

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): June 19, 2019

Eagle Materials Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

1-12984
(Commission
File Number)

75-2520779
(IRS Employer
Identification No.)

5960 Berkshire Lane, Suite 900, Dallas, Texas
(Address of principal executive offices)

75225
(Zip code)

Registrant's telephone number including area code: (214) 432-2000

Not Applicable
(Former name or former address if changed from last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.01 par value	EXP	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 5.02. Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers.

Appointment of Michael R. Haack to Board of Directors

On June 19, 2019, the Board of Directors (the “Board”) of Eagle Materials Inc. (the “Company”) expanded the size of the Board from nine to ten directors and appointed Michael R. Haack to serve as a Class III director, effective immediately, with a term to expire at the 2021 annual stockholders’ meeting.

Mr. Haack is the Company’s President and Chief Operating Officer, who will succeed David B. Powers as the Company’s Chief Executive Officer when Mr. Powers retires from the role on July 1, 2019. Mr. Haack joined the Company as Executive Vice President and Chief Operating Officer in December 2014. Previously, Mr. Haack was employed at Haliburton Energy Services for 17 years, most recently as Global Operations Manager at Halliburton’s Sperry Drilling Division. Mr. Haack will not receive additional compensation for his service as a member of the Board.

Approval of Change in Control Agreements

On June 19, 2019, the Board approved change in control continuity agreements with the following named executive officers: Mr. Haack; D. Craig Kesler, the Company’s Executive Vice President – Finance and Administration & Chief Financial Officer; Robert S. Stewart, the Company’s Executive Vice President – Strategy, Corporate Development and Communications; and James H. Graass, the Company’s Executive Vice President, General Counsel and Secretary.

The change in control continuity agreements provide that, in the event of a change in control during the term, a two-year protection period will commence during which the relevant executive will be entitled to compensation and benefits on terms that are generally no less favorable than those that applied prior to the change in control. In the event of the executive’s involuntary termination of employment without cause or resignation for good reason during the two-year protection period, subject to the execution of a release of claims, he would be entitled to (a) cash severance equal to the product of (i) a severance multiple of 3 (for Mr. Haack), 2.5 (for Mr. Kesler) or 2 (for Messrs. Stewart and Graass), *multiplied by* (ii) the sum of his annual base salary and target annual bonus; (b) a prorated annual bonus for the year of termination; (c) a payment in lieu of employer retirement savings plan contributions that he would have received had his employment continued for 18 months (for Mr. Haack), 15 months (for Mr. Kesler) or 12 months (for Messrs. Stewart and Graass) post-termination; (d) a payment equal to the premium for continued participation in health insurance plans for 18 months (for Mr. Haack), 15 months (for Mr. Kesler) or 12 months (for Messrs. Stewart and Graass) post-termination; and (e) outplacement benefits of up to \$30,000. The change in control continuity agreements subject the executives to a perpetual confidentiality covenant and noncompetition covenants for 18 months (for Mr. Haack), 15 months (for Mr. Kesler) or 12 months (for Messrs. Stewart and Graass) post-termination. If any payments or benefits under the change in control continuity agreements would be subject to Sections 280G and 4999 of the Internal Revenue Code, such payments or benefits would be reduced to the extent that such reduction would place the executive in a better after-tax position. The initial term of the change in control continuity agreements is three years from the effective date of June 20, 2019, subject to automatic renewal for an additional year on each anniversary of the effective date.

The foregoing summary of the change in control continuity agreements does not purport to be complete and is qualified in its entirety by reference to the change in control continuity agreements with Messrs. Haack, Kesler, Stewart and Graass, which are attached to this Current Report on Form 8-K as Exhibits 10.1, 10.2, 10.3 and 10.4, respectively.

Approval of Advisory Agreement

On June 19, 2019, the Board approved an advisory agreement with Mr. Powers in connection with his retirement, effective July 1, 2019, pursuant to which Mr. Powers has agreed to provide advisory services to the Company during the period from his retirement date until March 31, 2020. The advisory services include providing support, advice, and counsel to the Company’s Chief Executive Officer regarding all aspects of the Company’s businesses; consulting with the Chief Executive Officer, including with regard to leadership transition; assisting the

Chief Executive Officer and the management team with any special projects, including specifically with regard to the recently announced separation of the Company's wallboard business and the cement business and the exploration of alternatives for the Company's frac sand division; and performing such other services as are consistent with Mr. Powers's experience and expertise.

The agreement also subjects Mr. Powers to a perpetual confidentiality covenant and covenants concerning noncompetition, nonsolicitation of customers, clients and suppliers and nonsolicitation of employees, each of which apply until the first anniversary of his retirement date.

In consideration for Mr. Powers's services, he will receive an advisory fee of \$1,200,000, payable in monthly installments (or upon an earlier termination by the Company that is not due to Mr. Powers's material breach of the agreement). In addition, the Board approved his retirement for purposes of his outstanding earned but unvested restricted stock awards, resulting in the vesting of such awards as of his retirement date.

The advisory agreement provides that, following Mr. Powers's retirement, he will continue as a member of the Board and be compensated in the same manner as other non-employee directors, except that his director compensation for 2019 will be prorated for the period following his retirement date.

The foregoing summary of the advisory agreement does not purport to be complete and is qualified in its entirety by reference to the advisory agreement, which is attached to this Current Report on Form 8-K as Exhibit 10.5.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

- 10.1 [Change in Control Continuity Agreement, dated as of June 20, 2019, by and between Eagle Materials Inc. and Michael R. Haack](#)
- 10.2 [Change in Control Continuity Agreement, dated as of June 20, 2019, by and between Eagle Materials Inc. and D. Craig Kesler](#)
- 10.3 [Change in Control Continuity Agreement, dated as of June 20, 2019, by and between Eagle Materials Inc. and Robert S. Stewart](#)
- 10.4 [Change in Control Continuity Agreement, dated as of June 20, 2019, by and between Eagle Materials Inc. and James H. Graass](#)
- 10.5 [Advisory Agreement, dated as of June 20, 2019, by and between Eagle Materials Inc. and David B. Powers](#)

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 hereunto duly authorized.

EAGLE MATERIALS INC.

By: /s/ James H. Graass

James H. Graass
Executive Vice President, General Counsel and
Secretary

Dated: June 25, 2019

CHANGE IN CONTROL CONTINUITY AGREEMENT

THIS CHANGE IN CONTROL CONTINUITY AGREEMENT (this “**Agreement**”) is made and entered into, as of June 20, 2019, by and between Eagle Materials Inc., a Delaware corporation (the “**Company**”) and Michael R. Haack (“**Executive**”).

WHEREAS, the Board of Directors of the Company (the “**Board**”) has determined that it is in the best interests of the Company and its stockholders to assure that the Company will have the continued dedication of Executive, notwithstanding the possibility, threat or occurrence of a Change in Control (as defined below); and

WHEREAS, the Board believes it is imperative to diminish the inevitable distraction of Executive by virtue of the personal uncertainties and risks created by a pending or threatened Change in Control and to encourage Executive’s full attention and dedication to the Company currently and in the event of any threatened or pending Change in Control, and to provide Executive with compensation and benefits arrangements upon a Change in Control that ensure that the compensation and benefits expectations of Executive will be satisfied and that are competitive with those of other corporations.

NOW, THEREFORE, in order to accomplish the foregoing objectives and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows.

1. **Certain Definitions.**

(a) “**Affiliate**” shall mean an entity controlled by, controlling or under common control with another entity.

