016	30,000	77.57
June 1 through June 30, 2016	265,000	78.32
Quarter 1 Totals	525,000	\$ 74.55
July 1 through July 31, 2016	233,100	78.83
August 1 through August 31, 2016	30,700	81.51
September 1 through September 30, 2016	—	—
Quarter 2 Totals	263,800	79.15
Year-to-Date Totals	788,800	\$ 76.08

On August 10, 2015, the Board of Directors authorized the Company to repurchase up to an additional 6,782,700 shares, for a total outstanding authorization of 7,500,000 shares. We repurchased 263,800 shares at an average price of \$ 79.15 during the three months ended September 30, 2016. At September 30, 2016 we have authorization to purchase an additional 4,817,200 shares.

Share repurchases may be made from time-to-time in the open market or in privately negotiated transactions. The timing and amount of any repurchases of shares will be determined by management, based on its evaluation of market and economic conditions and other factors. In some cases, repurchases may be made pursuant to plans, programs or directions established from time to time by the Company's management, including plans intended to comply with the safe-harbor provided by Rule 10b5-1.

During the six months ended September 30, 2016, 47,128 shares of stock were withheld from employees upon the vesting of Restricted Shares that were granted under the Plan. These shares were withheld by us to satisfy the employees' minimum statutory tax withholding, which is required once the Restricted Shares or Restricted Shares Units are vested.

### **Capital Expenditures.**

The following table compares capital expenditures:

	For the Six Months Ended September 30,	
	2016	2015
	(dollars in thousands)	
Land and Quarries	\$ 1,224	\$ 7,555
Plants	13,375	32,541
Buildings, Machinery and Equipment	3,632	15,773
Total Capital Expenditures	<u>\$ 18,231</u>	<u>\$ 55,869</u>

We anticipate sustaining capital expenditures will be approximately \$30.0 to \$35.0 million for fiscal 2017. Total capital expenditures for fiscal 2017, including sustaining capital expenditures, are expected to be approximately \$55.0 million to \$65.0 million. Additionally, we anticipate spending approximately \$400.0 million to complete the Fairborn Acquisition during the fiscal third quarter, or shortly thereafter. Historically, we have financed such expenditures with cash from operations and borrowings under our revolving credit facility.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

We are exposed to market risks related to fluctuations in interest rates on our Credit Facility. From time-to-time we have utilized derivative instruments, including interest rate swaps, in conjunction with our overall strategy to manage the debt outstanding that is subject to changes in interest rates. We have a \$500.0 million Credit Facility available at September 30, 2016, under which borrowings bear interest at a variable rate. There were no borrowings outstanding under the Credit Facility at September 30, 2016. At present, we do not utilize derivative financial instruments.

We are subject to commodity risk with respect to price changes principally in coal, coke, natural gas and power. We attempt to limit our exposure to changes in commodity prices by entering into contracts or increasing our use of alternative fuels.

**Item 4. Controls and Procedures**

We have established a system of disclosure controls and procedures that are designed to ensure that information relating to the Company, which is required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934 (“Exchange Act”), is recorded, processed, summarized and reported within the time periods specified by the SEC’s rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, in a timely fashion. An evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act) was performed as of the end of the period covered by this quarterly report. This evaluation was performed under the supervision and with the participation of management, including our CEO and CFO. Based upon that evaluation, our CEO and CFO have concluded that these disclosure controls and procedures were effective.

## **PART II. OTHER INFORMATION**

### **Item 1. Legal Proceedings**

#### **EPA Notice of Violation**

On October 5, 2010, Region IX of the EPA issued a Notice of Violation and Finding of Violation (“NOV”) alleging violations by our subsidiary, Nevada Cement Company (“NCC”), of the Clean Air Act (“CAA”). The NOV alleges that NCC made certain physical changes to its facility in the 1990s without first obtaining permits required by the Prevention of Significant Deterioration requirements and Title V permit requirements of the CAA. The EPA also alleges that NCC has failed to submit to the EPA since 2002 certain reports required by the National Emissions Standard for Hazardous Air Pollutants General Provisions and the Portland Cement Manufacturing Industry Standards. On March 12, 2014, the EPA Region IX issued a second NOV to NCC. The second NOV is materially similar to the 2010 NOV except that it alleges violations of the new source performance standards (“NSPS”) for Portland cement plants. The NOVs state that the EPA may seek penalties although it does not propose or assess any specific level of penalties or specify what relief the EPA will seek for the alleged violations. NCC believes it has meritorious defenses to the allegations in the NOVs. The EPA and NCC remain in discussions regarding a resolution of the alleged violations. If a negotiated settlement cannot be reached, NCC intends to vigorously defend these matters in any enforcement action that may be pursued by the EPA. As a part of a settlement, or should NCC fail in its defense in any enforcement action, NCC could be required to make substantial capital expenditures to modify its facility and incur increased operating costs. NCC could also be required to pay significant civil penalties. Additionally, an enforcement action could take many years to resolve the underlying issues alleged in the NOV. We are currently unable to determine the final outcome of this matter or the impact of an unfavorable determination upon our financial position or results of operations.

#### **Domestic Wallboard Antitrust Litigation**

Since late December 2012, several purported class action lawsuits were filed in various United States District Courts, including the Eastern District of Pennsylvania, Western District of North Carolina and the Northern District of Illinois, against the Company’s subsidiary, American Gypsum Company LLC (“American Gypsum”), alleging that the defendant wallboard manufacturers conspired to fix the price for drywall sold in the United States in violation of federal antitrust laws and, in some cases related provisions of state law. The complaints allege that the defendant wallboard manufacturers conspired to increase prices through the announcement and implementation of coordinated price increases, output restrictions, and other restraints of trade, including the elimination of individual “job quote” pricing. In addition to American Gypsum, the defendants in these lawsuits include CertainTeed Corp., USG Corporation and United States Gypsum (together “USG”), New NGC, Inc., Lafarge North America (“Lafarge”), Temple Inland Inc. (“TIN”) and PABCO Building Products LLC. On April 8, 2013, the Judicial Panel on Multidistrict Litigation (“JPML”) transferred and consolidated all related cases to the Eastern District of Pennsylvania for coordinated pretrial proceedings.

On June 24, 2013, the direct and indirect purchaser plaintiffs filed consolidated amended class action complaints. The direct purchasers’ complaint added the Company as a defendant. The plaintiffs in the consolidated class action lawsuits bring claims on behalf of purported classes of direct or indirect purchasers of wallboard from January 1, 2012 to the present for unspecified monetary damages (including treble damages) and in some cases injunctive relief. On July 29, 2013, the Company and American Gypsum answered the complaints, denying all allegations that they conspired to increase the price of drywall and asserting affirmative defenses to the plaintiffs’ claims.

In 2014, USG and TIN entered into agreements with counsel representing the direct and indirect purchaser classes pursuant to which they agreed to settle all claims against them. On August 20, 2015, the court entered orders finally approving USG and TIN’s settlements with the direct and indirect purchaser plaintiffs. Initial discovery in this litigation is complete. Following completion of the initial discovery, the Company and remaining co-defendants moved for summary judgement. On February 18, 2016, the court denied the Company’s motion for summary judgement. On June 16, 2016, Lafarge entered into an agreement with counsel for the direct purchaser class under which it agreed to settle all claims against it. The court entered an order preliminarily

approving this settlement on July 18, 2016. On July 28, 2016, Lafarge entered into an agreement with counsel representing the indirect purchaser class under which it agreed to settle all claims against it. Indirect purchaser plaintiffs filed a motion for preliminary approval of this settlement in September 2016. On July 14, 2016, the Company's motion for permission to appeal the summary judgment decision to the U.S. Court of Appeals for the Third Circuit was denied. Direct purchaser plaintiffs and indirect purchaser plaintiffs filed their motions for class certification on August 3, 2016 and October 12, 2016, respectively. Class certification proceedings are ongoing. We are unable to estimate the amount of any reasonably possible loss or range of reasonably possible losses. We deny the allegations in these lawsuits and will vigorously defend ourselves against these claims.

On March 17, 2015, a group of homebuilders filed a complaint against the defendants, including American Gypsum, based upon the same conduct alleged in the consolidated class action complaints. On March 24, 2015, the JPML transferred this action to the multidistrict litigation already pending in the Eastern District of Pennsylvania. Following the transfer, the homebuilder plaintiffs filed two amended complaints, on December 14, 2015 and March 25, 2016. Discovery in this lawsuit is ongoing.

In June 2015, American Gypsum and an employee received grand jury subpoenas from the United States District Court for the Western District of North Carolina seeking information regarding an investigation of the gypsum drywall industry by the Antitrust Division of the Department of Justice. We believe the investigation, although a separate proceeding, is related to the same subject matter at issue in the litigation described above and we intend to fully cooperate with government officials. Given its preliminary nature, we are currently unable to determine the ultimate outcome of such investigation.

#### **Item 1A. Risk Factors**

***We are affected by the level of demand in the construction industry.***

Demand for our construction products and building materials is directly related to the level of activity in the construction industry, which includes residential, commercial and infrastructure construction. While the most recent downturn in residential and commercial construction, which began in calendar 2007, materially impacted our business, certain economic fundamentals began improving in calendar 2012, and have continued to improve through calendar 2015 and into calendar 2016; however, the rate and sustainability of such improvement remains uncertain. Infrastructure spending continues to be adversely impacted by a number of factors, including the budget constraints currently being experienced by federal, state and local governments. Any decrease in the amount of government funds available for such projects or any decrease in construction activity in general (including any weakness in residential construction or commercial construction) could have a material adverse effect on our business, financial condition and results of operations.

***Our business is seasonal in nature, and this causes our quarterly results to vary significantly.***

A majority of our business is seasonal with peak revenues and profits occurring primarily in the months of April through November when the weather in our markets is more suitable for construction activity. Quarterly results have varied significantly in the past and are likely to vary significantly in the future. Such variations could have a negative impact on the price of our common stock.

***We are subject to the risk of unfavorable weather conditions, particularly during peak construction periods, as well as other unexpected operational difficulties.***

Unfavorable weather conditions, such as snow, cold weather, hurricanes, tropical storms and heavy or sustained rainfall, can reduce construction activity and adversely affect demand for construction products. Such weather conditions can also increase our costs, reduce our production or impede our ability to transport our products in an efficient and cost-effective manner. Similarly, operational difficulties, such as business interruption due to required maintenance, capital improvement projects or loss of power, can increase our costs and reduce our production. In particular, the occurrence of unfavorable weather conditions and other unexpected operational difficulties during peak construction periods could adversely affect operating income and cash flow and could have a disproportionate impact on our results of operations for the full year.

***We and our customers participate in cyclical industries and regional markets, which are subject to industry downturns.***

A majority of our revenues are from customers who are in industries and businesses that are cyclical in nature and subject to changes in general economic conditions. For example, many of our customers operate in the construction industry, which is affected by a variety of factors, such as general economic conditions, changes in interest rates, demographic and population shifts, levels of infrastructure spending and other factors beyond our control. In addition, since our operations are in a variety of geographic markets, our businesses are subject to differing economic conditions in each such geographic market. Economic downturns in the industries to which we sell our products or localized downturns in the regions where we have operations generally have an adverse effect on demand for our products and adversely affect the collectability of our receivables. In general, any downturns in these industries or regions could have a material adverse effect on our business, financial condition and results of operations.

***Many of our products are commodities, which are subject to significant changes in supply and demand and price fluctuations.***

Many of the products sold by us are commodities and competition among manufacturers is based largely on price. Prices are often subject to material changes in response to relatively minor fluctuations in supply and demand, general economic conditions and other market conditions beyond our control. Increases in the production capacity of industry participants for products such as gypsum wallboard or cement or increases in cement imports tend to create an oversupply of such products leading to an imbalance between supply and demand, which can have a negative impact on product prices. Currently, there continues to be significant excess nameplate capacity in the gypsum wallboard industry in the United States. There can be no assurance that prices for products sold by us will not decline in the future or that such declines will not have a material adverse effect on our business, financial condition and results of operations.

***Our Cement business is capital intensive, resulting in significant fixed and semi-fixed costs. Therefore, our earnings are sensitive to changes in volume.***

Due to the high levels of fixed capital required to produce cement, our profitability is susceptible to significant changes in volume. Although we believe that our current cash balance, along with our projected internal cash flows and our available financing resources, will provide sufficient cash to support our currently anticipated operating and capital needs, if we are unable to generate sufficient cash to purchase and maintain the property and machinery necessary to operate our cement business, we may be required to reduce or delay planned capital expenditures or incur additional debt. In addition, given the level of fixed and semi-fixed costs within our cement business and at our cement production facilities, decreases in volumes could have an adverse effect on our financial condition, results of operations and liquidity.

***Our Oil and Gas Proppants business and financial performance depends on the level of activity in the oil and natural gas industries.***

Our operations that produce frac sand are materially dependent on the levels of activity in natural gas and oil exploration, development and production. More specifically, the demand for the frac sand we produce is closely related to the number of natural gas and oil wells completed in geological formations where sand-based proppants are used in fracture treatments. These activity levels are affected by both short- and long-term trends in natural gas and oil prices. In recent years, natural gas and oil prices and, therefore, the level of exploration, development and production activity, have experienced significant fluctuations. Worldwide economic, political and military events, including war, terrorist activity, events in the Middle East and initiatives by the Organization of the Petroleum Exporting Countries, have contributed, and are likely to continue to contribute, to price volatility. Additionally, warmer than normal winters in North America and other weather patterns may adversely impact the short-term demand for natural gas and, therefore, demand for our products. Reduction in demand for natural gas to generate electricity could also adversely impact the demand for frac sand. A prolonged reduction in natural gas and oil prices would generally depress the level of natural gas and oil exploration, development, production and well completion activity and result in a corresponding decline in the demand for the frac sand we produce. In



addition, any future decreases in the rate at which oil and natural gas reserves are discovered or developed, whether due to increased governmental regulation, limitations on exploration and drilling activity or other factors, could have material adverse effect on our oil and gas proppants business, even in a stronger natural gas and oil price environment.

***Any material nonpayment or nonperformance by any of our key customers could have a material adverse effect on our business and results of operations.***

Any material nonpayment or nonperformance by any of our key customers could have a material adverse effect on our revenue and cash flows, in particular with respect to our Oil and Gas Proppants business. Our contracts with our customers provide for different potential remedies to us in the event a customer fails to purchase the minimum contracted amount of product in a given period. If we were to pursue legal remedies in the event a customer failed to purchase the minimum contracted amount of product under a fixed-volume contract or failed to satisfy the take-or-pay commitment under a take-or-pay contract, we may receive significantly less in a judgment or settlement of any claimed breach than we would have received had the customer fully performed under the contract. In the event of any customer's breach, we may also choose to renegotiate any disputed contract on less favorable terms (including with respect to price and volumes) to us to preserve the relationship with that customer. Accordingly, any material nonpayment or performance by our customers could have a material adverse effect on our revenue and cash flows.

***Volatility and disruption of financial markets could affect access to credit.***

Difficult economic conditions can cause a contraction in the availability, and increase the cost, of credit in the marketplace. A number of our customers or suppliers have been and may continue to be adversely affected by unsettled conditions in capital and credit markets, which in some cases have made it more difficult or costly for them to finance their business operations. These unsettled conditions have the potential to reduce the sources of liquidity for the Company and our customers.

***Our and our customers' operations are subject to extensive governmental regulation, including environmental laws, which can be costly and burdensome.***

Our operations and those of our customers are subject to and affected by federal, state and local laws and regulations with respect to such matters as land usage, street and highway usage, noise level and health and safety and environmental matters. In many instances, various certificates, permits or licenses are required in order for us or our customers to conduct business or carry out construction and related operations. Although we believe that we are in compliance in all material respects with applicable regulatory requirements, there can be no assurance that we will not incur material costs or liabilities in connection with regulatory requirements or that demand for our products will not be adversely affected by regulatory issues affecting our customers. In addition, future developments, such as the discovery of new facts or conditions, the enactment or adoption of new or stricter laws or regulations or stricter interpretations of existing laws or regulations, may impose new liabilities on us, require additional investment by us or prevent us from opening, expanding or modifying plants or facilities, any of which could have a material adverse effect on our financial condition or results of operations.

For example, greenhouse gasses ("GHGs") currently are regulated as pollutants under the CAA and subject to reporting and permitting requirements. Future consequences of GHG permitting requirements and potential emission reduction measures for our operations may be significant because (1) the cement manufacturing process requires the combustion of large amounts of fuel, (2) in our cement manufacturing process, the production of carbon dioxide is a byproduct of the calcination process, whereby carbon dioxide is removed from calcium carbonate to produce calcium oxide, and (3) our gypsum wallboard manufacturing process combusts a significant amount of fossil fuel, especially natural gas. In addition, the EPA has proposed to regulate GHG emissions from existing fossil fuel-fired power plants as a result of the EPA's promulgation of new source performance standards for the same sources. In the future, the EPA is expected to propose new source performance standards for cement manufacturing, which similarly will trigger a requirement for the EPA to promulgate regulations relating to existing cement manufacturing facilities. The timing of such regulation is uncertain.

On September 9, 2010, the EPA finalized National Emissions Standards for Hazardous Air Pollutants, or NESHAP, for Portland cement plants (“PC NESHAP”). The PC NESHAP will require a significant reduction in emissions of certain hazardous air pollutants from Portland cement kilns. The PC NESHAP sets limits on mercury emissions from existing Portland cement kilns and increases the stringency of emission limits for new kilns. The PC NESHAP also sets emission limits for total hydrocarbons, particulate matter (as a surrogate for metal pollutants) and acid gases from cement kilns of all sizes. The PC NESHAP was scheduled to take full effect in September 2013; however, as a result of a decision by the U.S. Court of Appeals for the District of Columbia Circuit in *Portland Cement Ass’n. v. EPA*, 665 F.3d 177 (D.C. Cir.) arising from industry challenges to the PC NESHAP, the EPA proposed a settlement agreement with industry petitioners in May 2012. In February 2013, the EPA published the final revised rule to the PC NESHAP which extended the compliance date until September 9, 2015 for existing cement kilns and made certain changes to the rules governing particulate matter monitoring methods and emissions limits, among other revisions. The 2013 revised rule was challenged in the U.S. Court of Appeals for the D.C. Circuit and on April 18, 2014, the court vacated the affirmative defense provision. The court upheld the EPA’s particulate matter emission standards and extended compliance date. On November 19, 2014, the EPA proposed a rule removing the affirmative defense provision and making minor technical corrections to the regulations. The PC NESHAP will materially increase capital costs and costs of production for the Company and the industry as a whole.

On March 21, 2011 the EPA proposed revised Standards of Performance for New Sources and Emissions Guidelines for Existing Sources for Commercial/Industrial Solid Waste Incinerators (the “CISWI Rule”) per Section 129 of the CAA, which created emission standards for 4 subcategories of industrial facilities, one of which is “Waste Burning Kilns.” The EPA simultaneously stayed the CISWI Rule for further reconsideration. Effective as of February 13, 2013, the EPA finalized revisions to the CISWI Rule. For those cement kilns that utilize non-hazardous secondary materials (“NHSM”) as defined in a rule first finalized on March 21, 2011 (and slightly revised effective on February 13, 2013), the CISWI Rule will require significant reductions in emissions of certain pollutants from applicable cement kilns. The CISWI Rule sets forth emission standards for mercury, carbon monoxide, acid gases, nitrogen oxides, sulfur dioxide, certain metals (lead and cadmium) and more stringent standards than PC NESHAP for particulate matter and dioxin/furans. The CISWI Rule as currently promulgated may materially increase capital costs and costs for production but only for those facilities that will be using applicable solid wastes as fuel. The compliance date for this rule is expected to be March 1, 2018 (either 3 years after State CISWI plan approval, or 5 years from the date of the final CISWI Rule, whichever is sooner). It is anticipated that the CISWI Rule may materially increase capital costs and costs of production for the Company and the industry as a whole.

On April 17, 2015, the EPA published its final rule addressing the storage, reuse and disposal of coal combustion products, which include fly ash and flue gas desulfurization gypsum (“synthetic gypsum”). We use synthetic gypsum in wallboard manufactured at our Georgetown, South Carolina plant. The rule, which applies only to electric utilities and independent power producers, establishes standards for the management of coal combustion residuals (CCRs) under Subtitle D of the Resource Conservation and Recovery Act, or RCRA, which is the Subtitle that regulates non-hazardous wastes. The rule imposes requirements addressing CCR surface impoundments and landfills, including location restrictions, design and operating specifications, groundwater monitoring requirements, corrective action requirements, recordkeeping and reporting obligations, and closure requirements. Beneficial encapsulated uses of CCRs, including synthetic gypsum, are exempt from regulation. The rule became effective on October 14, 2015, with many of the requirements phased in months or years after the effective date. Given the EPA’s decision to continue to allow CCR to be used in synthetic gypsum and to regulate CCR under the non-hazardous waste sections of RCRA, we do not expect the rule to materially affect our business, financial condition and results of operations.

On October 1, 2015, the EPA lowered the primary and secondary ozone standards from the current 8-hour standard of 75 parts per billion (“ppb”) to 70 ppb. The EPA also strengthened the secondary ozone standard to improve protection for trees, plants and ecosystems. Like the primary standard, an area will meet the secondary standard if the fourth-highest maximum daily 8-hour ozone concentration per year, averaged over three years, is equal to or less than 70 ppb. The EPA based the secondary standard on the “W126 metric,” an index designed to

show the cumulative impact of ozone on plants and trees seasonally. The EPA has issued an implementation memo describing how it will determine whether the ozone levels in areas across the country, typically on a county level, are above the new standards. Areas above the new standards will be designated as “nonattainment;” areas at or below the new standards will be designated “attainment.” In states with major emitting sources located in or near designated nonattainment areas, States will impose new and costly regulatory requirements. For areas that are determined to be in non-attainment, states will be required to develop plans to bring the areas into attainment by as early as 2020. At this time, it is not possible to determine whether any area in which we operate will be designated nonattainment. However, if that occurs, we may be required to meet new control requirements requiring significant capital expenditures for compliance.

Our cement plants located in Kansas City, Missouri and Tulsa, Oklahoma are subject to certain obligations under a consent decree with the United States requiring the establishment of facility-specific emissions limitations for certain air pollutants. Limitations that significantly restrict emissions levels beyond current operating levels may require additional investments by us or place limitations on operations, any of which could have a material adverse effect on our financial condition or results of operations.

Our cement plant in Tulsa, Oklahoma is subject to NESHAP for hazardous waste combustors (the “HWC MACT”), which imposes emission limitations and operating limits on cement kilns that are fueled by hazardous wastes. Compliance with the HWC MACT could impose additional liabilities on us or require additional investment by us, which could have a material adverse effect on our financial condition or results of operations. In addition, new developments, such as new laws or regulations, may impose new liabilities on us, require additional investment by us or prevent us from operating or expanding plants or facilities, any of which could have a material adverse effect on our financial condition or results of operations. For example, while the HWC MACT has not been updated since 2008, 73 Fed. Reg. 64068 (Oct. 28, 2008), future revisions to the HWC MACT regulations would apply to both of the cement kilns used at the cement plant in Tulsa, Oklahoma. Such revision could require new control requirements and significant capital expenditure for compliance. In 2013, the EPA adopted the final CISWI Rule (as discussed above) that likely will apply to the cement kiln used by the cement plant in Sugar Creek, Missouri and the two cement kilns at Nevada Cement Company, and may impose new control requirements requiring significant capital expenditures for compliance. Existing CISWI units will need to comply with the CISWI Rule when it becomes effective, which is expected to occur in early 2018.

***We may incur significant costs in connection with pending and future litigation.***

We are, or may become, party to various lawsuits, claims, investigations and proceedings, including but not limited to personal injury, environmental, antitrust, tax, asbestos, property entitlements and land use, intellectual property, commercial, contract, product liability, health and safety, and employment matters. The outcome of pending or future lawsuits, claims, investigations or proceedings is often difficult to predict, but could be adverse and material in amount. In addition, the defense of these lawsuits, claims, investigations and proceedings may divert our management’s attention and we may incur significant costs in defending these matters. See Part II Item 1. Legal Proceedings of this report.

***Our results of operations are subject to significant changes in the cost and availability of fuel, energy and other raw materials.***

Major cost components in each of our businesses are the costs of fuel, energy and raw materials. Significant increases in the costs of fuel, energy or raw materials or substantial decreases in their availability could materially and adversely affect our sales and operating profits. Prices for fuel, energy or raw materials used in connection with our businesses could change significantly in a short period of time for reasons outside our control. Prices for fuel and electrical power, which are significant components of the costs associated with our gypsum wallboard and cement businesses, have fluctuated significantly in recent years and may increase in the future. In the event of large or rapid increases in prices, we may not be able to pass the increases through to our customers in full, which would reduce our operating margin.

***Changes in the cost or availability of raw materials supplied by third parties may adversely affect our operating and financial performance.***

We generally maintain our own reserves of limestone, gypsum, aggregates and other materials that we use to manufacture our products. However, we obtain certain raw materials used to manufacture our products, such as synthetic gypsum, from third parties who produce such materials as by-products of industrial processes. While we try to secure our needed supply of such materials through long-term contracts, those contracts may not be sufficient to meet our needs or we may be unable to renew or replace existing contracts when they expire or are terminated in the future. Should our existing suppliers cease operations or reduce or eliminate production of these by-products, our costs to procure these materials may increase significantly or we may be obliged to procure alternatives to replace these materials, which may not be available on commercially reasonable terms or at all. Any such development may adversely affect our operations and financial condition.

***We may become subject to significant clean-up, remediation and other liabilities under applicable environmental laws.***

Our operations are subject to state, federal and local environmental laws and regulations, which impose liability for cleanup or remediation of environmental pollution and hazardous waste arising from past acts. These laws and regulations also require pollution control and prevention, site restoration and operating permits and/or approvals to conduct certain of our operations or expand or modify our facilities. Certain of our operations may from time-to-time involve the use of substances that are classified as toxic or hazardous substances within the meaning of these laws and regulations. Additionally, any future laws or regulations addressing GHG emissions would likely have a negative impact on our business or results of operations, whether through the imposition of raw material or production limitations, fuel-use or carbon taxes emission limitations or reductions or otherwise. We are unable to estimate accurately the impact on our business or results of operations of any such law or regulation at this time. Risk of environmental liability (including the incurrence of fines, penalties or other sanctions or litigation liability) is inherent in the operation of our businesses. As a result, it is possible that environmental liabilities and compliance with environmental regulations could have a material adverse effect on our operations in the future.

***Significant changes in the cost and availability of transportation could adversely affect our business, financial condition and results of operations.***

Some of the raw materials used in our manufacturing processes, such as coal or coke, are transported to our facilities by truck or rail. In addition, transportation logistics play an important part in allowing us to supply products to our customers, whether by truck, rail or barge. For example, we deliver gypsum wallboard to many areas of the United States and the transportation costs associated with the delivery of our wallboard products represent a significant portion of the variable cost of our gypsum wallboard segment. Significant increases in the cost of fuel or energy can result in material increases in the cost of transportation, which could materially and adversely affect our operating profits. In addition, reductions in the availability of certain modes of transportation such as rail or trucking could limit our ability to deliver product and therefore materially and adversely affect our operating profits.

***Our debt agreements contain restrictive covenants and require us to meet certain financial ratios and tests, which limit our flexibility and could give rise to a default if we are unable to remain in compliance.***

Our Credit Facility, Senior Unsecured Notes and Private Placement Note Purchase Agreements governing our Private Placement Senior Unsecured Notes contain, among other things, covenants that limit our ability to finance future operations or capital needs or to engage in other business activities, including but not limited to our ability to:

- Incur additional indebtedness;
- Sell assets or make other fundamental changes;
- Engage in mergers and acquisitions;

- Pay dividends and make other restricted payments;
- Make investments, loans, advances or guarantees;
- Encumber our assets or those of our restricted subsidiaries;
- Enter into transactions with our affiliates.

In addition, these agreements require us to meet and maintain certain financial ratios and tests, which may require that we take action to reduce our debt or to act in a manner contrary to our business objectives. Events beyond our control, including the changes in general business and economic conditions, may impair our ability to comply with these covenants or meet those financial ratios and tests. A breach of any of these covenants or failure to maintain the required ratios and meet the required tests may result in an event of default under these agreements. This may allow the lenders under these agreements to declare all amounts outstanding to be immediately due and payable, terminate any commitments to extend further credit to us and pursue other remedies available to them under the applicable agreements. If this occurs, our indebtedness may be accelerated and we may not be able to refinance the accelerated indebtedness on favorable terms, or at all, or repay the accelerated indebtedness. In general, the occurrence of any event of default under these agreements could have a material adverse effect on our financial condition or results of operations.

***We have incurred substantial indebtedness, which could adversely affect our business, limit our ability to plan for or respond to changes in our business and reduce our profitability.***

Our future ability to satisfy our debt obligations is subject, to some extent, to financial, market, competitive, legislative, regulatory and other factors that are beyond our control. Our substantial debt obligations could have negative consequences to our business, and in particular could impede, restrict or delay the implementation of our business strategy or prevent us from entering into transactions that would otherwise benefit our business. For example:

- we may be required to dedicate a substantial portion of our cash flows from operations to payments on our indebtedness, thereby reducing the availability of our cash flow for other purposes, including business development efforts, capital expenditures or strategic acquisitions;
- we may not be able to generate sufficient cash flow to meet our substantial debt service obligations or to fund our other liquidity needs. If this occurs, we may have to take actions such as selling assets, selling equity or reducing or delaying capital expenditures, strategic acquisitions, investments and joint ventures or restructuring our debt;
- as a result of the amount of our outstanding indebtedness and the restrictive covenants to which we are subject, if we determine that we require additional financing to fund future working capital, capital investments or other business activities, we may not be able to obtain such financing on commercially reasonable terms, or at all; and
- our flexibility in planning for, or reacting to, changes in our business and industry may be limited, thereby placing us at a competitive disadvantage compared to our competitors that have less indebtedness.

***Our production facilities may experience unexpected equipment failures, catastrophic events and scheduled maintenance.***

Interruptions in our production capabilities may cause our productivity and results of operations to decline significantly during the affected period. Our manufacturing processes are dependent upon critical pieces of equipment. Such equipment may, on occasion, be out of service as a result of unanticipated events such as fires, explosions, violent weather conditions or unexpected operational difficulties. We also have periodic scheduled shut-downs to perform maintenance on our facilities. Any significant interruption in production capability may require us to make significant capital expenditures to remedy problems or damage as well as cause us to lose

revenue and profits due to lost production time, which could have a material adverse effect on our results of operations and financial condition.

***Increases in interest rates and inflation could adversely affect our business and demand for our products, which would have an adverse effect on our results of operations.***

Our business is significantly affected by the movement of interest rates. Interest rates have a direct impact on the level of residential, commercial and infrastructure construction activity by impacting the cost of borrowed funds to builders. Higher interest rates could result in decreased demand for our products, which would have a material adverse effect on our business and results of operations. In addition, increases in interest rates could result in higher interest expense related to borrowings under our Credit Facility. Inflation can result in higher interest rates. With inflation, the costs of capital increase, and the purchasing power of our cash resources can decline. Current or future efforts by the government to stimulate the economy may increase the risk of significant inflation, which could have a direct and indirect adverse impact on our business and results of operations.

***Any new business opportunities we may elect to pursue will be subject to the risks typically associated with the early stages of business development or product line expansion.***

We are continuing to pursue opportunities which are natural extensions of our existing core businesses and which allow us to leverage our core competencies, existing infrastructure and customer relationships. See “Management’s Discussion and Analysis of Financial Conditions and Results of Operations – Executive Summary.” Our likelihood of success in pursuing and realizing these opportunities must be considered in light of the expenses, difficulties and delays frequently encountered in connection with the early phases of business development or product line expansion, including the difficulties involved in obtaining permits; planning and constructing new facilities; transporting and storing products; establishing, maintaining or expanding customer relationships; as well as navigating the regulatory environment in which we operate. There can be no assurance that we will be successful in the pursuit and realization of these opportunities.

***We may be adversely affected by decreased demand for frac sand or the development of either effective alternative proppants or new processes to replace hydraulic fracturing.***

Frac sand is a proppant used in the completion and re-completion of natural gas and oil wells through hydraulic fracturing. Frac sand is the most commonly used proppant and is less expensive than ceramic proppant, which is also used in hydraulic fracturing to stimulate and maintain oil and natural gas production. A significant shift in demand from frac sand to other proppants, such as ceramic proppants, could have a material adverse effect on our oil and gas proppants business. The development and use of other effective alternative proppants or the development of new processes to replace hydraulic fracturing altogether, could also cause a decline in demand for the frac sand we produce and could have a material adverse effect on our oil and gas proppants business.

***Our operations are dependent on our rights and ability to mine our properties and on our having renewed or received the required permits and approvals from governmental authorities and other third parties.***

We hold numerous governmental, environmental, mining and other permits, water rights and approvals authorizing operations at many of our facilities. A decision by a governmental agency or other third party to deny or delay issuing a new or renewed permit or approval, or to revoke or substantially modify an existing permit or approval, could have a material adverse effect on our ability to continue operations at the affected facility. Expansion of our existing operations is also predicated on securing the necessary environmental or other permits, water rights or approvals, which we may not receive in a timely manner or at all.

Title to, and the area of, mineral properties and water rights may also be disputed. Mineral properties sometimes contain claims or transfer histories that examiners cannot verify. A successful claim that we do not have title to one or more of our properties or lack appropriate water rights could cause us to lose any rights to explore, develop and extract any minerals on that property, without compensation for our prior expenditures relating to such property. Our business may suffer a material adverse effect in the event one or more of our properties are determined to have title deficiencies.

In some instances, we have received access rights or easements from third parties, which allow for a more efficient operation than would exist without the access or easement. A third party could take action to suspend the access or easement, and any such action could be materially adverse to our results of operations or financial conditions.

***A cyber-attack or data security breach affecting our information technology systems may negatively affect our businesses, financial condition and operating results.***

We use information technology systems to collect, store and transmit the data needed to operate our businesses, including our confidential and proprietary information. Although we have implemented industry-standard security safeguards and policies to prevent unauthorized access or disclosure of such information, we cannot prevent all cyber-attacks or data security breaches. If such an attack or breach occurs, our businesses could be negatively affected, and we could incur additional costs in remediating the attack or breach and suffer reputational harm due to the theft or disclosure of our confidential information.

***We may pursue acquisitions, joint ventures and other transactions that are intended to complement or expand our businesses. We may not be able to complete proposed transactions, and even if completed, the transactions may involve a number of risks that may result in a material adverse effect on our business, financial condition, operating results and cash flows.***

As business conditions warrant and our financial resources permit, we may pursue opportunities to acquire businesses or technologies and to form joint ventures that we believe could complement, enhance or expand our current businesses or product lines or that might otherwise offer us growth opportunities. We may have difficulty identifying appropriate opportunities, or if we do identify opportunities, we may not be successful in completing transactions for a number of reasons. Any transactions that we are able to identify and complete may involve one or more of a number of risks, including:

- the diversion of management's attention from our existing businesses to integrate the operations and personnel of the acquired business or joint venture;
- possible adverse effects on our operating results during the integration process;
- failure of the acquired business or joint venture to achieve expected operational, profitability and investment return objectives;
- the incurrence of significant charges, such as impairment of goodwill or intangible assets, asset devaluation or restructuring charges;
- the assumption of unanticipated liabilities and costs for which indemnification is unavailable or inadequate;
- unforeseen difficulties encountered in operating in new geographic areas; and
- the inability to achieve other intended objectives of the transaction

In addition, we may not be able to successfully or profitably integrate, operate, maintain and manage our newly acquired operations or their employees. We may not be able to maintain uniform standards, controls, procedures and policies, which may lead to operational inefficiencies. In addition, future acquisitions may result in dilutive issuances of equity securities or the incurrence of additional indebtedness.

***Our bylaws include a forum selection clause, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us.***

Our bylaws provide that, unless we consent in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any internal corporate claims within the meaning of the Delaware General Corporation Law ("DGCL"), (ii) any derivative action or proceeding brought on our behalf, (iii) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers, or employees to us or to our stockholders, or (iv) any action asserting a claim arising pursuant to any provision of the DGCL, will be a state or federal court located

within the State of Delaware in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock is deemed to have notice of and consented to the foregoing provisions. This forum selection provision in our bylaws may limit our stockholders' ability to obtain a favorable judicial forum for disputes with us. It is also possible that, notwithstanding the forum selection clause included in our bylaws, a court could rule that such a provision is inapplicable or unenforceable.

***This report includes various forward-looking statements, which are not facts or guarantees of future performance and which are subject to significant risks and uncertainties.***

This report and other materials we have filed or will file with the SEC, as well as information included in oral statements or other written statements made or to be made by us, contain or may contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, Section 21E of the Exchange Act of 1934 and the Private Securities Litigation Reform Act of 1995. You can identify these statements by the fact that they do not relate to matters of a strictly factual or historical nature and generally discuss or relate to forecasts, estimates or other expectations regarding future events. Generally, the words "believe," "expect," "intend," "estimate," "anticipate," "project," "may," "can," "could," "might," "will" and similar expressions identify forward-looking statements, including statements related to expected operating and performing results, planned transactions, plans and objectives of management, future developments or conditions in the industries in which we participate, including future prices for our products, audits and legal proceedings to which we are a party and other trends, developments and uncertainties that may affect our business in the future.