(b) “**Change in Control**” shall mean:

(i) An acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a “**Person**”) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended, or any successor thereto (the “**Exchange Act**”) of 35% or more of either (1) the then outstanding shares of common stock of the Company (the “**Outstanding Company Common Stock**”) or (2) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the “**Outstanding Company Voting Securities**”); provided, however, that for purposes of this subsection (i), the following acquisitions shall not constitute a Change in Control: (A) any acquisition directly from the Company; (B) any acquisition by the Company; (C) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any entity controlled by the Company; or (D) any acquisition by any entity pursuant to a transaction that complies with clauses (A), (B) and (C) of subsection (iii) of this Section 1(b);

(ii) A change in the composition of the Board such that the individuals who, as of the Effective Date, constitute the Board (the “**Incumbent Board**”) cease for any reason to constitute at least a majority of the Board; provided, however, that, for purposes of this Section 1(b), any individual who becomes a member of the Board subsequent to the date of this Agreement whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least a majority of those individuals who are members of the Board and who were also members of the Incumbent Board (or deemed to be such pursuant to this proviso) shall be considered as though such individual were a member of the Incumbent Board; provided further, that any such individual whose initial assumption of office occurs as a result of either an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board shall not be considered as a member of the Incumbent Board;

(iii) The consummation of a reorganization, merger, statutory share exchange or consolidation or similar transaction involving the Company or any of its subsidiaries or sale or other disposition of all or substantially all of the assets of the Company, or the acquisition of assets or securities of another entity by the Company or any of its subsidiaries (a “**Business Combination**”), in each case, unless, following such Business Combination: (A) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock (or, for a noncorporate entity, equivalent securities) and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors (or, for a noncorporate entity, equivalent securities), as the case may be, of the entity resulting from such Business Combination (including an entity that, as a result of such transaction, owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be; (B) no Person (excluding any entity resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or such entity resulting from such Business Combination) beneficially owns, directly or indirectly, 35% or more of, respectively, the then outstanding shares of common stock (or, for a noncorporate entity, equivalent securities) of the entity resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such entity except to the extent that such ownership existed prior to the Business Combination; and (C) at least a majority of the members of the board of directors (or, for a noncorporate entity, equivalent body or committee) of the entity resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

(iv) The approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

(c) “**Change in Control Period**” shall mean the period commencing on the date hereof and ending on the third anniversary of the date hereof; provided, however, that commencing on the date one year after the date hereof, and on each annual anniversary of such date (such date and each annual anniversary thereof shall be hereinafter referred to as the “**Renewal Date**”), unless previously terminated, the Change in Control Period shall be automatically extended so as to terminate three years from such Renewal Date, unless at least 60 days prior to the Renewal Date the Company shall give notice to Executive that the Change in Control Period shall not be so extended.

(d) “**Code**” shall mean the Internal Revenue Code of 1986, as amended.

(e) “**Effective Date**” shall mean the first date during the Change in Control Period on which a Change in Control occurs. Notwithstanding anything in this Agreement to the contrary, if (i) Executive’s employment with the Company is terminated by the Company, (ii) the Date of Termination is prior to the date on which a Change in Control occurs, and (iii) it is reasonably demonstrated by Executive that such termination of employment (A) was at the request of a third party that has taken steps reasonably calculated to effect a Change in Control or (B) otherwise arose in connection with or anticipation of a Change in Control, then for all purposes of this Agreement, the “**Effective Date**” means the date immediately prior to such Date of Termination.

(f) “**Restricted Period**” shall mean the period of 18 months following the Date of Termination.

2. **Continuity Period.** The Company hereby agrees to continue Executive in its employ, and Executive hereby agrees to remain in the employ of the Company subject to the terms and conditions of this Agreement, for the period commencing on the Effective Date and ending on the second anniversary of such date (the “**Continuity Period**”). The Continuity Period shall terminate upon Executive’s termination of employment for any reason.

3. **Terms of Employment.** (a) **Position and Duties.** (i) During the Continuity Period, (A) Executive’s position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be at least commensurate in all respects with the most significant of those held, exercised and assigned to Executive at any time during the 120-day period immediately preceding the Effective Date and (B) Executive’s services shall be performed at the location where Executive was employed immediately preceding the Effective Date or any office or location less than 25 miles from such location.

(ii) During the Continuity Period, and excluding any periods of vacation and sick leave to which Executive is entitled, Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to Executive hereunder, to use Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Continuity Period it shall not be a violation of this Agreement for Executive to (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions and (C) manage personal investments, so long as such activities do not significantly interfere with the performance of Executive's responsibilities as an employee of the Company in accordance with this Agreement. It is expressly understood and agreed that to the extent that any such activities have been conducted by Executive prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not thereafter be deemed to interfere with the performance of Executive's responsibilities to the Company.

(b) **Compensation.** (i) **Base Salary.** During the Continuity Period, Executive shall receive an annual base salary ("**Annual Base Salary**"), that shall be paid at an annual rate, at least equal to 12 times the highest monthly base salary paid or payable, including any base salary that has been earned but deferred, to Executive by the Company and its Affiliates in respect of the 12-month period immediately preceding the month in which the Effective Date occurs. The Annual Base Salary shall be paid at such intervals as the Company pays executive salaries generally. During the Continuity Period, the Annual Base Salary shall be periodically reviewed and increased in the same manner and proportion as the base salaries of other senior executives of the Company and Affiliates, but in no event shall such review and adjustment be more than 12 months after the last salary increase awarded to Executive prior to the Effective Date and thereafter at least annually. Any increase in Annual Base Salary shall not serve to limit or reduce any other obligation to Executive under this Agreement. Annual Base Salary shall not be reduced after any such increase and the term Annual Base Salary as utilized in this Agreement shall refer to Annual Base Salary as so increased.

(ii) **Annual Bonus.** In addition to Annual Base Salary, Executive shall be awarded, for each fiscal year ending during the Continuity Period, an annual bonus (the "**Annual Bonus**") in cash at least equal to the target annual bonus for which Executive was eligible as of immediately prior to the Effective Date (or, if the target annual bonus has not been established for such fiscal year, for the completed fiscal year immediately preceding the Effective Date) (the "**Target Annual Bonus**"). Each such Annual Bonus shall be paid no later than two and a half months after the end of the fiscal year for which the Annual Bonus is awarded, unless Executive shall elect to defer the receipt of such Annual Bonus pursuant to an arrangement that meets the requirements of Section 409A of the Code.

(iii) **Long Term Incentive Awards.** During the Continuity Period, Executive shall be entitled to participate in all long-term equity- and cash-based incentive plans and programs applicable generally to other peer executives of the Company and its Affiliates. For each fiscal year ending during the Continuity Period, Executive shall be awarded annual long-term incentive awards (the "**Annual LTI Award**") in respect of the common stock of the Company (or the ultimate parent entity of

the Company) or cash incentive awards, in each case on the same basis as other peer executives of the Company, at least equal to the target Annual LTI Award opportunity to which Executive was eligible as of immediately prior to the Effective Date or, if more favorable to Executive, the target Annual LTI Award opportunity provided generally at any time after the Effective Date to other peer executives of the Company and its Affiliates (the “**Target LTI Award Opportunity**”). The terms and conditions of the awards granted in respect of such Annual LTI Awards shall be no less favorable, in the aggregate, than the most favorable of those provided by the Company and its Affiliates for the awards granted to Executive under such plans and programs as in effect at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its Affiliates.

(iv) **Savings and Retirement Plans.** During the Continuity Period, Executive shall be entitled to participate in all savings and retirement plans, practices, policies and programs applicable generally to other peer executives of the Company and its Affiliates, but in no event shall such plans, practices, policies and programs provide Executive with savings opportunities and retirement benefit opportunities, in each case, less favorable, in the aggregate, than the most favorable of those provided by the Company and its Affiliates for Executive under such plans, practices, policies and programs as in effect at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its Affiliates.

(v) **Welfare and Insurance Benefit Plans.** During the Continuity Period, Executive and/or Executive’s family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare and insurance benefit plans, practices, policies and programs provided by the Company and its Affiliates (including medical, prescription, dental, disability, salary continuance, employee life, group life, accidental death and travel accident insurance plans and programs) (“**Company Welfare Benefit Plans**”) to the extent applicable generally to other peer executives of the Company and its Affiliates, but if the Company Welfare Benefit Plans provide Executive with benefits that are less favorable, in the aggregate, than the most favorable of such plans, practices, policies and programs in effect for Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, those provided generally at any time after the Effective Date (the “**Former Company Welfare Benefit Plans**”), the Company shall provide Executive with supplemental arrangements (such as individual insurance coverage purchased by the Company for Executive) such that the Company Welfare Benefit Plans together with such supplemental arrangements provide Executive with benefits that are at least as favorable, in the aggregate, as those provided by the Former Company Welfare Benefit Plans.

(vi) **Expenses.** During the Continuity Period, Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by Executive in accordance with the most favorable policies, practices and procedures of the Company and its Affiliates in effect for Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its Affiliates.

(vii) **Fringe Benefits.** During the Continuity Period, Executive shall be entitled to fringe benefits in accordance with the most favorable plans, practices, programs and policies of the Company and its Affiliates in effect for Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its Affiliates.

(viii) **Office and Support Staff.** During the Continuity Period, Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to personal secretarial and other assistance, at least equal to the most favorable of the foregoing provided to Executive by the Company and its Affiliates at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, as provided generally at any time thereafter with respect to other peer executives of the Company and its Affiliates.

(ix) **Vacation.** During the Continuity Period, Executive shall be entitled to paid vacation, in each case in accordance with the most favorable plans, policies, programs and practices of the Company and its Affiliates as in effect for Executive at any time during the 365-day period immediately preceding the Effective Date or, if more favorable to Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its Affiliates.

4. **Termination of Employment.** (a) **Death or Disability.** The Executive's employment shall terminate automatically upon Executive's death during the Continuity Period. If the Company determines in good faith that the Disability of Executive has occurred during the Continuity Period (pursuant to the definition of Disability set forth below), it may give to Executive written notice in accordance with Section 11(b) of its intention to terminate Executive's employment. In such event, Executive's employment with the Company shall terminate effective on the 30th day after receipt of such notice by Executive (the "**Disability Effective Date**"), provided that, within the 30 days after such receipt, Executive shall not have returned to full-time performance of Executive's duties. For purposes of this Agreement, "**Disability**" shall mean the absence of Executive from Executive's duties with the Company on a full-time basis for 180 consecutive business days (or for 180 business days in any consecutive 365 days) as a result of incapacity due to mental or physical illness that is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to Executive or Executive's legal representative.

(b) **Cause.** The Company may terminate Executive's employment during the Continuity Period with or without Cause. For purposes of this Agreement, "**Cause**" shall mean:

(i) Executive's conviction of or plea of guilty to *nolo contendere* to a charge of commission of a felony; or

(ii) the willful engaging by Executive in illegal conduct or gross misconduct in the performance of Executive's duties to the Company that is materially and demonstrably injurious to the Company.

For purposes of this provision, no act or failure to act, on the part of Executive, shall be considered "willful" unless it is done, or omitted to be done, by Executive in bad faith or without reasonable belief that Executive's action or omission was in the best interests of the Company and its Affiliates. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board, or if the Company is not the ultimate parent entity of the Company and is not publicly traded, the board of directors (or, for a non-corporate entity, equivalent governing body) of the ultimate parent of the Company (the "**Applicable Board**") or upon the instructions of the Chief Executive Officer of the Company or a senior officer of the Company and its Affiliates or based upon the advice of counsel for the Company and its Affiliates shall be conclusively presumed to be done, or omitted to be done, by Executive in good faith and in the best interests of the Company and its Affiliates. The cessation of employment of Executive shall not be deemed to be for Cause unless and until there shall have been delivered to Executive a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Applicable Board (excluding Executive if Executive is a member of the Applicable Board) at a meeting of the Applicable Board called and held for such purpose (after reasonable notice is provided to Executive and Executive is given an opportunity, together with counsel for Executive, to be heard before the Applicable Board), finding that, in the good faith opinion of the Applicable Board, Executive is guilty of the conduct described in subparagraph (i) or (ii) above, and specifying the particulars thereof in detail.

(c) **Good Reason.** The Executive's employment may be terminated during the Continuity Period by Executive for Good Reason or by Executive voluntarily without Good Reason. "**Good Reason**" means actions taken by the Company resulting in a material negative change in the employment relationship. For these purposes, a "material negative change in the employment relationship" shall include:

(i) the assignment to Executive of duties inconsistent in any material respect with Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section 3(a), or a diminution in any material respect in such position, authority, duties or responsibilities or in the budget over which Executive retains authority (for this purpose, a material diminution in duties shall be deemed to have occurred if the Change in Control results in the Company becoming a wholly owned division, unit or subsidiary of the acquiring company, or otherwise ceasing to be a publicly traded company, and Executive is not serving in the position Executive held immediately prior to the Effective Date (or a superior position) with respect to the ultimate parent company or the ultimate parent company is not publicly traded);

(ii) a material diminution in the authorities, duties or responsibilities of the person to whom Executive is required to report, including a requirement that Executive report to an officer or employee instead of reporting directly to the Applicable Board;

(iii) the failure to provide, in all material respects, any element of the compensation and benefits required to be provided to Executive in accordance with any of the provisions of Section 3(b), including any decrease in Executive's Annual Base Salary;

(iv) the Company's requiring Executive (A) to be based at any office or location other than as provided in Section 3(a)(i)(B) resulting in a material increase in Executive's commute to and from Executive's primary residence (for this purpose an increase in Executive's commute by 25 miles or more shall be deemed material); or (B) to be based at a location other than the principal executive offices of the Company if Executive was employed at such location immediately preceding the Effective Date; or

(v) any other action or inaction that constitutes a material breach by the Company of this Agreement, including any failure by the Company to comply with and satisfy Section 10(c).

In order to invoke a termination for Good Reason, Executive shall provide written notice to the Company of the existence of one or more of the conditions described in clauses (i) through (v) within 90 days following Executive's knowledge of the initial existence of such condition or conditions, specifying in reasonable detail the conditions constituting Good Reason, and the Company shall have 30 days following receipt of such written notice (the "**Cure Period**") during which it may remedy the condition. In the event that the Company fails to remedy the condition constituting Good Reason during the applicable Cure Period, Executive's "separation from service" (within the meaning of Section 409A of the Code) must occur, if at all, within two years following the initial existence of such condition or conditions in order for such termination as a result of such condition to constitute a termination for Good Reason. The Executive's mental or physical incapacity following the occurrence of an event described above in clauses (i) through (v) shall not affect Executive's ability to terminate employment for Good Reason and Executive's death following delivery of a Notice of Termination for Good Reason shall not affect Executive's estate's entitlement to severance payments benefits provided hereunder upon a termination of employment for Good Reason.

(d) **Notice of Termination.** Any termination of employment by the Company for Cause, or by Executive for Good Reason, shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 11(b). For purposes of this Agreement, a "**Notice of Termination**" means a written notice that (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of

receipt of such notice, specifies the Date of Termination (which date shall be not more than 30 days after the giving of such notice) (subject to the Company's right to cure in the case of a resignation for Good Reason). The failure by Executive or the Company to set forth in the Notice of Termination any fact or circumstance that contributes to a showing of Good Reason or Cause shall not waive any right of Executive or the Company, respectively, hereunder or preclude Executive or the Company, respectively, from asserting such fact or circumstance in enforcing Executive's or the Company's rights hereunder.

(e) **Date of Termination.** "Date of Termination" means (i) if Executive's employment is terminated by the Company for Cause, or by Executive for Good Reason, the date of receipt of the Notice of Termination or any later date specified therein, as the case may be, (ii) if Executive's employment is terminated by the Company other than for Cause or Disability, the date on which the Company notifies Executive of such termination, (iii) if Executive resigns without Good Reason, the date on which Executive notifies the Company of such termination and (iv) if Executive's employment is terminated by reason of death or Disability, the date of death of Executive or the Disability Effective Date, as the case may be.

5. **Obligations of the Company Upon Termination.** (a) **By Executive for Good Reason; By the Company Other Than for Cause, Death or Disability.** If, during the Continuity Period, the Company shall terminate Executive's employment other than for Cause, Death or Disability or Executive shall terminate employment for Good Reason, then, subject to Executive's execution within 50 days following the Date of Termination, and non-revocation, of a release of claims in the form attached as Exhibit A (the "Release"), the Company shall pay to Executive the following:

(i) subject to Section 11(k), the Company shall pay to Executive in a lump sum in cash within 60 days after the Date of Termination (and, if earlier, within five days after the Release becomes effective and irrevocable) the aggregate of the following amounts:

(A) the sum of (I) Executive's Annual Base Salary through the Date of Termination to the extent not theretofore paid; (II) Executive's business expenses that are reimbursable pursuant to Section 3(b)(v) but have not been reimbursed by the Company as of the Date of Termination; (III) Executive's Annual Bonus for the fiscal year immediately preceding the fiscal year in which the Date of Termination occurs, if such bonus has not been paid as of the Date of Termination; (IV) any accrued vacation pay to the extent not theretofore paid (the sum of the amounts described in subclauses (I), (II), (III) and (IV), the "Accrued Obligations"); and (V) an amount equal to the product of (x) the Target Annual Bonus (or, if higher, the target annual bonus as in effect immediately prior to the Date of Termination) and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365 (the "Pro Rata Bonus"); provided, that notwithstanding the foregoing, if

Executive has made an irrevocable election under any deferred compensation arrangement subject to Section 409A of the Code to defer any portion of the Annual Base Salary or the Annual Bonus described in clause (I) or (III), then for all purposes of this Section 5 (including Sections 5(b) through 5(d)), such deferral election, and the terms of the applicable arrangement shall apply to the same portion of the amount described in such clause (I) or (III), and such portion shall not be considered as part of the "Accrued Obligations" but shall instead be an "Other Benefit" (as defined below);