Forward-looking statements are not historical facts or guarantees of future performance but instead represent only our beliefs at the time the statements were made regarding future events, which are subject to significant risks, uncertainties, and other factors, many of which are outside of our control. Any or all of the forward-looking statements made by us may turn out to be materially inaccurate. This can occur as a result of incorrect assumptions, changes in facts and circumstances or the effects of known risks and uncertainties. Many of the risks and uncertainties mentioned in this report or other reports filed by us with the SEC, including those discussed in the risk factor section of this report, will be important in determining whether these forward-looking statements prove to be accurate. Consequently, neither our stockholders nor any other person should place undue reliance on our forward-looking statements and should recognize that actual results may differ materially from those that may be anticipated by us.

All forward-looking statements made in this report are made as of the date hereof, and the risk that actual results will differ materially from expectations expressed in this report will increase with the passage of time. We undertake no obligation, and disclaim any duty, to publicly update or revise any forward-looking statements, whether as a result of new information, future events, changes in our expectations or otherwise.

## **Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

The disclosure required under this Item is included in "Management's Discussion and Analysis of Results of Operations and Financial Condition" of this Quarterly Report on Form 10-Q under the heading "Share Repurchases" and is incorporated herein by reference.

## **Item 4. Mine Safety Disclosures**

The information concerning mine safety violations or other regulatory matters required by Section 1503 (a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act and Item 104 of Regulation S-K is included in Exhibit 95 to this Form 10-Q.



## Item 6. Exhibits

- 4.1 First Supplemental Indenture, dated as of August 2, 2016, among Eagle Materials Inc., the guarantor parties identified therein and The Bank of New York Mellon Trust Company, N.A. (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Commission on August 2, 2016).
- 4.2 Form of 4.500% Senior Note due 2026 (incorporated by reference to Exhibit 4.3 to the Company's Current Report on Form 8-K filed with the Commission on August 2, 2016).
- 10.1\* Eagle Materials Inc. Director Compensation Summary. (1)
- 10.2\* Form of Director Non-Qualified Stock Option Agreement. (1)
- 10.3\* Form of Director Restricted Stock Agreement. (1)
- 10.4\* Form of Management Non-Qualified Stock Option Agreement (Performance). (1)
- 10.5\* Form of Management Non-Qualified Stock Option Agreement (Time Vest). (1)
- 10.6\* Form of Management Restricted Stock Agreement (Performance). (1)
- 10.7\* Form of Management Restricted Stock Agreement (Time Vest). (1)
- 10.8\* Asset Purchase Agreement between Eagle Materials Inc. and Cemex Construction Materials Atlantic, LLC, dated September 11, 2016.\*\*
- 10.9 Amendment No. 2 to Third Amended and Restated Credit Agreement, dated as of August 2, 2016, among the Company, the lenders identified therein and JPMorgan Chase Bank, N.A., as the administrative agent, issuing bank and swingline lender thereunder (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on August 2, 2016).
- 12.1\* Computation of Ratio of Earnings to Fixed Charges.
- 31.1\* Certification of the Chief Executive Officer of Eagle Materials Inc. pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934, as amended.
- 31.2\* Certification of the Chief Financial Officer of Eagle Materials Inc. pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934, as amended.
- 32.1\* Certification of the Chief Executive Officer of Eagle Materials Inc. pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2\* Certification of the Chief Financial Officer of Eagle Materials Inc. pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 95\* Mine Safety Disclosure
- 101.INS\* XBRL Instance Document.
- 101.SCH\* XBRL Taxonomy Extension Schema Document.
- 101.CAL\* XBRL Taxonomy Extension Calculation Linkbase Document.
- 101.DEF\* XBRL Taxonomy Extension Definition Linkbase Document.
- 101.LAB\* XBRL Taxonomy Extension Label Linkbase Document.
- 101.PRE\* XBRL Taxonomy Extension Presentation Linkbase Document.

\* Filed herewith.

\*\* Pursuant to Item 601(b)(2) of Regulation S-K, the Company agrees to furnish supplementally a copy of any omitted exhibit or schedule to the Securities and Exchange Commission upon request.

(1) Management contract or compensatory plan or arrangement.

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

EAGLE MATERIALS INC.

\_\_\_\_\_  
Registrant

October 24, 2016

\_\_\_\_\_  
/s/ DAVID B. POWERS

David B. Powers  
President and Chief Executive Officer  
(principal executive officer)

October 24, 2016

\_\_\_\_\_  
/s/ D. CRAIG KESLER

D. Craig Kesler  
Executive Vice President – Finance and  
Administration and Chief Financial Officer  
(principal financial officer)

October 24, 2016

\_\_\_\_\_  
/s/ WILLIAM R. DEVLIN

William R. Devlin  
Senior Vice President – Controller and  
Chief Accounting Officer  
(principal accounting officer)

**EAGLE MATERIALS INC.**  
**Non-Employee Directors -- Compensation Summary**  
**Effective August 2016 to July 2017**

On an annual basis, each non-employee director of Eagle Materials Inc. (the “Company”) may select one of the following compensation packages for his or her performance of director services during the next 12 months:

- (1) total annual compensation valued at \$187,000, of which \$93,500 is paid in cash and the remainder is provided in the form of an equity grant valued at \$93,500; or
- (2) an equity grant valued at \$215,000.

The grant date value of the equity grant under either alternative is allocated between restricted stock and options to purchase common stock of the Company, par value \$0.01 (“Common Stock”) (based upon the recommendation of the Compensation Committee) with respect to each non-employee director.

In accordance with the terms of the Eagle Materials Inc. Amended and Restated Incentive Plan, the exercise price of the stock options is set at the closing price of the Common Stock on the New York Stock Exchange (“NYSE”) on the date of grant. The number of option shares granted is determined as of the date of the grant by using the Black-Scholes method. All options granted to directors in August 2016 were fully exercisable when granted and have a ten-year term.

The number of shares of restricted stock is determined as of the date of grant using the closing price of the Common Stock on the NYSE on the date of grant. The restricted stock granted to directors in August 2016 was earned on the date of grant; however, the shares will not become fully vested (unrestricted) until the recipient’s retirement from the Board in accordance with the Company’s director retirement policy, or under such circumstances as are approved by the Compensation Committee. During the restriction period the director will have the right to vote the shares. In addition, the director will also be entitled to cash dividends as and when the Company issues a cash dividend on the Common Stock. Notwithstanding the above, the restricted shares issued to Mr. Hirsch do not have voting rights and are not entitled to cash dividends, but rather to a dividend-equivalent payment.

Non-employee directors who chair committees of the Board of Directors receive additional annual compensation. The Governance Committee Chair receives a fee of \$15,000 per year. The chairs of the Audit Committee and the Compensation Committee each receive a fee of \$20,000 per year. The Vice Chairman of the Board receives a fee of \$35,000 per year, and the Chairman of the Board of Directors receives a fee of \$50,000 per year. Chairpersons who choose compensation package alternative one (part equity

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and part cash) receive this additional compensation in the form of cash. Chairpersons who choose compensation package alternative two (all equity) receive this additional compensation in the form of equity, in which case a 30 % premium is added to such fees when valuing the equity to be received by such chairperson.

If non-employee directors hold unvested restricted stock units (“RSUs”) granted as part of director compensation in prior fiscal years (which currently includes Messrs. Barnett, Hirsch and Nicolais), these directors will receive dividend equivalent units as and when the Company issues a cash dividend on the Common Stock, in accordance with the terms of the RSUs.

All directors are reimbursed for reasonable expenses of attending meetings.

**EAGLE MATERIALS INC.  
AMENDED AND RESTATED INCENTIVE PLAN**

**NON-QUALIFIED DIRECTOR STOCK OPTION AGREEMENT**

This option agreement (the "Option Agreement" or "Agreement") entered into between EAGLE MATERIALS INC. , a Delaware corporation (the "Company"), and \_\_\_\_\_ (the "Optionee"), a director of the Company, with respect to a right (the "Option") awarded to the Optionee under the Eagle Materials Inc. Amended and Restated Incentive Plan (the "Plan"), on August 4, 2016 (the "Award Date") to purchase from the Company up to but not exceeding in the aggregate \_\_\_\_\_ shares of Common Stock (as defined in the Plan) at a price of \$81.28 per share (the "Exercise Price"), such number of shares and such price per share being subject to adjustment as provided in the Plan, and further subject to the following terms and conditions:

1. *Relationship to Plan .*

This Option is subject to all of the terms, conditions and provisions of the Plan and administrative interpretations thereunder, if any, which have been adopted by the Company's Compensation Committee ("Committee") and are in effect on the date hereof. Except as defined herein, capitalized terms shall have the same meanings ascribed to them under the Plan. For purposes of this Option Agreement:

" *Retirement* " shall mean termination of service on the Board at the Company's mandatory retirement age in accordance with the Company's director retirement policy or earlier on such terms and conditions as approved by the Committee.

2. *Exercise Schedule .*

(a) *Exercisability* . This Option may be exercised to purchase the shares of Common Stock covered thereby (the "Option Shares") immediately on the Award Date. Such Option may be exercised in whole or in part (at any time or from time to time, except as otherwise provided herein) until expiration of the Option pursuant to the terms of this Agreement or the Plan.

(b) *Change in Control* . Upon the occurrence of a Change in Control (as defined in Exhibit A to this Agreement), (i) this Option may be replaced within a reasonable time after the Change in Control with an option of equivalent value to purchase shares of the surviving parent corporation if the Committee determines that the terms giving rise to the Change in Control provide for such replacement, or (ii) the Option may be settled in cash in accordance with the last sentence of this subparagraph (b). Upon a Change in Control, pursuant to Section 15 of the Plan, the Company may, in its discretion, settle the Option by a cash payment equal to the difference between the Fair Market Value per share of Common Stock on the settlement date and the Exercise Price for the Option, multiplied by the number of shares then subject to the Option.

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(c) *Capital Adjustments and Corporate Events.* If, from time to time during the term of the Option prior to its exercise, there is any capital adjustment affecting the outstanding Common Stock as a class without the Company's receipt of consideration, including as a result of a spin-off or business disposition, the Option Shares and other applicable terms of this Option shall be adjusted in accordance with the provisions of Section 15 of the Plan, which adjustment shall include (as may be applicable) without limitation, equitable adjustments to the number of Option Shares, exercise price and type of property or securities to which the Option relates, in each case as determined by the Committee in its discretion and in accordance with Code Section 409A. Any and all new, substituted or additional securities to which the Optionee may be entitled by reason of this Option because of a capital adjustment shall be immediately subject to the terms set forth herein (as may be modified pursuant to this Agreement) and included thereafter as Option Shares for purposes of this Agreement.

3. *Termination of Option.*

The Option hereby granted shall terminate and be of no force and effect with respect to any Option Shares not previously purchased by the Optionee at the earliest time specified below:

(a) the tenth anniversary of the Award Date;

(b) if Optionee's service as a Director is terminated by the Company for "cause" (as determined by the Committee) at any time after the Award Date, then the Option shall terminate immediately upon such termination of Optionee's service;

(c) if Optionee's service as a Director is terminated due to Retirement, then this Option shall terminate on the tenth anniversary of the Award Date;

(d) if Optionee's service as a Director is terminated due to death at any time after the Award Date and while in the service of the Company or within 90 days after such termination of service, then the Option shall terminate on the first business day following the expiration of the one-year period which began on the date of Optionee's death; or

(e) if Optionee's service as a Director is terminated for any reason other than death, Retirement or termination for "cause," then the Option shall terminate on the first business day following the expiration of the 90-day period beginning on the date of termination of Optionee's service.

4. *Exercise of Option.*

Subject to the limitations set forth herein and in the Plan, this Option may be exercised by notice provided to the Company as set forth in Section 5. The payment of the Exercise Price for the Option Shares being purchased pursuant to the Option shall be made (a) in cash, by check or cash equivalent, (b) by tender to the Company, or attestation to the ownership, of Common Stock owned by the Optionee having a Fair Market Value (as determined by the Company without regard to any restrictions on transferability applicable to such Common Stock by reason of federal or state securities laws or agreements with an underwriter for the Company) not less than the Exercise Price, (c) by delivery of a properly executed notice together with

irrevocable instructions to a broker providing for the assignment to the Company of the proceeds of a sale or loan with respect to some or all of the shares being acquired upon the exercise of the Option (including, without limitation, through an exercise complying with the provisions of Regulation T as promulgated from time to time by the Board of Governors of the Federal Reserve System), (d) by withholding Option Shares equal to the Exercise Price multiplied by the number of Options exercised divided by the Fair Market Value at the time of exercise, rounded up to the nearest whole share, (e) by such other consideration as may be approved by the Board from time to time to the extent permitted by applicable law, or (f) by any combination thereof. Notwithstanding the foregoing, if the Exercise Price of the outstanding portion of the Option is less than the Fair Market Value of a share of Common Stock on the day the Option would otherwise expire as provided in Section 3 (a), then the Option shall be automatically exercised in full pursuant to clause (d) above immediately prior to its expiration.

If the Optionee desires to pay the purchase price for the Option Shares by tendering Common Stock using the method of attestation, the Optionee may, subject to any such conditions and in compliance with any such procedures as the Committee may adopt, do so by attesting to the ownership of Common Stock of the requisite value, in which case the Company shall issue or otherwise deliver to the Optionee upon such exercise a number of Option Shares equal to the result obtained by dividing (a) the excess of the aggregate Fair Market Value of the total number shares of Common Stock subject to the Option for which the Option (or portion thereof) is being exercised over the purchase price payable in respect of such exercise by (b) the Fair Market Value per share of Common Stock subject to the Option, and the Optionee may retain the shares of Common Stock the ownership of which is attested.

Notwithstanding anything to the contrary contained herein, the Optionee agrees that he will not exercise the Option granted pursuant hereto, and the Company will not be obligated to issue any Option Shares pursuant to this Option Agreement, if the exercise of the Option or the issuance of such shares would constitute a violation by the Optionee or by the Company of any provision of any law or regulation of any governmental authority or any stock exchange or transaction quotation system. The Optionee agrees that, unless the options and shares covered by the Plan have been registered pursuant to the Securities Act of 1933, as amended (the "Act"), the Company may, at its election, require the Optionee to give a representation in writing in form and substance satisfactory to the Company to the effect that he is acquiring such shares for his own account for investment and not with a view to, or for sale in connection with, the distribution of such shares or any part thereof.

If any law or regulation requires the Company to take any action with respect to the shares specified in such notice, the time for delivery thereof, which would otherwise be as promptly as reasonably practicable, shall be postponed for the period of time necessary to take such action.

5. *Notices.*

Notice of exercise of the Option must be made in the following manner, using such forms as the Company may from time to time provide:

(b) by electronic means as designated by the Committee, in which case the date of exercise shall be the date when receipt is acknowledged by the Company;

(c) by registered or certified United States mail, postage prepaid, to Eagle Materials Inc., Attention: Secretary, 3811 Turtle Creek Blvd., Suite 1100, Dallas, Texas 75219, in which case the date of exercise shall be the date of mailing; or

(d) by hand delivery or otherwise to Eagle Materials Inc., Attention: Secretary, 3811 Turtle Creek Blvd., Suite 1100, Dallas, Texas 75219, in which case the date of exercise shall be the date when receipt is acknowledged by the Company.

Notwithstanding the foregoing, in the event that the address of the Company is changed prior to the date of any exercise of this Option, notice of exercise shall instead be made pursuant to the foregoing provisions at the Company's current address.

Any other notices provided for in this Agreement or in the Plan shall be given in writing or by such electronic means, as permitted by the Committee, and shall be deemed effectively delivered or given upon receipt or, in the case of notices delivered by the Company to the Optionee, five days after deposit in the United States mail, postage prepaid, addressed to the Optionee at the address specified at the end of this Agreement or at such other address as the Optionee hereafter designates by written notice to the Company.

6. *Assignment of Option.*

Except as otherwise permitted by the Committee, the rights of the Optionee under the Plan and this Agreement are personal; no assignment or transfer of the Optionee's rights under and interest in this Option may be made by the Optionee otherwise than by will, by beneficiary designation, by the laws of descent and distribution or by a qualified domestic relations order; and this Option is exercisable during his lifetime only by the Optionee, except as otherwise provided in this Agreement.

After the death of the Optionee, exercise of the Option shall be permitted only by the Optionee's designated beneficiary or, in the absence of a designated beneficiary, the Optionee's executor or the personal representative of the Optionee's estate (or by his assignee, in the event of a permitted assignment) and only to the extent that the Option was exercisable on the date of the Optionee's death.

7. *Stock Certificates.*

Certificates representing the Common Stock issued pursuant to the exercise of the Option will bear all legends required by law and necessary or advisable to effectuate the provisions of the Plan and this Option. The Company may place a "stop transfer" order against shares of the Common Stock issued pursuant to the exercise of this Option until all restrictions



and conditions set forth in the Plan or this Agreement and in the legends referred to in this Section 7 have been complied with.

8. *Shareholder Rights.*

The Optionee shall have no rights of a shareholder with respect to shares of Common Stock subject to the Option unless and until such time as the Option has been exercised and ownership of such shares of Common Stock has been transferred to the Optionee.

9. *Successors and Assigns.*

This Agreement shall bind and inure to the benefit of and be enforceable by the Optionee, the Company and their respective permitted successors and assigns (including personal representatives, heirs and legatees), except that the Optionee may not assign any rights or obligations under this Agreement except to the extent and in the manner expressly permitted herein.

10. *No Service Guaranteed.*

No provision of this Option Agreement shall confer any right upon the Optionee to continued service with the Company.

11. *Governing Law.*

This Option Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas.

12. *Amendment.*

This Agreement cannot be modified, altered or amended except by an agreement, in writing, signed by both the Company and the Optionee.

**EAGLE MATERIALS INC.**

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
Name: David B. Powers  
Its: President and CEO  
Address: 3811 Turtle Creek Boulevard, Suite 1100  
Dallas, Texas 75219

The Optionee hereby accepts the foregoing Option Agreement, subject to the terms and provisions of the Plan and administrative interpretations thereof referred to above.

**OPTIONEE:**

Dated: \_\_\_\_\_, 2016

Signed: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_

## EXHIBIT A

### Change in Control

For the purpose of this Agreement, a “Change in Control” shall mean the occurrence of any of the following events:

(a) The acquisition by any Person of beneficial ownership of securities of the Company (including any such acquisition of beneficial ownership deemed to have occurred pursuant to Rule 13d-5 under the Exchange Act) if, immediately thereafter, such Person is the beneficial owner of (i) 50% or more of the total number of outstanding shares of any single class of Company Common Stock or (ii) 40% or more of the total number of outstanding shares of all classes of Company Common Stock, unless such acquisition is made (a) directly from the Company in a transaction approved by a majority of the members of the Incumbent Board or (b) by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company;

(b) Individuals who, as of the date hereof, constitute the Board (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (or who is otherwise designated as a member of the Incumbent Board by such a vote) shall be considered as though such individual were a member of the Incumbent Board, except that any such individual shall not be considered a member of the Incumbent Board if his or her initial assumption of office occurs as a result of either an actual or threatened election contest (as such term is used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(c) The consummation of a Business Combination, unless, immediately following such Business Combination, (i) more than 50% of both the total number of then outstanding shares of common stock of the parent corporation resulting from such Business Combination and the combined voting power of the then outstanding voting securities of such parent corporation entitled to vote generally in the election of directors will be (or is) then beneficially owned, directly or indirectly, by all or substantially all of the Persons who were the beneficial owners, respectively, of the outstanding shares of Company Common Stock immediately prior to such Business Combination in substantially the same proportions as their ownership immediately prior to such Business Combination of the outstanding shares of Company Common Stock, (ii) no Person (other than any employee benefit plan (or related trust) of the Company or any corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 40% or more of the total number of then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors and (iii) at least a majority of the members of the board of directors of the parent corporation resulting from such Business Combination were members of the Incumbent Board immediately prior to the consummation of such Business Combination; or

(d) Approval by the Board and the shareholders of the Company of (i) a complete liquidation or dissolution of the Company or (ii) a Major Asset Disposition (or, if there is no such approval by shareholders, consummation of such Major Asset Disposition) unless, immediately following such Major Asset Disposition, (A) Persons that were beneficial owners of the outstanding shares of Company Common Stock immediately prior to such Major Asset Disposition beneficially own, directly or indirectly, more than 50% of the total number of then outstanding shares of common stock and the combined voting power of the then outstanding shares of voting stock of the Company (if it continues to exist) and of the Acquiring Entity in substantially the same proportions as their ownership immediately prior to such Major Asset Disposition of the outstanding shares of Company Common Stock; (B) no Person (other than any employee benefit plan (or related trust) of the Company or such entity) beneficially owns, directly or indirectly, 40% or more of the then outstanding shares of common stock or the combined voting power of the then outstanding voting securities of the Company (if it continues to exist) and of the Acquiring Entity entitled to vote generally in the election of directors and (C) at least a majority of the members of the Board of the Company (if it continues to exist) and of the Acquiring Entity were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board providing for such Major Asset Disposition.

For purposes of the foregoing,

(i) the term “Person” means an individual, entity or group;

(ii) the term “group” is used as it is defined for purposes of Section 13(d)(3) of the Exchange Act;

(iii) the terms “beneficial owner”, “beneficial ownership” and “beneficially own” are used as defined for purposes of Rule 13d-3 under the Exchange Act;

(iv) the term “Business Combination” means (x) a merger, consolidation or share exchange involving the Company or its stock or (y) an acquisition by the Company, directly or through one or more subsidiaries, of another entity or its stock or assets;

(v) the term “Company Common Stock” shall mean the Common Stock, par value \$.01 per share, of the Company;

(vi) the term “Exchange Act” means the Securities Exchange Act of 1934, as amended;

(vii) the phrase “parent corporation resulting from a Business Combination” means the Company if its stock is not acquired or converted in the Business Combination and otherwise means the entity which as a result of such Business Combination owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries;

(viii) the term “Major Asset Disposition” means the sale or other disposition in one transaction or a series of related transactions of 50% or more of the assets of the Company and its subsidiaries on a consolidated basis; and any specified percentage or portion of the assets of the Company shall be based on fair market value, as determined by a majority of the members of the Incumbent Board;

(ix) the term “Acquiring Entity” means the entity that acquires the largest portion of the assets sold or otherwise disposed of in a Major Asset Disposition (or the entity, if any, that owns a majority of the outstanding voting stock of such acquiring entity entitled to vote generally in the election of directors or members of a comparable governing body); and

(x) the phrase “substantially the same proportions,” when used with reference to ownership interests in the parent corporation resulting from a Business Combination or in an Acquiring Entity, means substantially in proportion to the number of shares of Company Common Stock beneficially owned by the applicable Persons immediately prior to the Business Combination or Major Asset Disposition, but is not to be construed in such a manner as to require that the same ratio or number of shares of such parent corporation or Acquiring Entity be issued, paid or delivered in exchange for or in respect of the shares of each class of Company Common Stock.

**EAGLE MATERIALS INC.****AMENDED AND RESTATED INCENTIVE PLAN****RESTRICTED STOCK AGREEMENT**

EAGLE MATERIALS INC., a Delaware corporation (the "Company"), and \_\_\_\_\_ (the "Grantee") hereby enter into this Restricted Stock Award Agreement (the "Agreement") in order to set forth the terms and conditions of the Company's award (the "Award") to the Grantee of certain shares of Common Stock of the Company granted to the Grantee on August 4, 2016 (the "Award Date").

1. Award. The Company hereby awards to the Grantee \_\_\_\_\_ shares of Common Stock of the Company (the "Shares").

2. Relationship to the Plan. The Award shall be subject to the terms and conditions of the Eagle Materials Inc. Amended and Restated Incentive Plan (the "Plan"), this Agreement and such administrative interpretations of the Plan, if any, as may be in effect on the date of this Agreement. Except as defined herein, capitalized terms shall have the meanings ascribed to them under the Plan. For purposes of this Agreement:

- (a) "Restriction Period" shall mean the period beginning on the Award Date and ending on the date immediately preceding the Vesting Date.
- (b) "Retirement" shall mean termination of service on the Board at the Company's mandatory retirement age in accordance with the Company's director retirement policy or earlier on such terms and conditions as approved by the Committee.

3. Vesting.

- (a) Vesting Criteria. The Grantee's interest in the Shares shall vest in full as of the earlier of (i) Grantee's Retirement or (ii) Grantee's death (as applicable, the "Vesting Date"). Prior to the Vesting Date, all Shares shall be unvested Shares.
- (b) Restrictions. During the Restriction Period, the Grantee may not sell, transfer, pledge, exchange, hypothecate, or otherwise dispose of any unvested Shares or any right or interest related to such unvested Shares, other than as required by the Grantee's will or beneficiary designation, in accordance with the laws of descent and distribution or by a qualified domestic relations order.
- (c) Cancellation Right. The Grantee must be in continuous service as a Director from the Award Date through the Vesting Date for an unvested Share to become vested. Subject to Section 4, Grantee's discontinuation of service as a Director prior to the Vesting Date shall cause the unvested Shares to be automatically forfeited as of such discontinuation of service date.

4. Change in Control. The restrictions set forth above in Section 3 shall lapse with respect to the unvested Shares not previously forfeited and such Shares shall become fully vested without regard to the limitations set forth in Section 3 above, provided that the Grantee has been in continuous service

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as a Director from the Award Date through the occurrence of a Change in Control (as defined in Exhibit A to this Agreement), unless either: (i) the Committee determines that the terms of the transaction giving rise to the Change in Control provide that the Award is to be replaced within a reasonable time after the Change in Control with an award of equivalent value of shares of the surviving parent corporation, or (ii) the Award is to be settled in cash in accordance with the last sentence of this Section 4. Upon a Change in Control, pursuant to Section 1 5 of the Plan, the Company may, in its discretion, settle the Award by a cash payment that the Committee shall determine in its sole discretion is equal to the fair market value of the Award on the date of such event.

5. Stockholder Rights. The Grantee shall have the right to vote the Shares. The Grantee shall also have the right to receive any cash dividends paid on the unvested Shares at the same time such amounts are paid with respect to all other shares of Common Stock; provided, the record date for such dividend payment is on or after the Award Date.

6. Capital Adjustments and Corporate Events. If, from time to time during the term of the Restriction Period, there is any capital adjustment affecting the outstanding Common Stock as a class without the Company's receipt of consideration, including as a result of a spin-off or business disposition, the Shares and other applicable terms of this Award shall be adjusted in accordance with the provisions of Section 15 of the Plan, which adjustment shall include (as may be applicable) without limitation, equitable adjustments to the type of property or securities to which the Award relates, in each case as determined by the Committee in its discretion. Any and all new, substituted or additional securities to which the Grantee may be entitled by reason of the Grantee's ownership of the Shares hereunder because of a capital adjustment shall be immediately subject to the restrictions set forth herein (as may be modified pursuant to this Agreement) and included thereafter as Shares for purposes of this Agreement.

7. Refusal to Transfer. The Company shall not be required:

- (a) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or the Plan; or
- (b) to treat such purchaser or other transferee as owner of such Shares, accord such purchaser or other transferee the right to vote; or pay or deliver dividends or other distributions to such purchaser or other transferee with respect to such Shares.

8. Legends. If the Shares are certificated, the certificate or certificates evidencing the Shares, if any, issued hereunder shall be endorsed with the following legend:

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS AND, ACCORDINGLY, MAY NOT BE SOLD, ASSIGNED, TRANSFERRED, ENCUMBERED, OR IN ANY MANNER DISPOSED OF EXCEPT IN CONFORMITY WITH THE TERMS OF THAT CERTAIN RESTRICTED STOCK AGREEMENT BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF THESE SHARES. A COPY OF SUCH AGREEMENT IS MAINTAINED AT THE ISSUER'S PRINCIPAL CORPORATE OFFICES.

9. Tax Consequences. The Grantee has reviewed with the Grantee's own tax advisors the federal, state, and local tax consequences of this investment and the transactions contemplated by this

Agreement. The Grantee is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. The Grantee understands that the Grantee (and not the Company) shall be responsible for the Grantee's own tax liability that may arise as a result of the transactions contemplated by this Agreement. The Grantee understands that Section 83 of the Code taxes as ordinary income the difference between the purchase price, if any, for the Shares and the Fair Market Value of the Shares as of the date any restrictions on the Shares lapse. In this context, "restriction" means the restrictions imposed during the Restriction Period. The Grantee understands that the Grantee may elect to be taxed at the time the Shares are awarded rather than when and as the restrictions lapse by filing an election under Section 83(b) of the Code with the Internal Revenue Service within 30 days from the Award Date. THE GRANTEE ACKNOWLEDGES THAT IT IS THE GRANTEE'S SOLE RESPONSIBILITY (AND NOT THE COMPANY'S) TO FILE TIMELY THE ELECTION UNDER SECTION 83(B), EVEN IF THE GRANTEE REQUESTS THE COMPANY OR ITS REPRESENTATIVES TO MAKE THIS FILING ON THE GRANTEE'S BEHALF.

10. Entire Agreement; Governing Law. The Plan and this Agreement constitute the entire agreement of the Company and the Grantee (collectively, the "Parties") with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Parties with respect to the subject matter hereof, and may not be modified adversely to the Grantee's interest except by means of a writing signed by the Parties. Nothing in the Plan and this Agreement (except as expressly provided therein or herein) is intended to confer any rights or remedies on any person other than the Parties. The Plan and this Agreement are to be construed in accordance with and governed by the internal laws of the State of Texas, without giving effect to any choice-of-law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of Texas to the rights and duties of the Parties. Should any provision of the Plan or this Agreement relating to the Shares be determined by a court of law to be illegal or unenforceable, such provision shall be enforced to the fullest extent allowed by law and the other provisions shall nevertheless remain effective and shall remain enforceable.

11. Interpretive Matters. Whenever required by the context, pronouns and any variation thereof shall be deemed to refer to the masculine, feminine, or neuter, and the singular shall include the plural, and vice versa. The term "include" or "including" does not denote or imply any limitation. The term "business day" means any Monday through Friday other than such a day on which banks are authorized to be closed in the State of Texas. The captions and headings used in this Agreement are inserted for convenience and shall not be deemed a part of the Award or this Agreement for construction or interpretation.

12. Notice. Any notice or other communication required or permitted hereunder shall be given in writing and shall be deemed given, effective, and received upon prepaid delivery in person or by courier or upon the earlier of delivery or the third business day after deposit in the United States mail if sent by certified mail, with postage and fees prepaid, addressed to the other Party at its address as shown beneath its signature in this Agreement, or to such other address as such Party may designate in writing from time to time by notice to the other Party.

13. Successors and Assigns. This Agreement shall bind and inure to the benefit of and be enforceable by the Grantee, the Company and their respective permitted successors and assigns (including personal representatives, heirs and legatees), except that the Grantee may not assign any rights or obligations under this Agreement except to the extent and in the manner expressly permitted herein.



*[Signature page follows]*

**EAGLE MATERIALS INC .**

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
Name: David B. Powers  
Its: President and CEO  
Address: 3811 Turtle Creek Boulevard, Suite 1100  
Dallas, Texas 75219

The Grantee acknowledges receipt of a copy of the Plan, represents that he or she is familiar with the terms and provisions thereof, and hereby accepts the Award subject to all of the terms and provisions hereof and thereof. The Grantee has reviewed this Agreement and the Plan in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Agreement, and fully understands all provisions of this Agreement and the Plan. The Grantee further agrees to notify the Company upon any change in the address for notice indicated in this Agreement.

**GRANTEE**

Dated: \_\_\_\_\_, 2016

Signed: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_

## EXHIBIT A

### CHANGE IN CONTROL

For the purpose of this Agreement, a "Change in Control" shall mean the occurrence of any of the following events:

(a) The acquisition by any Person of beneficial ownership of securities of the Company (including any such acquisition of beneficial ownership deemed to have occurred pursuant to Rule 13d-5 under the Exchange Act) if, immediately thereafter, such Person is the beneficial owner of (i) 50% or more of the total number of outstanding shares of any single class of Company Common Stock or (ii) 40% or more of the total number of outstanding shares of all classes of Company Common Stock, unless such acquisition is made (a) directly from the Company in a transaction approved by a majority of the members of the Incumbent Board or (b) by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company;

(b) Individuals who, as of the date hereof, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (or who is otherwise designated as a member of the Incumbent Board by such a vote) shall be considered as though such individual were a member of the Incumbent Board, except that any such individual shall not be considered a member of the Incumbent Board if his or her initial assumption of office occurs as a result of either an actual or threatened election contest (as such term is used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(c) The consummation of a Business Combination, unless, immediately following such Business Combination, (i) more than 50% of both the total number of then outstanding shares of common stock of the parent corporation resulting from such Business Combination and the combined voting power of the then outstanding voting securities of such parent corporation entitled to vote generally in the election of directors will be (or is) then beneficially owned, directly or indirectly, by all or substantially all of the Persons who were the beneficial owners, respectively, of the outstanding shares of Company Common Stock immediately prior to such Business Combination in substantially the same proportions as their ownership immediately prior to such Business Combination of the outstanding shares of Company Common Stock, (ii) no Person (other than any employee benefit plan (or related trust) of the Company or any corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 40% or more of the total number of then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors and (iii) at least a majority of the members of the board of directors of the parent corporation resulting from such Business Combination were members of the Incumbent Board immediately prior to the consummation of such Business Combination; or

(d) Approval by the Board and the shareholders of the Company of (i) a complete liquidation or dissolution of the Company or (ii) a Major Asset Disposition (or, if there is no such approval by shareholders, consummation of such Major Asset Disposition) unless, immediately following such Major Asset Disposition, (A) Persons that were beneficial owners of the outstanding shares of Company Common Stock immediately prior to such Major Asset Disposition beneficially own, directly or

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indirectly, more than 50% of the total number of then outstanding shares of common stock and the combined voting power of the then outstanding shares of voting stock of the Company (if it continues to exist) and of the Acquiring Entity in substantially the same proportions as their ownership immediately prior to such Major Asset Disposition of the outstanding shares of Company Common Stock; (B) no Person (other than any employee benefit plan (or related trust) of the Company or such entity) beneficially owns, directly or indirectly, 40% or more of the then outstanding shares of common stock or the combined voting power of the then outstanding voting securities of the Company (if it continues to exist) and of the Acquiring Entity entitled to vote generally in the election of directors and (C) at least a majority of the members of the Board of the Company (if it continues to exist) and of the Acquiring Entity were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board providing for such Major Asset Disposition.

For purposes of the foregoing,

- (i) the term "*Person*" means an individual, entity or group;
- (ii) the term "*group*" is used as it is defined for purposes of Section 13(d)(3) of the Exchange Act;
- (iii) the terms "*beneficial owner*", "*beneficial ownership*" and "*beneficially own*" are used as defined for purposes of Rule 13d-3 under the Exchange Act;
- (iv) the term "*Business Combination*" means (x) a merger, consolidation or share exchange involving the Company or its stock or (y) an acquisition by the Company, directly or through one or more subsidiaries, of another entity or its stock or assets;
- (v) the term "*Company Common Stock*" shall mean the Common Stock, par value \$.01 per share, of the Company;
- (vi) the term "*Exchange Act*" means the Securities Exchange Act of 1934, as amended;
- (vii) the phrase "*parent corporation resulting from a Business Combination*" means the Company if its stock is not acquired or converted in the Business Combination and otherwise means the entity which as a result of such Business Combination owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries;
- (viii) the term "*Major Asset Disposition*" means the sale or other disposition in one transaction or a series of related transactions of 50% or more of the assets of the Company and its subsidiaries on a consolidated basis; and any specified percentage or portion of the assets of the Company shall be based on fair market value, as determined by a majority of the members of the Incumbent Board;
- (ix) the term "*Acquiring Entity*" means the entity that acquires the largest portion of the assets sold or otherwise disposed of in a Major Asset Disposition (or the entity, if any, that owns a majority of the outstanding voting stock of such acquiring entity entitled to vote generally in the election of directors or members of a comparable governing body); and
- (x) the phrase "*substantially the same proportions*," when used with reference to ownership interests in the parent corporation resulting from a Business Combination or in an Acquiring Entity, means substantially in proportion to the number of shares of Company Common Stock beneficially owned by the applicable Persons immediately prior to the Business Combination or Major Asset Disposition, but is not to be construed in such a manner as to require that the same ratio or number of shares of such parent corporation or

Acquiring Entity be issued, paid or delivered in exchange for or in respect of the shares of each class of Company Common Stock.

EXHIBIT A - 2

## EAGLE MATERIALS INC.

**AMENDED AND RESTATED INCENTIVE PLAN****NON-QUALIFIED STOCK OPTION AGREEMENT****(Performance Vesting)**

This option agreement (the “Option Agreement” or “Agreement”) entered into between EAGLE MATERIALS INC., a Delaware corporation (the “Company”), and \_\_\_\_\_ (the “Optionee”), an employee of the Company or its Affiliates, with respect to a right (the “Option”) awarded to the Optionee under the Eagle Materials Inc. Amended and Restated Incentive Plan (the “Plan”), on May 20, 2016 (the “Award Date”) to purchase from the Company up to but not exceeding in the aggregate \_\_\_\_\_ shares of the Company’s common stock, par value \$0.01 per share (the “Common Stock”), at a price of \$75.69 per share (the “Exercise Price”), such number of shares and such price per share being subject to adjustment as provided in the Plan, and further subject to the following terms and conditions:

**1. Relationship to Plan**

This Option is subject to all of the terms, conditions and provisions of the Plan and administrative interpretations thereunder, if any, which have been adopted by the Company’s Compensation Committee (“Committee”) and are in effect on the date hereof. Except as defined herein, capitalized terms shall have the same meanings ascribed to them under the Plan. For purposes of this Option Agreement:

(a) “*Disability*” shall be determined by the Committee.

(b) “*Return on Equity*” for any fiscal year shall mean: (i) the Net Earnings of the Company (net of any discontinued operations) for such fiscal year; divided by (ii) the Company’s Average Stockholders’ Equity for such fiscal year.