(B) the amount equal to the product of (I) three (3) and (II) the sum of (x) Executive's Annual Base Salary and (y) the Target Annual Bonus (or, if higher, the target annual bonus as in effect immediately prior to the Date of Termination);

(C) an amount equal to Company's and its Affiliates' contributions under the tax-qualified defined contribution plan and any excess or supplemental defined contribution plans sponsored by the Company or its Affiliates, in which Executive participates as of immediately prior to the Date of Termination (or, if more favorable to Executive, the plans as in effect immediately prior to the Effective Date) (collectively, the "**Savings Plans**") that Executive would receive if Executive's employment continued for the Restricted Period, assuming for this purpose that (I) Executive is fully vested in the right to receive employer contributions under such plans; (II) Executive's compensation during each year of the Restricted Period is equal to the Annual Base Salary and the Target Annual Bonus, and such amounts are paid in equal installments ratably over each year of the Restricted Period; (III) Executive received an Annual Bonus with respect to the year in which the Date of Termination occurs equal to the Pro Rata Bonus, only if a contribution in respect of the compensation described in this clause (III) has not already been credited to Executive under the Savings Plans; (IV) the amount of any such employer contributions is equal to the maximum amount that could be provided under the terms of the applicable Savings Plans for the year in which the Date of Termination occurs (or, if more favorable to Executive, or in the event that as of the Date of Termination the amount of any such contributions for such year is not determinable, the amount of contribution that could be provided under the Savings Plans for the plan year ending immediately prior to the Effective Date) for a participant whose compensation is as provided in clauses (II) and (III) above; and (V) to the extent that the employer contributions are determined based on the contributions or deferrals of Executive, disregarding Executive's actual contributions or deferral elections as of the Date of Termination and assuming that Executive had elected to participate in the Savings Plans and to defer that percentage of Annual Base Salary and/or Annual Bonus under the Savings Plans that would result in the maximum possible employer contribution; and

(D) an amount equal to the product of (I) the full amount (both the employer and employee portion) of the monthly premiums for coverage under the Company's or and its Affiliates' health care plans for purposes of continuation coverage under Section 4980B of the Code with respect to the maximum level of coverage in effect for Executive and his or her spouse and dependents as of immediately prior to the Date of Termination, based on the plans in which Executive participates as of immediately prior to the Date of Termination (or, if more favorable to Executive, the plans as in effect immediately prior to the Effective Date), and (II) the number of months in the Restricted Period;

(ii) the Company shall, at its sole expense as incurred, provide Executive with outplacement services the scope and provider of which shall be selected by Executive in Executive's sole discretion, but the cost thereof shall not exceed \$30,000; provided that such outplacement benefits shall end not later than the last day of the second calendar year that begins after the Date of Termination; and

(iii) except as otherwise set forth in the last sentence of Section 6, to the extent not theretofore paid or provided, the Company shall timely pay or provide to Executive any other amounts or benefits required to be paid or provided or that Executive is eligible to receive under any plan, program, policy or practice or contract or agreement of the Company and its Affiliates (such other amounts and benefits shall be hereinafter referred to as the "**Other Benefits**") in accordance with the terms of the underlying plans or agreements.

For the avoidance of doubt, if applicable, any amount payable pursuant to this Section 5(a) shall be determined without regard to any reduction in compensation that resulted in Executive's termination of employment for Good Reason. If Executive does not execute the Release within 50 days following the Date of Termination, or if Executive revokes the Release, Executive shall be entitled to only the compensation and benefits contemplated by Sections 5(a)(i)(A) (excluding the Pro Rata Bonus) and (iii).

(b) **Death.** If Executive's employment is terminated by reason of Executive's death during the Continuity Period, the Company shall provide Executive's estate or beneficiaries with the Accrued Obligations and the Pro Rata Bonus and the timely payment or delivery of the Other Benefits, and shall have no other severance obligations under this Agreement. The Accrued Obligations (subject to the proviso set forth in Section 5(a)(i)(A) to the extent applicable) and the Pro Rata Bonus shall be paid to Executive's estate or beneficiary, as applicable, in a lump sum in cash within 30 days of the Date of Termination. With respect to the provision of the Other Benefits, the term "Other Benefits" as utilized in this Section 5(b) shall include, and Executive's estate and/or beneficiaries shall be entitled to receive, benefits at least equal to the most favorable benefits provided by the Company and its Affiliates to the estates and beneficiaries of peer executives of the Company and such Affiliates under such plans, programs, practices and policies relating to death benefits, if any, as in effect with respect to other peer executives and their beneficiaries at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive's estate and/or Executive's beneficiaries, as in effect on the date of Executive's death with respect to other peer executives of the Company and its Affiliates and their beneficiaries.

(c) **Disability.** If Executive's employment is terminated by reason of Executive's Disability during the Continuity Period, the Company shall provide Executive with the Accrued Obligations and Pro Rata Bonus and the timely payment or delivery of the Other Benefits in accordance with the terms of the underlying plans or agreements, and shall have no other severance obligations under this Agreement. The Accrued Obligations (subject to the proviso set forth in Section 5(a)(i)(A) to the extent applicable) and the Pro Rata Bonus shall be paid to Executive in a lump sum in cash within 30 days of the Date of Termination. With respect to the provision of the Other Benefits, the term "Other Benefits" as utilized in this Section 5(c) shall include, and Executive shall be entitled after the Disability Effective Date to receive, without limitation, disability and other benefits (either pursuant to a plan, program, practice or policy or an individual arrangement) at least equal to the most favorable of those generally provided by the Company and its Affiliates to disabled executives and/or their families in accordance with such plans, programs, practices and policies relating to disability, if any, as in effect generally with respect to other peer executives and their families at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive and/or Executive's family, as in effect at any time thereafter generally with respect to other peer executives of the Company and its Affiliates and their families.

(d) **Cause; Other Than for Good Reason.** If Executive's employment is terminated for Cause during the Continuity Period, the Company shall provide Executive with Executive's Annual Base Salary (subject to the proviso set forth in Section 5(a)(i)(A) to the extent applicable) through the Date of Termination, and the timely payment or delivery of the Other Benefits, and shall have no other severance obligations under this Agreement. If Executive voluntarily terminates employment during the Continuity Period, excluding a termination for Good Reason, the Company shall provide to Executive the Accrued Obligations and the Pro Rata Bonus and the timely payment or delivery of the Other Benefits and shall have no other severance obligations under this Agreement. In such case, all the Accrued Obligations (subject to the proviso set forth in Section 5(a)(i)(A) to the extent applicable) and the Pro Rata Bonus shall be paid to Executive in a lump sum in cash within 30 days of the Date of Termination.

6. **Non-exclusivity of Rights.** Nothing in this Agreement shall prevent or limit Executive's continuing or future participation in any plan, program, policy or practice provided by the Company or any of its Affiliates and for which Executive may qualify, nor, subject to Section 11(h), shall anything herein limit or otherwise affect such rights as Executive may have under any other contract or agreement with the Company or its Affiliates. Amounts that are vested benefits or that Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company or any of its Affiliates at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

Without limiting the generality of the foregoing, Executive's resignation under this Agreement with or without Good Reason shall in no way affect Executive's ability to terminate employment by reason of Executive's "retirement" under any compensation and benefits plans, programs or arrangements of the Company or its Affiliates, including any retirement or pension plans or arrangements or to be eligible to receive benefits under any compensation or benefit plans, programs or arrangements of the Company or any of its Affiliates, including any retirement or pension plan or arrangement of the Company or any of its Affiliates or substitute plans adopted by the Company or its successors, and any termination that otherwise qualifies as Good Reason shall be treated as such even if it is also a "retirement" for purposes of any such plan. Notwithstanding the foregoing, if Executive receives payments and benefits pursuant to Section 5(a) of this Agreement, Executive shall not be entitled to any severance pay or benefits under any severance plan, program or policy of the Company and its Affiliates, unless otherwise specifically provided therein in a specific reference to this Agreement.

7. **Full Settlement; Legal Fees.** (a) **Full Settlement.** The Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action that the Company may have against Executive or others. In no event shall Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to Executive under any of the provisions of this Agreement and such amounts shall not be reduced whether or not Executive obtains other employment.

(b) **Legal Fees.** The Company agrees to pay as incurred (within 10 days following the Company's receipt of an invoice from Executive), at any time from the Effective Date through Executive's remaining lifetime (or, if longer, through the 20th anniversary of the Effective Date) to the full extent permitted by law, all legal fees and expenses that Executive may reasonably incur as a result of any contest (regardless of the outcome thereof) by the Company, Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof whether such contest is between the Company and Executive or between either of them and any third party, and (including as a result of any contest by Executive about the amount of any payment pursuant to this Agreement), plus in each case interest on any delayed payment at the applicable federal rate provided for in Section 7872(f)(2)(A) of the Code ("**Interest**") determined as of the date such legal fees and expenses were incurred.

8. **Treatment of Certain Payments.**

(a) Anything in the Agreement to the contrary notwithstanding, in the event the Accounting Firm (as defined below) shall determine that receipt of all Payments (as defined below) would subject Executive to the excise tax under Section 4999 of the Code, the Accounting Firm shall determine whether to reduce any of the Payments paid or payable pursuant to the Agreement (the "**Agreement Payments**") so that the Parachute Value (as defined below) of all Payments, in the aggregate, equals the Safe Harbor Amount (as defined below). The Agreement Payments shall be so reduced

only if the Accounting Firm determines that Executive would have a greater Net After-Tax Receipt (as defined below) of aggregate Payments if the Agreement Payments were so reduced. If the Accounting Firm determines that Executive would not have a greater Net After-Tax Receipt (as defined below) of aggregate Payments if the Agreement Payments were so reduced, Executive shall receive all Agreement Payments to which Executive is entitled hereunder.

(b) If the Accounting Firm determines that aggregate Agreement Payments should be reduced so that the Parachute Value of all Payments, in the aggregate, equals the Safe Harbor Amount, the Company shall promptly give Executive notice to that effect and a copy of the detailed calculation thereof. All determinations made by the Accounting Firm under this Section 8 shall be binding upon the Company and Executive and shall be made as soon as reasonably practicable and in no event later than 15 days following the date of Termination of Employment. For purposes of reducing the Agreement Payments so that the Parachute Value of all Payments, in the aggregate, equals the Safe Harbor Amount, only amounts payable under the Agreement (and no other Payments) shall be reduced. The reduction of the amounts payable hereunder, if applicable, shall be made by reducing the payments and benefits under the following sections in the following order: (i) cash payments that may not be valued under Treas. Reg. § 1.280G-1, Q&A-24(c) (“**24(c)**”), (ii) equity-based payments that may not be valued under 24(c), (iii) cash payments that may be valued under 24(c), (iv) equity-based payments that may be valued under 24(c) and (v) other types of benefits. With respect to each category of the foregoing, such reduction shall occur first with respect to amounts that are not “deferred compensation” within the meaning of Section 409A of the Code and next with respect to payments that are deferred compensation, in each case, beginning with payments or benefits that are to be paid the farthest in time from the Accounting Firm’s determination. All fees and expenses of the Accounting Firm shall be borne solely by the Company.

(c) To the extent requested by Executive, the Company shall cooperate with Executive in good faith in valuing, and the Accounting Firm shall take into account the value of, services provided or to be provided by Executive (including Executive’s agreeing to refrain from performing services pursuant to a covenant not to compete or similar covenant, including under Section 9(b) of this Agreement, before, on or after the date of a change in ownership or control of the Company (within the meaning of Q&A-2(b) of the final regulations under Section 280G of the Code), such that payments in respect of such services may be considered reasonable compensation within the meaning of Q&A-9 and Q&A-40 to Q&A-44 of the final regulations under Section 280G of the Code and/or exempt from the definition of the term “parachute payment” within the meaning of Q&A-2(a) of the final regulations under Section 280G of the Code in accordance with Q&A-5(a) of the final regulations under Section 280G of the Code.

(d) The following terms shall have the following meanings for purposes of this Section 8:

(i) “**Accounting Firm**” shall mean a nationally recognized certified public accounting firm or other professional organization that is a certified public accounting firm recognized as an expert in determinations and calculations for purposes of Section 280G of the Code that is selected by the Company prior to a Change in Control for purposes of making the applicable determinations hereunder and is reasonably acceptable to Executive, which firm shall not, without Executive’s consent, be a firm serving as accountant or auditor for the individual, entity or group effecting the Change in Control.

(ii) “**Net After-Tax Receipt**” shall mean the present value (as determined in accordance with Sections 280G(b)(2)(A)(ii) and 280G(d)(4) of the Code) of a Payment net of all taxes imposed on Executive with respect thereto under Sections 1 and 4999 of the Code and under applicable state and local laws, determined by applying the highest marginal rate under Section 1 of the Code and under state and local laws which applied to Executive’s taxable income for the immediately preceding taxable year, or such other rate(s) as the Accounting Firm determines to be likely to apply to Executive in the relevant tax year(s).

(iii) “**Parachute Value**” of a Payment shall mean the present value as of the date of the change of control for purposes of Section 280G of the Code of the portion of such Payment that constitutes a “parachute payment” under Section 280G(b)(2) of the Code, as determined by the Accounting Firm for purposes of determining whether and to what extent the excise tax under Section 4999 of the Code will apply to such Payment.

(iv) “**Payment**” shall mean any payment or distribution in the nature of compensation (within the meaning of Section 280G(b)(2) of the Code) to or for the benefit of Executive, whether paid or payable pursuant to the Agreement or otherwise.

(v) “**Safe Harbor Amount**” shall mean 2.99 *times* Executive’s “base amount,” within the meaning of Section 280G(b)(3) of the Code.

(e) The provisions of this Section 8 shall survive the expiration of the Agreement.

9. **Restrictive Covenants.**

(a) **Confidential Information.** The Executive shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its Affiliates, and their respective businesses, which shall have been obtained by Executive during Executive’s employment by the Company or any of its Affiliates and which shall not be or become public knowledge (other than by acts by Executive or representatives of Executive in violation of this Agreement). After termination of Executive’s employment with the Company, Executive shall not, without the prior written consent of the Company or as may otherwise be required by law or legal process, communicate or divulge any such information, knowledge or data to anyone other than the Company and those persons designated by it. In no event shall an asserted violation of the provisions of this Section 9(a) constitute a basis for deferring or withholding any amounts otherwise payable to Executive under this Agreement, but the Company otherwise shall be entitled to all other remedies that may be available to it at law or in equity.

(b) **Noncompetition.** During the Restricted Period, in order to protect all secret or confidential information, knowledge or data relating to the Company or any of its Affiliates, and their respective businesses, which shall have been obtained by Executive during Executive's employment by the Company or any of its Affiliates and which shall not be or become public knowledge (other than by acts by Executive or representatives of Executive in violation of this Agreement), Executive agrees that to the fullest extent permitted by law, Executive shall not engage or be engaged in any aspect whatsoever of any the following lines of business: (i) the production (including any associated mining), distribution, marketing or sale of cement (including Portland, oil well cement and blended cements), slag, slag cement, masonry cement, fly-ash, pozzolan or clinker; (ii) the production, distribution or marketing of readymix concrete; (iii) the mining, extraction, production or marketing of crushed stone, sand, gravel and aggregates; (iv) the production (including any associated mining), distribution, marketing or sale of gypsum wallboard; (v) the production, distribution, marketing or sale of recycled paperboard; (vi) the mining, processing, drying, manufacturing, distributing or marketing of frac sand; or (vii) any other line of business engaged in by the Company or any of its Affiliates (each a "**Line of Business**" and collectively, the "**Business**"), either directly or indirectly as an individual, or as an employee, associate, partner, stockholder, consultant, owner, manager, agent or otherwise or by means of any corporate or other device, either on his own behalf in the Restricted Areas (as defined below) or on behalf of others who are engaged in any Line of Business (either directly or through an affiliate (including by virtue of having an affiliate in the Restricted Areas)) in the Restricted Areas. The "**Restricted Areas**" are, specific to each Line of Business, the geographic areas in which the Company or any of its Affiliates engages in the following activities for such Line of Business: (x) operates a manufacturing facility or other facility engaged in business operations; (y) engages in the distribution or sale of its products; or (z) is actively pursuing a strategic initiative (including a merger, acquisition or business expansion) that would reasonably be expected to result in the Company or any of its Affiliates engaging in the activities described in clause (x) or (y) above, of which (in the case of this clause (z)) the Company has informed Executive or in respect of which Executive have performed any services. In addition to any other remedies, the Company shall be entitled to specific performance and/or a temporary or permanent injunction prohibiting and enjoining Executive from violating the covenants set forth in this Section 9(b). For purposes of obtaining equitable relief, such as specific performance, a temporary restraining order, or an injunction (but not any relief to the extent it would involve the payment by Executive of monetary damages or the loss of a benefit under this Agreement), the Company need not prove, and Executive acknowledges and agrees that irreparable harm or injury will have occurred as a result of any breach of the covenants set forth in this Section 9(b).