(c) “*Average Stockholders’ Equity*” for any period shall mean: (i) the Company’s Total Stockholders’ Equity as of the beginning of such period plus the Company’s Total Stockholders’ Equity at the end of such period; divided by (ii) 2.

(d) “*Retirement*” shall mean a retirement approved by the Board.

(e) “*Service Vesting Date*” means the first, second or third anniversary of the end of the Performance Period, as applicable.

(f) “*Performance Period*” means the period commencing on April 1, 2016 and ending on March 31, 2017.

**2. Vesting and Exercise Schedules**

(a) Vesting Criteria. The shares of Common Stock covered by this Option (“Option Shares”) shall vest in accordance with the vesting schedule set forth below in this Section 2 (each such vesting date, a “Vesting Date”) only if the Return on Equity for the fiscal year ending March 31, 2017 is

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at least 11.0% (the “Performance Criteria”); provided, that the percentage of Option Shares that will be earned shall be based on the following:

<b>Performance Criteria</b>	<b>Percentage of Options Earned</b>
≥ 18.0%	100.0%
14.5%	83.3%
11.0%	66.7%

; provided, further, that the exact percentage of Option Shares earned shall be calculated based on straight-line interpolation between the points shown above with fractional points rounded up to the nearest tenth of a percent. After the end of the Performance Period, the Compensation Committee shall certify whether and to what extent the Performance Criteria has been satisfied (“Certification Date”). If the Performance Criteria has not been satisfied then the Option Shares shall be immediately and automatically forfeited. Upon the Certification Date, any portion of the Option Shares that are not earned in accordance with the provisions above shall be forfeited.

(b) Exercisability. The earned Option Shares shall vest and become exercisable one-fourth promptly following the Certification Date and then ratably on the next three Service Vesting Dates. The Optionee must be in continuous service as an employee of the Company or any of its Affiliates or as a Director from the Award Date through the applicable Vesting Date on which the portion of the Option Shares would otherwise become exercisable in order for the Option to become exercisable with respect to that portion of the Option Shares, otherwise such Option Shares shall be forfeited. Notwithstanding the foregoing, in the event the Optionee’s employment and, if applicable, service as a Director terminates by reason of death, Disability or Retirement following the end of the Performance Period and prior to any Vesting Date, any then exercisable Option Shares shall continue to be exercisable for a period of two years following such termination, and any earned but unexercisable Option Shares shall continue to become exercisable as if the Optionee had remained employed or continued to serve as a Director for a period of two years following such termination. In the event Optionee’s employment with the Company or any of its affiliates is terminated (other than a termination for “cause”) after the end of the Performance Period but before the Certification Date, then notwithstanding the restrictions set forth above in this Section 2, promptly following the Certification Date, one-fourth of any earned Option Shares shall vest and become exercisable for a period of 90 days following the Certification Date (or two years following the Certification Date in the case of the death, Disability or Retirement of the Optionee), and the remainder of the Option Shares shall be forfeited.

To the extent the Option becomes exercisable, such Option may be exercised in whole or in part (at any time or from time to time, except as otherwise provided herein) until expiration of the Option pursuant to the terms of this Agreement or the Plan.

(c) Calculations and Adjustments. The Committee shall have the authority to approve the calculations involving the “Return on Equity for the fiscal year ending March 31, 2017” for purposes of vesting, and its approval of such calculations shall be final, conclusive and binding on all parties; provided, that the Performance Criteria and calculation of actual results, in each case, shall be equitably adjusted as determined by the Committee in its discretion to account for any business acquisition or disposition that occurs after the Award Date .

(d) Change in Control. This Option shall become fully vested and exercisable, without regard to the limitations set forth in subparagraph (a) above, provided that the Optionee has

been in continuous employment with the Company or any of its Affiliates or served as a Director from the Award Date through the occurrence of a Change in Control (as defined in Exhibit A to this Agreement), unless either (i) the Committee determines that the terms of the transaction giving rise to the Change in Control provide that the Option is to be replaced within a reasonable time after the Change in Control with an option of equivalent value to purchase shares of the surviving parent corporation or (ii) the Option is to be settled in cash in accordance with the last sentence of this subparagraph ( d ). Upon a Change in Control, pursuant to Section 15 of the Plan, the Company may, in its discretion, settle the Option by a cash payment equal to the difference between the Fair Market Value per share of Common Stock on the settlement date and the Exercise Price for the Option, multiplied by the number of shares then subject to the Option .

(e) Capital Adjustments and Corporate Events . If, from time to time during the term of the Option prior to its exercise, there is any capital adjustment affecting the outstanding Common Stock as a class without the Company's receipt of consideration, including as a result of a spin-off or business disposition, the Option Shares and other applicable terms of this Option shall be adjusted in accordance with the provisions of Section 15 of the Plan, which adjustment shall include (as may be applicable) without limitation, equitable adjustments to the number of Option Shares, exercise price and type of property or securities to which the Option relates and to the Performance Condition set forth above, in each case as determined by the Committee in its discretion and in accordance with Code Section 409A. Any and all new, substituted or additional securities to which the Optionee may be entitled by reason of this Option because of a capital adjustment shall be immediately subject to the Vesting Period and other terms set forth herein (as may be modified pursuant to this Agreement) and included thereafter as Option Shares for purposes of this Agreement.

### **3. Termination of Option**

The Option hereby granted shall terminate and be of no force and effect with respect to any Option Shares not previously purchased by the Optionee at the earliest time specified below:

(a) the tenth anniversary of the Award Date;

(b) if Optionee's employment with the Company and its Affiliates or service as a Director is terminated by the Company or a Subsidiary for "cause" (as determined by the Committee) at any time after the Award Date, then the Option shall terminate immediately upon such termination of Optionee's employment or service;

(c) if Optionee's employment with the Company and its Affiliates and, if applicable, service as a Director is terminated for any reason other than death, Disability, Retirement or termination for "cause," then the Option shall terminate on the first business day following the expiration of the 90-day period beginning on such date of termination; or

(d) if Optionee's employment with the Company and its Affiliates and, if applicable, service as a Director is terminated due to the death, Disability or Retirement of the Optionee, and in any such case such termination is at any time after the Award Date, then the Option shall terminate on the later of (i) the first business day following the expiration of the two-year period following such termination and (ii) with respect to any Option Shares which become exercisable after such termination, the first business day following the expiration of the 90-day period beginning on the date the Options Shares first become exercisable.

#### 4. Exercise of Option

Subject to the limitations set forth herein and in the Plan, this Option may be exercised by notice provided to the Company as set forth in Section 5. The payment of the Exercise Price for the Common Stock being purchased pursuant to the Option shall be made (a) in cash, by check or cash equivalent, (b) by tender to the Company, or attestation to the ownership, of Common Stock owned by the Optionee having a Fair Market Value (as determined by the Company without regard to any restrictions on transferability applicable to such Common Stock by reason of federal or state securities laws or agreements with an underwriter for the Company) not less than the Exercise Price, (c) by delivery of a properly executed notice together with irrevocable instructions to a broker providing for the assignment to the Company of the proceeds of a sale or loan with respect to some or all of the shares being acquired upon the exercise of the Option (including, without limitation, through an exercise complying with the provisions of Regulation T as promulgated from time to time by the Board of Governors of the Federal Reserve System), (d) by withholding Option Shares equal to the Exercise Price multiplied by the number of Options exercised divided by the Fair Market Value at the time of exercise, rounded up to the nearest whole share, (e) by such other consideration as may be approved by the Board from time to time to the extent permitted by applicable law, or (f) by any combination thereof. Such notice shall be accompanied by cash or Common Stock in the full amount of all federal and state withholding or other employment taxes applicable to the taxable income of such Optionee resulting from such exercise (or instructions to satisfy such withholding obligation by withholding Option Shares in accordance with Section 8). Notwithstanding the foregoing, if the Exercise Price of the outstanding portion of the Option is less than the Fair Market Value of a share of Common Stock on the day the Option would otherwise expire as provided in Section 3(a), then the Option shall be automatically exercised in full pursuant to clause (d) above immediately prior to its expiration.

If the Optionee desires to pay the purchase price for the Option Shares by tendering Common Stock using the method of attestation, the Optionee may, subject to any such conditions and in compliance with any such procedures as the Committee may adopt, do so by attesting to the ownership of Common Stock of the requisite value, in which case the Company shall issue or otherwise deliver to the Optionee upon such exercise a number of Option Shares equal to the result obtained by dividing (a) the excess of the aggregate Fair Market Value of the total number shares of Common Stock subject to the Option for which the Option (or portion thereof) is being exercised over the purchase price payable in respect of such exercise by (b) the Fair Market Value per share of Common Stock subject to the Option, and the Optionee may retain the shares of Common Stock the ownership of which is attested.

Notwithstanding anything to the contrary contained herein, the Optionee agrees that he will not exercise the Option granted pursuant hereto, and the Company will not be obligated to issue any Option Shares pursuant to this Option Agreement, if the exercise of the Option or the issuance of such shares would constitute a violation by the Optionee or by the Company of any provision of any law or regulation of any governmental authority or any stock exchange or transaction quotation system. The Optionee agrees that, unless the options and shares covered by the Plan have been registered pursuant to the Securities Act of 1933, as amended, the Company may, at its election, require the Optionee to give a representation in writing in form and substance satisfactory to the Company to the effect that he is acquiring such shares for his own account for investment and not with a view to, or for sale in connection with, the distribution of such shares or any part thereof.

If any law or regulation requires the Company to take any action with respect to the shares specified in such notice, the time for delivery thereof, which would otherwise be as promptly as reasonably practicable, shall be postponed for the period of time necessary to take such action.



**5. Notices.**

Notice of exercise of the Option must be made in the following manner, using such forms as the Company may from time to time provide:

(a) by electronic means as designated by the Committee, in which case the date of exercise shall be the date when receipt is acknowledged by the Company;

(b) by registered or certified United States mail, postage prepaid, to Eagle Materials Inc., Attention: Secretary, 3811 Turtle Creek, Suite 1100, Dallas, Texas 75219, in which case the date of exercise shall be the date of mailing; or

(c) by hand delivery or otherwise to Eagle Materials Inc., Attention: Secretary, 3811 Turtle Creek, Suite 1100, Dallas, Texas 75219, in which case the date of exercise shall be the date when receipt is acknowledged by the Company.

Notwithstanding the foregoing, in the event that the address of the Company is changed prior to the date of any exercise of this Option, notice of exercise shall instead be made pursuant to the foregoing provisions at the Company's current address.

Any other notices provided for in this Agreement or in the Plan shall be given in writing or by such electronic means, as permitted by the Committee, and shall be deemed effectively delivered or given upon receipt or, in the case of notices delivered by the Company to the Optionee, five days after deposit in the United States mail, postage prepaid, addressed to the Optionee at the address specified at the end of this Agreement or at such other address as the Optionee hereafter designates by written notice to the Company.

**6. Assignment of Option.**

Except as otherwise permitted by the Committee, the rights of the Optionee under the Plan and this Agreement are personal; no assignment or transfer of the Optionee's rights under and interest in this Option may be made by the Optionee otherwise than by will, by beneficiary designation, by the laws of descent and distribution or by a qualified domestic relations order; and this Option is exercisable during his lifetime only by the Optionee, except as otherwise expressly provided in this Agreement.

After the death of the Optionee, exercise of the Option shall be permitted only by the Optionee's designated beneficiary or, in the absence of a designated beneficiary, the Optionee's executor or the personal representative of the Optionee's estate (or by his assignee, in the event of a permitted assignment) to the extent that the Option is exercisable on or after the date of the Optionee's death, as set forth in Sections 2(a) and 3(d) hereof.

**7. Stock Certificates.**

Certificates or other evidences of or representing the Common Stock issued pursuant to the exercise of the Option will bear all legends required by law and necessary or advisable to effectuate the provisions of the Plan and this Option.

**8. Withholding.**

No certificates representing shares of Common Stock purchased hereunder shall be delivered to or in respect of an Optionee unless the amount of all federal, state and other governmental withholding

tax requirements imposed upon the Company with respect to the issuance of such shares of Common Stock has been remitted to the Company or unless provisions to pay such withholding requirements have been made to the satisfaction of the Committee. The Committee may make such provisions as it may deem appropriate for the withholding of any taxes which it determines is required in connection with this Option. The Optionee may pay all or any portion of the taxes required to be withheld by the Company or paid by the Optionee in connection with the exercise of all or any portion of this Option by delivering cash, or, pursuant to Committee - approved procedures, by electing to have the Company withhold shares of Common Stock, or by delivering previously owned shares of Common Stock sufficient to satisfy the tax withholding obligation. The Optionee must make the foregoing election on or before the date that the amount of tax to be withheld is determined.

**9. Shareholder Rights.**

The Optionee shall have no rights of a shareholder with respect to shares of Common Stock subject to the Option unless and until such time as the Option has been exercised and ownership of such shares of Common Stock has been transferred to the Optionee.

**10. Successors and Assigns.**

This Agreement shall bind and inure to the benefit of and be enforceable by the Optionee, the Company and their respective permitted successors and assigns (including personal representatives, heirs and legatees), except that the Optionee may not assign any rights or obligations under this Agreement except to the extent and in the manner expressly permitted herein.

**11. No Employment Guaranteed.**

No provision of this Option Agreement shall confer any right upon the Optionee to continued employment with the Company or any Subsidiary.

**12. Governing Law.**

This Option Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas.

**13. Amendment.**

This Agreement cannot be modified, altered or amended except by an agreement, in writing, signed by both the Company and the Optionee.

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**EAGLE MATERIALS INC.**

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
Name: David B. Powers  
Its: President and CEO  
Address: 3811 Turtle Creek Boulevard, Suite 1100  
Dallas, Texas 75219

The Optionee hereby accepts the foregoing Option Agreement, subject to the terms and provisions of the Plan and administrative interpretations thereof referred to above.

**OPTIONEE:**

Dated: \_\_\_\_\_, 2016

Signed: \_\_\_\_\_  
[Name]  
Eagle Materials Inc.  
3811 Turtle Creek Blvd., Suite 1100  
Dallas, Texas 75219

## **EXHIBIT A**

### **CHANGE-IN-CONTROL**

For the purpose of this Agreement, a “Change in Control” shall mean the occurrence of any of the following events:

(a) The acquisition by any Person of beneficial ownership of securities of the Company (including any such acquisition of beneficial ownership deemed to have occurred pursuant to Rule 13d-5 under the Exchange Act) if, immediately thereafter, such Person is the beneficial owner of (i) 50% or more of the total number of outstanding shares of any single class of Company Common Stock or (ii) 40% or more of the total number of outstanding shares of all classes of Company Common Stock, unless such acquisition is made (a) directly from the Company in a transaction approved by a majority of the members of the Incumbent Board or (b) by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company;

(b) Individuals who, as of the date hereof, constitute the Board (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (or who is otherwise designated as a member of the Incumbent Board by such a vote) shall be considered as though such individual were a member of the Incumbent Board, except that any such individual shall not be considered a member of the Incumbent Board if his or her initial assumption of office occurs as a result of either an actual or threatened election contest (as such term is used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(c) The consummation of a Business Combination, unless, immediately following such Business Combination, (i) more than 50% of both the total number of then outstanding shares of common stock of the parent corporation resulting from such Business Combination and the combined voting power of the then outstanding voting securities of such parent corporation entitled to vote generally in the election of directors will be (or is) then beneficially owned, directly or indirectly, by all or substantially all of the Persons who were the beneficial owners, respectively, of the outstanding shares of Company Common Stock immediately prior to such Business Combination in substantially the same proportions as their ownership immediately prior to such Business Combination of the outstanding shares of Company Common Stock, (ii) no Person (other than any employee benefit plan (or related trust) of the Company or any corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 40% or more of the total number of then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors and (iii) at least a majority of the members of the board of directors of the parent corporation resulting from such Business Combination were members of the Incumbent Board immediately prior to the consummation of such Business Combination; or

(d) Approval by the Board and the shareholders of the Company of (i) a complete liquidation or dissolution of the Company or (ii) a Major Asset Disposition (or, if there is no such approval by shareholders, consummation of such Major Asset Disposition) unless,

(e) immediately following such Major Asset Disposition, (A) Persons that were beneficial owners of the outstanding shares of Company Common Stock immediately prior to such Major Asset Disposition beneficially own, directly or indirectly, more than 50% of the total number of then outstanding shares of common stock and the combined voting power of the then outstanding shares of voting stock of the Company (if it continues to exist) and of the Acquiring Entity in substantially the same proportions as their ownership immediately prior to such Major Asset Disposition of the outstanding shares of Company Common Stock; (B) no Person (other than any employee benefit plan (or related trust) of the Company or such entity) beneficially owns, directly or indirectly, 40% or more of the then outstanding shares of common stock or the combined voting power of the then outstanding voting securities of the Company (if it continues to exist) and of the Acquiring Entity entitled to vote generally in the election of directors and (C) at least a majority of the members of the Board of the Company (if it continues to exist) and of the Acquiring Entity were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board providing for such Major Asset Disposition.

For purposes of the foregoing,

- (i) the term “Person” means an individual, entity or group;
- (ii) the term “group” is used as it is defined for purposes of Section 13(d)(3) of the Exchange Act;
- (iii) the terms “beneficial owner”, “beneficial ownership” and “beneficially own” are used as defined for purposes of Rule 13d-3 under the Exchange Act;
- (iv) the term “Business Combination” means (x) a merger, consolidation or share exchange involving the Company or its stock or (y) an acquisition by the Company, directly or through one or more subsidiaries, of another entity or its stock or assets;
- (v) the term “Company Common Stock” shall mean the Common Stock, par value \$.01 per share, of the Company;
- (vi) the term “Exchange Act” means the Securities Exchange Act of 1934, as amended.
- (vii) the phrase “parent corporation resulting from a Business Combination” means the Company if its stock is not acquired or converted in the Business Combination and otherwise means the entity which as a result of such Business Combination owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries;
- (viii) the term “Major Asset Disposition” means the sale or other disposition in one transaction or a series of related transactions of 50% or more of the assets of the Company and its subsidiaries on a consolidated basis; and any specified percentage or portion of the assets of the Company shall be based on fair market value, as determined by a majority of the members of the Incumbent Board;

- (ix) the term “Acquiring Entity” means the entity that acquires the largest portion of the assets sold or otherwise disposed of in a Major Asset Disposition (or the entity, if any, that owns a majority of the outstanding voting stock of such acquiring entity entitled to vote generally in the election of directors or members of a comparable governing body); and
- (x) the phrase “substantially the same proportions,” when used with reference to ownership interests in the parent corporation resulting from a Business Combination or in an Acquiring Entity, means substantially in proportion to the number of shares of Company Common Stock beneficially owned by the applicable Persons immediately prior to the Business Combination or Major Asset Disposition, but is not to be construed in such a manner as to require that the same ratio or number of shares of such parent corporation or Acquiring Entity be issued, paid or delivered in exchange for or in respect of the shares of each class of Company Common Stock.

Exhibit A-3

EAGLE MATERIALS INC.

**AMENDED AND RESTATED INCENTIVE PLAN**

**NON-QUALIFIED STOCK OPTION AGREEMENT**

**(Time Vesting)**

This option agreement (the “Option Agreement” or “Agreement”) entered into between EAGLE MATERIALS INC. , a Delaware corporation (the “Company”), and \_\_\_\_\_ (the “Optionee”), an employee of the Company or its Affiliates, with respect to a right (the “Option”) awarded to the Optionee under the Eagle Materials Inc. Amended and Restated Incentive Plan (the “Plan”), on May 20, 2016 (the “Award Date”) to purchase from the Company up to but not exceeding in the aggregate \_\_\_\_\_ shares of the Company’s common stock, par value \$0.01 per share (the “Common Stock”), at a price of \$75.69 per share (the “Exercise Price”), such number of shares and such price per share being subject to adjustment as provided in the Plan, and further subject to the following terms and conditions:

**1. Relationship to Plan**

This Option is subject to all of the terms, conditions and provisions of the Plan and administrative interpretations thereunder, if any, which have been adopted by the Company’s Compensation Committee (“Committee”) and are in effect on the date hereof. Except as defined herein, capitalized terms shall have the same meanings ascribed to them under the Plan. For purposes of this Option Agreement:

- (a) “Disability” shall be determined by the Committee.
- (b) “Retirement” shall mean a retirement approved by the Board.

**2. Vesting and Exercise Schedules**

(a) Exercisability. The shares of Common Stock covered by this Option (“Option Shares”) shall vest and become exercisable on the date designated (a “Vesting Date”) in accordance with the following vesting schedule (the “Vesting Schedule”):

<u>Vesting Date</u>	<u>Option Shares</u>
May 20, 2017	
May 20, 2018	
May 20, 2019	
May 20, 2020	
<b>Total</b>	

The Optionee must be in continuous service as an employee of the Company or any of its Affiliates or as a Director from the Award Date through the applicable Vesting Date on which the portion of the Option Shares would otherwise become exercisable in order for the Option to become exercisable with respect to that portion of the Option Shares, otherwise such Option Shares shall be forfeited. Notwithstanding the foregoing, in the event the Optionee’s employment and, if applicable, service as a Director terminates by reason of death, Disability or Retirement, and in any such case such

termination follows the Award Date and is prior to any Vesting Date, any then exercisable Option Shares shall continue to be exercisable for a period of two years following such termination, and any unexercisable Option Shares shall continue to become exercisable as if the Optionee had remained employed or continued to serve as a Director for a period of two years following such termination.

To the extent the Option becomes exercisable, such Option may be exercised in whole or in part (at any time or from time to time, except as otherwise provided herein) until expiration of the Option pursuant to the terms of this Agreement or the Plan.

(b) Change in Control. This Option shall become fully vested and exercisable, without regard to the limitations set forth in subparagraph (a) above, provided that the Optionee has been in continuous employment with the Company or any of its Affiliates or served as a Director from the Award Date through the occurrence of a Change in Control (as defined in Exhibit A to this Agreement), unless either (i) the Committee determines that the terms of the transaction giving rise to the Change in Control provide that the Option is to be replaced within a reasonable time after the Change in Control with an option of equivalent value to purchase shares of the surviving parent corporation or (ii) the Option is to be settled in cash in accordance with the last sentence of this subparagraph (b). Upon a Change in Control, pursuant to Section 15 of the Plan, the Company may, in its discretion, settle the Option by a cash payment equal to the difference between the Fair Market Value per share of Common Stock on the settlement date and the Exercise Price for the Option, multiplied by the number of shares then subject to the Option.

(c) Capital Adjustments and Corporate Events. If, from time to time during the term of the Option prior to its exercise, there is any capital adjustment affecting the outstanding Common Stock as a class without the Company's receipt of consideration, including as a result of a spin-off or business disposition, the Option Shares and other applicable terms of this Option shall be adjusted in accordance with the provisions of Section 15 of the Plan, which adjustment shall include (as may be applicable) without limitation, equitable adjustments to the number of Option Shares, exercise price and type of property or securities to which the Option relates, in each case as determined by the Committee in its discretion and in accordance with Code Section 409A. Any and all new, substituted or additional securities to which the Optionee may be entitled by reason of this Option because of a capital adjustment shall be immediately subject to the Vesting Schedule and other terms set forth herein (as may be modified pursuant to this Agreement) and included thereafter as Option Shares for purposes of this Agreement.

### **3. Termination of Option**

The Option hereby granted shall terminate and be of no force and effect with respect to any Option Shares not previously purchased by the Optionee at the earliest time specified below:

(a) the tenth anniversary of the Award Date;

(b) if Optionee's employment with the Company and its Affiliates or service as a Director is terminated by the Company or a Subsidiary for "cause" (as determined by the Committee) at any time after the Award Date, then the Option shall terminate immediately upon such termination of Optionee's employment or service;

(c) if Optionee's employment with the Company and its Affiliates and, if applicable, service as a Director is terminated for any reason other than death, Disability, Retirement or termination



for “ cause ,” then the Option shall terminate on the first business day following the expiration of the 90-day period beginning on such date of termination ; or

(d) if Optionee’s employment with the Company and its Affiliates and, if applicable, service as a Director is terminated due to the death, Disability or Retirement of the Optionee, and in any such case such termination is at any time after the Award Date, then the Option shall terminate on the later of (i) the first business day following the expiration of the two-year period following such termination and (ii) with respect to any Option Shares which become exercisable after such termination, the first business day following the expiration of the 90-day period beginning on the date the Options Shares first become exercisable.

**4. Exercise of Option**

Subject to the limitations set forth herein and in the Plan, this Option may be exercised by notice provided to the Company as set forth in Section 5. The payment of the Exercise Price for the Common Stock being purchased pursuant to the Option shall be made (a) in cash, by check or cash equivalent, (b) by tender to the Company, or attestation to the ownership, of Common Stock owned by the Optionee having a Fair Market Value (as determined by the Company without regard to any restrictions on transferability applicable to such Common Stock by reason of federal or state securities laws or agreements with an underwriter for the Company) not less than the Exercise Price, (c) by delivery of a properly executed notice together with irrevocable instructions to a broker providing for the assignment to the Company of the proceeds of a sale or loan with respect to some or all of the shares being acquired upon the exercise of the Option (including, without limitation, through an exercise complying with the provisions of Regulation T as promulgated from time to time by the Board of Governors of the Federal Reserve System), (d) by withholding Option Shares equal to the Exercise Price multiplied by the number of Options exercised divided by the Fair Market Value at the time of exercise, rounded up to the nearest whole share, (e) by such other consideration as may be approved by the Board from time to time to the extent permitted by applicable law, or (f) by any combination thereof. Such notice shall be accompanied by cash or Common Stock in the full amount of all federal and state withholding or other employment taxes applicable to the taxable income of such Optionee resulting from such exercise (or instructions to satisfy such withholding obligation by withholding Option Shares in accordance with Section 8). Notwithstanding the foregoing, if the Exercise Price of the outstanding portion of the Option is less than the Fair Market Value of a share of Common Stock on the day the Option would otherwise expire as provided in Section 3(a), then the Option shall be automatically exercised in full pursuant to clause (d) above immediately prior to its expiration.

If the Optionee desires to pay the purchase price for the Option Shares by tendering Common Stock using the method of attestation, the Optionee may, subject to any such conditions and in compliance with any such procedures as the Committee may adopt, do so by attesting to the ownership of Common Stock of the requisite value, in which case the Company shall issue or otherwise deliver to the Optionee upon such exercise a number of Option Shares equal to the result obtained by dividing (a) the excess of the aggregate Fair Market Value of the total number shares of Common Stock subject to the Option for which the Option (or portion thereof) is being exercised over the purchase price payable in respect of such exercise by (b) the Fair Market Value per share of Common Stock subject to the Option, and the Optionee may retain the shares of Common Stock the ownership of which is attested.

Notwithstanding anything to the contrary contained herein, the Optionee agrees that he will not exercise the Option granted pursuant hereto, and the Company will not be obligated to issue any Option Shares pursuant to this Option Agreement, if the exercise of the Option or the issuance of such shares would constitute a violation by the Optionee or by the Company of any provision of any law or

regulation of any governmental authority or any stock exchange or transaction quotation system. The Optionee agrees that, unless the options and shares covered by the Plan have been registered pursuant to the Securities Act of 1933, as amended, the Company may, at its election, require the Optionee to give a representation in writing in form and substance satisfactory to the Company to the effect that he is acquiring such shares for his own account for investment and not with a view to, or for sale in connection with, the distribution of such shares or any part thereof.

If any law or regulation requires the Company to take any action with respect to the shares specified in such notice, the time for delivery thereof, which would otherwise be as promptly as reasonably practicable, shall be postponed for the period of time necessary to take such action.

**5. Notices.**

Notice of exercise of the Option must be made in the following manner, using such forms as the Company may from time to time provide:

(a) by electronic means as designated by the Committee, in which case the date of exercise shall be the date when receipt is acknowledged by the Company;

(b) by registered or certified United States mail, postage prepaid, to Eagle Materials Inc., Attention: Secretary, 3811 Turtle Creek, Suite 1100, Dallas, Texas 75219, in which case the date of exercise shall be the date of mailing; or

(c) by hand delivery or otherwise to Eagle Materials Inc., Attention: Secretary, 3811 Turtle Creek, Suite 1100, Dallas, Texas 75219, in which case the date of exercise shall be the date when receipt is acknowledged by the Company.

Notwithstanding the foregoing, in the event that the address of the Company is changed prior to the date of any exercise of this Option, notice of exercise shall instead be made pursuant to the foregoing provisions at the Company's current address.

Any other notices provided for in this Agreement or in the Plan shall be given in writing or by such electronic means, as permitted by the Committee, and shall be deemed effectively delivered or given upon receipt or, in the case of notices delivered by the Company to the Optionee, five days after deposit in the United States mail, postage prepaid, addressed to the Optionee at the address specified at the end of this Agreement or at such other address as the Optionee hereafter designates by written notice to the Company.

**6. Assignment of Option.**

Except as otherwise permitted by the Committee, the rights of the Optionee under the Plan and this Agreement are personal; no assignment or transfer of the Optionee's rights under and interest in this Option may be made by the Optionee otherwise than by will, by beneficiary designation, by the laws of descent and distribution or by a qualified domestic relations order; and this Option is exercisable during his lifetime only by the Optionee, except as otherwise expressly provided in this Agreement.

After the death of the Optionee, exercise of the Option shall be permitted only by the Optionee's designated beneficiary or, in the absence of a designated beneficiary, the Optionee's executor or the personal representative of the Optionee's estate (or by his assignee, in the event of a permitted assignment) to the extent that the Option is exercisable on or after the date of the Optionee's death, as set forth in Sections 2(a) and 3(d) hereof.

**7. Stock Certificates.**

Certificates or other evidences of or representing the Common Stock issued pursuant to the exercise of the Option will bear all legends required by law and necessary or advisable to effectuate the provisions of the Plan and this Option.

**8. Withholding.**

No certificates representing shares of Common Stock purchased hereunder shall be delivered to or in respect of an Optionee unless the amount of all federal, state and other governmental withholding tax requirements imposed upon the Company with respect to the issuance of such shares of Common Stock has been remitted to the Company or unless provisions to pay such withholding requirements have been made to the satisfaction of the Committee. The Committee may make such provisions as it may deem appropriate for the withholding of any taxes which it determines is required in connection with this Option. The Optionee may pay all or any portion of the taxes required to be withheld by the Company or paid by the Optionee in connection with the exercise of all or any portion of this Option by delivering cash, or, pursuant to Committee-approved procedures, by electing to have the Company withhold shares of Common Stock, or by delivering previously owned shares of Common Stock sufficient to satisfy the tax withholding obligation. The Optionee must make the foregoing election on or before the date that the amount of tax to be withheld is determined.

**9. Shareholder Rights.**

The Optionee shall have no rights of a shareholder with respect to shares of Common Stock subject to the Option unless and until such time as the Option has been exercised and ownership of such shares of Common Stock has been transferred to the Optionee.

**10. Successors and Assigns.**

This Agreement shall bind and inure to the benefit of and be enforceable by the Optionee, the Company and their respective permitted successors and assigns (including personal representatives, heirs and legatees), except that the Optionee may not assign any rights or obligations under this Agreement except to the extent and in the manner expressly permitted herein.

**11. No Employment Guaranteed.**

No provision of this Option Agreement shall confer any right upon the Optionee to continued employment with the Company or any Subsidiary.

**12. Governing Law.**

This Option Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas.

**13. Amendment.**

This Agreement cannot be modified, altered or amended except by an agreement, in writing, signed by both the Company and the Optionee.

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**EAGLE MATERIALS INC.**

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
Name: David B. Powers  
Its: President and CEO  
Address: 3811 Turtle Creek Boulevard, Suite 1100  
Dallas, Texas 75219

The Optionee hereby accepts the foregoing Option Agreement, subject to the terms and provisions of the Plan and administrative interpretations thereof referred to above.

**OPTIONEE:**

Dated: \_\_\_\_\_, 2016

Signed: \_\_\_\_\_  
[Name]  
Eagle Materials Inc.  
3811 Turtle Creek Blvd., Suite 1100  
Dallas, Texas 75219

## EXHIBIT A

### **Change in Control**

For the purpose of this Agreement, a “Change in Control” shall mean the occurrence of any of the following events:

(a) The acquisition by any Person of beneficial ownership of securities of the Company (including any such acquisition of beneficial ownership deemed to have occurred pursuant to Rule 13d-5 under the Exchange Act) if, immediately thereafter, such Person is the beneficial owner of (i) 50% or more of the total number of outstanding shares of any single class of Company Common Stock or (ii) 40% or more of the total number of outstanding shares of all classes of Company Common Stock, unless such acquisition is made (a) directly from the Company in a transaction approved by a majority of the members of the Incumbent Board or (b) by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company;

(b) Individuals who, as of the date hereof, constitute the Board (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (or who is otherwise designated as a member of the Incumbent Board by such a vote) shall be considered as though such individual were a member of the Incumbent Board, except that any such individual shall not be considered a member of the Incumbent Board if his or her initial assumption of office occurs as a result of either an actual or threatened election contest (as such term is used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(c) The consummation of a Business Combination, unless, immediately following such Business Combination, (i) more than 50% of both the total number of then outstanding shares of common stock of the parent corporation resulting from such Business Combination and the combined voting power of the then outstanding voting securities of such parent corporation entitled to vote generally in the election of directors will be (or is) then beneficially owned, directly or indirectly, by all or substantially all of the Persons who were the beneficial owners, respectively, of the outstanding shares of Company Common Stock immediately prior to such Business Combination in substantially the same proportions as their ownership immediately prior to such Business Combination of the outstanding shares of Company Common Stock, (ii) no Person (other than any employee benefit plan (or related trust) of the Company or any corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 40% or more of the total number of then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors and (iii) at least a majority of the members of the board of directors of the parent corporation resulting from such Business Combination were members of the Incumbent Board immediately prior to the consummation of such Business Combination; or

(d) Approval by the Board and the shareholders of the Company of (i) a complete liquidation or dissolution of the Company or (ii) a Major Asset Disposition (or, if there is no such approval by shareholders, consummation of such Major Asset Disposition) unless,

(e) immediately following such Major Asset Disposition, (A) Persons that were beneficial owners of the outstanding shares of Company Common Stock immediately prior to such Major Asset Disposition beneficially own, directly or indirectly, more than 50% of the total number of then outstanding shares of common stock and the combined voting power of the then outstanding shares of voting stock of the Company (if it continues to exist) and of the Acquiring Entity in substantially the same proportions as their ownership immediately prior to such Major Asset Disposition of the outstanding shares of Company Common Stock; (B) no Person (other than any employee benefit plan (or related trust) of the Company or such entity) beneficially owns, directly or indirectly, 40% or more of the then outstanding shares of common stock or the combined voting power of the then outstanding voting securities of the Company (if it continues to exist) and of the Acquiring Entity entitled to vote generally in the election of directors and (C) at least a majority of the members of the Board of the Company (if it continues to exist) and of the Acquiring Entity were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board providing for such Major Asset Disposition.

For purposes of the foregoing,

- (i) the term “Person” means an individual, entity or group;
- (ii) the term “group” is used as it is defined for purposes of Section 13(d)(3) of the Exchange Act;
- (iii) the terms “beneficial owner”, “beneficial ownership” and “beneficially own” are used as defined for purposes of Rule 13d-3 under the Exchange Act;
- (iv) the term “Business Combination” means (x) a merger, consolidation or share exchange involving the Company or its stock or (y) an acquisition by the Company, directly or through one or more subsidiaries, of another entity or its stock or assets;
- (v) the term “Company Common Stock” shall mean the Common Stock, par value \$.01 per share, of the Company;
- (vi) the term “Exchange Act” means the Securities Exchange Act of 1934, as amended.
- (vii) the phrase “parent corporation resulting from a Business Combination” means the Company if its stock is not acquired or converted in the Business Combination and otherwise means the entity which as a result of such Business Combination owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries;
- (viii) the term “Major Asset Disposition” means the sale or other disposition in one transaction or a series of related transactions of 50% or more of the assets of the Company and its subsidiaries on a consolidated basis; and any specified percentage or portion of the assets of the Company shall be based on fair market value, as determined by a majority of the members of the Incumbent Board;

- (ix) the term “Acquiring Entity” means the entity that acquires the largest portion of the assets sold or otherwise disposed of in a Major Asset Disposition (or the entity, if any, that owns a majority of the outstanding voting stock of such acquiring entity entitled to vote generally in the election of directors or members of a comparable governing body); and
- (x) the phrase “substantially the same proportions,” when used with reference to ownership interests in the parent corporation resulting from a Business Combination or in an Acquiring Entity, means substantially in proportion to the number of shares of Company Common Stock beneficially owned by the applicable Persons immediately prior to the Business Combination or Major Asset Disposition, but is not to be construed in such a manner as to require that the same ratio or number of shares of such parent corporation or Acquiring Entity be issued, paid or delivered in exchange for or in respect of the shares of each class of Company Common Stock.

Exhibit A-3

**EAGLE MATERIALS INC.****AMENDED AND RESTATED INCENTIVE PLAN  
RESTRICTED STOCK AGREEMENT****(Performance Vesting)**

EAGLE MATERIALS INC. , a Delaware corporation (the "Company"), and \_\_\_\_\_ (the "Grantee") hereby enter into this Restricted Stock Award Agreement (the "Agreement") in order to set forth the terms and conditions of the Company's award (the "Award") to the Grantee of certain shares of Common Stock of the Company granted to the Grantee on May 20, 2016 (the "Award Date").