10. **Successors.** (a) This Agreement is personal to Executive and without the prior written consent of the Company shall not be assignable by Executive other than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns. Except as provided in Section 10(c), without the prior written consent of Executive, this Agreement shall not be assignable by the Company.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

11. **Miscellaneous.**

(a) **Governing Law and Dispute Resolution.** This Agreement shall be governed by and construed in accordance with the laws of Texas, without reference to principles of conflict of laws. The parties irrevocably submit to the jurisdiction of any state or federal court sitting in or for Dallas, Texas with respect to any dispute arising out of or relating to this Agreement, and each party irrevocably agrees that all claims in respect of such dispute or proceeding shall be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the venue of any dispute arising out of or relating to this Agreement or the transactions contemplated hereby brought in such court or any defense of inconvenient forum for the maintenance of such dispute or proceeding. Each party agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. THE PARTIES HEREBY WAIVE A TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT OR ASSERTED BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT.

(b) **Notices.** All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Executive: To the most recent address on file with the Company.

If to the Company:
Eagle Materials Inc.
5960 Berkshire Lane
Dallas TX 75225
Attention: General Counsel

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) **Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(d) **Survivorship.** Upon the expiration or other termination of this Agreement or Executive's employment, the respective rights and obligations of the parties hereto shall survive to the extent necessary to carry out the intentions of the parties under this Agreement.

(e) **Section Headings; Construction.** The section headings used in this Agreement are included solely for convenience and shall not affect, or be used in connection with, the interpretation hereof. For purposes of this Agreement, the term "including" shall mean "including, without limitation."

(f) **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

(g) **Amendments; Waiver.** No provision of this Agreement shall be modified or amended except by an instrument in writing duly executed by the parties hereto. The Executive's or the Company's failure to insist upon strict compliance with any provision hereof or any other provision of this Agreement or the failure to assert any right Executive or the Company may have hereunder, including the right of Executive to terminate employment for Good Reason pursuant to Section 4(c)(i)-(v), shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(h) **At-Will Employment.** The Executive and the Company acknowledge that, except as may otherwise be provided under any other written agreement between Executive and the Company, the employment of Executive by the Company is "at will" and, subject to Section 1(e) of this Agreement, prior to the Effective Date, Executive's employment may be terminated by either Executive or the Company at any time prior to the Effective Date, in which case Executive shall have no further rights under this Agreement. From and after the Effective Date, except as specifically provided herein, this Agreement shall supersede any other employment agreement between the parties. For the avoidance of doubt, prior to the Effective Date, any other employment agreement between the parties shall continue to govern the relationship between the parties.

(i) **Entire Agreement.** This Agreement constitutes the entire agreement of the parties hereto in respect of the terms and conditions of Executive's employment with the Company and its Affiliates, including his severance entitlements, and, as of the Effective Date, supersedes and cancels in their entirety all prior understandings, agreements and commitments, whether written or oral, relating to the terms and conditions of employment between Executive, on the one hand, and the Company or its Affiliates, on the other hand. For the avoidance of doubt, this Agreement does not limit the terms of any benefit plans (including equity award agreements) of the Company or its Affiliates that are applicable to Executive, except to the extent that the terms of this Agreement are more favorable to Executive.

(j) **Tax Withholding.** The Company may withhold from any amounts payable under this Agreement such Federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(k) **Section 409A.**

(i) **General.** It is intended that payments and benefits made or provided under this Agreement shall not result in penalty taxes or accelerated taxation pursuant to Section 409A of the Code. Any payments that qualify for the "short-term deferral" exception, the separation pay exception or another exception under Section 409A of the Code shall be paid under the applicable exception. For purposes of the limitations on nonqualified deferred compensation under Section 409A of the Code, each payment of compensation under this Agreement shall be treated as a separate payment of compensation. All payments to be made upon a termination of employment under this Agreement may only be made upon a "separation from service" under Section 409A of the Code to the extent necessary in order to avoid the imposition of penalty taxes on Executive pursuant to Section 409A of the Code. In no event may Executive, directly or indirectly, designate the calendar year of any payment under this Agreement, and to the extent required by Section 409A of the Code, any payment that may be paid in more than one taxable year shall be paid in the later taxable year.

(ii) **Reimbursements and In-Kind Benefits.** Notwithstanding anything to the contrary in this Agreement, all reimbursements and in-kind benefits provided under this Agreement that are subject to Section 409A of the Code shall be made in accordance with the requirements of Section 409A of the Code, including, where applicable, the requirement that (A) any reimbursement is for expenses incurred during Executive's lifetime (or during a shorter period of time specified in this Agreement); (B) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during a calendar year may not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year; (C) the reimbursement of an eligible expense will be made no later than the last day of the calendar year following the year in which the expense is incurred; and (D) the right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.

(iii) **Delay of Payments.** Notwithstanding any other provision of this Agreement to the contrary, if Executive is considered a “specified employee” for purposes of Section 409A of the Code (as determined in accordance with the methodology established by the Company and its Affiliates as in effect on the Termination Date), any payment that constitutes nonqualified deferred compensation within the meaning of Section 409A of the Code that is otherwise due to Executive under this Agreement during the six-month period immediately following Executive’s separation from service on account of Executive’s separation from service shall instead be paid, with Interest (based on the rate in effect for the month in which the Executive’s separation from service occurs), on the first business day of the seventh month following his separation from service (the “**Delayed Payment Date**”), to the extent necessary to prevent the imposition of tax penalties on Executive under Section 409A of the Code. If Executive dies during the postponement period, the amounts and entitlements delayed on account of Section 409A of the Code shall be paid to the personal representative of his estate on the first to occur of the Delayed Payment Date or 30 calendar days after the date of Executive’s death.

(l) **Indemnification.** The Company shall indemnify Executive and hold him harmless to the fullest extent permitted by law and under the charter and bylaws of the Company (including the advancement of expenses) against, and with respect to, any and all actions, suits, proceedings, claims, demands, judgments, costs, expenses (including reasonable attorney fees), losses and damages resulting from Executive’s good faith performance of his duties and obligations with the Company and its Affiliates.

[Signature Page Follows]

IN WITNESS WHEREOF, Executive has hereunto set Executive's hand and, pursuant to the authorization from the Board and the Company have caused this Agreement to be executed in its name on its behalf, all as of the day and year first above written.

/s/ Michael R. Haack

Michael R. Haack

Eagle Materials Inc.

By: /s/ Michael Nicolais

Name: Michael Nicolais

Its: Chairman of the Board

[Change in Control Continuity Agreement Signature Page]

GENERAL RELEASE OF CLAIMS

This **GENERAL RELEASE OF CLAIMS** (this “**Agreement**”) is entered into on [•], 20[•], by and between Eagle Materials Inc., a Delaware corporation (the “**Company**”) and Michael R. Haack (“**Executive**”).

1. General Release and Waiver of Claims.

(a) **Release.** In consideration of the payments and benefits afforded under the Change in Control Continuity Agreement, dated as of June 20, 2019, by and between the Company and Executive (the “**CIC Agreement**”) as specified on **Schedule I** attached hereto, and after consultation with counsel, Executive and each of Executive’s respective heirs, executors, administrators, representatives, agents, successors and assigns (collectively, the “**Releasors**”) hereby irrevocably and unconditionally release and forever discharge the Company and its subsidiaries and affiliates and each of their respective officers, employees, directors and agents (“**Releasees**”) from any and all claims, actions, causes of action, rights, judgments, obligations, damages, demands, accountings or liabilities of whatever kind or character (collectively, “**Claims**”) that the Releasors may have arising out of Executive’s employment relationship with and service as an employee, officer or director of the Company and its subsidiaries and affiliates, and the termination of any such relationship or service, in each case up to and including Executive’s date of termination, including, without limitation, any and all Claims of discrimination on the basis of race, religion, sex, age, color, national origin, ancestry, disability, medical condition or marital status or other employment claims for injury to Executive including, but not limited to any Claim arising under any of the following: the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Age Discrimination in Employment Act of 1967; the Older Worker Benefits Protection Act; the Americans with Disabilities Act of 1990; the Family and Medical Leave Act; the Employee Retirement Income Security Act of 1974; the Fair Labor Standards Act; the Equal Pay Act; the Genetic Information Nondiscrimination Act; Chapter 21 of the Texas Labor Code; the Texas Payday Act; the Texas Administrative Code; or any other similar local, state, or federal laws, in each case, as amended from time to time; provided, however, that notwithstanding anything contained herein to the contrary, this Agreement shall not affect: (i) the obligations of the Company set forth in the CIC Agreement, including without limitation under Sections 5, 6, 7, 8 and 11 of the CIC Agreement, or under any other benefit plan, agreement, arrangement or policy of the Company or its affiliates; (ii) any indemnification or similar rights Executive has as a current or former officer, director, employee or agent of the Company and its subsidiaries and affiliates, including, without limitation, any and all rights thereto under applicable law, the Company’s bylaws or other governance documents, or any rights with respect to coverage under any directors’ and officers’ insurance policies and/or indemnification agreements; (iii) any Claim the Releasors may have as the holder or beneficial owners of securities of the Company or its affiliates or other rights relating to securities or equity awards in respect of the common stock of the Company or its affiliates; (iv) rights to accrued but unpaid salary, paid time off, vacation or other compensation due through the date of termination