1. Award. The Company hereby awards to the Grantee \_\_\_\_\_ shares of Common Stock of the Company (the "Shares").

2. Relationship to the Plan. The Award shall be subject to the terms and conditions of the Eagle Materials Inc. Amended and Restated Incentive Plan (the "Plan"), this Agreement and such administrative interpretations of the Plan, if any, as may be in effect on the date of this Agreement. Except as defined herein, capitalized terms shall have the meanings ascribed to them under the Plan. For purposes of this Agreement:

- (a) "Disability" shall be determined by the Committee.
- (b) "Return on Equity" for any fiscal year shall mean: (i) the Net Earnings of the Company (net of any discontinued operations) for such fiscal year; divided by (ii) the Company's Average Stockholders' Equity for such fiscal year.
- (c) "Average Stockholders' Equity" for any period shall mean: (i) the Company's Total Stockholders' Equity as of the beginning of such period plus the Company's Total Stockholders' Equity at the end of such period; divided by (ii) 2.
- (d) "Retirement" shall mean a retirement approved by the Board.
- (e) "Service Vesting Date" means the first, second or third anniversary of the end of the Performance Period, as applicable.
- (f) "Performance Period" shall mean the period commencing on April 1, 2016 and ending on March 31, 2017.

3. Vesting.

- (a) Vesting Criteria. The Grantee's interest in the Shares shall vest in accordance with the vesting schedule set forth below in this Section 3(a) (each such vesting date, a "Vesting Date") only if the Return on Equity for the fiscal year ending March 31, 2017 is at least 11.0% (the "Performance Criteria"); provided, that the percentage of Shares that will be earned shall be based on the following:
-



<b>Performance Criteria</b>	<b>Percentage of Shares Earned</b>
> 18.0%	100.0%
14.5%	83.3%
11.0%	66.7%

; provided, further, that the exact percentage of Shares earned shall be calculated based on straight-line interpolation between the points shown above with fractional points rounded up to the nearest tenth of a percent. After the end of the Performance Period, the Compensation Committee shall certify whether and to what extent the Performance Criteria has been satisfied (“Certification Date”) (such earned Shares shall then be considered “Earned But Unvested Shares” hereunder). Such Earned But Unvested Shares shall vest one-fourth on the third business day following the Certification Date and then ratably on the next three Service Vesting Dates. Prior to the Certification Date, all Shares shall be considered “unvested Shares.” If the Performance Criteria has not been satisfied then the Shares shall be immediately and automatically forfeited. Upon the Certification Date, any portion of the Shares that are not earned in accordance with the provisions above shall be forfeited.

- (b) Restrictions. The period beginning on the Award Date and ending on the date immediately preceding the Vesting Date for a Share shall be known as the restriction period (the “Restriction Period”). During the Restriction Period, the Grantee may not sell, transfer, pledge, exchange, hypothecate, or otherwise dispose of any unvested Shares or any right or interest related to such unvested Shares, other than as required by the Grantee’s will or beneficiary designation, in accordance with the laws of descent and distribution or by a qualified domestic relations order.
- (c) Cancellation Right. Subject to Section 4, the Grantee must be in continuous service as an employee of the Company or any of its Affiliates or as a Director from the Award Date through the applicable Vesting Date for an unvested Share to become vested. Subject to Section 4, Grantee’s termination of employment and, if applicable, service as a Director prior to the Vesting Date shall cause the unvested Shares to be automatically forfeited as of such discontinuation of service date.
- (d) Calculations and Adjustments. The Committee shall have the authority to approve the calculations involving the "Return on Equity for the fiscal year ending March 31, 2017" for purposes of vesting, and its approval of such calculations shall be final, conclusive and binding on all parties; provided, that the Performance Criteria and calculation of actual results, in each case, shall be equitably adjusted as determined by the Committee in its discretion to account for any business acquisition or disposition that occurs after the Award Date .

4. Change-in-Control; Death or Disability; Retirement. The restrictions set forth above in Section 3 shall lapse with respect to any Shares (in the case of a Change in Control) or Earned But Unvested Shares (in the case of termination of employment and, if applicable, discontinuation of service as a Director by reason of death, Disability or Retirement) not previously forfeited and the remaining shares of this Award shall become fully vested without regard to the limitations set forth in Section 3 above, provided that the Grantee has been in continuous employment with the Company or any of its

Affiliates or has been in continuous service as a Director from the Award Date through: (A) the occurrence of a Change in Control (as defined in Exhibit A to this Agreement), unless either: (i) the Committee determines that the terms of the transaction giving rise to the Change in Control provide that the Award is to be replaced within a reasonable time after the Change in Control with an award of equivalent value of shares of the surviving parent corporation, or (ii) the Award is to be settled in cash in accordance with the last sentence of this Section 4, or (B) Grantee's termination of employment and, if applicable, discontinuation of service as a Director by reason of death, Disability or Retirement. Upon a Change in Control, pursuant to Section 15 of the Plan, the Company may, in its discretion, settle the Award by a cash payment that the Committee shall determine in its sole discretion is equal to the fair market value of the Award on the date of such event. In the event Grantee's employment with the Company or any of its affiliates is terminated (other than a termination for "cause") after the end of the Performance Period but before the Certification Date, then notwithstanding the restrictions set forth above in Section 3, on the third business day following the Certification Date, one-fourth of the Earned But Unvested Shares shall vest, and the remainder of the Shares shall be forfeited.

5. Stockholder Rights. The Grantee shall have the right to vote the Shares. On the first dividend payment date following the Certification Date, the Grantee shall be entitled to a cash dividend payment equal to: (i) the sum of per share dividends paid with respect to Common Stock during the period from the Award Date to the Certification Date; provided, the record date for such dividend payment is on or after the Award Date; times (ii) the number of Earned But Unvested Shares (once determined). The Grantee shall also have the right to receive any cash dividends paid on Earned But Unvested Shares after the Certification Date at the same time such amounts are paid with respect to all other shares of Common Stock.

6. Capital Adjustments and Corporate Events. If, from time to time during the term of the Restriction Period, there is any capital adjustment affecting the outstanding Common Stock as a class without the Company's receipt of consideration, including as a result of a spin-off or business disposition, the Shares and other applicable terms of this Award shall be adjusted in accordance with the provisions of Section 15 of the Plan, which adjustment shall include (as may be applicable) without limitation, equitable adjustments to the type of property or securities to which the Award relates and to the Performance Criteria set forth above, in each case as determined by the Committee in its discretion. Any and all new, substituted or additional securities to which the Grantee may be entitled by reason of the Grantee's ownership of the Shares hereunder because of a capital adjustment shall be immediately subject to the restrictions set forth herein (as may be modified pursuant to this Agreement) and included thereafter as Shares for purposes of this Agreement.

7. Refusal to Transfer.

The Company shall not be required:

- (a) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or the Plan; or
- (b) to treat such purchaser or other transferee as owner of such Shares, accord such purchaser or other transferee the right to vote; or pay or deliver dividends or other distributions to such purchaser or other transferee with respect to such Shares.

8. Legends. If the Shares are certificated, the certificate or certificates evidencing the Shares, if any, issued hereunder shall be endorsed with the following legend:

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS AND, ACCORDINGLY,

MAY NOT BE SOLD, ASSIGNED, TRANSFERRED, ENCUMBERED, OR IN ANY MANNER DISPOSED OF EXCEPT IN CONFORMITY WITH THE TERMS OF THAT CERTAIN RESTRICTED STOCK AGREEMENT BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF THESE SHARES. A COPY OF SUCH AGREEMENT IS MAINTAINED AT THE ISSUER'S PRINCIPAL CORPORATE OFFICES.

9. Tax Consequences. The Grantee has reviewed with the Grantee's own tax advisors the federal, state, and local tax consequences of this investment and the transactions contemplated by this Agreement. The Grantee is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. The Grantee understands that the Grantee (and not the Company) shall be responsible for the Grantee's own tax liability that may arise as a result of the transactions contemplated by this Agreement. The Grantee understands that Section 83 of the Code taxes as ordinary income the difference between the purchase price, if any, for the Shares and the Fair Market Value of the Shares as of the date any restrictions on the Shares lapse. In this context, "restriction" means the restrictions imposed during the Restriction Period. The Grantee understands that the Grantee may elect to be taxed at the time the Shares are awarded rather than when and as the restrictions lapse by filing an election under Section 83(b) of the Code with the Internal Revenue Service within 30 days from the Award Date. THE GRANTEE ACKNOWLEDGES THAT IT IS THE GRANTEE'S SOLE RESPONSIBILITY (AND NOT THE COMPANY'S) TO FILE TIMELY THE ELECTION UNDER SECTION 83(B), EVEN IF THE GRANTEE REQUESTS THE COMPANY OR ITS REPRESENTATIVES TO MAKE THIS FILING ON THE GRANTEE'S BEHALF.

10. Withholding of Taxes. At the time and to the extent vested Shares become compensation income to the Grantee for federal or state income tax purposes, the Grantee either shall deliver to the Company such amount of money as required to meet the Company's minimum withholding obligation under applicable tax laws or regulations, or, in lieu of cash, the Grantee, in his or her sole discretion, may elect to surrender, or direct the Company to withhold from the vested Shares, shares of Common Stock in such number as necessary to satisfy the Company's minimum tax withholding obligations. Further, any dividends paid to you pursuant to Section 5 above prior to the end of the Restriction Period will generally be subject to federal, state and local withholding, as appropriate, as additional compensation.

11. Entire Agreement; Governing Law. The Plan and this Agreement constitute the entire agreement of the Company and the Grantee (collectively, the "Parties") with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Parties with respect to the subject matter hereof, and may not be modified adversely to the Grantee's interest except by means of a writing signed by the Parties. Nothing in the Plan and this Agreement (except as expressly provided therein or herein) is intended to confer any rights or remedies on any person other than the Parties. The Plan and this Agreement are to be construed in accordance with and governed by the internal laws of the State of Texas, without giving effect to any choice-of-law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of Texas to the rights and duties of the Parties. Should any provision of the Plan or this Agreement relating to the Shares be determined by a court of law to be illegal or unenforceable, such provision shall be enforced to the fullest extent allowed by law and the other provisions shall nevertheless remain effective and shall remain enforceable.

12. Interpretive Matters. Whenever required by the context, pronouns and any variation thereof shall be deemed to refer to the masculine, feminine, or neuter, and the singular shall include the plural, and vice versa. The term "include" or "including" does not denote or imply any limitation. The

term “business day” means any Monday through Friday other than such a day on which banks are authorized to be closed in the State of Texas. The captions and headings used in this Agreement are inserted for convenience and shall not be deemed a part of the Award or this Agreement for construction or interpretation.

13. Notice. Any notice or other communication required or permitted hereunder shall be given in writing and shall be deemed given, effective, and received upon prepaid delivery in person or by courier or upon the earlier of delivery or the third business day after deposit in the United States mail if sent by certified mail, with postage and fees prepaid, addressed to the other Party at its address as shown beneath its signature in this Agreement, or to such other address as such Party may designate in writing from time to time by notice to the other Party.

14. Successors and Assigns. This Agreement shall bind and inure to the benefit of and be enforceable by the Grantee, the Company and their respective permitted successors and assigns (including personal representatives, heirs and legatees), except that the Grantee may not assign any rights or obligations under this Agreement except to the extent and in the manner expressly permitted herein.

*[Signature page follows.]*

**EAGLE MATERIALS INC .**

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
Name: David B. Powers  
Its: President and CEO  
Address: 3811 Turtle Creek Boulevard, Suite 1100  
Dallas, Texas 75219

The Grantee acknowledges receipt of a copy of the Plan, represents that he or she is familiar with the terms and provisions thereof, and hereby accepts the Award subject to all of the terms and provisions hereof and thereof. The Grantee has reviewed this Agreement and the Plan in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Agreement, and fully understands all provisions of this Agreement and the Plan. The Grantee further agrees to notify the Company upon any change in the address for notice indicated in this Agreement.

Dated: \_\_\_\_\_, 2016

Signed: \_\_\_\_\_  
[Name]  
Eagle Materials Inc.  
3811 Turtle Creek Blvd., Suite 1100  
Dallas, Texas 75219

## **EXHIBIT A**

### **CHANGE-IN-CONTROL**

For the purpose of this Agreement, a "Change in Control" shall mean the occurrence of any of the following events:

(a) The acquisition by any Person of beneficial ownership of securities of the Company (including any such acquisition of beneficial ownership deemed to have occurred pursuant to Rule 13d-5 under the Exchange Act) if, immediately thereafter, such Person is the beneficial owner of (i) 50% or more of the total number of outstanding shares of any single class of Company Common Stock or (ii) 40% or more of the total number of outstanding shares of all classes of Company Common Stock, unless such acquisition is made (a) directly from the Company in a transaction approved by a majority of the members of the Incumbent Board or (b) by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company;

(b) Individuals who, as of the date hereof, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (or who is otherwise designated as a member of the Incumbent Board by such a vote) shall be considered as though such individual were a member of the Incumbent Board, except that any such individual shall not be considered a member of the Incumbent Board if his or her initial assumption of office occurs as a result of either an actual or threatened election contest (as such term is used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(c) The consummation of a Business Combination, unless, immediately following such Business Combination, (i) more than 50% of both the total number of then outstanding shares of common stock of the parent corporation resulting from such Business Combination and the combined voting power of the then outstanding voting securities of such parent corporation entitled to vote generally in the election of directors will be (or is) then beneficially owned, directly or indirectly, by all or substantially all of the Persons who were the beneficial owners, respectively, of the outstanding shares of Company Common Stock immediately prior to such Business Combination in substantially the same proportions as their ownership immediately prior to such Business Combination of the outstanding shares of Company Common Stock, (ii) no Person (other than any employee benefit plan (or related trust) of the Company or any corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 40% or more of the total number of then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors and (iii) at least a majority of the members of the board of directors of the parent corporation resulting from such Business Combination were members of the Incumbent Board immediately prior to the consummation of such Business Combination; or

(d) Approval by the Board and the shareholders of the Company of (i) a complete liquidation or dissolution of the Company or (ii) a Major Asset Disposition (or, if there is no such approval by shareholders, consummation of such Major Asset Disposition) unless, immediately following such Major Asset Disposition, (A) Persons that were beneficial owners of the outstanding shares of Company Common Stock immediately prior to such Major Asset Disposition beneficially own, directly or indirectly, more than 50% of the total number of then outstanding shares of common stock and the combined voting power of the then outstanding shares of voting stock of the Company (if it continues to

exist) and of the Acquiring Entity in substantially the same proportions as their ownership immediately prior to such Major Asset Disposition of the outstanding shares of Company Common Stock; (B) no Person (other than any employee benefit plan (or related trust) of the Company or such entity) beneficially owns, directly or indirectly, 40% or more of the then outstanding shares of common stock or the combined voting power of the then outstanding voting securities of the Company (if it continues to exist) and of the Acquiring Entity entitled to vote generally in the election of directors and (C) at least a majority of the members of the Board of the Company (if it continues to exist) and of the Acquiring Entity were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board providing for such Major Asset Disposition.

For purposes of the foregoing,

- (i) the term " *Person* " means an individual, entity or group;
- (ii) the term " *group* " is used as it is defined for purposes of Section 13(d)(3) of the Exchange Act;
- (iii) the terms " *beneficial owner* ", " *beneficial ownership* " and " *beneficially own* " are used as defined for purposes of Rule 13d-3 under the Exchange Act;
- (iv) the term " *Business Combination* " means (x) a merger, consolidation or share exchange involving the Company or its stock or (y) an acquisition by the Company, directly or through one or more subsidiaries, of another entity or its stock or assets;
- (v) the term " *Company Common Stock* " shall mean the Common Stock, par value \$.01 per share, of the Company;
- (vi) the term " *Exchange Act* " means the Securities Exchange Act of 1934, as amended;
- (vii) the phrase " *parent corporation resulting from a Business Combination* " means the Company if its stock is not acquired or converted in the Business Combination and otherwise means the entity which as a result of such Business Combination owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries;
- (viii) the term " *Major Asset Disposition* " means the sale or other disposition in one transaction or a series of related transactions of 50% or more of the assets of the Company and its subsidiaries on a consolidated basis; and any specified percentage or portion of the assets of the Company shall be based on fair market value, as determined by a majority of the members of the Incumbent Board;
- (ix) the term " *Acquiring Entity* " means the entity that acquires the largest portion of the assets sold or otherwise disposed of in a Major Asset Disposition (or the entity, if any, that owns a majority of the outstanding voting stock of such acquiring entity entitled to vote generally in the election of directors or members of a comparable governing body); and
- (x) the phrase " *substantially the same proportions* ," when used with reference to ownership interests in the parent corporation resulting from a Business Combination or in an Acquiring Entity, means substantially in proportion to the number of shares of Company Common Stock beneficially owned by the applicable Persons immediately prior to the Business Combination or Major Asset Disposition, but is not to be construed in such a manner as to require that the same ratio or number of shares of such parent corporation or Acquiring Entity be issued, paid or delivered in exchange for or in respect of the shares of each class of Company Common Stock.

**EAGLE MATERIALS INC.**

**AMENDED AND RESTATED INCENTIVE PLAN  
RESTRICTED STOCK AGREEMENT**

**(Time Vesting)**

Eagle Materials Inc., a Delaware corporation (the "Company"), and \_\_\_\_\_ (the "Grantee") hereby enter into this Restricted Stock Agreement (the "Agreement") in order to set forth the terms and conditions of the Company's award (the "Award") to the Grantee of certain shares of Common Stock of the Company granted to the Grantee on May 20, 2016 (the "Award Date").

1. Award. The Company hereby awards to the Grantee \_\_\_\_\_ shares of Common Stock of the Company (the "Shares").

2. Relationship to the Plan. The Award shall be subject to the terms and conditions of the Eagle Materials Inc. Amended and Restated Incentive Plan (the "Plan"), this Agreement and such administrative interpretations of the Plan, if any, as may be in effect on the date of this Agreement. Except as defined herein, capitalized terms shall have the meanings ascribed to them under the Plan. For purposes of this Agreement:

- (a) "Disability" shall be determined by the Committee.
- (b) "Retirement" shall mean a retirement approved by the Board.

3. Vesting.

(a) Vesting Criteria. The Grantee's interest in the Shares shall vest on the date designated (a "Vesting Date") in accordance with the following vesting schedule (the "Vesting Schedule"):

<u>Vesting Date</u>	<u>Shares</u>
May 20, 2017	
May 20, 2018	
May 20, 2019	
May 20, 2020	

**Total**

(b) Restrictions. The period beginning on the Award Date and ending on the date immediately preceding the Vesting Date for a Share shall be known as the restriction period (the "Restriction Period"). During the Restriction Period, the Grantee may not sell, transfer, pledge, exchange, hypothecate, or otherwise dispose of any unvested Shares or any right or interest related to such unvested Shares, other than as required by the Grantee's will or beneficiary designation, in accordance with the laws of descent and distribution or by a qualified domestic relations order.



- (c) Cancellation Right. The Grantee must be in continuous service as an employee of the Company or any of its Affiliates or as a Director from the Award Date through the applicable Vesting Date for a Share to become vested. Subject to Section 4, Grantee's termination of employment and, if applicable, service as a Director prior to the vesting of any Shares shall cause any unvested Shares to be automatically forfeited.

4. Change-in-Control; Death or Disability; Retirement. The restrictions set forth above in Section 3 shall lapse with respect to any unvested Shares not previously forfeited and the remaining shares of this Award shall become fully vested without regard to the limitations set forth in Section 3 above, provided that the Grantee has been in continuous employment with the Company or any of its Affiliates or has been in continuous service as a Director from the Award Date through: (A) the occurrence of a Change in Control (as defined in Exhibit A to this Agreement), unless either: (i) the Committee determines that the terms of the transaction giving rise to the Change in Control provide that the Award is to be replaced within a reasonable time after the Change in Control with an award of equivalent value of shares of the surviving parent corporation, or (ii) the Award is to be settled in cash in accordance with the last sentence of this Section 4, or (B) Grantee's termination of employment and, if applicable, discontinuation of service as a Director, by reason of death, Disability or Retirement. Upon a Change in Control, pursuant to Section 15 of the Plan, the Company may, in its discretion, settle the Award by a cash payment that the Committee shall determine in its sole discretion is equal to the fair market value of the Award on the date of such event.

5. Stockholder Rights. Until such time as any of the unvested Shares are forfeited, the Grantee shall have the right to vote any Shares, and the Grantee shall have the right to receive any cash dividends declared and paid on unvested Shares after the date hereof at the same time such amounts are paid with respect to all other shares of Common Stock.

6. Capital Adjustments and Corporate Events. If, from time to time during the term of the Restriction Period, there is any capital adjustment affecting the outstanding Common Stock as a class without the Company's receipt of consideration, including as a result of a spin-off or business disposition, the Shares and other applicable terms of this Award shall be adjusted in accordance with the provisions of Section 15 of the Plan, which adjustment shall include (as may be applicable) without limitation, equitable adjustments to the type of property or securities to which the Award relates, in each case as determined by the Committee in its discretion. Any and all new, substituted or additional securities to which the Grantee may be entitled by reason of the Grantee's ownership of the Shares hereunder because of a capital adjustment shall be immediately subject to the restrictions set forth herein (as may be modified pursuant to this Agreement) and included thereafter as Shares for purposes of this Agreement.

7. Refusal to Transfer.

The Company shall not be required:

- (a) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or the Plan; or
- (b) to treat such purchaser or other transferee as owner of such Shares, accord such purchaser or other transferee the right to vote; or pay or deliver dividends or other distributions to such purchaser or other transferee with respect to such Shares.

8. Legends. If the Shares are certificated, the certificate or certificates evidencing the Shares, if any, issued hereunder shall be endorsed with the following legend:

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS AND, ACCORDINGLY, MAY NOT BE SOLD, ASSIGNED, TRANSFERRED, ENCUMBERED, OR IN ANY MANNER DISPOSED OF EXCEPT IN CONFORMITY WITH THE TERMS OF THAT CERTAIN RESTRICTED STOCK AGREEMENT BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF THESE SHARES. A COPY OF SUCH AGREEMENT IS MAINTAINED AT THE ISSUER'S PRINCIPAL CORPORATE OFFICES.

9. Tax Consequences. The Grantee has reviewed with the Grantee's own tax advisors the federal, state, and local tax consequences of this investment and the transactions contemplated by this Agreement. The Grantee is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. The Grantee understands that the Grantee (and not the Company) shall be responsible for the Grantee's own tax liability that may arise as a result of the transactions contemplated by this Agreement. The Grantee understands that Section 83 of the Code taxes as ordinary income the difference between the purchase price, if any, for the Shares and the Fair Market Value of the Shares as of the date any restrictions on the Shares lapse. In this context, "restriction" means the restrictions imposed during the Restriction Period. The Grantee understands that the Grantee may elect to be taxed at the time the Shares are awarded rather than when and as the restrictions lapse by filing an election under Section 83(b) of the Code with the Internal Revenue Service within 30 days from the Award Date. THE GRANTEE ACKNOWLEDGES THAT IT IS THE GRANTEE'S SOLE RESPONSIBILITY (AND NOT THE COMPANY'S) TO FILE TIMELY THE ELECTION UNDER SECTION 83(B), EVEN IF THE GRANTEE REQUESTS THE COMPANY OR ITS REPRESENTATIVES TO MAKE THIS FILING ON THE GRANTEE'S BEHALF.

10. Withholding of Taxes. At the time and to the extent vested Shares become compensation income to the Grantee for federal or state income tax purposes, the Grantee either shall deliver to the Company such amount of money as required to meet the Company's minimum withholding obligation under applicable tax laws or regulations, or, in lieu of cash, the Grantee, in his or her sole discretion, may elect to surrender, or direct the Company to withhold from the vested Shares, shares of Common Stock in such number as necessary to satisfy the Company's minimum tax withholding obligations. Further, any dividends paid to you pursuant to Section 5 above prior to the end of the Restriction Period will generally be subject to federal, state and local withholding, as appropriate, as additional compensation.

11. Entire Agreement; Governing Law. The Plan and this Agreement constitute the entire agreement of the Company and the Grantee (collectively, the "Parties") with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Parties with respect to the subject matter hereof, and may not be modified adversely to the Grantee's interest except by means of a writing signed by the Parties. Nothing in the Plan and this Agreement (except as expressly provided therein or herein) is intended to confer any rights or remedies on any person other than the Parties. The Plan and this Agreement are to be construed in accordance with and governed by the internal laws of the State of Texas, without giving effect to any choice-of-law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of Texas to the rights and duties of the Parties. Should any provision of the Plan or this Agreement relating to the Shares be determined by a court of law to be illegal or unenforceable, such provision shall be enforced

to the fullest extent allowed by law and the other provisions shall nevertheless remain effective and shall remain enforceable.

12. Interpretive Matters. Whenever required by the context, pronouns and any variation thereof shall be deemed to refer to the masculine, feminine, or neuter, and the singular shall include the plural, and vice versa. The term “include” or “including” does not denote or imply any limitation. The term “business day” means any Monday through Friday other than such a day on which banks are authorized to be closed in the State of Texas. The captions and headings used in this Agreement are inserted for convenience and shall not be deemed a part of the Award or this Agreement for construction or interpretation.

13. Notice. Any notice or other communication required or permitted hereunder shall be given in writing and shall be deemed given, effective, and received upon prepaid delivery in person or by courier or upon the earlier of delivery or the third business day after deposit in the United States mail if sent by certified mail, with postage and fees prepaid, addressed to the other Party at its address as shown beneath its signature in this Agreement, or to such other address as such Party may designate in writing from time to time by notice to the other Party.

14. Successors and Assigns. This Agreement shall bind and inure to the benefit of and be enforceable by the Grantee, the Company and their respective permitted successors and assigns (including personal representatives, heirs and legatees), except that the Grantee may not assign any rights or obligations under this Agreement except to the extent and in the manner expressly permitted herein.

*[Signature page follows.]*

**EAGLE MATERIALS INC .**

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
Name: David B. Powers  
Its: President and Chief Executive Officer  
Address: 3811 Turtle Creek Boulevard, Suite 1100  
Dallas, Texas 75219

The Grantee acknowledges receipt of a copy of the Plan, represents that he or she is familiar with the terms and provisions thereof, and hereby accepts the Award subject to all of the terms and provisions hereof and thereof. The Grantee has reviewed this Agreement and the Plan in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Agreement, and fully understands all provisions of this Agreement and the Plan. The Grantee further agrees to notify the Company upon any change in the address for notice indicated in this Agreement.

Dated: \_\_\_\_\_, 2016

Signed: \_\_\_\_\_  
[Name]  
Eagle Materials Inc.  
3811 Turtle Creek Blvd., Suite 1100  
Dallas, Texas 75219

## EXHIBIT A

### **CHANGE-IN-CONTROL**

For the purpose of this Agreement, a "Change in Control" shall mean the occurrence of any of the following events:

(a) The acquisition by any Person of beneficial ownership of securities of the Company (including any such acquisition of beneficial ownership deemed to have occurred pursuant to Rule 13d-5 under the Exchange Act) if, immediately thereafter, such Person is the beneficial owner of (i) 50% or more of the total number of outstanding shares of any single class of Company Common Stock or (ii) 40% or more of the total number of outstanding shares of all classes of Company Common Stock, unless such acquisition is made (a) directly from the Company in a transaction approved by a majority of the members of the Incumbent Board or (b) by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company;

(b) Individuals who, as of the date hereof, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (or who is otherwise designated as a member of the Incumbent Board by such a vote) shall be considered as though such individual were a member of the Incumbent Board, except that any such individual shall not be considered a member of the Incumbent Board if his or her initial assumption of office occurs as a result of either an actual or threatened election contest (as such term is used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(c) The consummation of a Business Combination, unless, immediately following such Business Combination, (i) more than 50% of both the total number of then outstanding shares of common stock of the parent corporation resulting from such Business Combination and the combined voting power of the then outstanding voting securities of such parent corporation entitled to vote generally in the election of directors will be (or is) then beneficially owned, directly or indirectly, by all or substantially all of the Persons who were the beneficial owners, respectively, of the outstanding shares of Company Common Stock immediately prior to such Business Combination in substantially the same proportions as their ownership immediately prior to such Business Combination of the outstanding shares of Company Common Stock, (ii) no Person (other than any employee benefit plan (or related trust) of the Company or any corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 40% or more of the total number of then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors and (iii) at least a majority of the members of the board of directors of the parent corporation resulting from such Business Combination were members of the Incumbent Board immediately prior to the consummation of such Business Combination; or

(d) Approval by the Board and the shareholders of the Company of (i) a complete liquidation or dissolution of the Company or (ii) a Major Asset Disposition (or, if there is no such approval by shareholders, consummation of such Major Asset Disposition) unless, immediately following such Major Asset Disposition, (A) Persons that were beneficial owners of the outstanding shares of Company Common Stock immediately prior to such Major Asset Disposition beneficially own, directly or indirectly, more than 50% of the total number of then outstanding shares of common stock and the combined voting power of the then outstanding shares of voting stock of the Company (if it continues to

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exist) and of the Acquiring Entity in substantially the same proportions as their ownership immediately prior to such Major Asset Disposition of the outstanding shares of Company Common Stock; (B) no Person (other than any employee benefit plan (or related trust) of the Company or such entity) beneficially owns, directly or indirectly, 40% or more of the then outstanding shares of common stock or the combined voting power of the then outstanding voting securities of the Company (if it continues to exist) and of the Acquiring Entity entitled to vote generally in the election of directors and (C) at least a majority of the members of the Board of the Company (if it continues to exist) and of the Acquiring Entity were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board providing for such Major Asset Disposition.

For purposes of the foregoing,

- (i) the term "*Person*" means an individual, entity or group;
- (ii) the term "*group*" is used as it is defined for purposes of Section 13(d)(3) of the Exchange Act;
- (iii) the terms "*beneficial owner*", "*beneficial ownership*" and "*beneficially own*" are used as defined for purposes of Rule 13d-3 under the Exchange Act;
- (iv) the term "*Business Combination*" means (x) a merger, consolidation or share exchange involving the Company or its stock or (y) an acquisition by the Company, directly or through one or more subsidiaries, of another entity or its stock or assets;
- (v) the term "*Company Common Stock*" shall mean the Common Stock, par value \$.01 per share, of the Company;
- (vi) the term "*Exchange Act*" means the Securities Exchange Act of 1934, as amended;
- (vii) the phrase "*parent corporation resulting from a Business Combination*" means the Company if its stock is not acquired or converted in the Business Combination and otherwise means the entity which as a result of such Business Combination owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries;
- (viii) the term "*Major Asset Disposition*" means the sale or other disposition in one transaction or a series of related transactions of 50% or more of the assets of the Company and its subsidiaries on a consolidated basis; and any specified percentage or portion of the assets of the Company shall be based on fair market value, as determined by a majority of the members of the Incumbent Board;
- (ix) the term "*Acquiring Entity*" means the entity that acquires the largest portion of the assets sold or otherwise disposed of in a Major Asset Disposition (or the entity, if any, that owns a majority of the outstanding voting stock of such acquiring entity entitled to vote generally in the election of directors or members of a comparable governing body); and
- (x) the phrase "*substantially the same proportions*," when used with reference to ownership interests in the parent corporation resulting from a Business Combination or in an Acquiring Entity, means substantially in proportion to the number of shares of Company Common Stock beneficially owned by the applicable Persons immediately prior to the Business Combination or Major Asset Disposition, but is not to be construed in such a manner as to require that the same ratio or number of shares of such parent corporation or Acquiring Entity be issued, paid or delivered in exchange for or in respect of the shares of each class of Company Common Stock.

**ASSET PURCHASE AGREEMENT**

**between**

**CEMEX CONSTRUCTION MATERIALS ATLANTIC, LLC**

**and**

**EAGLE MATERIALS INC.**

**dated as of**

**September 11, 2016**

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**EXHIBITS**

<u>Exhibit A</u>	Form of Assignment and Assumption Agreement and Bill of Sale
<u>Exhibit B</u>	Form of Deed
<u>Exhibit C</u>	Form of Assignment and Assumption of Lease
<u>Exhibit D</u>	Adjustable Inventory Adjustment Principles
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## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (together with any amendments or other modifications and all exhibits and schedules, this "**Agreement**"), dated as of September 11, 2016, is entered into by and between CEMEX CONSTRUCTION MATERIALS ATLANTIC, LLC, a Delaware limited liability company ("**Seller**"), and EAGLE MATERIALS INC., a Delaware corporation ("**Buyer**"). Capitalized terms used and not otherwise defined herein shall have the meanings set forth in Article I.

### RECITALS

WHEREAS, Seller is in the business of manufacturing, producing, storing, selling and distributing cement at or from a plant located in Fairborn, Ohio, a cement distribution terminal located in Columbus, Ohio, or the other Real Property (defined herein) and mining or purchasing limestone and other minerals and raw materials for the foregoing purposes (such business, the "**Business**");

WHEREAS, Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase and acquire from Seller all of Seller's rights, title and interest in and to the Purchased Assets, and in connection therewith Buyer is willing to assume all of the Assumed Liabilities, in each case upon the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

The following terms have the meanings specified or referred to in this Article I:

" **Accountant** " has the meaning set forth in Section 2.06(e).

" **Action** " means any action, suit, investigation or other legal proceeding.

" **Adjustable Inventory** " means the Inventory that consists of raw materials, work in process and finished goods, in each case to the extent located at the Seller Facilities as of the Closing Date.

" **Adjustable Inventory Value** " has the meaning set forth in Section 2.06(a).

" **Adjustable Inventory Value Adjustment** " has the meaning set forth in Section 2.06(a).

" **Adjustable Inventory Value Report** " has the meaning set forth in Section 2.06(a).

" **Affiliate** " means, with respect to any Person, any other Person directly or indirectly controlled by, controlling, or under common control with such Person; and for purposes of this

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definition, " control " (including the concept of " control " when used in the terms " controlled by " and " controlled " ) means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of such other Person, whether through the ownership of voting securities, by agreement or otherwise.

" **Agreement** " has the meaning set forth in the preamble.

" **Allocation Objections** " has the meaning set forth in Section 2.07.

" **Allocation Schedule** " has the meaning set forth in Section 2.07.

" **Annexation Agreement** " means the agreement effective May 7, 2014 between the City of Fairborn, CEMEX, Inc., and CEMEX Construction Materials Atlantic, LLC.

" **Annual Financial Statements** " has the meaning set forth in Section 6.19.

" **Applicable CBA** " means the Agreement dated March 1, 2015 between Seller and International Brotherhood of Boilermakers, Cement, Lime, Gypsum and Allied Workers Division, Local Lodge D-357.

" **Applicable Transition Period** " has the meaning set forth in Section 6.15(b).

" **Assigned Contracts** " has the meaning set forth in Section 2.01(i).

" **Assignment and Assumption Agreement and Bill of Sale** " has the meaning set forth in Section 3.02(a)(i).

" **Assignment and Assumption of Lease** " has the meaning set forth in Section 3.02(a)(iii).

" **Assumed Liabilities** " has the meaning set forth in Section 2.03.

" **Audited Financial Statements** " has the meaning set forth in Section 3.01.

" **Auditor** " has the meaning set forth in Section 6.19.

" **Books and Records** " has the meaning set forth in Section 2.01(j).

" **Business** " has the meaning set forth in the Recitals.

" **Business Confidential Information** " has the meaning set forth in Section 6.05.

" **Business Day** " means any day except for Saturday, Sunday or any day on which banks located in the States of New York or Texas are authorized or obligated to close.

" **Business Employees** " means the Must-Offer Employees and the May-Offer Employees, collectively.

" **Business Financial Statements** " has the meaning set forth in Section 4.04.

" **Business Permits** " has the meaning set forth in Section 2.01(f).

" **Buyer** " has the meaning set forth in the preamble.

" **Buyer 401(k) Plan** " has the meaning set forth in Section 6.04(g).

" **Buyer Closing Certificate** " has the meaning set forth in Section 7.03(d).

" **Buyer Disclosure Schedules** " means the disclosure schedules delivered by Buyer to Seller concurrently with the execution and delivery of this Agreement.

" **Buyer Indemnitees** " has the meaning set forth in Section 8.02.

" **Casualty Amount** " has the meaning set forth in Section 6.17(a).

" **Casualty Loss** " has the meaning set forth in Section 6.17(a).

" **Casualty Loss Report** " has the meaning set forth in Section 6.17(a).

" **CAUV Program** " has the meaning set forth in Section 6.22.

" **CERCLA** " means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

" **Claim** " means any claim, demand or cause of action of any kind, whether in tort, contract or otherwise.

" **Closing** " has the meaning set forth in Section 3.01.

" **Closing Date** " has the meaning set forth in Section 3.01.

" **COBRA Coverage** " has the meaning set forth in Section 6.04(i).

" **Code** " means the Internal Revenue Code of 1986, as amended.

" **Columbus Terminal** " means Seller's current terminal located at 220 Walnut Street, Blacklick, Ohio 43004.

" **Commitment** " has the meaning set forth in Section 6.18.

" **Confidentiality Agreement** " means the confidentiality agreement between Cemex, Inc. and Eagle Materials Inc., dated as of May 17, 2016.

" **Consent Decree** " means the Consent Decree filed with the U.S. District Court Southern District of Ohio, Western Division on April 4, 2011 in connection with Civil Action No. 3:11CV00037.

" **Contracts** " means all contracts, purchase orders, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and arrangements, whether written or oral.

" **Deductible** " has the meaning set forth in Section 8.04(a) .

" **Deed** " has the meaning set forth in Section 3.02(a)(ii) .

" **Direct Claim** " has the meaning set forth in Section 8.05(c) .

" **Disclosure Schedules** " means the Buyer Disclosure Schedules and the Seller Disclosure Schedules.

" **Dispute Resolution Period** " has the meaning set forth in Section 2.06(e) .

" **Dollar** " or " **\$** " means the lawful currency of the United States.

" **Drop Dead Date** " has the meaning set forth in Section 9.01(b)(i) .

" **Effective Time** " means 11:59 p.m., Central time, on the Closing Date.