of employment; (v) any unreimbursed business expenses; (vi) benefits or the right to seek benefits under applicable workers' compensation and/or unemployment compensation statutes; and (vii) any Claims that may arise in the future from events or actions occurring after Executive's date of termination of employment or that Executive may not by law release through an agreement such as this.

(b) **Specific Release of ADEA Claims.** In further consideration of the payments and benefits provided to Executive under the Plan, the Releasers hereby unconditionally release and forever discharge the Releasees from any and all Claims that the Releasers may have as of the date Executive signs this Agreement arising under the Federal Age Discrimination in Employment Act of 1967, as amended, and the applicable rules and regulations promulgated thereunder ("ADEA"). By signing this Agreement, Executive hereby acknowledges and confirms the following: (i) Executive was advised by the Company in connection with Executive's termination of employment to consult with an attorney of Executive's choice prior to signing this Agreement and to have such attorney explain to Executive the terms of this Agreement, including, without limitation, the terms relating to Executive's release of claims arising under ADEA, and Executive has in fact consulted with an attorney; (ii) Executive was given a period of not fewer than [twenty-one (21)] [forty-five (45)] calendar days to consider the terms of this Agreement and to consult with an attorney of Executive's choosing with respect thereto; and (iii) Executive knowingly and voluntarily accepts the terms of this Agreement. Executive also understands that Executive has seven (7) calendar days following the date on which Executive signs this Agreement within which to revoke the release contained in this Section 1(b), by providing the Company a written notice of Executive's revocation of the release and waiver contained in this Section 1(b).

(c) **No Assignment.** Executive represents and warrants that Executive has not assigned any of the Claims being released under this Agreement.

2. **Proceedings.** Executive has not filed, and agrees not to initiate or cause to be initiated on Executive's behalf, any complaint, charge, claim or proceeding against the Releasees with respect to any Claims released under Section 1(a) or (b) before any local, state or federal agency, court or other body (each, individually, a "**Proceeding**"), and agrees not to participate voluntarily in any Proceeding involving such Claims; provided, however, and subject to the immediately following sentence, nothing set forth here in intended to or shall interfere with Executive's right to participate in a Proceeding with any appropriate federal, state, or local government agency enforcing discrimination or securities laws, nor shall this Agreement prohibit Executive from cooperating with any such agency in its investigation. To the maximum extent permitted by law, the Executive waives any right he may have to benefit in any manner from any relief (whether monetary or otherwise) arising out of any Proceeding, provided that the foregoing shall not apply to any legally protected whistleblower rights (including under Rule 21F under the Securities Exchange Act of 1934).

3. **Severability Clause.** In the event any provision or part of this Agreement is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire Agreement, will be inoperative.

4. **No Admission.** Nothing contained in this Agreement will be deemed or construed as an admission of wrongdoing or liability on the part of the Company.

5. **Governing Law and Venue.** This Agreement shall be governed by and construed and interpreted in accordance with the substantive laws of the State of Texas (without giving effect to any conflict-of-law rule or principle that would result in the application of the laws of any other jurisdiction). The parties agree to submit to the jurisdiction of the federal and state courts sitting in Dallas, Texas, for all purposes relating to the validity, interpretation, or enforcement of this Agreement

6. **Counterparts.** This Agreement may be executed in counterparts and each counterpart will be deemed an original.

7. **Notices.** All notices, requests, demands or other communications under this Agreement shall be in writing and shall be deemed to have been duly given when delivered in person or deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, to the party to whom such notice is being given as follows:

As to Executive: Executive's last address on the books
and records of the Company

As to the Company: Eagle Materials Inc
5960 Berkshire Lane
Dallas TX 75225
Attention: General Counsel

Any party may change his, her or its address or the name of the person to whose attention the notice or other communication shall be directed from time to time by serving notice thereof upon the other party as provided herein.

EXECUTIVE ACKNOWLEDGES THAT EXECUTIVE HAS READ THIS AGREEMENT AND THAT EXECUTIVE FULLY KNOWS, UNDERSTANDS AND APPRECIATES ITS CONTENTS, AND THAT EXECUTIVE HEREBY EXECUTES THE SAME AND MAKES THIS AGREEMENT AND THE RELEASE PROVIDED FOR HEREIN VOLUNTARILY AND OF EXECUTIVE'S OWN FREE WILL.

IN WITNESS WHEREOF, Executive has executed this Agreement on the date set forth below.

Michael R. Haack

Dated as of: _____

CHANGE IN CONTROL CONTINUITY AGREEMENT

THIS CHANGE IN CONTROL CONTINUITY AGREEMENT (this “**Agreement**”) is made and entered into, as of June 20, 2019, by and between Eagle Materials Inc., a Delaware corporation (the “**Company**”) and D. Craig Kesler (“**Executive**”).

WHEREAS, the Board of Directors of the Company (the “**Board**”) has determined that it is in the best interests of the Company and its stockholders to assure that the Company will have the continued dedication of Executive, notwithstanding the possibility, threat or occurrence of a Change in Control (as defined below); and

WHEREAS, the Board believes it is imperative to diminish the inevitable distraction of Executive by virtue of the personal uncertainties and risks created by a pending or threatened Change in Control and to encourage Executive’s full attention and dedication to the Company currently and in the event of any threatened or pending Change in Control, and to provide Executive with compensation and benefits arrangements upon a Change in Control that ensure that the compensation and benefits expectations of Executive will be satisfied and that are competitive with those of other corporations.

NOW, THEREFORE, in order to accomplish the foregoing objectives and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows.

1. **Certain Definitions.**

(a) “**Affiliate**” shall mean an entity controlled by, controlling or under common control with another entity.

(b) “**Change in Control**” shall mean:

(i) An acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a “**Person**”) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended, or any successor thereto (the “**Exchange Act**”) of 35% or more of either (1) the then outstanding shares of common stock of the Company (the “**Outstanding Company Common Stock**”) or (2) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the “**Outstanding Company Voting Securities**”); provided, however, that for purposes of this subsection (i), the following acquisitions shall not constitute a Change in Control: (A) any acquisition directly from the Company; (B) any acquisition by the Company; (C) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any entity controlled by the Company; or (D) any acquisition by any entity pursuant to a transaction that complies with clauses (A), (B) and (C) of subsection (iii) of this Section 1(b);

(ii) A change in the composition of the Board such that the individuals who, as of the Effective Date, constitute the Board (the “**Incumbent Board**”) cease for any reason to constitute at least a majority of the Board; provided, however, that, for purposes of this Section 1(b), any individual who becomes a member of the Board subsequent to the date of this Agreement whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least a majority of those individuals who are members of the Board and who were also members of the Incumbent Board (or deemed to be such pursuant to this proviso) shall be considered as though such individual were a member of the Incumbent Board; provided further, that any such individual whose initial assumption of office occurs as a result of either an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board shall not be considered as a member of the Incumbent Board;

(iii) The consummation of a reorganization, merger, statutory share exchange or consolidation or similar transaction involving the Company or any of its subsidiaries or sale or other disposition of all or substantially all of the assets of the Company, or the acquisition of assets or securities of another entity by the Company or any of its subsidiaries (a “**Business Combination**”), in each case, unless, following such Business Combination: (A) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock (or, for a noncorporate entity, equivalent securities) and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors (or, for a noncorporate entity, equivalent securities), as the case may be, of the entity resulting from such Business Combination (including an entity that, as a result of such transaction, owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be; (B) no Person (excluding any entity resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or such entity resulting from such Business Combination) beneficially owns, directly or indirectly, 35% or more of, respectively, the then outstanding shares of common stock (or, for a noncorporate entity, equivalent securities) of the entity resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such entity except to the extent that such ownership existed prior to the Business Combination; and (C) at least a majority of the members of the board of directors (or, for a noncorporate entity, equivalent body or committee) of the entity resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

(iv) The approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

(c) “**Change in Control Period**” shall mean the period commencing on the date hereof and ending on the third anniversary of the date hereof; provided, however, that commencing on the date one year after the date hereof, and on each annual anniversary of such date (such date and each annual anniversary thereof shall be hereinafter referred to as the “**Renewal Date**”), unless previously terminated, the Change in Control Period shall be automatically extended so as to terminate three years from such Renewal Date, unless at least 60 days prior to the Renewal Date the Company shall give notice to Executive that the Change in Control Period shall not be so extended.