" **Election Period** " has the meaning set forth in Section 6.17(c) .

" **Employee Plan** " has the meaning set forth in Section 4.14(c) .

" **Employee Transfer Date** " has the meaning set forth in Section 6.04(b) .

" **Employees** " means those Persons employed by Seller who work primarily or exclusively for the Business.

" **Employee Vehicles** " has the meaning set forth in Section 6.20 .

" **Encumbrance** " means any lien (statutory or other), pledge, mortgage, deed of trust, security interest, charge, claim, equitable interest, easement, encroachment, right of way, right of first refusal or other similar encumbrance or restriction.

" **Environmental Claim** " means any Governmental Order, Action or Claim by any Person alleging liability arising out of, based on or resulting from: (a) the Release of any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

" **Environmental Law** " means any applicable Law: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources or threatened or endangered species, the protection of human health or safety (solely as relates to exposure to Hazardous Materials), or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the manufacture, use, recycling, reclamation, reuse, treatment, generation, discharge, transportation, storage, containment, disposal or remediation of any Hazardous Materials. The term "Environmental Law" includes the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation,

and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq. and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

" **Environmental Notice** " means any written notice respecting an Environmental Claim.

" **Environmental Permit** " means any Permit required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

" **ERISA** " means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

" **ERISA Affiliate** " has the meaning set forth in Section 4.14(c)(iii).

" **Estimated Adjustable Inventory Value** " has the meaning set forth in Section 2.05(b).

" **Excluded Assets** " has the meaning set forth in Section 2.02.

" **Excluded Liabilities** " has the meaning set forth in Section 2.04.

" **Excluded Taxes** " has the meaning set forth in Section 2.04(e).

" **Fairborn CKD Landfill #6** " means that certain landfill facility and associated real property identified on Section 1.01(a) of the Seller Disclosure Schedules, which is the subject of that certain Director's Final Findings & Order In the Matter of SOUTHDOWN, INC., 506 West Xenia Drive, Fairborn, Ohio 45324, Respondent, dated July 2, 1992, issued by the Ohio Environmental Protection Agency.

" **Fairborn Plant** " means Seller's current manufacturing facility located at 3250 Linebaugh Road, Xenia, Ohio 45385.

" **Fundamental Representations** " has the meaning set forth in Section 8.01.

" **Governmental Authority** " means any federal, state or local government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations, orders or other actions of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

" **Governmental Order** " means any order, writ, judgment, injunction, decree, stipulation, determination or award issued or entered by or with any Governmental Authority.

" **Hazardous Material s** " means any chemicals, materials or substances defined as or included in the definition of " hazardous substances " , " hazardous wastes " , " hazardous materials " , " hazardous constituents " , " restricted hazardous materials " , " extremely hazardous substances " , " toxic substances " , " radioactive materials " , " radioactive wastes " , " contaminants " , " pollutants " , " toxic pollutants " , or words of similar meaning and regulatory effect under any applicable Environmental Law, including petroleum and asbestos.

" **Hired Employees** " has the meaning set forth in Section 6.04(b) .

" **HSR Act** " means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

" **IFRS** " means International Financial Reporting Standards as issued by the International Accounting Standards Board, in effect from time to time.

" **Identified Parcels** " has the meaning set forth in Section 6.18(a) .

" **Identified Parcel Alta Survey** " has the meaning set forth in Section 6.18(a) .

" **Identified Parcel Title Commitment** " has the meaning set forth in Section 6.18(a) .

" **Identified Parcel Title Policy** " has the meaning set forth in Section 3.02(a)(x) .

" **Indemnified Party** " has the meaning set forth in Section 8.04 .

" **Indemnified Taxes** " has the meaning set forth in Section 8.02(d) .

" **Indemnifying Party** " has the meaning set forth in Section 8.04 .

" **Insurance Adjuster** " has the meaning set forth in Section 6.17 .

" **Intellectual Property** " means any and all of the following in any jurisdiction throughout the world: (a) trademarks, trade names, and service marks, including all applications and registrations and the goodwill connected with the use of and symbolized by the foregoing; (b) copyrights, including all applications and registrations, and works of authorship, whether or not copyrightable; (c) trade secrets and confidential know-how; (d) inventions (whether or not patentable), patents, and patent applications, together with all re-issuances, continuations, continuations-in-part, divisions, revisions, extensions and re-examinations thereof; (e) websites and internet domain name registrations; and (f) all other intellectual property and industrial property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing.

" **Intellectual Property Agreements** " means all licenses, sublicenses or other agreements authorizing the use of Intellectual Property and other agreements by or through which other Persons grant Seller or Seller grants any other Persons any exclusive or non-exclusive rights or interests in or to any Intellectual Property Assets.



" **Intellectual Property Assets** " means all Intellectual Property that is owned by Seller or as to which the Seller has rights or interests under any Intellectual Property Agreements and that is primarily or exclusively used in connection with the Business, including the Intellectual Property Registrations set forth in Section 2.01(g) of the Seller Disclosure Schedules.

" **Intellectual Property Registrations** " means all Intellectual Property Assets that are subject to or require for the enforcement thereof any issuance, registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names, and copyrights, issued and reissued patents and pending applications for any of the foregoing.

" **Interim Financial Statements** " has the meaning set forth in Section 6.19.

" **Inventory** " has the meaning set forth in Section 2.01(e).

" **Key Customers** " has the meaning set forth in Section 4.21(a).

" **Key Suppliers** " has the meaning set forth in Section 4.21(b).

" **Law** " means each applicable provision of any U.S. federal, state, provincial, municipal or local constitution, statute, law (including common law), ordinance, code, rule, regulation, judgment, release, license, Governmental Order or other legally binding pronouncement of any Governmental Authority.

" **Leased Real Property** " means the real property subject to the Real Property Leases.

" **Leave Employee** " has the meaning set forth in Section 6.04(b).

" **Losses** " means, except as may be limited by Section 10.14, losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder.

" **Material Adverse Effect** " means any event, occurrence, fact, condition or change that, individually or together with any other events, occurrences, facts, conditions or changes, (a) is, or would reasonably be expected to become, materially adverse to (a) the operations, properties, results of operations or financial condition of the Business, taken as a whole, or (b) the ability of Seller to consummate the transactions contemplated hereby in accordance with the terms of this Agreement; *provided, however*, that "Material Adverse Effect" shall not include any event, occurrence, fact, condition or change to the extent arising out of or attributable to: (i) general economic, market or political conditions; (ii) any circumstances or conditions generally affecting the industries in which the Business operates; (iii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates; (iv) acts of war (whether or not declared), sabotage, armed hostilities or terrorism, or the escalation or worsening thereof; (v) the execution or announcement of this Agreement or any action required or permitted by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of Buyer; (vi) any matter set forth in the Disclosure Schedules; (vii) any changes in applicable Laws or accounting rules (including IFRS) or the enforcement, implementation or

interpretation thereof; (viii) the announcement, pendency or completion of the transactions contemplated by this Agreement, including losses or threatened losses of employees, customers, suppliers, distributors or others having relationships with Seller and the Business, to the extent such losses result from the announcement, pendency or completion of the transactions contemplated by this Agreement; (ix) any natural or man-made disaster or act of God which constitutes a Casualty Loss under Section 6.17; or (x) any failure by any of the Seller Facilities or the Business to meet any internal or published projections, forecasts or revenue or earnings predictions (provided that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded); *provided, however*, that any event, occurrence, fact, condition or change referred to in causes (i) through (iv) above shall only be excluded in determining whether a Material Adverse Effect has occurred to the extent that such event, occurrence, fact, condition or change does not and would not reasonably be expected to have a disproportionate effect on the Business, the Purchased Assets or the Assumed Liabilities compared to businesses, assets and liabilities of other participants in the industries in which the Business operates.

" **Material Contracts** " has the meaning set forth in Section 4.06(a).

" **Materiality Qualifications** " means, with respect to the representations and warranties of any party, all qualifications or exceptions contained therein based on materiality (including any qualifications related to the presence or absence of a Material Adverse Effect) and all usages of "material," "in all material respects," "in any material respect," "would not be material," "would not reasonably be expected to be material" or similar qualifiers.

" **May-Offer Employees** " has the meaning set forth in Section 4.14(b).

" **May-Offer Employee Side Letter** " means that certain side letter dated as of the date of this Agreement between Seller and Buyer.

" **Metes and Bounds Survey** " has the meaning set forth in Section 6.18.

" **Must-Offer Employees** " has the meaning set forth in Section 4.14(a).

" **NI Noted Exceptions** " has the meaning set forth in Section 6.18(b).

" **Non-assignable Right** " has the meaning set forth in Section 2.08(a).

" **Non - Identified Parcels** " has the meaning set forth in Section 6.18(b).

" **Non-Identified Parcel Alta Survey** " has the meaning set forth in Section 6.18(b).

" **Noted Exceptions** " has the meaning set forth in Section 6.18(a).

" **Owned Real Property** " has the meaning set forth in Section 4.09(a).

" **Performance Bond** " has the meaning set forth in Section 4.16.

" **Permits** " means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances, exemptions, consents or similar rights issued, granted or otherwise authorized by, or required to be obtained from, or registrations required to be made with, Governmental Authorities.

" **Permitted Encumbrances** " means (a) Encumbrances for Taxes, assessments or other governmental charges or levies that are not yet due and payable or that are being contested in good faith by appropriate proceedings and for which adequate reserves are reflected in the Business Financial Statements in accordance with IFRS; (b) statutory Encumbrances of landlords in respect of any Leased Real Property provided for under leases provided or made available to the Buyer and Encumbrances of carriers, warehousemen, mechanics, materialmen, repairmen and other Encumbrances arising in the ordinary course of business that are imposed by operation of Law, to the extent not incurred in connection with the borrowing of money, for amounts not yet due or being contested in good faith by appropriate proceedings and for which adequate reserves are reflected in the Business Financial Statements in accordance with IFRS; (c) Encumbrances incurred or deposits made to a Governmental Authority in connection with a Business Permit; (d) Encumbrances incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance or other types of social security; (e) recorded or unrecorded easements, rights of way, covenants, conditions, restrictions, licenses, reservations, subdivisions and other charges or encumbrances or defects of title of any kind or rights of others for rights of way, utilities and other similar purposes that are not, individually or in the aggregate, material to the relevant asset or property; (f) zoning, building, subdivision, land use, environmental regulations and other similar restrictions or requirements; (g) Encumbrances resulting from any facts or circumstances caused by Buyer or its Affiliates; (h) leases affecting the Owned Real Properties or Leased Real Properties and entered into in the ordinary course of business and set forth on Section 2.01(b) of the Seller Disclosure Schedules; and (i) the Encumbrances set forth in Section 1.01(b) of the Seller Disclosure Schedules.

" **Person** " means any individual, sole proprietorship, partnership, joint venture, corporation, estate, trust, unincorporated organization, association, limited liability company, institution or other entity or organization of any kind or character, including any Governmental Authority.

" **Post-Closing CBA** " has the meaning set forth in Section 6.04(c).

" **Purchase Price** " has the meaning set forth in Section 2.05(a).

" **Purchased Assets** " has the meaning set forth in Section 2.01.

" **Real Property** " means, collectively, the Owned Real Property and the Leased Real Property.

" **Real Property Leases** " has the meaning set forth in Section 4.09(b).

" **Release** " means any actual release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or allowing to escape or migrate into or through the environment.

" **Representative** " means, with respect to any Person, any and all directors, managers, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

" **Retained Names** " has the meaning set forth in Section 2.02(d).

" **Sales Contracts** " has the meaning set forth in Section 2.01(i).

" **Schedule Supplement** " has the meaning set forth in Section 6.03(b).

" **Seller** " has the meaning set forth in the preamble.

" **Seller 401(k) Plan** " has the meaning set forth in Section 4.14(d).

" **Seller Closing Certificate** " has the meaning set forth in Section 7.02(e).

" **Seller Disclosure Schedules** " means the disclosure schedules delivered by Seller to Buyer concurrently with the execution and delivery of this Agreement.

" **Seller Facilities** " means the Columbus Terminal and the Fairborn Plant.

" **Seller Indemnities** " has the meaning set forth in Section 8.03.

" **Seller's Knowledge** " and variations of it refer to all matters actually (and not constructively or by imputation) known to John Miller, Rob Walker, Tom Mancino, Juan Carlos Herrera, John Heffernan, Lillian Deprimo and Susie Mejia (and Buyer agrees that the inclusion of those individuals in this definition does not result in any of them having any personal liability to Buyer or any Affiliate under this Agreement or otherwise).

" **Seller Lease** " has the meaning set forth in Section 4.09(a).

" **Seller Performance Support** " has the meaning set forth in Section 6.16.

" **Significant Contract** " has the meaning set forth in Section 6.01.

" **Survey** " has the meaning set forth in Section 6.18.

" **Tangible Personal Property** " has the meaning set forth in Section 2.01(d).

" **Tax Representations** " has the meaning set forth in Section 8.01.

" **Taxes** " means all (a) federal, state, local, foreign taxes, fees, assessments, duties, levies or other charges of any kind whatsoever, including income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, escheat and unclaimed property obligations, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, and customs duties, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties and (b) any liability in respect of any of the foregoing payable by reason of contract,

assumption, transferee or successor liability, operation of Law, Treasury Regulations Section 1.1502-6(a) or any analogous or similar provision of Law (or any predecessor or successor thereof) or otherwise.

" **Tax Return** " means any return, declaration, report, claim for refund, information return or statement or other document filed or required to be filed with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

" **Third Party Claim** " has the meaning set forth in Section 8.05(a).

" **Title Company** " has the meaning set forth in Section 6.18.

" **Transaction Documents** " means this Agreement, the Assignment and Assumption Agreement and Bill of Sale, Deeds, Assignment and Assumption of Leases, the Transition Services Agreement and the other agreements, instruments and documents required to be delivered at the Closing.

" **Transfer Taxes** " has the meaning set forth in Section 6.11(a).

" **Transferred Agricultural Parcels** " has the meaning set forth in Section 6.22.

" **Transition Marks** " has the meaning set forth in Section 6.15(b).

" **Transition Services Agreement** " has the meaning set forth in Section 3.02(a)(iv).

" **Unpermitted Exceptions** " has the meaning set forth in Section 6.18.

"**Updated Non-Identified Parcel Title Commitment**" has the meaning set forth in Section 6.18(b).

" **WARN Act** " means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses.

" **Water Rights** " means all surface and underground water and water rights, together with all applications for water rights or applications or permits for the use, transfer or change of water rights, ditch and ditch rights, well and well rights, reservoir and reservoir rights, stock or interests in irrigation or ditch companies appurtenant to any of the Real Property and all other rights to water for use at or in connection with any of the Real Property or the exploration for or mining of minerals from any of the Real Property.

## **ARTICLE II PURCHASE AND SALE**

Section 2.01 Purchase and Sale of Assets. Upon the terms and subject to the conditions set forth herein, at the Closing and as of the Effective Time, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase, acquire and accept from Seller, free and clear of all Encumbrances other than Permitted Encumbrances, all of Seller's right, title

and interest in, to and under (or, in the case of leased assets or Contracts or Permits, all rights and interests of Seller in , to and under) the assets, properties, entitlements and rights , solely to the extent that such assets, properties, entitlements and rights exist as of the Closing Date , of every kind and nature, real or personal, tangible or intangible, wherever located (other than the Excluded Assets), which are used or held for use primarily or exclusively in connection with, the Business (collectively, the " **Purchased Assets** " ), including, without limitation, the following:

(a) the Owned Real Property and all of the plants and facilities located thereon (including the Fairborn Plant and the Columbus Terminal) set forth on Section 2.01(a) of the Seller Disclosure Schedules and any other Owned Real Property primarily or exclusively used or held for use in connection with the Business, together with all mineral rights and Water Rights appurtenant to such Owned Real Property, and all buildings, facilities, structures, fixtures and improvements located thereon, and all easements, rights-of-way and other rights and, to the extent owned by Seller, interests incidental thereto;

(b) all Leased Real Property and all of the plants and facilities located thereon set forth on Section 2.01(b) of the Seller Disclosure Schedules;

(c) all on and off road mobile equipment, trucks, tractors and trailers, in each case, used primarily or exclusively at the Seller Facilities (either owned or leased);

(d) all equipment, machinery, computers, servers, tools, repair parts, spare parts, supplies, furniture, fixtures and other tangible personal property located at the Seller Facilities or used, primarily or exclusively in connection with the Business (either owned or leased by Seller, but excluding any Excluded Assets) (the " **Tangible Personal Property** " ), including the Tangible Personal Property listed on Section 2.01(d) of the Seller Disclosure Schedules;

(e) all inventories of raw materials, work in process, finished goods, stores, samples, supplies, packaging materials (subject to Section 6.15 ), fuel and other items treated as inventory by Seller at the Closing Date, in each case to the extent located at the Seller Facilities ( " **Inventory** " );

(f) all Permits issued to or held by Seller in connection with its ownership, possession, occupancy or use of any of the Purchased Assets or the Seller Facilities, or operation of the Business, except to the extent such Permits are not transferable under applicable Law (the " **Business Permits** " );

(g) the Intellectual Property Agreements set forth on Section 4.10(a) (ii) of the Seller Disclosure Schedules, and all Intellectual Property Assets, together with all goodwill associated therewith;

(h) any prepaid rentals, advance payments, deposits, advances and other prepaid items, including prepaid rent, purchase price and deposits with lessors, suppliers and utilities, to the extent relating to any of the other Purchased Assets;

(i) all (i) Contracts with customers of the Business under which Seller derives or expects to derive revenues ( " **Sales Contracts** " ) and all purchase orders and unaccepted bids relating to the sale or possible sale of products to customers or prospective

customers of the Business and (ii) supply agreements, purchase orders and unaccepted bids for supply inputs and raw materials of the Seller with suppliers or prospective suppliers of the Business and other Contracts relating to the Business set forth on Section 2.01(i) of the Seller Disclosure Schedules (collectively, the "**Assigned Contracts**");

(j) originals or, where not permitted to be transferred to Buyer under applicable Law, copies of all books and records relating primarily or exclusively to the Business, or the ownership or operation of the Purchased Assets, including all Assigned Contracts and Real Property Leases, books and records of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, customer lists and correspondence, customer purchasing histories, price lists, distribution lists, supplier lists and correspondence, catalogues, brochures, advertising materials, forms of purchase orders, sales orders and invoices and similar sales and marketing materials, mining records, production data, quality control records and procedures, customer complaints and inquiry files, records and data (including all correspondence with any Governmental Authority), sales material and records (including pricing history, total sales, terms and conditions of sale), internal financial statements and all manuals, data, records and information pertaining to materials, supplies, reserves, production, operations, maintenance, distribution and similar matters, and all reserve reports, engineering reports and studies, environmental and safety compliance and monitoring records and reports, spill response and emergency response plans related to any Real Property, other than books and records set forth in Section 2.02(e) ("**Books and Records**");

(k) the software, websites and related technology used in the Business set forth on Section 2.01(k) of the Seller Disclosure Schedules;

(l) except as set forth on Section 2.01(l) of the Seller Disclosure Schedules, all landline phones and facsimile machines owned by the Seller, and Seller's rights with respect to any landline phones and facsimile machines leased by the Seller, in each case used by Employees in connection with the Business, along with associated numbers;

(m) all rights and Claims against any Person which relate primarily or exclusively to the Purchased Assets, including warranty rights, guaranty rights, indemnification rights, Encumbrances, judgments, causes of action and rights of recovery; provided, however, that the Seller shall retain, and the Buyer shall have no right in respect of, any such rights or Claims against any Person to the extent that they relate to the Excluded Assets or Excluded Liabilities; and

(n) all goodwill associated with the Business.

Section 2.02 Excluded Assets. Other than the Purchased Assets described or referred to in Section 2.01, Buyer expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, any other assets or properties of Seller, and all such other assets and properties shall be excluded from the Purchased Assets (the "**Excluded Assets**"). Without limiting the generality of the foregoing, Excluded Assets include the following assets and properties of Seller or any of its Affiliates:

(a) all cash and cash equivalents, bank accounts and securities of Seller;

(b) all accounts and notes receivable (including any claim or rights of action with respect to accounts and notes receivable) and the right to bill and receive payment for products shipped or delivered and/or services performed prior to the Effective Time by the Seller but unbilled as of the Effective Time;

(c) all leased Employee cars and trucks, subject to Section 6.20;

(d) other than the Intellectual Property Assets, all Intellectual Property of Seller, including, (i) accounting and information management systems software used by the Business, including all systems identified on Section 2.02(d)(i) of the Seller Disclosure Schedules, and any other software used by the Business, other than the software set forth in Section 2.01(k) of the Seller Disclosure Schedules, (ii) the trademarks and names listed in Section 2.02(d)(ii) of the Seller Disclosure Schedules and any variation of the foregoing, and the goodwill connected therewith and symbolized thereby (collectively, the " **Retained Names** "), (iii) the Intellectual Property Registrations set forth on Section 4.10(a)(i) of the Seller Disclosure Schedules, and (iv) any licenses or other agreements related to such Intellectual Property;

(e) the corporate seals, organizational documents, minute books, stock books, Tax Returns, books of account or other general corporate records of Seller, all sales and pricing policies and practices, strategic plans, marketing and promotional surveys, materials and research, all manuals, data, records and information pertaining to transportation, research and development (other than such reports, studies or documents expressly included in Section 2.01(j)), all employee-related or employee benefit-related files or records related to employees of Seller other than the Hired Employees, and any other books and records which Seller is prohibited from disclosing or transferring to Buyer under applicable Law;

(f) other than the Tangible Personal Property referred to in Section 2.01(d) and the software identified on Section 2.01(k) of the Seller Disclosure Schedules, all equipment, machinery, computers (whether owned or leased), servers, tools, repair parts, spare parts, supplies, furniture, fixtures and other tangible personal property, software, websites and related information technology, in each case not primarily or exclusively related to the operation of the Purchased Assets and located at the Seller Facilities, and any leases relating to such equipment or other tangible personal property so leased by the Seller ;

(g) all Contracts set forth on Section 2.02(g) of the Seller Disclosure Schedules;

(h) all Contracts that are not Assigned Contracts and any and all rights thereunder;

(i) all insurance policies and all rights to applicable claims and proceeds thereunder, including any policy or coverage relating to the Purchased Assets or the Business;

(j) other than the Purchased Assets, all assets, properties and rights of every kind and nature, real or personal, tangible or intangible used or held by Seller or any of its Affiliates in its businesses or in its ownership, possession, occupancy, use or management of any assets related thereto;



(k) all Employee Plans and all rights, assets, properties and contracts with respect to Employee Plans;

(l) all Tax assets including refunds, rebates or prepayments of Taxes (or rights thereto), for taxable periods (including portions thereof) ending on or before the Effective Time;

(m) all rights to any Action or Claim of any nature (i) available to or being pursued by Seller, whether arising by way of counterclaim or otherwise, in each case whether or not related to the Business, the Purchased Assets, or the Assumed Liabilities, or (ii) against any third party arising out of Seller's ownership, use or possession of any of the Purchased Assets on or before the Closing Date or against any Person relating to any of the Excluded Assets or Excluded Liabilities (but excluding Claims of the type set forth before the proviso in Section 2.01(m));

(n) all rights which accrue or will accrue to Seller or any of its Affiliates under the Transaction Documents;

(o) all intercompany receivables and other rights pursuant to any agreement or Contract between Seller, or any of its Affiliates, on the one hand, and any of their respective Affiliates, on the other hand;

(p) any outstanding amounts owing to the Business from other businesses of Seller or its Affiliates;

(q) the shares of stock or other ownership interests in any Affiliates of Seller;

(r) all correspondence and documents prepared by Seller or any of its Affiliates related to Buyer or any third party bid to purchase any of the assets of the Business;

(s) the Fairborn CKD Landfill #6 and all other real property of the Seller other than the Leased Real Property and Owned Real Property;

(t) all Permits other than the Business Permits;

(u) any (i) personnel records with respect to the Hired Employees that Seller or any of its Affiliates is required by Law to maintain in its possession, (ii) Books and Records relating to any Purchased Asset or Assumed Liability that Seller or any of its Affiliates is required by Law to maintain in its possession and (iii) Books and Records to the extent relating to any other Excluded Assets and not the Purchased Assets;

(v) any and all guarantees, warranties, indemnities and similar rights (i) in respect of the Business or a Purchased Asset for the period prior to the Closing Date (but excluding Claims of the type set forth before the proviso in Section 2.01(m)) and (ii) in respect of any other Excluded Asset, arising on or after the Closing Date;

(w) all assets and rights relating primarily or exclusively to Seller ' s businesses other than the Business; and

(x) the assets, properties and rights specifically set forth on Section 2.02(x) of the Seller Disclosure Schedules.

Section 2.03 Assumed Liabilities. Subject to the terms and conditions set forth herein, Buyer shall assume pursuant to the Assignment and Assumption Agreement and Bill of Sale and agree to pay, perform and discharge when due solely the following liabilities and obligations of Seller arising out of or relating to the Business or the Purchased Assets after the Effective Time, other than the Excluded Liabilities (collectively, the " **Assumed Liabilities** "):

(a) all leases of real and personal property included in the Purchased Assets, to the extent that such obligations relate to and are required to be performed during periods after the Effective Time;

(b) all unperformed and uncompleted Contracts, supply agreements, purchase orders and unaccepted bids for supply of product relating to the Business, in each case, which will be assigned to the Buyer in accordance with Section 2.01, and to the extent that such obligations relate to and are required to be performed during periods after the Effective Time;

(c) all obligations and liabilities arising under or relating to the Assigned Contracts, to the extent that such obligations relate to and are required to be performed during periods after the Effective Time;

(d) all accrued but unused time off entitlements, including vacation days, for Hired Employees as of the Closing Date, in accordance with Section 6.04(c);

(e) all obligations and liabilities under Business Permits, governmental approvals and consent decrees (other than the Consent Decree, which is addressed in Section 2.03(q)), in each case, which will be assigned to the Buyer in accordance with Section 2.01, subject to the terms and conditions thereof, and to the extent that such obligations relate to and are required to be performed during periods after the Effective Time;

(f) all environmental liabilities and obligations with respect to the Purchased Assets to the extent arising from acts or omissions on or after the Effective Time either under any Environmental Law or under any contract or other arrangement that will be assigned to the Buyer in accordance with Section 2.01 (including those arising as a result of the transportation or disposal or both after the Effective Time of hazardous materials regulated by Environmental Law for disposal or treatment);

(g) all reclamation obligations associated with the Purchased Assets arising prior to or after the Effective Time, other than those reclamation obligations required by a Law, Permit or Governmental Order to have been performed by a date certain prior to the Closing Date and not performed by such date;

(h) except as specifically provided in Section 6.04, all liabilities and obligations of Buyer or its Affiliates relating to employee benefits, compensation or other arrangements with respect to any Hired Employee after the Effective Time ;

(i) all liabilities and obligations for (i) Taxes relating to the Business or the Purchased Assets for any taxable period or portion thereof beginning (or deemed to begin) after the Effective Time (in the case of a taxable period that begins before the Closing Date and ends after the Closing Date, determined in a manner consistent with Section 2.09.) and (ii) one-half (50%) of any Transfer Taxes described in Section 6.11(a);

(j) all liabilities and obligations arising out of or relating to any products manufactured by Buyer at, or distributed or sold by Buyer from, the Seller Facilities after the Effective Time;

(k) all liabilities and obligations under any deed or other instruments relating to Seller's ownership interests in the Owned Real Property included in the Purchased Assets to be paid or performed or otherwise relating to periods after the Effective Time;

(l) any and all liabilities and obligations to the extent arising out of or relating to violations by Buyer of, and/or non-compliance by Buyer with, any Laws relating to occupational safety and health, including the Occupational Safety and Health Administration Act of 1970, Federal Mine Safety and Health Act of 1977, or those issued by the Mine Safety and Health Administration (MSHA), after the Effective Time;

(m) a portion of any liabilities or obligations in respect of rebates, discounts or allowances payable to any customer of the Seller arising under any Sales Contracts in accordance with the terms specifically set forth in the applicable Sales Contracts, to be transferred to Buyer, as determined based on pro ration in accordance with the applicable method set forth in Section 2.09 of the Seller Disclosure Schedules;

(n) all other liabilities and obligations arising out of or relating to Buyer's ownership or operation of the Business and the Purchased Assets on or after the Effective Time, including all liabilities arising out of or in connection with product liability, claims for personal injuries, property damage or losses, in each case, that involve the use of any product sold or otherwise disposed of by Buyer or any of its Affiliates in connection with the Business or the Purchased Assets after the Effective Time, except to the extent such liabilities or obligations are the express responsibility of Seller pursuant to this Agreement;

(o) all other liabilities specifically assumed by Buyer under the Transaction Documents;

(p) all liabilities and obligations of Seller set forth on Section 2.03(p) of the Seller Disclosure Schedules;

(q) all liabilities and obligations under the Consent Decree that the Buyer expressly assumes pursuant to Section 6.06(d); and

(r) any Taxes, fees, penalties or other liabilities attributable to pre-Closing periods arising out of the failure of any portion of the Transferred Agricultural Parcels to continue to meet the requirements to remain in the CAUV Program following the Effective Time.

Section 2.04 Excluded Liabilities. Notwithstanding anything to the contrary contained in this Agreement, Buyer shall not assume and shall not be responsible to pay, perform or discharge (i) any debts, liabilities or obligations of the Seller of any kind, character or description whatsoever (whether absolute or contingent, known or unknown, asserted or unasserted) other than the Assumed Liabilities or (ii) any of the following debts, liabilities or obligations of Seller, whether or not the same are disclosed to Buyer in or pursuant to this Agreement (any such debts, liabilities or obligations described in clause (i) or (ii) above being collectively referred to as the "**Excluded Liabilities** "):

(a) any liabilities or obligations arising out of or relating to Seller's ownership or operation of the Business and the Purchased Assets prior to the Effective Time;

(b) any debts, liabilities or obligations relating to, or occurring or existing in connection with, or arising out of, the Excluded Assets, whether before, on or after, the Effective Time;

(c) all indebtedness of the Seller, including all indebtedness for borrowed money, including principal and interest, whether incurred before, on or after the Effective Time;

(d) all liabilities of the Seller arising from or relating to any litigation that is currently pending or threatened against or affecting the Seller or its properties or assets or that arise from or relate to actions, events, occurrences or developments that first occurred on or prior to the Closing (whether or not covered by insurance), including all litigation that relates to the Business or Purchased Assets and is pending as of the Effective Time;

(e) except as otherwise provided in Section 2.03(i), any liabilities or obligations for (i) any Taxes relating to the Business, the Purchased Assets or the Assumed Liabilities, (ii) any Taxes of the Seller, and (iii) one-half (50%) of any Transfer Taxes described in Section 6.11(a) (collectively, "**Excluded Taxes** "); for the avoidance of doubt, Excluded Taxes shall not include Taxes arising under Section 2.03(r);

(f) except as provided in Section 6.04, any liabilities or obligations of Seller relating to or arising out of (i) the employment, or termination of employment, of (x) any Employee prior to or at the Effective Time, and (y) any Employee that is not a Hired Employee prior to, at and after the Effective Time, (ii) workers' compensation claims of any Employee which relate to events occurring prior to or at the Effective Time, or (iii) any multiemployer plan (as defined in ERISA §3(37)) or any multiple employer welfare arrangement (as defined in ERISA §3(40)), including any of the items set forth on Section 4.14(f) of the Seller Disclosure Schedules;

(g) a portion of any liabilities or obligations in respect of rebates, discounts or allowances payable to any customer of the Seller arising under any Sales Contracts,

in accordance with the terms specifically set forth in the applicable Sales Contracts, to be transferred to Buyer, as determined based on pro ration in accordance with the applicable method set forth in Section 2.09 of the Seller Disclosure Schedules;

(h) any liabilities arising out of or in connection with (A) any product or service warranties or guarantees given by any Seller in connection with or (B) Claims for personal injuries, property damage or losses that involve, any product sold, delivered or otherwise disposed of, or any service performed or delivered, by the Seller prior to the Effective time;

(i) any debts, liabilities or obligations of the Seller arising out of or relating to the use or exploitation of rights and interests in any Intellectual Property;

(j) any liabilities or obligations of the Seller arising from any breach or violation by the Seller of the terms and provisions of any Contract, Permit or lease;

(k) any Claims or other rights pursuant to any agreement or Contract between Seller, or any of its Affiliates, on the one hand, and any of their respective Affiliates, on the other hand;

(l) any liabilities or obligations arising from or relating to a breach or violation by the Seller of any Law or Governmental Order applicable to Seller or its businesses;

(m) all environmental liabilities and obligations with respect to the Business to the extent arising from acts or omissions prior to the Effective Time either under any Environmental Law or under any contract or other arrangement (including those arising as a result of the transportation or disposal or both, prior to the Effective Time, of hazardous materials regulated by Environmental Law for disposal or treatment);

(n) any brokers' or finders' fees or similar fees or expenses incurred by the Seller relating to this Agreement or the Transaction Documents or any of the transactions contemplated hereby or thereby;

(o) any debts, liabilities or obligations of Seller arising under or incurred in connection with the negotiation, preparation, investigation, execution, delivery and performance of this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, including fees and expenses of counsel, accountants, consultants, advisers and others;

(p) all other liabilities specifically assumed by Seller under the Transaction Documents;

(q) any liabilities or obligations set forth on Section 2.04(q) of the Seller Disclosure Schedules; and

(r) any debt, liability or obligation of any Affiliates of the Seller (whether or not similar to any of the categories of debts, liabilities or obligations of the Seller described above).

Section 2.05 Purchase Price.

(a) The aggregate purchase price for the Purchased Assets, subject to adjustment provided for in Section 2.05(b), shall be \$400,000,000.00 (as adjusted pursuant to Section 2.05(b) and Section 2.06, the "**Purchase Price**"), plus the assumption of all of the Assumed Liabilities. The Purchase Price shall be paid by wire transfer of immediately available funds at Closing to an account designated in writing by Seller to Buyer no later than two Business Days prior to the Closing Date.

(b) Not less than three (3) Business Days prior to the Closing Date, Seller shall deliver to Buyer a statement setting forth its good faith estimate of the book value of the Adjustable Inventory (the "**Estimated Adjustable Inventory Value**"), together with a report setting forth detailed supporting calculations, in accordance with the inventory valuation principles and methodologies set forth in Exhibit D. The Purchase Price payable at Closing shall be (i) to the extent that the Estimated Adjustable Inventory Value is less than \$6,000,000, decreased, on a dollar-for-dollar basis, by the amount of such shortfall, or (ii) to the extent that the Estimated Adjustable Inventory Value is greater than \$7,000,000, increased, on a dollar-for-dollar basis, by the amount of such excess.

Section 2.06 Post-Closing Adjustment – Inventory.

(a) Within 60 days after the Closing Date, Buyer will (i) determine (A) the book value of Adjustable Inventory as of the Effective Time (the "**Adjustable Inventory Value**") and (B) the amount by which that determination of the Adjustable Inventory Value is more or less than the Estimated Adjustable Inventory Value (the difference being the "**Adjustable Inventory Value Adjustment**") and (ii) deliver to Seller a report setting forth in detail the Adjustable Inventory Value Adjustment and detailed supporting calculations in accordance with the inventory valuation principles and methodologies set forth in Exhibit D (the "**Adjustable Inventory Value Report**"). The post-Closing determination of Adjustable Inventory Value will be based on the actual Adjustable Inventory as of the Effective Time, determined based upon the Estimated Adjustable Inventory Value as adjusted for purchases, production and sales from the time the Estimated Adjustable Inventory Value was calculated until the Effective Time and will conform in all respects to the inventory valuation principles and methodologies set forth in Exhibit D. If the Adjustable Inventory Value Adjustment is a positive amount, such amount will be paid by Buyer to Seller, and if the Adjustable Inventory Value Adjustment is a negative amount, such amount will be paid by the Seller to Buyer, each as provided in Section 2.06(d) below.

(b) From and after the date upon which Seller delivers its report and calculations pursuant to Section 2.05(b), each party, at the other party's request, will make available to the other party and its agents and Representatives the books, records and worksheets supporting, and the personnel who prepared, any calculation or report provided for in Section 2.05 or Section 2.06. Each party will also discuss with the other party during the time period for preparing such report, as requested by the other party, the status of any such calculation or report, including particular adjustments that it has identified. Seller's designated representative for purposes of this Section 2.06 is John Heffernan who is currently Vice President - Business Development, and Buyer's designated representative for purposes of this Section 2.06 is Craig

Kesler who is currently Executive Vice President - Finance and Administration and Chief Financial Officer. The contact information for such persons is:

John Heffernan  
929 Gessner, Suite 1900

Houston, TX 77024

Tel: (713) 722-6078

[johnv.heffernan@cemex.com](mailto:johnv.heffernan@cemex.com)

Craig Kesler

3811 Turtle Creek Blvd.

Dallas, TX 75219-4487

Tel: (214) 432-2013

[ckesler@eaglematerials.com](mailto:ckesler@eaglematerials.com)

The communications between such persons in connection with this Section 2.06 may be given by email, fax, registered mail, overnight courier or any other comparable means, but any such communication will be deemed received only upon actual receipt. Notice of any dispute that they cannot resolve and changes in such contact person and contact information will only be made pursuant to Section 10.02.

(c) If Seller does not (i) give written notice to Buyer of an objection to the Adjustable Inventory Value Report, together with a reasonably detailed description of any changes that Seller proposes to be made to the calculation of Adjustable Inventory Value and detailed supporting calculations, within 30 days after Seller's receipt of such report, or (ii) notify Buyer at any time within such 30-day period that Seller accepts the Adjustable Inventory Value Report, the Adjustable Inventory Value Report will become binding in its entirety at the end of such 30-day period. If Seller has notified Buyer that Seller accepts the Adjustable Inventory Value Report within such 30-day period, the Adjustable Inventory Value Report will become binding in its entirety as of the date of such notification. If Seller objects to any part of the Adjustable Inventory Value Report within such 30-day period, and the Seller and Buyer are unable to agree as to all disputed parts within 30 days after Seller's objection is received by Buyer, then (x) the agreed-upon parts (if any) of the Adjustable Inventory Value Report will become binding on the parties at the end of the 30-day period after Seller's objection is received by Buyer and paid in accordance with Section 2.06(d) and (y) the disputed parts will be resolved pursuant to the binding dispute resolution process as provided in Section 2.06(e).

(d) If the Adjustable Inventory Value Report delivered to Seller has become binding in whole and indicates that Buyer is to make a payment to Seller, then such payment will be made within seven (7) days after the Adjustable Inventory Value Report

becomes binding as provided in Section 2.06(c). If the Adjustable Inventory Value Report as delivered to Seller has become binding in whole and indicates that Seller is to make a payment to Buyer, then such payment will be made within seven (7) days after the Adjustable Inventory Value Report becomes binding as provided in Section 2.06(c). If the Adjustable Inventory Value Report is disputed, in whole or in part, by Seller in accordance with Section 2.06(c), then (i) payment of amounts related to the undisputed parts that have become binding will be made in accordance with the foregoing and (ii) payment of amounts related to each disputed part will be made only when the final Adjustable Inventory Value Adjustment is determined in accordance with Section 2.06(e). For the avoidance of doubt, any disputes with respect to the Adjustable Inventory Value Report will defer the payment only of amounts related to the disputed parts. All payments pursuant to this Section 2.06(d) will be by wire transfer in accordance with the recipient's instructions.

(e) Any disputes regarding the Adjustable Inventory Value Report will be submitted to and settled by the binding dispute resolution process set forth in this Section 2.06(e). The dispute will be (a) submitted for resolution to a partner in the firm of PricewaterhouseCoopers LLP, who has at least 10 years' experience in resolving disputes and who is designated in writing by another partner of the firm (the designated partner, the "**Accountant**"), (b) conducted in accordance with the following provisions of this Section 2.06(e), and (c) initiated by either Seller or Buyer sending a notice to the other electing to resolve the dispute in accordance with this Section 2.06(e). The Accountant will undertake to complete the dispute resolution and issue his written report within 60 days after he receives the notice referred to above (the "**Dispute Resolution Period**"). Each of Seller and Buyer will promptly submit to the Accountant all materials requested by the Accountant, promptly respond to questions asked by the Accountant, so that the Accountant can issue his report on or before the end of the Dispute Resolution Period. The Accountant may, if he or she elects, hold a one-day hearing at the Accountant's offices. The Accountant (who will act as an expert and not as an arbitrator) will undertake in good faith to issue a written report (which will briefly summarize the reasons for the determination) by the end of the Dispute Resolution Period. The Accountant's report will set forth a determination only with respect to the disputed amounts (and for avoidance of doubt, will not include any other finding or award), and will be based solely on the information made available to the Accountant (to the extent the Accountant considers appropriate) and the terms of this Agreement (and, for the avoidance of doubt, the Accountant will not vary the terms of this Agreement, but rather will strictly apply them to the dispute and without limiting or being limited by the foregoing, will not employ any means of calculating the components of Adjustable Inventory Value which are different from the principles and methodologies set forth in Exhibit D, to the extent that such means are inconsistent with or not provided for in Exhibit D). The decision for each disputed amount must be within the range of values assigned to each such item in the calculation of the Adjustable Inventory Value Adjustment and value attributable thereto by Seller in its objection to the Adjustable Inventory Value Adjustment. The decision of the Accountant will be final and binding on the parties and may be entered in any court having jurisdiction, with payment being due from Seller or Buyer, as applicable, to the other party within 10 days after the issuance of the decision. The Accountant will not award costs or expenses (including attorneys' fees), or damages, interest or penalties to any party. Each of the Buyer and the Seller will pay 50% of the Accountant's fees and expenses, but otherwise each party will pay its own costs and expenses of the dispute resolution process of this Section 2.06(e).



Section 2.07 Allocation of the Purchase Price. Within ninety days (90) after the Closing Date, Buyer shall deliver to Seller a schedule allocating the Purchase Price (including any Assumed Liabilities treated as consideration for the Purchased Assets for Tax purposes) (the " **Allocation Schedule** "). The Allocation Schedule shall be prepared in accordance with Section 1060 of the Code. The Allocation Schedule shall be deemed final, and shall be conclusive and binding on all parties, unless Seller delivers to Buyer a written notice identifying each item reflected in the Allocation Schedule to which Seller takes exception within 30 days after delivery of the Allocation Schedule to Seller (such items " **Allocation Objections** ") (it being understood that any amounts not disputed by Seller shall be final and binding). Upon delivery of the Allocation Objections, if any, Seller and Buyer shall negotiate in good faith to resolve such dispute; *provided, however*, that if Seller and Buyer are unable to resolve any dispute with respect to the Allocation Schedule within 60 days after the delivery of the Allocation Schedule, then Seller and Buyer shall each be entitled to adopt their own positions regarding the allocation of the Purchase Price among the Purchased Assets for applicable tax purposes. If the parties agree on the Allocation Schedule (or such schedule is deemed accepted), Seller and Buyer agree to file their respective IRS Forms 8594 and all federal, state and local Tax Returns in accordance with the Allocation Schedule.

Section 2.08 Non-assignable Rights.

(a) Notwithstanding anything to the contrary in this Agreement, and subject to the provisions of this Section 2.08, to the extent that the sale, assignment, transfer, conveyance or delivery, or attempted sale, assignment, transfer, conveyance or delivery, to Buyer of any Assigned Contract or Business Permit (i) would result in a violation of applicable Law or (ii) would require the consent, authorization, approval or waiver of a Person who is not a party to this Agreement or an Affiliate of a party to this Agreement (including any Governmental Authority), and such consent, authorization, approval or waiver shall not have been obtained prior to the Closing, this Agreement shall not constitute a sale, assignment, transfer, conveyance or delivery, or an attempted sale, assignment, transfer, conveyance or delivery, of such Assigned Contract or Business Permit (each, a " **Non-assignable Right** "); *provided, however*, that, subject to the satisfaction or waiver of the conditions contained in Article VII, the Closing shall occur notwithstanding the foregoing without any adjustment to the Purchase Price on account thereof. Following the Closing, Seller and Buyer shall use commercially reasonable efforts, and cooperate with each other, to obtain, any such required consent, authorization, approval or waiver or (if required in order to carry out the provisions of this Section 2.08) any release, substitution or amendment required to novate any Non-assignable Rights so that they can effectively be transferred to Buyer as promptly as reasonably practicable after the Closing upon the terms set forth in this Agreement (without regard to the provisions of this Section 2.08); *provided, however*, that neither Seller nor Buyer shall be required to pay any consideration therefor. Once such consent, authorization, approval, waiver, release, substitution or amendment is obtained, Seller shall sell, assign, transfer, convey and deliver to Buyer the relevant Non-assignable Right to which such consent, authorization, approval, waiver, release, substitution or amendment relates for no additional consideration. Applicable Transfer Taxes in connection with such sale, assignment, transfer, conveyance or license shall be borne by the parties in accordance with Section 6.11(a).

(b) To the extent that any Non-Assignable Right cannot be transferred to Buyer following the Closing pursuant to this Section 2.08, Buyer and Seller shall use reasonable best efforts to implement such arrangements (such as subleasing, sublicensing or subcontracting) as shall be determined by the parties in order to provide to them the economic and, to the extent permitted under applicable Law, operational equivalent of the transfer of such Non-assignable Right to Buyer as of the Closing and the performance by Buyer of the Assumed Liabilities with respect thereto. Under any such arrangements, unless otherwise agreed by the parties, Seller shall continue to hold legal title to such Non-assignable Right for the exclusive benefit of Buyer and Buyer shall, as agent or subcontractor for Seller, pay, perform and discharge fully the Assumed Liabilities thereunder from and after the Closing Date. In addition, to the extent permitted under applicable Law, Seller shall, at Buyer's expense, hold in trust for and pay to Buyer promptly upon receipt thereof, such Non-Assignable Right and all income, proceeds and other monies received by Seller to the extent related to such Non-Assignable Right in connection with the arrangements under this Section 2.08. Notwithstanding anything herein to the contrary, the provisions of this Section 2.08 shall not apply to any consent or approval required under any antitrust, competition or trade regulation Law, which consent or approval shall be governed by Section 6.06.

Section 2.09 Pro Ration. As soon as reasonably practicable following the Closing Date (and, to the extent necessary, from time to time thereafter), Buyer shall deliver to Seller a statement setting forth all (i) gas, heat, water, sewage, electricity, trash removal, telephone, internet and other utilities, (ii) rebates, discounts or allowances payable to any customer or arising under any Sales Contracts transferred to Buyer and (iii) any ad valorem and property Taxes, in each case relating to the Business with respect to periods (or portions thereof) prior to the Closing which were not settled at Closing and are to be paid by Seller or Buyer (as the case may be) to the other party pursuant to this Section 2.09, together with reasonable supporting documentation. The amounts referred to in clauses (i) through (iii) above shall be apportioned between the Buyer and the Seller on a pro rata basis based on the Closing Date and the number of days in the relevant determination period. Each statement to be delivered by Buyer pursuant to this Section 2.09 shall also set forth a calculation of the net amount payable by the Seller to the Buyer, or by the Buyer to the Seller, in order to give effect to such apportionment for all amounts covered by such statement. The net amount payable by the Buyer or the Seller, as applicable, shall be paid by the Buyer or the Seller (as applicable) to the other party within thirty days after the delivery of the statement referred to above.

### ARTICLE III CLOSING

Section 3.01 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement shall take place at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Square, New York, NY 10036 on (a) the second Business Day following the satisfaction or waiver of the conditions to Closing set forth in Article VII (other than those conditions that by their nature can only be satisfied at the time of Closing, but subject to the satisfaction of such conditions), which date shall not be earlier than fifteen (15) days after the delivery of all Identified Parcel Commitments and Non-Identified Parcel Commitments by Seller to Buyer in accordance with Section 6.18, or (b) at such other place, time or date as Seller and Buyer may agree in writing (the "**Closing Date**"). The

closing of the transactions contemplated by this Agreement (the " **Closing** " ) shall be effective as of the Effective Time.

Section 3.02 Closing Deliverables.

(a) At the Closing, Seller shall deliver to Buyer the following:

(i) a counterpart to the assignment and assumption agreement and bill of sale in the form set forth in Exhibit A hereto (the " **Assignment and Assumption Agreement and Bill of Sale** "), duly executed by Seller;

(ii) with respect to each parcel of Owned Real Property, a limited warranty deed in the form of Exhibit B, as applicable for each such parcel of Owned Real Property, as set forth in Exhibit B hereto (each, a " **Deed** "), each duly executed and notarized by Seller;

(iii) with respect to each Real Property Lease, a counterpart of the Assignment and Assumption of Lease substantially in the form set forth in Exhibit C (each, an " **Assignment and Assumption of Lease** "), duly executed by Seller and, if necessary, Seller's signature shall be witnessed and/or notarized;

(iv) a counterpart to the transition services agreement, in the form set forth in Exhibit E hereto (the " **Transition Services Agreement** "), duly executed by Seller;

(v) copies of all consents, authorizations, approvals or waivers obtained by Seller from any third parties in connection with the transactions contemplated by this Agreements;

(vi) releases of Encumbrances evidencing the discharge and removal of all Encumbrances on or affecting the Purchased Assets, other than Permitted Encumbrances;

(vii) the Seller Closing Certificate;

(viii) a certificate of non-foreign status of Seller, in substantially the form attached hereto as Exhibit F, which meets the requirements of Treasury Regulations Section 1.1445-2(b);

(ix) a receipt for the Purchase Price (in the amount paid at Closing), duly executed by the Seller;

(x) Identified Parcel title policies for each Identified Parcel (which may be in the form of a binding obligation from Title Agent to issue such policy in the form of a mark-up of the Identified Parcel Title Commitment) in accordance with the Identified Parcel Title Commitment insuring Buyer's fee simple title to the Identified Parcels as of the Closing

Date including the mineral estate and subject only to Permitted Encumbrances and items deemed accepted by Buyer, in such amounts as Seller and Buyer reasonably determine to be the value of the real property insured thereunder (“ **Identified Parcel Title Policy** ”);

(xi) Non-Identified Parcel Title Commitments to receive title policies after Closing insuring Buyer’s fee simple title to the Non-Identified Parcels;

(xii) ALTA/NSPS Land Title Surveys for the Identified Parcels;

(xiii) Metes and Bounds Surveys for the Non-Identified Parcels;

(xiv) a list of all Employees who are terminated involuntarily by Seller for any reason during the 90 days prior to the Closing Date, including each such employee’s last known address; and

(xv) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement.

(b) At the Closing, Buyer shall deliver to Seller the following:

(i) the Purchase Price (as adjusted pursuant to Section 2.05(b)), but without giving effect to any post-closing adjustment to be made pursuant to Section 2.06 ) by wire transfer of immediately available funds;

(ii) a counterpart to the Assignment and Assumption Agreement and Bill of Sale, duly executed by Buyer;

(iii) with respect to each Real Property Lease, a counterpart of the Assignment and Assumption of Lease, duly executed by Buyer and, if necessary, Buyer's signature shall be witnessed and/or notarized;

(iv) a counterpart to the Transition Services Agreement, duly executed by Buyer;

(v) the Buyer Closing Certificate; and

(vi) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Seller as may be required to give effect to this Agreement.

**ARTICLE IV**  
**REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as set forth in the Seller Disclosure Schedules, Seller represents and warrants to Buyer that the statements contained in this Article IV are true and correct as of the date hereof as follows:

Section 4.01 Organization and Qualification of Seller. Seller is a limited liability company duly organized, validly existing and in good standing under the Laws of the state of Delaware and has all necessary entity power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as currently conducted. Section 4.01 of the Seller Disclosure Schedules sets forth each jurisdiction in which Seller is licensed or qualified to do business in connection with the Business, and Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of the Purchased Assets or the operation of the Business as currently conducted makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not have a Material Adverse Effect.

Section 4.02 Authority of Seller. Seller has all necessary entity power and authority to enter into this Agreement and the other Transaction Documents to which Seller is or will be a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any other Transaction Document to which Seller is or will be a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite entity action on the part of Seller and, if required, its equity owners. This Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). When each other Transaction Document to which Seller is or will be a party has been duly executed and delivered by Seller (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Seller enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 4.03 No Conflicts; Consents. The execution, delivery and performance by Seller of this Agreement and the other Transaction Documents to which it is or will be a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) result in a violation or breach of any provision of the certificate of formation or operating agreement of Seller; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller, the Business or the Purchased Assets; or (c) require the consent, notice or other action by any Person under, conflict with, result in a

violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, or result in the acceleration of or loss of rights under or create in any party the right to accelerate, terminate, modify or cancel any Contract or Business Permit to which Seller is a party or by which Seller or the Business is bound or to which any of the Purchased Assets are subject (including any Assigned Contract); or (d) result in the creation or imposition of any Encumbrance on the Purchased Assets other than a Permitted Encumbrance; except in the cases of clauses (b) and (c), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a Material Adverse Effect. No consent, approval, Permit, Governmental Order, declaration or filing or registration with, or notice to, any Governmental Authority is required by or with respect to Seller in connection with the execution and delivery of this Agreement or any of the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, except for such filings as may be required under the HSR Act and as set forth in Section 4.03 of the Seller Disclosure Schedules and such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which, if not obtained, would not, individually or in the aggregate, have a Material Adverse Effect.

Section 4.04 Financial Statements . Attached as Section 4.04 of the Seller Disclosure Schedules are true and correct copies of (i) funds employed statements of the Business as of December 31, 2014 and December 31, 2015, and for the six month period ended June 30, 2016, and (ii) unaudited summary statements of EBITDA for the operations of the Business for the years ended December 31, 2014 and December 31, 2015, and for the six month period ended June 30, 2016 (the foregoing are collectively the "**Business Financial Statements** "). The Business Financial Statements were prepared from Seller's books and records for the Business on a pro-forma basis in accordance with the principles set forth in Section 4.04 of the Seller Disclosure Schedules and may not necessarily reflect what the results of operations and financial position of the Business taken as a whole would have been had the Business been operated on a stand-alone basis during the periods presented, but subject to the foregoing and except as set forth in Section 4.04 of the Seller Disclosure Schedules, the Business Financial Statements present fairly on a summary basis in all material respects and in accordance with the International Financial Reporting Standards as stated in Section 4.04 of the Seller Disclosure Schedules as to each of the Business Financial Statements, the financial position of the operations of the Business taken as a whole and the results of the operations of the Business taken as a whole as of the dates and for the periods (as applicable) specified therein.

Section 4.05 Absence of Certain Changes, Events and Conditions . Except as expressly contemplated by this Agreement or as set forth on Section 4.05 of the Seller Disclosure Schedules, from June 30, 2016 to the date hereof, Seller has operated the Business in the ordinary course of business in all material respects and there has not been (a) any sale, assignment, transfer or other disposition of any property or asset relating to the Business having a value in excess of \$100,000 or any relocation of any such property or asset from the Seller Facilities to any other location, other than (i) any Excluded Assets or (ii) any Inventory sold to third parties in the ordinary course of business; (b) any Encumbrance (other than any Permitted Encumbrance) created on or arising with respect to any material property or asset relating to the Business, other than any Excluded Assets; (c) any substantial damage, destruction or loss or casualty loss (whether or not insured against) affecting any property or asset relating to the Business having a value in excess of \$100,000, other than the Excluded Assets; (d) any

cancellation by the Seller of any material debt or waiver of any material Claim or right of value relating solely to the Purchased Assets; (e) any failure to pay the debts, Taxes and other obligations of the Business when due; ( f ) any transfer or relocation of any employees whose services were performed primarily or exclusively in connection with the Business to other facilities or sites operated by Seller or its Affiliates; or ( g ) any increase in the compensation paid or payable, whether pursuant to a Benefit Plan or otherwise, to any of the Business Employees, or any increase in any payment or commitment, whether pursuant to a Benefit Plan or otherwise, for the payment of any bonus, additional compensation, service award, welfare, pension, retirement, termination or severance benefit to any Business Employee .

Section 4.06 Material Contracts .

(a) Section 4.06(a) of the Seller Disclosure Schedules lists the Contracts, as of the date of this Agreement, that are to be transferred to Buyer pursuant to Section 2.01 (together with the leases listed in Section 4.09(b) of the Seller Disclosure Schedules and the Intellectual Property Agreements listed in Section 4.10(a) (ii) of the Seller Disclosure Schedules, collectively, the " **Material Contracts** ").

(b) Seller has made available to Buyer a true, correct and complete copy of each of the Material Contracts (including all amendments and modifications thereto). Each of the Material Contracts (i) has been duly and validly executed by Seller and, to Seller's Knowledge, each of the other parties thereto, (ii) is in full force and effect and (iii) constitutes a valid, legal and binding obligation of Seller and, to Seller's Knowledge, each of the other parties thereto, enforceable against each of them in accordance with its terms. Seller has not waived, released or relinquished any material rights or remedies arising under any of the Material Contracts.

(c) Seller is not, and, to Seller's Knowledge, no other party to any Material Contract is, in material breach of, or default under, any Material Contract, no written notice of default, defense, offset, counterclaim, termination, cancellation or acceleration has been received by Seller with respect thereto. As of the date hereof, to Seller's Knowledge, there is no written threat to cancel any such Material Contract. As of the date hereof, no party has repudiated any Material Contract, and there are no disputes with respect to any Material Contract nor any agreements or understandings (whether written or oral) that modify or affect the terms thereof or the course of performance thereunder that have not been made available to Buyer as contemplated in paragraph (b) above.

Section 4.07 Title to Tangible Personal Property . Seller has good and valid title to, or a valid and subsisting leasehold interest in, the Purchased Assets, free and clear of Encumbrances except for Permitted Encumbrances. All leases of properties or assets included in the Purchased Assets are valid, subsisting and effective in accordance with their respective terms, and Seller enjoys peaceful possession of all such properties and assets. Upon the sale, conveyance, transfer, assignment and delivery of the Purchased Assets in accordance with this Agreement, the Buyer will acquire good and valid title thereto or valid and subsisting leasehold interests therein, free and clear of all Encumbrances, other than Permitted Encumbrances.

Section 4.08 Sufficiency and Condition of Assets. (a) Assuming Buyer has obtained all Permits and approvals (other than the Business Permits), and has replaced or provided substitutes for any Excluded Assets, necessary for the operation of the Business, the Purchased Assets constitute all of the material rights, property and assets (including real property and real property rights) used by Seller to conduct the Business as currently conducted, and the Purchased Assets (together with the rights to be granted to Buyer under the Transition Services Agreement and any other Transaction Document ) constitute all of the material rights, property and assets necessary for the operation of the Business as currently conducted.

(b) All Purchased Assets set forth on Section 4.08(b) of the Seller Disclosure Schedules (i) are in good operating condition and repair (ordinary wear and tear excepted) and (ii) to Seller's Knowledge, do not have any defects that would reasonably be expected to interfere in any material respect with their use in connection with the Business.

Section 4.09 Real Property.

(a) Section 4.09(a) of the Seller Disclosure Schedules sets forth all real property owned by Seller and used primarily or exclusively in connection with the Business, excluding the Fairborn CKD Landfill #6 (collectively, the " **Owned Real Property** "). Seller has good and valid fee simple title to the Owned Real Property, free and clear of all Encumbrances, except Permitted Encumbrances. Seller has not leased or otherwise granted to any Person the right to use or occupy the Owned Real Property (each a " **Seller Lease** ") or any portion thereof, except as set forth in the Seller Disclosure Schedules. With respect to the Owned Real Property:

(i) To Seller's Knowledge, each lot, parcel and tract of land comprising the Non-Identified Parcels includes the surface estate and the mineral estate. Other than Permitted Encumbrances, Seller has not conveyed, assigned or encumbered its interest in the Non-Identified Parcels or any portion thereof including, to Seller's Knowledge, the mineral estate. Each lot, parcel and tract of land comprising the Identified Parcels includes the surface estate and the mineral estate. Other than Permitted Encumbrances, Seller has not conveyed, assigned or encumbered its interest in the Identified Parcels or any portion thereof including the mineral estate.

(ii) There is, to Seller's Knowledge, no proposed public improvement that may involve the creation or imposition of any Encumbrance on any lot, parcel or tract of land constituting the Owned Real Property.

(iii) To Seller's Knowledge, no Owned Real Property is located within, or subject to, a road utility district, municipal utility district, or other similar quasi-governmental district which imposes taxes or assessments, nor is any Owned Real Property a part of any other private association which imposes dues, assessments, or allocates operating or other costs to such Owned Real Property.



(iv) To Seller's Knowledge, other than the Permitted Encumbrances and the Annexation Agreement, no commitments have been made to any Governmental Authority or to any other organization, group or individual that would impose an obligation upon any owner of a lot, parcel or tract of land constituting the Owned Real Property to make any contribution or dedication of money or land (including but not limited to any rights of access or reciprocal easement agreements) or to construct, install or maintain any improvements upon or in the vicinity of such lot, parcel or tract of land.

(v) Except as set forth on Section 4.09(a)(v) of the Seller Disclosure Schedules, to Seller's Knowledge, no written jurisdictional determination has been made by the U.S. Army Corps of Engineers that any of the Owned Real Property are "wetlands" subject to the Clean Water Act of 1977 33 U.S.C. Section 1344 et seq.

(vi) There are no contracts of sale or outstanding options, rights of first refusal or similar rights granted to any third party to purchase any lot, parcel or tract included in the Owned Real Property, or any portion thereof or interest therein.

(vii) All real estate taxes, assessments, water and sewer charges and other municipal charges with respect to the Owned Real Property, to the extent due and owing, have been paid in full.

(viii) To Seller's Knowledge, there are no defaults (or any events or circumstances which, with the delivery of notice or the passage of time, could constitute a default) under any of the Seller Leases on the part of Seller or the tenants under such leases.

(b) Section 4.09(b) of the Seller Disclosure Schedules sets forth a list, as of the date of this Agreement, of all leases for each Leased Real Property used primarily or exclusively in connection with the Business (collectively, the "**Real Property Leases**"). With respect to the Real Property Leases:

(i) Section 4.09(b) of the Seller Disclosure Schedules lists each Real Property Lease, the name and address of the landlord of such Real Property Leases, the street address of each Real Property Lease, the rental amount currently being paid, the security deposit paid to such landlord and the expiration of the term of such lease.

(ii) Each Real Property Lease is valid and binding on the Seller and in full force and effect and is valid and binding on the other parties thereto.

(iii) To Seller's Knowledge, Seller has performed all obligations required to be performed by it to date under each Real

Property Lease and has not received any notice of violation or default thereunder.

(iv) Seller has not entered into any subleases, licenses, concessions, or other agreements, written or oral, granting to any Person the right of use or occupancy (or granted any security interest in) of any portion of the Leased Real Property.

(c) Except as set forth on Section 4.09(c) of the Seller Disclosure Schedules, since January 1, 2013, there are no pending or, to the Seller's Knowledge, threatened (i) eminent domain, condemnation or federal forfeiture proceedings affecting the Real Property, (ii) zoning, building code or other moratorium proceedings, or similar matters which would reasonably be expected to adversely affect the Real Property or the use thereof in the Business or (iii) other Actions against or involving the Real Property. There is no contemplated sale or other disposition of the Real Property in lieu of any remedy in proceedings of the type described in clause (i) above.

(d) Except as set forth on Section 4.09(d) of the Seller Disclosure Schedules, there are no arrangements for any production royalties to be paid in connection with any mineral production affecting any Real Property.

(e) Except as set forth on Section 4.09(e) of the Seller Disclosure Schedules, (i) since January 1, 2013, Seller has not received written notice from any Governmental Authority concerning a violation of any Law (or restrictive covenant applicable to the Real Property) related to the Real Property or any building or improvement located thereon which has not been fully remedied and (ii) to Seller's Knowledge, the Real Property, and its continued use, occupancy and operation as currently used, occupied and operated, does not constitute a nonconforming use under any applicable Law relating to building, zoning, subdivision and other land use and does not otherwise violate any restrictive covenant applicable to the Real Property.

(f) To Seller's Knowledge, the Real Property has either direct contiguous access or access via a valid easement appurtenant that is of record in the applicable county real estate records to public roads for ingress to and egress from the Real Property.

#### Section 4.10 Intellectual Property.

(a) Section 4.10(a) of the Seller Disclosure Schedules lists (i) all Intellectual Property Registrations, (ii) all Intellectual Property Agreements, and (iii) all software (whether owned by the Seller or licensed from a third party), in each case, that is currently used by the Seller in the operation of the Business. Except as would not be materially adverse to the Business or the Purchased Assets, Seller owns or has the right to use all Intellectual Property Assets and the Intellectual Property licensed to Seller under the Intellectual Property Agreements.

(b) Except as would not be materially adverse to the Business or the Purchased Assets: (i) the conduct of the Business as currently conducted does not infringe, misappropriate, dilute or otherwise violate the Intellectual Property of any Person; (ii) there is no

Claim pending or threatened in writing against Seller which draws into question any right of Seller to use or exploit the Intellectual Property Assets or conduct the Business without infringing upon or otherwise violating Intellectual Property rights of any other Person, and, to Seller's Knowledge, there is no basis for such a Claim; and (iii) no Person is infringing, misappropriating or otherwise violating any Intellectual Property Assets. Notwithstanding anything to the contrary in this Agreement, this Section 4.10 constitutes the sole representation and warranty of Seller under this Agreement with respect to any actual or alleged infringement, misappropriation or other violation by Seller of any Intellectual Property of any other Person.

(c) In each case, except as would not be materially adverse to the Business or the Purchased Assets: (i) all Intellectual Property Assets that are owned by Seller are owned free and clear of any security interests or Encumbrances (other than Permitted Encumbrances) or ownership interests of any third Person (including any employee); and (ii) Seller is the exclusive owner having the exclusive right to use all of the Intellectual Property Assets owned by Seller.

#### Section 4.11 Legal Proceedings; Governmental Orders.

(a) Except as set forth in Section 4.11 of the Seller Disclosure Schedules, as of the date hereof, there are no Actions pending or, to Seller's Knowledge, threatened against or by Seller (i) relating to or affecting the Business, the Purchased Assets or the Assumed Liabilities; or (ii) that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. As of the date hereof, except for ordinary course credit matters, there are no Actions pending in which Seller is the claimant or plaintiff relating to or affecting the Business, the Purchased Assets or to the transactions contemplated hereby or by the Transaction Documents.

(b) Except as set forth in Section 4.11 of the Seller Disclosure Schedules, to Seller's Knowledge, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Business or the Purchased Assets which would have a Material Adverse Effect.

#### Section 4.12 Compliance with Laws; Permits.

(a) To Seller's Knowledge, since January 1, 2013, the Seller has conducted the Business and operated, occupied and used the Purchased Assets in compliance in all material respects with all Laws applicable to it and to the Purchased Assets. Since January 1, 2013, to the date hereof, except as set forth in Section 4.12 of the Seller Disclosure Schedules, no Claim or assertion has been made by any Governmental Authority to the effect that the operations of the Business or the ownership, occupancy, operation or use of any Purchased Asset fails to comply with any applicable Law. To Seller's Knowledge, as of the date hereof, no investigation by any Governmental Authority with respect to a violation of any Law relating to the operation of the Business or the ownership, occupancy, operation or use of any of the Purchased Assets (other than Environmental Permits) is pending or has been asserted or threatened.

(b) Except as set forth in Section 4.12 of the Seller Disclosure Schedules, the Seller has properly obtained and continues to hold all Permits necessary for the ownership or operation of the Business, as currently operated by Seller, in accordance with applicable Law. All such Permits are identified in Section 4.12 of the Seller Disclosure Schedules. To Seller's Knowledge, the Seller is in compliance with each of such Permits, and each such Permit is valid and in full force and effect, and Seller has not received any notice to the contrary. No Action is pending or, to Seller's Knowledge, threatened which could result in the revocation or termination of any such Permits. Notwithstanding anything to the contrary in this Agreement, other than with respect to Real Property (which is the subject of Section 4.09), Intellectual Property (which is the subject of Section 4.10) and Environmental Laws (which are the subject of Section 4.13), this Section 4.12 constitutes the sole representation and warranty of Seller with respect to compliance with Laws and Permits relating to the operation of the Business.

Section 4.13 Environmental Matters.

(a) The operations of Seller with respect to the Business and the Purchased Assets are, and at all times since January 1, 2013 have been, in compliance in all material respects with all Environmental Laws and the terms and conditions of all applicable Environmental Permits with respect to the Business and the Purchased Assets and, except as set forth on Section 4.13(a) of the Seller Disclosure Schedules, Seller has not received from any Person, with respect to the Business or the Purchased Assets, any Environmental Notice or Environmental Claim which, in each case, either remains pending or unresolved, or is the source of ongoing or future obligations or requirements as of the Closing Date.

(b) Section 4.13(b) of the Seller Disclosure Schedules sets forth a list of all material Environmental Permits currently held by Seller in connection with the ownership and operation of the Business.

(c) None of the Real Property is listed on, or, to Seller's Knowledge, has been proposed for listing on, the National Priorities List under CERCLA, or any similar state list.

(d) Except as set forth in Section 4.13(d) of the Seller Disclosure Schedules, to Seller's Knowledge, since January 1, 2013, there has been no Release of Hazardous Materials in violation of Environmental Law with respect to the Business or the Purchased Assets or which, if known to the applicable Governmental Authority, would reasonably be expected to result in an Environmental Claim against, a violation of Environmental Law or term of any Environmental Permit by, or liability under Environmental Law of, Seller.

(e) Except as set forth in Section 4.13(e) of the Seller Disclosure Schedules, the Seller has not entered into or agreed to any Governmental Order and is not subject to any injunction or judgment, or to Seller's Knowledge, investigation, relating to compliance with any Environmental Laws or to investigation or cleanup of Hazardous Materials under any Environmental Law, in each case relating to the Business or the Purchased Assets.

(f) To Seller's Knowledge, since January 1, 2013, no reports or studies have been prepared or conducted by Seller with respect to the presence of asbestos located in or forming any part of the Purchased Assets. Other than transformers which have been retrofitted prior to the date hereof, to the Seller's Knowledge, there are no polychlorinated biphenyls (PCBs) or PCB containing items located in or forming any part of the Purchased Assets. Except as set forth in Section 4.13(f) of the Seller Disclosure Schedules, to Seller's Knowledge, there are no underground storage tanks located at the Real Property.

(g) Seller has provided or made available to Buyer in an electronic data room all phase I and phase II environmental assessments relating to the Purchased Assets prepared by or on behalf of Seller since January 1, 2013.

(h) The representations and warranties set forth in this Section 4.13 are Seller's sole and exclusive representations and warranties regarding environmental matters.

#### Section 4.14 Employee Matters.

(a) Certain Employee Information. Section 4.14(a) of the Seller Disclosure Schedules lists as to each current Employee of Seller whose job duties are primarily related to the Business and to whom Buyer is obligated to make an offer of employment pursuant to Section 6.04(b) ("Must-Offer Employees") as of the date of this Agreement: name and current job title.

(b) Additional Employee Information. The May-Offer Employee Side Letter lists each current Employee of Seller to whom Buyer may make an Employment Offer pursuant to Section 6.04(b) ("May-Offer Employees").

(c) Employee Plans. Section 4.14(c) of the Seller Disclosure Schedules lists each material Employee Plan maintained or contributed to by the Seller with respect to the Business Employees, or otherwise participated in by the Business Employees. Seller has provided Buyer copies of documents or summaries setting forth the terms of each Employee Plan. " **Employee Plan** " means:

(i) each employee pension benefit plan (as such term is defined in Section 3(2) of ERISA), including any pension, profit-sharing, retirement, thrift, or stock purchase plan;

(ii) each employee welfare benefit plan (as such term is defined in ERISA §3(3)); and

(iii) each bonus, incentive compensation, stock purchase, stock option, severance or other employee benefit plan or agreement (including each employment, severance and retention agreement), sponsored, maintained, or contributed to with respect to any Business Employee by or on behalf of Seller or any ERISA Affiliate or with respect to which Seller or any ERISA Affiliate is a party or has any liability, but only to the extent that such plan covers or provides compensation or benefits with respect to any Business Employees. " **ERISA Affiliate** " means each trade or

business (whether or not incorporated) that together with Seller is treated as a single employer pursuant to Section 414(b), (c), (m) or (o) of the Code.

(d) Seller 401(k) Plan. Seller's defined contribution plan and related trust that is intended to be qualified under Sections 401(a), 401(k) and 501(a) of the Code (the "**Seller 401(k) Plan**") has received, from the Internal Revenue Service, a favorable determination letter (or in the case of a master or prototype plan, a favorable opinion letter or in the case of a volume submitter plan, a favorable advisory letter) as to its qualification under Section 401(a) of the Code, and (ii) to Seller's Knowledge, there has been no event or condition, whether by action or by failure to act, that could adversely affect the qualified status of the Seller 401(k) Plan.

(e) Cessation of Participation. The Hired Employees will cease to participate in the Employee Plans effective as of the close of business on the Closing Date, and after the Closing Date neither Buyer nor any of its Affiliates has any liability or obligation with respect to any Employee Plan as a result of the transactions contemplated by this Agreement.

(f) Multiemployer Plan. Except as set forth on Section 4.14(f) of the Seller Disclosure Schedules, Seller and Seller's ERISA Affiliates do not, with respect to any Business Employee, maintain, contribute to or otherwise participate in, or have any liability or obligation with respect to, any multiemployer plan (as defined in ERISA §3(37)) or any multiple employer welfare arrangement (as defined in ERISA §3(40)).

(g) Severance. Section 4.14(g) of the Seller Disclosure Schedules sets for a complete and correct description of the terms of any plan, policy or arrangement under which any Business Employee is or would be entitled to the severance payments and severance benefits from Seller or its Affiliates in the event of a termination of his or her employment.

(h) Other Employment Related Matters. Except for the Applicable CBA, Seller is not a party to or bound by, any collective bargaining or other agreement with a labor organization representing any of the Employees. Solely with respect to the Business Employees, except as set forth on Section 4.14(h) of the Seller Disclosure Schedules, (i) there is no (and since December 31, 2013 has not been) labor strike, organizing effort or organized labor dispute pending or, to Seller's Knowledge, threatened against Seller at any of the Seller Facilities; (ii) to Seller's Knowledge, Seller is (and since December 31, 2013 has been) in compliance at each Seller Facility in all material respects with all applicable Laws that relate to employment, equal employment opportunity, wages, hours, leaves, workers' compensation, disability, immigration, collective bargaining, contractors and temporary employees, other employment terms and conditions and plant closings and layoffs, and (iii) there is not pending or, to Seller's Knowledge, threatened in writing any action or other formal claim or investigation against Seller for any actual or alleged violation of any Employee Plan or for violation of any right or obligation under any Employee Plan.

Section 4.15 Taxes.

(a) Seller (i) has timely filed (taking into account any valid extensions) all income and other material Tax Returns required to be filed with respect to the Business and Purchased Assets, and all such Tax Returns are true, correct and complete in all material respects and (ii) has timely paid all income and other material Taxes with respect to the Business or the Purchased Assets (whether or not shown on such Tax Returns as owing), except for Taxes that are being contested by Seller in good faith by appropriate proceedings and for which adequate reserves have been made in accordance with IFRS. Seller is not currently the beneficiary of any extension of time within which to file any income or other material Tax Return other than extensions of time to file Tax Returns obtained in the ordinary course of business.

(b) There is no claim, audit, or examination currently in progress, pending or threatened in writing by any taxing authority in connection with any Tax related to the Purchased Assets or the Business. No written claim has been made by a taxing authority in a jurisdiction where Seller does not file Tax Returns that Seller may be subject to taxation in that jurisdiction. None of the Purchased Assets is (i) "tax exempt use property" within the meaning of Section 168(h)(1) of the Code, (ii) "tax-exempt bond financed property" within the meaning of Section 168(g)(5) of the Code, (iii) "limited use property" within the meaning of Rev. Proc. 2001-28, (iv) subject to Section 168(g)(1)(A) of the Code or (v) subject to any provision of state, local or foreign Law comparable to any of the provisions listed herein;

(c) To Seller's Knowledge, Seller has conducted all aspects of the Business in all material respects in accordance with the terms and conditions of all Tax abatements. With respect to any Tax exemptions and Tax concessions that were provided by any relevant taxing authority with respect to the Business or the Purchased Assets, to Seller's Knowledge, no default of such terms and conditions has been alleged by any taxing authority, and no default, recapture, or other payments are owing pursuant to such terms and conditions.

(d) Except for certain representations related to Taxes in Section 4.05, the representations and warranties set forth in this Section 4.15 are Seller's sole and exclusive representations and warranties regarding Tax matters.

Section 4.16 Performance Bonds. Section 4.16 of the Seller Disclosure Schedules sets forth each performance bond, surety agreement, letter of credit or similar instruments issued to provide a counterparty with assurances as to the other party's obligations (a " **Performance Bond** ") to the extent that it is required to be maintained by the terms of an agreement to be disclosed pursuant to Section 4.06.

Section 4.17 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission payable by Buyer or its Affiliates or in respect of which they will have any liability or responsibility whatsoever in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Seller.

Section 4.18 Interests of Affiliates. No Affiliate of Seller has any right, title or interest in any properties or assets of any kind or character (whether real, personal or mixed, tangible or intangible, contingent or otherwise) included in the Purchased Assets.

Section 4.19 Reserves. The Seller has made available to the Buyer true, correct and complete copies of each engineering or geological report, survey or other study prepared by, on behalf of, or at the direction of, the Seller (or any of its Affiliates) since January 1, 2013 analyzing or otherwise relating to the reserves of aggregates, limestone, shale, clay and other raw materials available at any of the Real Property.

Section 4.20 Solvency. Seller is solvent, is able to pay its debts as they become due, has capital sufficient to carry on its business as presently conducted and proposed to be conducted, and owns property and assets which have both a fair value and a fair saleable value in excess of the amount required to pay its debts as they become due. The Seller will not be rendered insolvent by the transactions contemplated by this Agreement or any of the Transaction Documents, and following the consummation of such transactions, the Seller will be able to pay its debts as they become due, will have capital sufficient to carry on its business as then conducted and proposed to be conducted, and will own property and assets which have a fair value and a fair saleable value in excess of the amount required to pay its debts as they become due.

Section 4.21 Customers and Suppliers.

(a) Section 4.21(a) of the Seller Disclosure Schedules lists (i) the ten (10) largest customers of the Business during the period commencing on July 1, 2015 and ending on June 30, 2016 based on and listing the gross sales of the Seller's products sold to such customer that were supplied or delivered by the Business (the " **Key Customers** ").

(b) Section 4.21(b) of the Seller Disclosure Schedules lists the ten largest suppliers of the Business during the period commencing on July 1, 2015 and ending on June 30, 2016 based on and listing the dollar amounts paid by the Seller to such suppliers for products and services supplied to the Business (the " **Key Suppliers** ").

(c) To Seller's Knowledge, since January 1, 2016, to the date hereof, none of the Key Customers or Key Suppliers has notified the Seller in writing that it intends to (i) cease or materially decrease purchasing from or selling to the Business or (ii) materially modify the terms on which it sells to or purchases from the Business (including any material changes in pricing or terms) as compared to past practices. Except as set forth on Section 4.21(c) of the Seller Disclosure Schedules, as of the date hereof, there is no pending or, to the Seller's Knowledge, threatened material dispute or controversy between the Seller and any Key Supplier or Key Customer.

Section 4.22 DISCLAIMERS: RELIANCE ON REPRESENTATIONS AND WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING REPRESENTATIONS AND WARRANTIES IN THIS ARTICLE IV (WHICH ARE SUBJECT TO THE DISCLOSURES SET FORTH IN THE SCHEDULES), NEITHER SELLER NOR ANY OF ITS AFFILIATES, NOR ANY REPRESENTATIVE OF ANY OF THEM, HAS



MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER AS TO THE PURCHASED ASSETS, THE ASSUMED LIABILITIES, OR THE LIABILITIES, OBLIGATIONS, BUSINESS, RESULTS OF OPERATIONS OR ANY OTHER ASPECT OF, OR RELATED TO, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES, OR ANY ASPECT OF THE BUSINESS. WITHOUT LIMITING THE FOREGOING, EXCEPT AS TO THOSE MATTERS EXPRESSLY COVERED BY THE REPRESENTATIONS AND WARRANTIES IN THE FOREGOING SECTIONS OF THIS ARTICLE IV: (a) SELLER DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND GUARANTEES, WHETHER EXPRESS OR IMPLIED, INCLUDING IN THIS DISCLAIMER ANY STATEMENT, MATERIALS, PROJECTION OR OTHER INFORMATION WHATSOEVER RELATING TO ANY ASPECT OF THE PURCHASED ASSETS, THE ASSUMED LIABILITIES OR ANY ASPECT OF THE BUSINESS, OR THAT WAS MADE OR PROVIDED BY OR OTHERWISE OBTAINED FROM (WHETHER THROUGH A DATA ROOM, A MANAGEMENT PRESENTATION, DUE DILIGENCE DISCUSSIONS, EMPLOYEE INTERVIEWS OR OTHERWISE) SELLER, OR ANY OF ITS AFFILIATES, OR ANY REPRESENTATIVE OF ANY OF THEM, TO OR BY BUYER OR ANY OF ITS AFFILIATES, OR ANY REPRESENTATIVE OF ANY OF THEM, OR ANY OTHER PERSON; AND (b) THE PURCHASED ASSETS, ASSUMED LIABILITIES AND ALL PROPERTY CONVEYED PURSUANT TO THIS AGREEMENT (WHETHER DIRECTLY OR INDIRECTLY) AND/OR THE TRANSFER DOCUMENTS DELIVERED AT CLOSING BY SELLER AND ITS AFFILIATES ARE CONVEYED ON AN " AS IS " AND " WHERE IS/WHERE AS " AND " WITH ALL FAULTS " BASIS AND WITHOUT ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WHATSOEVER, INCLUDING IN THIS EXCLUSION ALL REPRESENTATIONS AND WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OPERABILITY, CAPACITY OR CONDITION.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER**

Except as set forth in the Buyer Disclosure Schedules, Buyer represents and warrants to Seller that the statements contained in this Article V are true and correct as of the date hereof as follows:

Section 5.01 Organization and Authority of Buyer. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware.

Section 5.02 Authority of Buyer. Buyer has all necessary corporate power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is or will be a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is or will be a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer.

in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). When each other Transaction Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 5.03 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which it is or will be a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) result in a violation or breach of any provision of the certificate of incorporation or by-laws of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, or constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, any Contract to which Buyer is a party or by which Buyer or its assets are subject, except in the cases of clauses (b) or (c), where the violation, breach, conflict, default or failure to give notice would not have a material effect on Buyer's ability to consummate the transactions contemplated hereby. No consent, approval, Permit, Governmental Order, declaration or filing or registration with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, except for such filings as may be required under the HSR Act and such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which, if not obtained, would not individually or in the aggregate, have a material effect on Buyer's ability to consummate the transactions contemplated hereby and thereby.

Section 5.04 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission payable by Seller or its Affiliates in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer.

Section 5.05 Sufficiency of Funds. Buyer has available to it, and will have available at Closing (through a combination of cash on hand and/or available credit under its existing credit facilities), sufficient funds to enable it to pay the Purchase Price and meet all of its financial obligations contemplated by this Agreement and the other Transaction Agreements.

Section 5.06 Solvency. Immediately after giving effect to the transactions contemplated hereby, Buyer shall be solvent and shall: (a) be able to pay its debts as they become due; (b) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities); and (c) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the

intent to hinder, delay or defraud either present or future creditors of Buyer or Seller. In connection with the transactions contemplated hereby, Buyer has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

Section 5.07 Legal Proceedings. There are no Actions or Claims pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

Section 5.08 Independent Investigation. Buyer has conducted its own independent investigation, review and analysis of the Business and the Purchased Assets, and acknowledges that it has been provided access by Seller to the personnel, properties, assets, premises, books and records, and other documents and data of Seller for such purpose. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties of Seller set forth in Article IV of this Agreement (including related portions of the Seller Disclosure Schedules); and (b) neither Seller nor any other Person has made any representation or warranty (i) as to Seller, the Business, the Purchased Assets, the Assumed Liabilities, or this Agreement, except as expressly set forth in Article IV of this Agreement (including the related portions of the Seller Disclosure Schedules), or (ii) as to the accuracy, completeness or other characteristics of any statement, memoranda, projections, estimates, budgets, summaries or other information whatsoever relating to any aspect of the Purchased Assets, the Assumed Liabilities, or the Seller Facilities or its operations or of Seller that was made, provided or otherwise made available by Seller, by any of its Affiliates, or by any Representative of any of them (whether pursuant to offering materials, a management presentation, a "data room," due diligence discussions, or employee interviews or in connection with access to Seller's records, premises and employees) to (or otherwise obtained by) Buyer or any of its Affiliates or any Representative of any of them.

## ARTICLE VI COVENANTS

Section 6.01 Conduct of Business Prior to the Closing. From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), with respect to the Business and Purchased Assets, Seller shall (a) conduct the Business in the ordinary course of business consistent with past practice; (b) use commercially reasonable efforts to maintain and preserve intact its current business organization and operations, and to preserve the rights, goodwill and relationships of its Employees, customers, suppliers, regulators and others having relationships with the Business; (c) use, operate, maintain and repair the Seller Facilities in the ordinary course of business consistent with past practice; (d) maintain the books and records of Seller relating to the Business in the ordinary course of business consistent with past practice; (e) pay, discharge and satisfy all material Claims, accounts payable, liabilities or obligations of Seller relating to the Business in the ordinary course of business consistent with past practice; (f) not enter into any Contract relating to the Business with a term in excess of thirty (30) months and providing for annual payments thereunder in excess of \$1,000,000 (a “**Significant Contract**”), or amend, modify or change any Material Contract, other than entering into new Contracts (other than Significant Contracts) with suppliers for the purchase of raw materials,

products and supplies and new Contracts (other than Significant Contracts) with customers for the sale of Inventory, in each case in the ordinary course of business ; (g ) not obtain any material rulings or make, change or revoke any material elections with respect to Taxes, or enter into any material agreements with any taxing authority related to the Business or the Purchased Assets; or (h ) not take any action which, if taken immediately prior to the execution of this Agreement, would constitute or result in a breach or violation of the representations and warranties of Seller set forth in Section 4.05 if not disclosed in the Seller Disclosure Schedules.

For the avoidance of doubt, nothing contained in this Agreement shall be construed to give Buyer, directly or indirectly, rights to control or direct the Business' operations prior to Closing. Prior to Closing, Seller shall exercise, subject to the terms and conditions of this Agreement, complete control and supervision of the operations of the Business.

Section 6.02 Access to Information. From the date hereof until the Closing, Seller shall (a) afford Buyer and its Representatives reasonable access to and the right to inspect all of the Real Property, properties, assets, premises, Books and Records, Assigned Contracts and other documents and data related to the Business; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Business as Buyer or any of its Representatives may reasonably request; and (c) instruct the Representatives of Seller to cooperate with Buyer in its investigation of the Business; *provided, however*, that any such investigation shall be conducted during normal business hours upon reasonable advance notice to Seller, under the supervision of Seller's personnel and in such a manner as not to interfere unreasonably with the conduct of the Business or any other businesses of Seller. No investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty, covenant or agreement given or made by Seller in this Agreement. All requests by Buyer for access pursuant to this Section 6.02 shall be submitted or directed exclusively to John Heffernan or such other individuals as Seller may designate in writing from time to time. Notwithstanding anything to the contrary in this Agreement, Seller shall not be required to disclose any information to Buyer if it is reasonably foreseeable that such disclosure would, in Seller's reasonable judgment: (x) cause significant competitive harm to Seller and its businesses, including the Business, if the transactions contemplated by this Agreement are not consummated; (y) jeopardize any attorney-client or other privilege; or (z) contravene any applicable Law or binding agreement entered into prior to the date of this Agreement. Prior to the Closing, without the prior written consent of Seller, which shall not be unreasonably withheld, Buyer shall not contact any suppliers to, or customers of, the Business in connection with the transactions contemplated hereby, and Buyer shall not perform invasive or subsurface investigations of the Real Property. Buyer shall, and shall cause its Representatives to, abide by the terms of the Confidentiality Agreement with respect to any access or information provided pursuant to this Section 6.02.

Section 6.03 Notification of Certain Matters; Supplement to Seller Disclosure Schedules.

(a) Seller shall give prompt notice to the Buyer of (i) any matter hereafter arising or discovered which, if existing or known at the date of the Agreement, would have been required to be set forth or described in the Seller Disclosure Schedules, (ii) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which is

reasonably expected to cause any representation or warranty of the Seller contained in Article IV to be untrue or inaccurate at or prior to the Closing, (iii) any failure of Seller to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by Seller hereunder, (iv) any notice or other communication from any Person alleging that any consent, approval or authorization of such Person is or may be required in connection with the transactions contemplated by this Agreement, or (v) the commencement of any Action by a Governmental Authority or other Person that could reasonably be expected to affect the transactions contemplated hereby in any material respect; *provided, however*, that any such notice shall in any event be delivered to the Buyer no later than three Business Days prior to the Closing Date. In addition, the Seller shall promptly provide written notice to the Buyer if any Key Customer or Key Supplier or any other lessor, licensor, licensee, distributor, contractor or other Person having a material business relationship with Seller relating to the Business informs the Seller or any member of the management of the Seller orally or in writing that such Person intends to terminate or alter in any material respect such relationship, whether as a result of the transactions contemplated by this Agreement or otherwise.

(b) From time to time prior to the Closing, Seller shall have the right (but not the obligation) to supplement or amend the Seller Disclosure Schedules hereto with respect to any matter hereafter arising or of which it becomes aware after the date hereof (each a "**Schedule Supplement**"). Any disclosure in any such Schedule Supplement shall not be deemed to have cured any inaccuracy in or breach of any representation or warranty contained in this Agreement, including for purposes of determining whether or not the conditions set forth in Section 7.02(a) have been satisfied and for purposes of the indemnification provisions of Article VIII. Notwithstanding the foregoing, (i) if the Seller Disclosure Schedules are supplemented after the date hereof to reflect any matter (A) that first arises after the date of this Agreement and, if existing on the date of this Agreement, would have been required to be set forth in the Seller Disclosure Schedules in order for the representations and warranties of Seller to be true and correct and (B) that does not arise, in whole or in substantial part, from a breach by Seller of any of its covenants or agreements set forth in this Agreement, (ii) if Seller acknowledges in writing to Buyer when such supplement or amendment is delivered to Buyer that the matter disclosed in such supplement or amendment would cause any of the conditions to the obligations of Buyer to not be fulfilled at the Closing, and (iii) Buyer nonetheless elects to proceed with the Closing of the transactions contemplated by this Agreement, then, unless otherwise agreed in writing by the parties, such supplement or amendment shall be deemed to have qualified, as applicable, the representations and warranties made as of the Closing Date by Seller pursuant to Article IV for purposes of determining any indemnification rights of Buyer under this Agreement.

#### Section 6.04 Certain Employees Matters.

(a) Employee Information. Seller has previously provided or made available to Buyer, as of the date hereof, (i) a list of all Business Employees, (ii) each Business Employee's rate of base salary or hourly wage compensation, total annual compensation (including incentive and similar compensation), title, job location, beginning service date, period of service recognized by each Employee Plan (if applicable), vacation entitlement and target bonus opportunity and (iii) whether a Business Employee is on active status or on leave of absence, whether short-term, family, paternity, short-term disability, paid, unpaid or other leave,

and projected return date, if any. Prior to the Closing Date, Seller shall provide Buyer with written updates to such information to reflect new hires and terminations of employment of Business Employees between the date hereof and the fifth Business Day prior to the Closing Date. Following the execution of this Agreement, Seller shall not transfer any Must-Offer Employee or May-Offer Employee to a position unrelated to the Business.

(b) Offers of Employment. Prior to the Closing Date, Buyer shall make offers of employment in writing for employment with Buyer commencing on the applicable Employee Transfer Date and otherwise on the terms and conditions set forth in this Section 6.04 to (i) each of the Must-Offer Employees and (ii) those May-Offer Employees as Buyer shall deem appropriate. Following the Effective Date and prior to the Closing Date, Seller shall take reasonable efforts to have the May-Offer Employees available to interview for employment with Buyer. Each Business Employee shall have at least five Business Days from the date of the offer of employment to accept the offer. Seller shall not induce or otherwise attempt to influence any such Business Employee to not accept his or her offer of employment from Buyer. Each Business Employee who accepts Buyer's offer of employment and satisfies Buyer's standard hiring policies shall be hired by Buyer as of the applicable Employee Transfer Date, it being understood that such Business Employee will thereafter become an employee of Buyer (such Business Employees to collectively be referred to as the "**Hired Employees**"). In respect of any Business Employee who is (i) absent from work due to short or long-term disability or an authorized leave of absence and (ii) returns to work within ninety (90) days following the Closing Date or such later period as the Business Employee has the right to return to work under applicable Law and satisfies Buyer's standard hiring policies (any such Business Employee, a "**Leave Employee**"), Buyer's offer of employment to the Leave Employee shall provide for employment effective as of the date on which such Leave Employee returns to work and, if such Leave Employee accepts Buyer's offer of employment and commences employment with Buyer, such Leave Employee shall be considered a Transferred Employee under this Agreement effective as of his or her Employee Transfer Date. For purposes of this Agreement, the "**Employee Transfer Date**" shall be (A) for Hired Employees other than the Leave Employees, the Effective Time, and (B) for Leave Employees, 12:01 A.M. local time on the date on which such Leave Employee's period of absence expires and such Leave Employee returns to active employment. Any Business Employee that declines Buyer's offer of employment (or fails to timely respond to such offer), fails to satisfy Buyer's standard hiring policies, or, in the case of a Leave Employee, does not timely return from such employee's absences or leave as provided above, shall not be a Hired Employee.

(c) Benefits for Hired Employees. During the period beginning on the Closing Date and ending on the 12<sup>th</sup> full calendar month after the Closing Date, Buyer will provide to each Hired Employee (excluding those who have quit or been terminated) compensation and employee benefits that, with respect to each such Hired Employee, are not less favorable in the aggregate than the compensation and benefits provided to similarly situated employees of Buyer and its Affiliates; *provided, however*, that the compensation and benefits of the Hired Employees who were covered by the Applicable CBA shall be as set out in either the Applicable CBA, as assumed by Buyer or Buyer's Affiliate, or a collective bargaining agreement entered into between Buyer or Buyer's Affiliate and International Brotherhood of Boilermakers, Cement, Lime, Gypsum and Allied Workers Division, Local Lodge D-357, as determined by Buyer ("**Post-Closing CBA**"), covering such Hired Employee's employment until such collective

bargaining agreement ' s expiration, modification or termination in accordance with its terms or applicable Law. Without limiting the foregoing, the vacation and other paid time off provided to each Hired Employee will include his or her accrued but unpaid vacation and other paid time off that are assumed by Buyer as Assumed Liabilities pursuant to Section 2.03 . Following the Closing Date, Buyer shall credit Hired Employees with their accrued but unpaid vacation and other paid time off benefits as of the Closing Date for use by an employee in accordance with Buyer ' s policies in respect thereof.

(d) Severance Payments . Buyer will provide each Hired Employee whose employment is not covered by the Post-Closing CBA who incurs a termination of employment during the period beginning on the Closing Date and ending on the 12th full calendar month after the Closing Date with severance payments and severance benefits that are no less favorable than the greater of (i) the severance payments and severance benefits to which such Hired Employee would have been entitled with respect to such termination under the severance policies of Seller as in effect immediately before the Closing Date and (ii) the severance payments and severance benefits to which a similarly situated employee of Buyer and its Affiliates would have been entitled with respect to such termination under the severance policies of Buyer and its Affiliates.

(e) Service Credit . Buyer will give each Hired Employee full credit for such Hired Employee's service with Seller and its Affiliates for purposes of eligibility, vesting, and determination of the amount and level of benefits (except for purposes of benefit accruals under defined benefit pension plans) pursuant to any benefit plans made generally available to employees or officers or any class or level of employees or officers maintained by Buyer or any of its Affiliates in which a Hired Employee participates to the same extent recognized by Seller immediately before the Closing Date; *provided, however* , that such service is not to be recognized to the extent that such recognition would result in a duplication of benefits with respect to the same period of service.

(f) Welfare Benefits . Buyer will (i) waive any preexisting condition limitations otherwise applicable to Hired Employees, their spouses and their eligible dependents under any plan of Buyer or any Affiliate of Buyer that provides health and welfare benefits in which Hired Employees, their spouses and their eligible dependents may be eligible to participate on or after the Closing Date, except for any limitations that were in effect with respect to such employees as of the Closing under the analogous plan of Seller, (ii) credit any deductible, co-payment and out-of-pocket maximums incurred by the Hired Employees and their eligible dependents under the health and other plans in which they participated immediately before the Closing Date during the portion of the calendar year before the Closing Date in satisfying any deductibles, co-payments or out-of-pocket maximums under health plans of Buyer or any of its Affiliates in which they are eligible to participate on or after the Closing Date in the same plan year in which such deductibles, co-payments or out-of-pocket maximums were incurred, and (iii) waive any waiting period limitation or evidence of insurability requirement that would otherwise be applicable to a Hired Employee and his or her eligible dependents on or after the Closing Date, in each case to the extent such Hired Employee or eligible dependent had satisfied any similar limitation or requirement under an analogous plan of Seller before the Closing Date.

(g) 401(k) Plan. Effective as of the Closing Date, Buyer will maintain or designate a defined contribution plan and related trust intended to be qualified under Sections 401(a), 401(k) and 501(a) of the Code (the "**Buyer 401(k) Plan**"). Effective as of the Closing, the Hired Employees cease participation in the Seller 401(k) Plan, and commence participation in the Buyer 401(k) Plan. Seller and Buyer will take all action necessary or appropriate to allow Hired Employees to rollover their account balances (excluding any outstanding loan balances) from the Seller 401(k) Plan to the Buyer 401(k) Plan in a direct rollover.

(h) Health and Dependent Flex Account Transfer. Effective as of the Closing Date, Buyer will, as to the Hired Employees, have in effect flexible spending reimbursement accounts for medical and dependent care expenses under a cafeteria plan qualified under IRC §125 and will credit such accounts with the amount credited as of the Closing under comparable accounts maintained with Seller from the beginning of the plan year to the Closing Date. As soon as practical after the Closing (i) Seller will pay to Buyer in cash the amount, if any, by which aggregate contributions made by Hired Employees to Seller's flexible spending accounts for such plan year exceeded the aggregate benefits provided to Hired Employees for such plan year as of the Closing; or (ii) Buyer will pay to Seller in cash the amount, if any, by which aggregate benefits provided to Hired Employees under Seller's flexible spending accounts exceeded the aggregate contributions made by Hired Employees for such plan year as of the Closing Date.

(i) COBRA Coverage. Seller will provide for any required continuation coverage pursuant to Section §4980B of the Code ("**COBRA Coverage**") with respect to any "qualifying event" (as defined in Section §4980B(f)(i) of the Code) that occurred before the Closing Date and Buyer will provide COBRA Coverage for the Hired Employees and their qualified beneficiaries with respect to qualifying events occurring on or after the Closing Date.

(j) Actions by Affiliates. All obligations undertaken by Buyer or Seller under this Section 6.04 may be satisfied in whole or in part by an Affiliate of such person.

(k) Cooperation; Employee and Plan Information. Seller and Buyer each will, and each will cause its Affiliates as necessary to, cooperate (i) in carrying out the provisions of this Section 6.04 (including working with third-party administrators and insurance carriers and making available to the other such records and other information as the other may reasonably request to facilitate the determination of the period of service and salary of any Hired Employee with Seller or an Affiliate) and (ii) in the preparation, execution and filing of documents required by the transfer of assets and liabilities pursuant to this Section 6.04.

(l) WARN Act. Seller will be responsible for any action prior to or at Closing and Buyer will be responsible for any action after Closing that results in a "mass layoff" or "plant closing" under the Workers Adjustment and Retraining Notification Act or any similar state or local Applicable Law (collectively, the "**WARN Act**"), including, in the case of any action after Closing, any such event that is triggered in part by any "employment losses" (as defined under the WARN Act) before the Closing Date.



(m) Third Party Beneficiaries. The parties do not intend for this Section 6.04 or any other term or provision of this Agreement to create any rights or obligations as between Buyer and Seller, and no past, present, or future employee (or their family members) of Buyer or Seller will be treated as a third party beneficiary of this Agreement.

(n) No Amendment to Employee Plans. No provision in this Agreement shall modify or amend any other agreement, plan, program or document unless this Agreement explicitly states that the provision "amends" that other agreement, plan, program or document. If a party not entitled to enforce this Agreement brings a lawsuit or other action to enforce any provision in this Agreement as an amendment to another agreement, plan, program or document, and that provision is construed to be such an amendment despite not being explicitly designated as an amendment in this Agreement, that provision shall lapse retroactively, thereby precluding it from having any amendatory effect.

(o) Annual Bonus. Notwithstanding anything to the contrary contained herein, Seller shall pay each bonus-eligible Hired Employee a pro rata portion of such employee's annual incentive bonus for service through the Closing Date, based on such employee's target bonus for the year in which the Closing Date occurs, in accordance with the Seller's applicable bonus programs.

Section 6.05 Confidentiality. (a) Buyer acknowledges and agrees that the Confidentiality Agreement remains in full force and effect and, in addition, covenants and agrees, following the Closing, to keep confidential, in accordance with the provisions of the Confidentiality Agreement, information provided to Buyer pursuant to this Agreement relating to the Excluded Assets and Excluded Liabilities. If this Agreement is, for any reason, terminated prior to the Closing, the Confidentiality Agreement and the provisions of this Section 6.05 shall nonetheless continue in full force and effect as to all information provided to Buyer pursuant to this Agreement. After the Closing, Buyer shall promptly return to Seller all documents and information concerning the Excluded Assets or Excluded Liabilities furnished by Seller or any of its Affiliates, agents, employees or Representatives (including all copies, if any). Seller hereby acknowledges that, by reason of its ownership and operation of the Business, it has acquired, and may acquire after the date hereof pursuant to this Agreement or in connection with the transactions and arrangements contemplated hereby, confidential or proprietary information relating to the affairs, operations, assets, liabilities, personnel, results of operations and financial condition of the Business ("**Business Confidential Information**"), and that Buyer would be irreparably damaged if at any time after the Closing any Business Confidential Information possessed by Seller or any of its Affiliates, officers, directors, employees, representatives or agents were disclosed to or used by any Person other than Purchaser or its Affiliates. From and after the Closing, Seller covenants and agrees that it shall not, and shall not permit its Affiliates to, and that it shall use reasonable efforts to cause its officers, directors, employees, representatives and agents not to, use or disclose any such Business Confidential Information without the prior written consent of Buyer, except in the performance of the terms of Transaction Documents, in the enforcement of its rights under the Transaction Documents or with the prior written consent of Buyer.

(b) For purposes of this Agreement, Business Confidential Information shall not include any information that Seller can demonstrate is or becomes publicly available through

no wrongful act or breach of obligation of confidentiality by Seller . In the event that the Seller or any of its Representatives is required by Law or Governmental Order to produce any Business Confidential Information or any other information concerning the Business, such production shall not be a violation of this Agreement and Seller and its Representatives shall, to the extent legally permissible, (i) notify Buyer in writing as soon as practicable to permit Buyer a reasonable amount of time to seek an appropriate protective order or other remedy (in which case Seller will cooperate with Buyer, at Buyer's cost, to the extent as Buyer may reasonably request), (ii) cooperate with Buyer, at Buyer's cost, to preserve the confidentiality of such Business Confidential Information consistent with applicable Law, and (iii) use its reasonable efforts to limit any such disclosure to the minimum disclosure necessary to comply with such Law or Governmental Order . Notwithstanding anything to the contrary herein, the obligations of Buyer and its Affiliates pursuant to the Confidentiality Agreement or any other confidentiality or non-disclosure agreement with Seller or any of its Affiliates, on the one hand, and Buyer or any of its Affiliates, on the other hand, in respect of any Business Confidential Information shall terminate as of the Closing and cease to be of any further force or effect.

Section 6.06 Governmental Approvals and Consents; Consent Decree.

(a) Each party hereto shall, as promptly as possible, use its reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the other Transaction Documents. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals. If required by the HSR Act and if the appropriate filing pursuant to the HSR Act has not been filed prior to the date hereof, each party hereto agrees to make an appropriate filing pursuant to the HSR Act with respect to the transactions contemplated by this Agreement within ten (10) Business Days after the date hereof, unless otherwise mutually agreed upon by the parties, and to supply as promptly as practicable to the appropriate Governmental Authority any additional information and documentary material that may be requested pursuant to the HSR Act.

(b) Without limiting the generality of the parties' undertakings pursuant to this Section 6.06, each of the parties agrees to use all reasonable best efforts to (i) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or any other Transaction Document; (ii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any other Transaction Document; and (iii) in the event any Governmental Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any other Transaction Document has been issued, to have such Governmental Order vacated or lifted.

(c) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not

including any interactions between Seller or Buyer with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(d) Without limiting the obligations of Buyer pursuant to Section 6.06(d), Seller and Buyer shall use their reasonable best efforts to give all notices to, and obtain all approvals and consents from, all third parties that are described in Section 4.03 of the Seller Disclosure Schedules and Section 5.03 of the Buyer Disclosure Schedules; *provided, however*, that neither Seller nor Buyer shall be obligated to pay any consideration therefor to any third party from whom consent or approval is requested.

(e) Buyer acknowledges that Seller has provided a copy of the Consent Decree to Buyer prior to the date hereof. Buyer agrees, from and as of the Closing, to undertake all of the obligations of Seller under, and comply with and be bound by the terms of, the Consent Decree, in each case solely with respect to, and only to the extent of, the obligations of Seller arising out of the operation of the Business from and after the Closing. Upon the receipt of the requisite consents (as defined in the Consent Decree), Buyer agrees to be substituted for Seller as a Party (as defined in the Consent Decree) under the Consent Decree. Prior to such substitution, Buyer and Seller shall cooperate to facilitate compliance with the terms of the Consent Decree, including with respect to the provision of data, reports and notices required thereunder, whether relating to the operation of the Business prior to or after the Closing. Each party shall use its reasonable best efforts to obtain the requisite consents under the Consent Decree for substitution of Buyer for Seller as a Party under the Consent Decree.

#### Section 6.07 Books and Records.

(a) In order to facilitate the resolution of any claims made against or incurred by Seller prior to the Closing, or for any other reasonable purpose, for a period of seven (7) years after the Closing, or such longer period as required by the Consent Decree, to the extent applicable, Buyer shall:

(i) retain the Books and Records (including personnel files) included in the Purchased Assets and delivered to it by Seller relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of Seller; and

(ii) upon reasonable notice, afford the Seller's Representatives reasonable access (including the right to make, at Seller's expense, photocopies), during normal business hours, to such Books and Records.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Buyer after the Closing, or for any other reasonable purpose, for a period of seven (7) years after the Closing, Seller shall:

(i) retain the Books and Records (including personnel files) of Seller retained by Seller which relate to the Business and its operations for periods prior to the Closing; and

(ii) upon reasonable notice, afford Buyer's Representatives reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such Books and Records.

(c) Neither Buyer nor Seller shall be obligated to provide the other party with access to any Books or Records (including personnel files) pursuant to this Section 6.07 where such access would jeopardize any attorney-client privilege or violate or contravene any Law or binding agreement entered into prior to the date of this Agreement.

Section 6.08 Closing Conditions. From the date hereof until the Closing, each party hereto shall use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the Closing conditions set forth in Article VII hereof. Without limiting the foregoing, each party agrees to cooperate in good faith to agree upon and finalize Exhibit G hereto, which sets forth the scope of transition services to be provided under the Transition Services Agreement and shall be Exhibit A to the Transition Services Agreement, promptly after the execution and delivery of this Agreement; *provided*, however, that such agreement shall be a condition to Closing so long as the scope of services requested by Buyer to be included in the Transition Services Agreement does not vary from the scope of services set forth on Exhibit G hereto and the fees for such services are the full actual costs of the applicable service provider.

Section 6.09 Public Announcements. Unless otherwise required by applicable Law or stock exchange requirements (based upon the reasonable advice of counsel), each of the parties hereto will cooperate with each other in the development and distribution of all news releases and other public information disclosures with respect to this Agreement or any of the transactions contemplated by this Agreement or the other Transaction Documents, and no party hereto shall make any such news release or public disclosure without having complied with its obligations under this Section 6.09.

Section 6.10 Bulk Sales Laws. Without admitting the applicability of the bulk transfer Laws of any jurisdiction, the parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer.

Section 6.11 Tax Matters. All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the other Transaction Documents (including any real property transfer Tax and any other similar Tax) (collectively, "**Transfer Taxes**") shall be borne one-half (50%) by each of Buyer and Seller. Buyer shall, at its own expense, timely file

any Tax Return or other document with respect to such Taxes or fees (and Seller shall cooperate with respect thereto as necessary), unless otherwise required by Law.

Section 6.12 Further Assurances. Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

Section 6.13 Accounts Receivable; Receipts and Disbursements; Mail. In the event that Buyer receives any payments after the Closing relating to any accounts receivable, including intracompany receivables, that accrued prior to Closing, such payments shall be the property of, and shall be forwarded and remitted to Seller on a bi-monthly basis. If Buyer receives any mail or other communication that does not relate to (i) Buyer's active vendors or suppliers for the Purchased Assets or the Business or (ii) the Purchased Assets or post-Closing aspects of the Business, then Buyer shall forward it to Seller within five (5) business days after receipt. In the event that Seller receives any payments after the Closing relating to any accounts receivable or other amounts that accrued on or following the Closing, such payments shall be the property of, and shall be forwarded and remitted to Buyer on a bi-monthly basis. If Seller receives any mail or other communication that relates to the Purchased Assets or post-Closing aspects of the Business, then Seller shall undertake to forward it to Buyer within five (5) business days after receipt.

Section 6.14 Intracompany Arrangements. Notwithstanding any other provision herein, as of the Closing, all services, commitments or other arrangements provided by Seller or its Affiliates that existed pre-Closing for the benefit of the Business and all services, commitments or other arrangements provided by the Business for the benefit of the Seller or its Affiliates that existed pre-Closing for the benefit of the Seller or such Affiliates shall cease, other than the services, arrangements and commitments provided for in the Transition Services Agreement.

Section 6.15 Retained Names; Transition Marks. (a) To the extent any of the Retained Names appear on any plants, buildings, signs, equipment or other structures that constitute Purchased Assets, Buyer shall, within ninety (90) calendar days after the Closing Date, remove or obliterate, or cause to be removed or obliterated, the Retained Names from such plants, buildings, signs, equipment or other structures (including on uniforms and motor vehicles). Seller may remove, or cause to be removed, from the Real Property on or prior to the Closing all stationery, business forms, packaging, containers and other similar personal property on which any of the Retained Names appear; *provided, however*, to the extent any such items are inadvertently left on the Real Property, Buyer shall not use any such items without first removing or obliterating, or causing to be removed or obliterated, the Retained Names from such materials. Buyer will not use any vehicles with any Retained Name or related signage outside the Seller Facilities (whether to deliver product or otherwise). For the avoidance of doubt, except as set forth in this Section 6.15, neither Buyer nor any of its Affiliates shall have any rights to, and shall not use in any manner, the Retained Names on or after the Closing.

(b) Subject to the terms and conditions of this Section 6.15, Seller, shall cause Buyer to be granted a limited, non-transferable, non-sublicensable, non-exclusive, royalty-free license, (i) with respect to the “CEMEX” trademark, for the six (6) month period following the Closing Date and (ii) with respect to the “RICHMORTAR”, “RICHCOLOR” and “STONESET” trademarks (together with the “CEMEX” trademark, the “ **Transition Marks** ”), for a period of nine (9) months following the Closing Date (such nine (9) month period, or six (6) month period, as applicable, the “ **Applicable Transition Period** ”) solely for use on cement bags in the manner that such Transition Marks were set forth on cement bags contained in the Purchased Assets at Closing. Buyer will use its commercially reasonable efforts to transition from use of the Transition Marks as soon as reasonably practicable and in any event prior to expiration of the Applicable Transition Period.

(c) In no event will Buyer use any of the Transition Marks that are subject to the license under this Section 6.15 after the Closing in any manner or for any purpose other than in the same manner that such Transition Marks were being used by the Business during the twelve (12) month period preceding the Closing. Without limiting the generality or effect of the foregoing, all products sold by the Business using any Transition Mark will be consistent in nature and quality with such products as sold by the Business in the twelve (12) month period preceding Closing.

Section 6.16 Release of Seller Performance Support. Buyer shall, at its sole cost and expense, use commercially reasonable efforts (and Seller will cooperate, at its sole cost and expense, as reasonably requested by Buyer and without charge) to (a) obtain with respect to all Performance Bonds and similar instruments issued with respect to Seller and its Affiliates in connection with the Business new performance bonds or other security with respect to Buyer's acts or omissions on or after the Closing Date that are satisfactory to the beneficiary; and (b) cause Seller and each of its Affiliates to be released from post-Closing liabilities and obligations under all of the Performance Bonds and similar instruments issued with respect to Seller and its Affiliates and under any guarantees and similar instruments entered into in connection with them (collectively with the Performance Bonds and similar instruments referred to in clause (b) above, the “ **Seller Performance Support** ”). Without limiting the foregoing, Buyer will make commercially reasonable financial accommodation, provide such security reasonably required by the issuer, and agree to any additional reasonable requirements of the issuer as a condition to obtaining such replacement and release of Seller Performance Support. Buyer will pay and otherwise be responsible for any Losses in respect of post-Closing liabilities incurred or suffered by Seller or any of its Affiliates as a result of any Seller Performance Support not having been replaced and released as set forth above. For avoidance of doubt, Buyer's failure to comply with this Section 6.16 shall constitute a breach of a covenant for which Buyer will indemnify Seller in accordance with Article VIII.

Section 6.17 Casualty Loss. (a) If, between the date of this Agreement and the Closing, any improvements on any Real Property or Tangible Personal Property included in the Purchased Assets (other than Adjustable Inventory) is destroyed or damaged in whole or in part by fire, earthquake, flood, or other casualty (a “ **Casualty Loss** ”), Seller shall promptly notify the Buyer thereof, and Seller and Buyer shall promptly jointly engage and retain an independent insurance adjuster (the “ **Insurance Adjuster** ”) to assess the extent of the Casualty Loss and promptly deliver a report (the “ **Casualty Loss Report** ”) to each of Seller and Buyer with its

determination of the cost to repair and replace the Purchased Asset in accordance with industry practice (such amount, the “**Casualty Amount**”).

(b) If the Casualty Amount is determined by the Insurance Adjuster not to be in excess of \$30,000,000, then Seller shall, at its option, either (i) expend an amount not in excess of the Casualty Amount to effect the repair of such damage or destruction (which repair may be completed following the Closing), or (ii) pay Buyer an amount in cash not greater than the Casualty Amount to effect the repair of such damage or destruction.

(c) If the Casualty Loss is determined by the Insurance Adjuster to exceed \$30,000,000, then, unless within thirty (30) Business Days following the receipt by Seller of the Casualty Loss Report (“**Election Period**”) Seller agrees to either (i) expend an amount not in excess of the Casualty Amount to effect the repair of such damage or destruction (which repair may be completed following the Closing) or (ii) pay Buyer an amount in cash not greater than the Casualty Amount to effect the repair of such damage or destruction, Buyer shall have the right to terminate the Agreement during the ten (10) Business Day period following the end of the Election Period by providing written notice to the Seller thereof.

#### Section 6.18 Title and Survey.

(a) Identified Parcels. With respect to each parcel of Owned Real Property set forth on Section 6.18 of the Seller Disclosures Schedules (“**Identified Parcels**”), promptly after the date of this Agreement, Seller shall obtain and provide to Buyer (i) from a surveyor reasonably acceptable to Buyer, an ALTA/NSPS Land Title Survey (which survey shall depict any improvements, easements, rights-of-way, encroachments and any other plottable matters affecting the real property depicted thereon) (each an “**Identified Parcel Alta Survey**”); and (ii) from First American Title Insurance Company (“**Title Agent**”), title insurance commitments for the issuance of Owner's Title Insurance Policies on each Identified Parcel naming Buyer as the proposed insured together with copies of all exception documents referenced therein (each an “**Identified Parcel Title Commitment**”). Buyer shall have fifteen (15) days from receipt of an Identified Parcel Title Commitment to examine same. Buyer shall, on or before the end of said fifteen (15) day review period, notify Seller in writing of the title exceptions listed in the Identified Parcel Title Commitment to which it objects, which shall not include Permitted Encumbrances (“**Noted Exceptions**”). Seller shall inform Buyer prior to Closing whether Seller will cure such Noted Exceptions or obtain an endorsement for additional title insurance or indemnification that satisfies such objection. Notwithstanding Buyer's fifteen (15) day review period, Buyer shall promptly notify Seller if Buyer determines that it has no objections to any Identified Parcel Title Commitment. If Buyer does not provide notice of objections to Seller as set forth above, then Buyer shall be deemed to have waived any remaining uncured objections and accepted the Identified Parcel Title Commitment; provided that Buyer shall be deemed to have objected to, and the same shall be deemed Noted Exceptions, any monetary encumbrances. With respect to any Ohio standard title exceptions, Seller agrees to (i) provide a customary owner's affidavit required by the Title Agent to, in conjunction with the delivery of the Identified Parcel Alta Survey, provide for so-called “extended coverage”, and (ii) cause the Title Agent to perform such searches as may be necessary to remove any exception related to the ownership of mineral rights being vested in any Person other than Seller.

(b) Non-Identified Parcels. With respect to each parcel of Owned Real Property not set forth on Section 6.18 of the Seller Disclosures Schedules (“**Non-Identified Parcels**”), promptly following the date of this Agreement, Seller shall obtain (i) from a surveyor reasonably acceptable to Buyer, a metes and bounds survey (each a “**Metes and Bounds Survey**”); and (ii) from the Title Agent, title insurance commitments for the issuance of Owner's Title Insurance Policies on each Non-Identified Parcel naming Buyer as the proposed insured together with copies of all exception documents referenced therein (each a “**Non-Identified Parcel Title Commitment**”). Following Closing, Buyer shall cooperate with Seller to obtain an ALTA/NSPS Land Title Survey for each Non-Identified Parcel (each a “**Non-Identified Parcel Alta Survey**”) together with an updated Non-Identified Parcel Title Commitment (each an “**Updated Non-Identified Parcel Title Commitment**”). Buyer shall have fifteen (15) days from receipt of an Updated Non-Identified Parcel Title Commitment to examine same. Buyer shall, on or before the end of said fifteen (15) day review period, notify Seller in writing of the title exceptions listed in the Updated Non-Identified Parcel Title Commitment to which it objects which shall not include Permitted Encumbrances (“**NI Noted Exceptions**”). Seller shall inform Buyer within fifteen (15) days from receipt of such notice if Seller will cure such NI Noted Exceptions or obtain an endorsement for additional title insurance or indemnification that satisfies such NI Noted Exception. Notwithstanding Buyer's fifteen (15) day review period, Buyer shall promptly notify Seller if Buyer determines that it has no objections to any Updated Non-Identified Parcel Title Commitment. If Buyer does not provide notice of objections to Seller as set forth above, then Buyer shall be deemed to have waived any remaining uncured objections and accepted the Non-Identified Parcel Title Commitment; provided that Buyer shall be deemed to have objected to, and the same shall be deemed NI Noted Exceptions, any monetary encumbrances and any exceptions to Seller's sole ownership of fee title to the entire estate. With respect to any Ohio standard exceptions, Seller agrees to provide a customary owner's affidavit required by the Title Agent to, in conjunction with the delivery of the Non-Identified Parcel Alta Survey, provide for so-called “extended coverage”. Within 15 days of receipt of all Non-Identified Parcel Alta Surveys together with Updated Non-Identified Parcel Title Commitments for all of the Non-Identified Parcel Title Commitments, Buyer and Seller shall cause the Title Agent to issue Non-Identified Parcel title policies for each Non-Identified Parcel (which may be in the form of a binding obligation from Title Agent to issue such policy in the form of a mark-up of the Non-Identified Parcel Title Commitment) in accordance with the Non-Identified Parcel Title Commitment insuring Buyer's fee simple title to the Non-Identified Parcels as of the date of such policy and subject only to Permitted Encumbrances and the Ohio standard title exceptions for mineral rights and items deemed accepted by Buyer, in such amounts as Seller and Buyer reasonably determine to be the value of the real property insured thereunder.

(c) Seller shall use commercially reasonable efforts to remove all Noted Objections and NI Noted Objections. However, if any Noted Objections or NI Noted Objections cannot be removed, and the failure to remove the same does not constitute a Material Adverse Effect, such failure shall not be deemed to have a Material Adverse Effect that would cause the condition set forth in Section 7.02(d) not to be satisfied. The parties agree that the fact that the Closing takes place without any Noted Objections or NI Noted Objections being removed shall not impair or otherwise affect the rights to indemnification under Section 8.02 in respect of any Losses incurred by Buyer resulting from such title defect.



(d) Notwithstanding the foregoing, if all Noted Exceptions and NI Noted Exceptions which have not been removed, insured by endorsement, or deemed accepted by Buyer, when taken as a whole, would result in a Material Adverse Effect, the condition set forth in Section 7.02(d) shall be deemed not to have been satisfied.

Section 6.19 Financial Statements; Cooperation with Auditor. Commencing promptly after the date hereof, Seller shall use its reasonable best efforts to prepare and provide to Buyer no later than sixty (60) days following the Closing Date, in cooperation with Buyer and KPMG LLP (the " **Auditor** "), the following financial statements (including footnotes thereto) in accordance with United States generally accepted accounting principles and the rules and regulations of the Securities and Exchange Commission applicable to financial statements to be filed with respect to an acquired business: (i) audited annual financial statements of the Business consisting of a balance sheet of the Business as of December 31, 2015 and the related audited statements of operations, statements of changes in net parent investment and statements of cash flows of the Business for the fiscal year then ended, including all footnotes thereto (collectively, the " **Annual Financial Statements** "), accompanied by an unqualified report of the Auditor with respect thereto (ii) (x) if the Closing occurs prior to November 12, 2016, unaudited interim financial statements of the Business consisting of balance sheets of the Business as of June 30, 2016 and the related statements of operations, statements of changes in net parent investment and statements of cash flows of the Business for the three and six-month periods then ended, including all footnotes thereto, or (y) if the Closing occurs on or after November 12, 2016, unaudited interim financial statements of the Business consisting of balance sheets of the Business as of September 30, 2016 and the related statements of operations, statements of changes in net parent investment and statements of cash flows of the Business for the three and nine-month periods then ended, including all footnotes thereto, and (iii) unaudited quarterly statements of operations of the Business for each fiscal quarter within the fiscal year ended on December 31, 2015 and (x) if the Closing occurs prior to November 12, 2016, for the three and six-month periods ended June 30, 2016, or (y) if the Closing occurs on or after November 12, 2016, for the three and nine-month periods ended September 30, 2016 and the three month period ended March 31, 2016 (the " **Interim Financial Statements** "). In addition, Seller shall cooperate with and assist Buyer and the Auditor provide them with such financial and other information and such assistance as may be required or as they may reasonably request to permit the Auditor to audit the Annual Financial Statements. The information to be provided by Seller pursuant to this Section 6.19 shall include information relating to Seller's day-to-day operations, and statements of revenue and expenses, general ledgers, balance sheets and statements of cash flow and such other financial information as reasonably requested by Buyer or the Auditor. Buyer shall bear and be responsible for the payment of the fees and expenses of KPMG LLP in connection with the audit of the Annual Financial Statements.

Section 6.20 Transfer of Leased Employee Vehicles. Section 6.20 of the Seller Disclosure Schedules lists each car and truck that is used in the Business by Employees and leased by the Seller as of the date of this Agreement (the " **Employee Vehicles** "). At or prior to the Closing, the parties shall use their reasonable best efforts to (i) establish, in the Buyer's name, new leases (on terms reasonably satisfactory to the Buyer) between the Buyer and the applicable lessor of each Employee Vehicle required to be listed in Section 6.20 of the Seller Disclosure Schedules, and (ii) transfer and deliver such leased Employee Vehicles to the Buyer. If the Buyer does not enter into a new lease in the Buyer's name with respect to each Employee

Vehicle at or prior to the Closing, then the Buyer may, at its option, with respect to each Employee Vehicle not subject to a new lease in the Buyer ' s name, (A) purchase such Employee Vehicle according to the terms required by the lease between the Seller and such lessor, or (B ) implement any other reasonable arrangement acceptable to the Seller.

Section 6.21 Transfer of Permits . Section 6.21 of the Seller Disclosure Schedules sets forth, to the Seller's Knowledge, a list of all non-transferable Permits and Environmental Permits of the Business as of the date hereof. Prior to the Closing, the Seller and the Buyer shall work together to transfer to the Buyer, subject to Section 2.08 , all Environmental Permits and other Permits currently held by the Seller relating to the Purchased Assets, including cooperating in the preparation and submission to the applicable Governmental Authority of the applications for assignment and any supporting documentation necessary to transfer, amend, modify, or reissue, as applicable, all such Environmental Permits or other Permits from the Seller to the Buyer. Any fees of any Governmental Authority imposed with respect to the assignment, transfer, amendment, or reissuance of such Environmental Permits or other Permits shall be paid by the Buyer.

Section 6.22 Transferred Agricultural Parcels . For three (3) years following the Closing Date, Buyer shall cause each parcel of Owned Real Property set forth on Section 6.22 of the Seller Disclosure Schedules (“ **Transferred Agricultural Parcels** ”) to continue to meet the requirements to remain in the Ohio Current Agricultural Use Value Program (“ **CAUV Program** ”).

Section 6.23 Fair born CKD Landfill #6 . From and after the Closing, Buyer shall take, or shall cause to be taken, all action reasonably necessary to enable, facilitate or assist Seller and its Representatives in entering, accessing or using the Fairborn CKD Landfill #6 for any purpose, including but not limited to granting any and all easements, rights-of-way or other rights over any Purchased Assets and providing reasonable assistance consistent with prior practices of the Business in connection with monitoring and maintenance activities of the Fairborn CKD Landfill #6. At or prior to the Closing, Seller and Buyer shall agree on the form of a non-exclusive easement over the parcel identified with the APN A02000100490000200 on Section 1.01(a) of the Seller Disclosure Schedules in order to permit Buyer to have reasonable access thereto for the installation, operation and construction of a rail line or road way.

## ARTICLE VII CONDITIONS TO CLOSING

Section 7.01 Conditions to Obligations of All Parties . The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) The filings of Buyer and Seller pursuant to the HSR Act, if any, shall have been made and the applicable waiting period and any extensions thereof shall have expired or been terminated.

(b) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect

of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

Section 7.02 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver (in its sole discretion), at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Seller contained in Article IV shall be true and correct in all respects as of the Closing Date (without giving effect to any Materiality Qualifiers therein) with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a Material Adverse Effect.

(b) Seller shall have duly performed and complied in all material respects with all agreements and covenants required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) There shall not have occurred any Material Adverse Effect.

(d) Seller shall have delivered to Buyer duly executed counterparts to each of the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.02(a).

(e) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Seller, that each of the conditions set forth in Section 7.02(a) and Section 7.02(b) have been satisfied (the "**Seller Closing Certificate**").

Section 7.03 Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller's waiver (in its sole discretion), at or prior to the Closing, of each of the following conditions:

(a) Each of the representations and warranties of Buyer contained in Article V shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby.

(b) Buyer shall have duly performed and complied in all material respects with all agreements and covenants required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) Buyer shall have delivered to Seller the Purchase Price, duly executed counterparts to each of the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.02(b).

(d) Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 7.03(a) and Section 7.03(b) have been satisfied (the "**Buyer Closing Certificate**").

## ARTICLE VIII INDEMNIFICATION

Section 8.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is eighteen (18) months after the Closing Date; *provided*, that the representations and warranties in (i) Section 4.01, Section 4.02, Section 4.07 (solely as to title), Section 4.09 (solely as to title), Section 4.17, Section 5.01, Section 5.02 and Section 5.04 (collectively, the "**Fundamental Representations**") shall survive indefinitely and without limitation and (ii) Section 4.15 (the "**Tax Representations**") shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 30 days. All covenants or other agreements contained in this Agreement shall survive the Closing Date until they have been fully performed or fulfilled in accordance with their terms, or no further performance is required thereunder. Notwithstanding the foregoing, any claims asserted in good faith and in writing by notice from an Indemnified Party to the Indemnifying Party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of such survival period and such claims and the rights of the Indemnified Party in respect thereof under this Article VII shall survive until finally resolved.

Section 8.02 Indemnification By Seller. Subject to the other terms and conditions of this Article VIII, Seller shall indemnify Buyer and its Affiliates and their respective Representatives (collectively, the "**Buyer Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon or arising out of:

(a) any failure of any representation or warranty of Seller contained in this Agreement to be true and correct as of the date of this Agreement and as of the Closing Date (other than those made on a specified date, which shall be true and correct as of such specified date); *provided, however*, that all Materiality Qualifications contained in any such representation or warranty shall be disregarded for purposes of determining whether a breach has occurred and the amount of Losses resulting therefrom;

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement, the other Transaction Documents or any instrument delivered by or on behalf of Seller pursuant to this Agreement;

(c) any Excluded Asset or any Excluded Liability; or

(d) without duplication, Excluded Taxes ("**Indemnified Taxes**").

Section 8.03 In demnification By Buyer . Subject to the other terms and conditions of this Article VIII, Buyer shall indemnify each of Seller and its Affiliates and their respective Representatives (collectively, the " **Seller Indemnitees** " ) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon or arising out of:

(a) any failure of any representation or warranty of Buyer contained in this Agreement to be true and correct as of the date of this Agreement and as of the Closing Date (other than those made on a specified date, which shall be true and correct as of such specified date); *provided, however* , that all Materiality Qualifications contained in any such representation or warranty shall be disregarded for purposes of determining whether a breach has occurred and the amount of Losses resulting therefrom;

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement, the other Transaction Documents or any instrument delivered by or on behalf of Buyer pursuant to this Agreement; or

(c) any Assumed Liability.

Section 8.04 Certain Limitations . The party making a claim under this Article VIII is referred to as the " **Indemnified Party** ", and the party against whom such claims are asserted under this Article VIII is referred to as the " **Indemnifying Party** ". The indemnification provided for in Section 8.02 and Section 8.03 shall be subject to the following limitations:

(a) Seller shall not be liable to the Buyer Indemnitees for indemnification under Section 8.02(a) (other than with respect to breaches of any Fundamental Representation or Tax Representation) until the aggregate amount of all Losses in respect of indemnification under Section 8.02(a) exceeds \$4,000,000.00 (the " **Deductible** " ), in which event Seller shall only be required to pay or be liable for Losses in excess of the Deductible. With respect to any claim as to which the Buyer Indemnitees may be entitled to indemnification under Section 8.02(a), Seller shall not be liable for any individual or series of related Losses (other than with respect to breaches of any Fundamental Representation or Tax Representation) which do not exceed fifty thousand dollars (\$50,000). With respect to any claim as to which the Seller Indemnitees may be entitled to indemnification under Section 8.03(a), Buyer shall not be liable for any individual or series of related Losses which do not exceed fifty thousand dollars (\$50,000).

(b) The aggregate amount of all Losses for which Seller shall be liable pursuant to Section 8.02(a) (other than with respect to breaches of any Fundamental Representation or Tax Representation) shall not exceed \$30,000,000.00. Notwithstanding anything to the contrary set forth herein, in no event shall either Indemnifying Party's aggregate liability pursuant to Section 8.02(a) or Section 8.03(a), respectively, exceed the Purchase Price.

(c) Payments by an Indemnifying Party pursuant to Section 8.02 or Section 8.03 in respect of any Loss shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or

other similar payment from a third party that has actually been received by the Indemnified Party in respect thereof, net of any out-of-pocket expenses incurred by the Indemnified Party in seeking recovery from the insurer or other third party from whom it is or may be entitled to receive such insurance proceeds or indemnity, contribution or other similar payment. If the Indemnified Party determines in good faith that it is likely to be entitled to recover all or a portion of such Loss from any such insurer or other third party, it shall submit a claim to such insurer or other third party and shall use its commercially reasonable efforts to seek recovery of the applicable portion of such Loss from such insurer or other third party; *provided, however*, that the Indemnified Party shall not be required to commence any Action to enforce its rights against such insurer or other third party unless it elects to do so in its sole discretion; *provided, further, however*, that any such insurance or other third party proceeds actually received by the Indemnified Party in respect of any such Loss after payment by an Indemnifying Party shall be promptly refunded to the Indemnifying Party .

(d) Payments by an Indemnifying Party pursuant to Section 8.02 or Section 8.03 in respect of any Loss shall be reduced by an amount equal to any Tax benefit realized as a result of such Loss by the Indemnified Party; provided that any such benefit realized within two (2) years after payment by an Indemnifying Party shall be promptly refunded to the Indemnifying Party.

(e) Each Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps required by applicable Law to mitigate any Loss upon becoming aware of any event or circumstance that it determines is reasonably likely to give rise thereto.

(f) Each of the parties hereby acknowledges and agrees that the limitations provided for in paragraphs (a) and (b) above apply only to Losses arising from a breach of the representations and warranties specified therein, and do not apply to any other rights to indemnification provided for in this Article VIII, including rights to indemnification against Excluded Liabilities or Assumed Liabilities (as the case may be).

#### Section 8.05 Indemnification Procedures.

(a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a " **Third Party Claim** ") against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of any written notice of assertion or commencement thereof received by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party's expense and with counsel reasonably acceptable to the Indemnified Party, and the Indemnified Party shall cooperate in good faith in such defense; *provided*, that the Indemnifying Party shall not have the

right to assume the defense of a Third Party Claim if (1) in the reasonable judgment of the Indemnified Party, there exists a material conflict of interest between the Indemnified Party and the Indemnifying Party with respect to such Third Party Claim or there are any material defenses available to the Indemnified Party that differ from or are in addition to those available to the Indemnified Party or (2) the Third Party Claim would reasonably be expected to result in an injunction or other equitable relief against the Indemnified Party that, in the reasonable judgment of the Indemnified Party, would be expected to materially and adversely affect the business activities or operations of the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 8.05(b), it shall conduct the defense diligently and in a reasonable manner and, in doing so, shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right, at its own cost and expense, to participate in the defense of any Third Party Claim assumed by the Indemnifying Party with counsel selected by it, subject to the Indemnifying Party's right to conduct the defense thereof in accordance with the terms of this Section 8.05(a). If the Indemnifying Party elects not to assume the defense of a Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently conduct the defense of such Third Party Claim, the Indemnified Party may, subject to Section 8.05(b), conduct, control, pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of Section 6.05) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), unless the terms of such settlement include the grant by the claimant or plaintiff to the Indemnified Party of a full and unconditional release from any and all liability in respect thereof. If the Indemnified Party is conducting its own defense pursuant to Section 8.05(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) Direct Claims. Any claim by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a "**Direct Claim**") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include reasonable supporting documentation and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 60 days after its receipt of such notice to respond in writing to such Direct Claim. During such 60-day period, the Indemnified Party shall provide the Indemnifying Party and its professional advisors reasonable

information, together with such access to the Indemnified Party's premises and personnel and the right to examine and copy any accounts, documents or records, as the Indemnifying Party or any of its professional advisors may reasonably request to substantiate the Direct Claim. If the Indemnifying Party does not so respond within such 60-day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

(d) Reliance. The rights of the Buyer Indemnitees to indemnification for breaches of the representations and warranties of Seller set forth in this Agreement are part of the basis of the bargain contemplated by this Agreement, and such rights to indemnification shall not be affected or waived by virtue of, and Buyer Indemnitees shall be deemed to have relied upon the representations and warranties of Seller set forth in this Agreement notwithstanding any knowledge acquired (or capable of being acquired) by any Buyer Indemnitee of any untruth of any such representation or warranty of Seller set forth in this Agreement, regardless of whether such knowledge was obtained (or was capable of being obtained) through the investigation by such Buyer Indemnitee or through disclosure by Seller or any other Person, and regardless of whether such knowledge was obtained before, at or after the Closing.

Section 8.06 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement and all post-Closing adjustments made pursuant to Section 2.06 shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

Section 8.07 Exclusive Remedies. Subject to Section 10.11, the parties acknowledge and agree that, from and after the Closing, their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this Article VIII. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action (other than claims arising from fraud on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this Article VIII. Nothing in this Section 8.07 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled pursuant to Section 10.11 or to seek or obtain any remedy on account of any party's fraud.



**ARTICLE IX  
TERMINATION**

Section 9.01 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of Seller and Buyer;

(b) by Buyer by written notice to Seller if:

(i) Buyer is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article VII and such breach, inaccuracy or failure cannot be cured by Seller within by February 15, 2017 (the “**Drop Dead Date**”); or

(ii) any of the conditions set forth in Section 7.01 or Section 7.02 shall not have been fulfilled by the Drop Dead Date, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(c) by Seller by written notice to Buyer if:

(i) Seller is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article VII and such breach, inaccuracy or failure cannot be cured by Buyer by the Drop Dead Date;

(ii) any of the conditions set forth in Section 7.01 or Section 7.03 shall not have been fulfilled by the Drop Dead Date, unless such failure shall be due to the failure of Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(d) by Buyer or Seller in the event that:

(i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited; or

(ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions

contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable; or

(e) by Buyer, in accordance with the terms of Section 6.17(c).

Section 9.02 Effect of Termination. In the event of the termination of this Agreement in accordance with this Article IX, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto or to any Affiliate, shareholder, director, officer or Representative of such party except:

(a) as set forth in this Article IX, Section 6.05 and Article X hereof; and

(b) that nothing herein shall relieve any party hereto from liability for any breach of any provision hereof and any such breaching party shall remain fully liable for any and all Losses incurred or suffered by another party to this Agreement as a result of such breach.

## ARTICLE X MISCELLANEOUS

Section 10.01 Expenses. Except as otherwise expressly provided herein (including Section 6.11 hereof), all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred; *provided, however*, that (i) Buyer shall pay all filing and other similar fees payable in connection with any filings or submissions under the HSR Act; and (ii) Buyer and Seller shall each share one-half (50%) of all costs and expenses incurred in (A) obtaining title policies and surveys pursuant to Section 6.18 and (B) retaining the Insurance Adjuster pursuant to Section 6.17.

Section 10.02 Notices. Any and all notices or other communications required or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of delivery if personally delivered, (b) on the date of transmission if sent by facsimile, (c) one (1) Business Day after delivery if sent by overnight service or (d) four (4) Business Days after mailing if mailed by first class registered mail, return receipt requested, in each case addressed to the parties at the addressees set forth below (or at such other address as any party may specify by notice to all other parties given as aforesaid)

If to Seller:                   CEMEX CONSTRUCTION MATERIALS ATLANTIC, LLC  
929 Gessner, Suite 1900  
Houston, TX 77024  
Attention: Executive VP Planning  
Facsimile: (713) 722-5100

with copies to: CEMEX  
1501 Belvedere Road  
West Palm Beach, FL 33406  
Attention: General Counsel  
Facsimile: (561) 803-6044

and

Skadden, Arps, Slate, Meagher & Flom LLP  
4 Times Square  
New York, NY 10036  
Attention: Clifford H. Aronson  
Facsimile: (212) 735-2000

If to Buyer: EAGLE MATERIALS INC.  
3811 Turtle Creek Blvd.  
Suite 1100  
Dallas, Texas 75219-4487  
Attention: James H. Graass,  
Executive Vice President, General Counsel and Secretary  
Facsimile: (214) 432-2110

with copies to: Baker Botts L.L.P.  
2001 Ross Avenue  
Dallas, Texas 75201  
Attention: Geoffrey L. Newton  
Facsimile: (214) 661-4753

Section 10.03 Interpretation. For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa; and (d) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. Exceptions to a party's representations and warranties set forth herein that are disclosed in the Disclosure Schedules shall relate and apply only to representations and

warranties that correspond to the numbered section or subsection thereof; *provided, however*, that information set forth in one section or subsection of the Disclosure Schedules shall be deemed to apply to each other section or subsection of the Disclosure Schedules to which its relevance is readily apparent on the face of such disclosure.

Section 10.04 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 10.05 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 10.06 Entire Agreement. This Agreement, the Confidentiality Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Confidentiality Agreement or the other Transaction Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 10.07 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, however, that prior to the Closing Date, Buyer may, without the prior written consent of the Seller, assign all or any portion of its rights under this Agreement (including its right to acquire any Purchased Assets) to one or more of its direct or indirect wholly owned subsidiaries; *provided, further*, that following the Closing, Seller may assign its rights hereunder, without the prior written consent of the Buyer, to an Affiliate of Seller or a third party acquirer of all or substantially all of Seller's equity or assets. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 10.08 No Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 10.09 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto.

No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 10.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction), except to the extent that mandatory principles of conflicts of law require the application of the laws of another jurisdiction wherein any of the Purchased Assets are located to determine the validity or effect of the sale, conveyance, transfer, assignment and delivery thereof in accordance with Article II.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE CITY OF HOUSTON, TEXAS AND COUNTY OF HARRIS, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D)

SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.10(c).

Section 10.11 Specific Performance. The parties acknowledge that, in view of the uniqueness of the Business and the transactions contemplated by this Agreement, each of Seller and Buyer would not have an adequate remedy at law for money damages in the event that this Agreement has not been performed in accordance with its terms, and therefore agrees that, in addition to all other remedies available at law or in equity, the other party shall be entitled to an injunction or injunctions to prevent or restrain breaches or threatened breaches of this Agreement by the other (as applicable), and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of the other (as applicable), and this right shall include the right of Seller to cause Buyer to draw upon its credit facility and cause the Purchase Price to be fully paid if the conditions set forth in Section 7.01 and 7.02 have been satisfied (other than those conditions that by their nature are to be satisfied at the Closing) or waived. Each of Seller and Buyer agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that the other party has an adequate remedy at law or that any award of specific performance is not an appropriate remedy for any reason at law or in equity. Any party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction.

Section 10.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 10.13 Non-recourse. This Agreement may only be enforced against, and any claim, action, suit or other legal proceeding based upon, arising out of, or related to this Agreement, or the negotiation, execution or performance of this Agreement, may only be brought against the entities that are expressly named as parties hereto and then only with respect to the specific obligations set forth herein with respect to such party. No past, present or future director, officer, employee, incorporator, manager, member, partner, stockholder, Affiliate, agent, attorney or other Representative of any party hereto or of any Affiliate of any party hereto, or any of their successors or permitted assigns, shall have any liability for any obligations or liabilities of any party hereto under this Agreement or for any claim, action, suit or other legal proceeding based on, in respect of or by reason of the transactions contemplated hereby.

Section 10.14 LIMITATION ON CERTAIN DAMAGES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY (I) PUNITIVE OR EXEMPLARY DAMAGES OR (II) INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES, INCLUDING LOSS OF FUTURE PROFITS, LOSS OF BUSINESS REPUTATION OR OPPORTUNITY RELATING TO THE BREACH OR ALLEGED BREACH OF THIS AGREEMENT, UNLESS UNDER APPLICABLE CONTRACT LAW PRINCIPLES SUCH LOSSES WERE A REASONABLY FORESEEABLE CONSEQUENCE OF THE BREACH OR CIRCUMSTANCE GIVING RISE TO THE SAME; *PROVIDED, HOWEVER*, THAT THE ABOVE LIMITATIONS SHALL NOT APPLY TO ANY LOSSES INCURRED BY OR IMPOSED UPON AN INDEMNIFIED PARTY IN RESPECT OF THIRD-PARTY CLAIMS FOR WHICH ANY PARTY IS OBLIGATED TO INDEMNIFY SUCH INDEMNIFIED PARTY UNDER THIS AGREEMENT.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

CEMEX CONSTRUCTION MATERIALS  
ATLANTIC, LLC

By: /s/ Juan Carlos Herrera  
Name: Juan Carlos Herrera  
Title: Vice President

EAGLE MATERIALS INC.

By: /s/ David B. Powers  
Name: David B. Powers  
Title: President and Chief Executive Officer



	Six Months Ended September 30, 2016	Fiscal Year Ended March 31,			
		2016	2015	2014	2013
Earnings: (1)					
Earnings before income taxes	156,649	219,252	252,927	181,804	84,096
Add: Fixed charges	10,535	18,539	16,631	18,171	15,791
Add: Amortization of capitalized interest and FIN 48 Interest	268	536	(3,311)	1,117	945
Add: Cash distributions from equity method investments	21,750	37,250	40,375	37,750	28,500
Subtract: Income from equity method investments	(20,127)	(39,083)	(44,967)	(37,811)	(32,507)
<b>Total Earnings</b>	<b>169,075</b>	<b>236,494</b>	<b>261,655</b>	<b>201,091</b>	<b>96,825</b>
Fixed Charges: (2)					
Interest expense	9,557	16,583	15,590	17,646	15,467
Interest component of rent expense	978	1,956	1,041	525	324
<b>Total Fixed Charges</b>	<b>10,535</b>	<b>18,539</b>	<b>16,631</b>	<b>18,171</b>	<b>15,791</b>
<b>Ratio of Earnings to Fixed Charges</b>	<b>16.0x</b>	<b>12.8x</b>	<b>15.7.1x</b>	<b>11.1x</b>	<b>6.1x</b>

(1) Earnings represent earnings before income taxes and before income from equity method investments plus: (a) fixed charges; and (b) cash distributions from equity method investments.

(2) Fixed charges include: (a) interest expense, whether expensed or capitalized, less interest accrued for uncertain tax positions; and (b) the portion of operating rental expense which management believes is representative of the interest component of rent expense.

**Certification of Periodic Report Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, David B. Powers, certify that:

1. I have reviewed this report on Form 10-Q of Eagle Materials Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures [as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)] and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: October 24, 2016

By: /s/ David B. Powers  
David B. Powers  
President and Chief Executive Officer

**Certification of Periodic Report Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, D. Craig Kesler, certify that:

1. I have reviewed this report on Form 10-Q of Eagle Materials Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures [as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)] and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: October 24, 2016

By: /s/ D. Craig Kesler  
D. Craig Kesler  
Chief Financial Officer  
(Principal Financial Officer)

**Certification of Periodic Report Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report of Eagle Materials Inc. and subsidiaries (the "Company") on Form 10-Q for the period ended September 30, 2016 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David B. Powers, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (i) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: October 24, 2016

By: /s/ David B. Powers  
David B. Powers  
President and Chief Executive Officer

**Certification of Periodic Report Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report of Eagle Materials Inc. and subsidiaries (the "Company") on Form 10-Q for the period ended September 30, 2016 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, D. Craig Kesler, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (i) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: October 24, 2016

By: /s/ D. Craig Kesler  
D. Craig Kesler  
Chief Financial Officer  
(Principal Financial Officer)

MINE SAFETY DISCLOSURE

Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act contains reporting requirements regarding mine safety. The operation of our quarries is subject to regulation by the federal Mine Safety and Health Administration, or MSHA, under the Federal Mine Safety and Health Act of 1977, or the Mine Act. Set forth below is the required information regarding certain mining safety and health matters for the three month period ending September 30, 2016 for our facilities. In evaluating this information, consideration should be given to factors such as: (i) the number of citations and orders will vary depending on the size of the quarry, (ii) the number of citations issued will vary from inspector-to-inspector and mine-to-mine, and (iii) citations and orders can be contested and appealed, and in that process, may be reduced in severity and amount, and are sometimes dismissed.

Mine or Operating Name/MSHA Identification Number	Section 104 S&S Citations	Section 104(b) Orders	Section 104(d) Citations and Orders	Section 110(b)(2) Violations	Section 107(a) Orders	Total Dollar Value of MSHA Assessments Proposed	Total Number of Mining Related Fatalities	Received Notice of Pattern of Vio-lations Under Section 104(e) (yes/no)	Received Notice of Potential to Have Pattern Under Section 104(e) (yes/no)	Legal Actions Pending as of Last Day of Period	Legal Actions Initiated During Period	Legal Actions Resolved During Period
American Gypsum Company LLC Albuquerque, NM (2900181)	0	0	0	0	0	\$ 0	0	no	no	0	0	0
American Gypsum Company LLC Duke, OK (3400256)	0	0	0	0	0	\$ 0	0	no	no	0	0	0
American Gypsum Company LLC Eagle, CO (0503997)	0	0	0	0	0	\$ 0	0	no	no	0	0	0
Centex Materials LLC Buda, TX (4102241)	0	0	0	0	0	\$ 434	0	no	no	0	0	0
Central Plains Cement Company Sugar Creek, MO (2302171)	8	0	0	0	0	\$ 14,832	0	no	no	0	0	0
Central Plains Cement Company Tulsa, OK (3400026)	11	0	0	0	0	\$ 0	0	no	no	1 (1)	0	0
Great Northern Sand Barron Co., WI (4703646)	0	0	0	0	0	\$ 0	0	no	no	0	0	0
Great Northern Sand LLC Barron Co., WI (4703740)	0	0	0	0	0	\$ 0	0	no	no	0	0	0
Illinois Cement Company LaSalle, IL (1100003)	0	0	0	0	0	\$ 0	0	no	no	0	0	0
Mountain Cement Company Laramie, WY (4800007)	0	0	0	0	0	\$ 276	0	no	no	0	0	0
Mountain Cement Company Laramie, WY (4800529)	0	0	0	0	0	\$ 0	0	no	no	0	0	0
Nevada Cement Company Fernley, NV (2600015)	0	0	0	0	0	\$ 0	0	no	no	0	0	0
Northern White Sand LLC Utica, IL (1103253)	0	0	0	0	0	\$ 0	0	no	no	0	0	0
Northern White Sand LLC Corpus Christi, TX (4105013)	0	0	0	0	0	\$ 0	0	no	no	0	0	0
Talon Concrete and Aggregates LLC Sugar Creek, MO (2302211)	0	0	0	0	0	\$ 259	0	no	no	0	0	0
Western Aggregates LLC Yuba, CA (0404950)	0	0	0	0	0	\$ 0	0	no	no	0	0	0

(1) The legal action is a penalty contest.