(d) “**Code**” shall mean the Internal Revenue Code of 1986, as amended.

(e) “**Effective Date**” shall mean the first date during the Change in Control Period on which a Change in Control occurs. Notwithstanding anything in this Agreement to the contrary, if (i) Executive’s employment with the Company is terminated by the Company, (ii) the Date of Termination is prior to the date on which a Change in Control occurs, and (iii) it is reasonably demonstrated by Executive that such termination of employment (A) was at the request of a third party that has taken steps reasonably calculated to effect a Change in Control or (B) otherwise arose in connection with or anticipation of a Change in Control, then for all purposes of this Agreement, the “**Effective Date**” means the date immediately prior to such Date of Termination.

(f) “**Restricted Period**” shall mean the period of 15 months following the Date of Termination.

2. **Continuity Period.** The Company hereby agrees to continue Executive in its employ, and Executive hereby agrees to remain in the employ of the Company subject to the terms and conditions of this Agreement, for the period commencing on the Effective Date and ending on the second anniversary of such date (the “**Continuity Period**”). The Continuity Period shall terminate upon Executive’s termination of employment for any reason.

3. **Terms of Employment.** (a) **Position and Duties.** (i) During the Continuity Period, (A) Executive’s position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be at least commensurate in all respects with the most significant of those held, exercised and assigned to Executive at any time during the 120-day period immediately preceding the Effective Date and (B) Executive’s services shall be performed at the location where Executive was employed immediately preceding the Effective Date or any office or location less than 25 miles from such location.

(ii) During the Continuity Period, and excluding any periods of vacation and sick leave to which Executive is entitled, Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to Executive hereunder, to use Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Continuity Period it shall not be a violation of this Agreement for Executive to (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions and (C) manage personal investments, so long as such activities do not significantly interfere with the performance of Executive's responsibilities as an employee of the Company in accordance with this Agreement. It is expressly understood and agreed that to the extent that any such activities have been conducted by Executive prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not thereafter be deemed to interfere with the performance of Executive's responsibilities to the Company.

(b) **Compensation.** (i) **Base Salary.** During the Continuity Period, Executive shall receive an annual base salary ("**Annual Base Salary**"), that shall be paid at an annual rate, at least equal to 12 times the highest monthly base salary paid or payable, including any base salary that has been earned but deferred, to Executive by the Company and its Affiliates in respect of the 12-month period immediately preceding the month in which the Effective Date occurs. The Annual Base Salary shall be paid at such intervals as the Company pays executive salaries generally. During the Continuity Period, the Annual Base Salary shall be periodically reviewed and increased in the same manner and proportion as the base salaries of other senior executives of the Company and Affiliates, but in no event shall such review and adjustment be more than 12 months after the last salary increase awarded to Executive prior to the Effective Date and thereafter at least annually. Any increase in Annual Base Salary shall not serve to limit or reduce any other obligation to Executive under this Agreement. Annual Base Salary shall not be reduced after any such increase and the term Annual Base Salary as utilized in this Agreement shall refer to Annual Base Salary as so increased.

(ii) **Annual Bonus.** In addition to Annual Base Salary, Executive shall be awarded, for each fiscal year ending during the Continuity Period, an annual bonus (the "**Annual Bonus**") in cash at least equal to the target annual bonus for which Executive was eligible as of immediately prior to the Effective Date (or, if the target annual bonus has not been established for such fiscal year, for the completed fiscal year immediately preceding the Effective Date) (the "**Target Annual Bonus**"). Each such Annual Bonus shall be paid no later than two and a half months after the end of the fiscal year for which the Annual Bonus is awarded, unless Executive shall elect to defer the receipt of such Annual Bonus pursuant to an arrangement that meets the requirements of Section 409A of the Code.

(iii) **Long Term Incentive Awards.** During the Continuity Period, Executive shall be entitled to participate in all long-term equity- and cash-based incentive plans and programs applicable generally to other peer executives of the Company and its Affiliates. For each fiscal year ending during the Continuity Period, Executive shall be awarded annual long-term incentive awards (the "**Annual LTI Award**") in respect of the common stock of the Company (or the ultimate parent entity of

the Company) or cash incentive awards, in each case on the same basis as other peer executives of the Company, at least equal to the target Annual LTI Award opportunity to which Executive was eligible as of immediately prior to the Effective Date or, if more favorable to Executive, the target Annual LTI Award opportunity provided generally at any time after the Effective Date to other peer executives of the Company and its Affiliates (the “**Target LTI Award Opportunity**”). The terms and conditions of the awards granted in respect of such Annual LTI Awards shall be no less favorable, in the aggregate, than the most favorable of those provided by the Company and its Affiliates for the awards granted to Executive under such plans and programs as in effect at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its Affiliates.

(iv) **Savings and Retirement Plans.** During the Continuity Period, Executive shall be entitled to participate in all savings and retirement plans, practices, policies and programs applicable generally to other peer executives of the Company and its Affiliates, but in no event shall such plans, practices, policies and programs provide Executive with savings opportunities and retirement benefit opportunities, in each case, less favorable, in the aggregate, than the most favorable of those provided by the Company and its Affiliates for Executive under such plans, practices, policies and programs as in effect at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its Affiliates.

(v) **Welfare and Insurance Benefit Plans.** During the Continuity Period, Executive and/or Executive’s family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare and insurance benefit plans, practices, policies and programs provided by the Company and its Affiliates (including medical, prescription, dental, disability, salary continuance, employee life, group life, accidental death and travel accident insurance plans and programs) (“**Company Welfare Benefit Plans**”) to the extent applicable generally to other peer executives of the Company and its Affiliates, but if the Company Welfare Benefit Plans provide Executive with benefits that are less favorable, in the aggregate, than the most favorable of such plans, practices, policies and programs in effect for Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, those provided generally at any time after the Effective Date (the “**Former Company Welfare Benefit Plans**”), the Company shall provide Executive with supplemental arrangements (such as individual insurance coverage purchased by the Company for Executive) such that the Company Welfare Benefit Plans together with such supplemental arrangements provide Executive with benefits that are at least as favorable, in the aggregate, as those provided by the Former Company Welfare Benefit Plans.

(vi) **Expenses.** During the Continuity Period, Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by Executive in accordance with the most favorable policies, practices and procedures of the Company and its Affiliates in effect for Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its Affiliates.

(vii) **Fringe Benefits.** During the Continuity Period, Executive shall be entitled to fringe benefits in accordance with the most favorable plans, practices, programs and policies of the Company and its Affiliates in effect for Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its Affiliates.

(viii) **Office and Support Staff.** During the Continuity Period, Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to personal secretarial and other assistance, at least equal to the most favorable of the foregoing provided to Executive by the Company and its Affiliates at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, as provided generally at any time thereafter with respect to other peer executives of the Company and its Affiliates.

(ix) **Vacation.** During the Continuity Period, Executive shall be entitled to paid vacation, in each case in accordance with the most favorable plans, policies, programs and practices of the Company and its Affiliates as in effect for Executive at any time during the 365-day period immediately preceding the Effective Date or, if more favorable to Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its Affiliates.

4. **Termination of Employment.** (a) **Death or Disability.** The Executive's employment shall terminate automatically upon Executive's death during the Continuity Period. If the Company determines in good faith that the Disability of Executive has occurred during the Continuity Period (pursuant to the definition of Disability set forth below), it may give to Executive written notice in accordance with Section 11(b) of its intention to terminate Executive's employment. In such event, Executive's employment with the Company shall terminate effective on the 30th day after receipt of such notice by Executive (the "**Disability Effective Date**"), provided that, within the 30 days after such receipt, Executive shall not have returned to full-time performance of Executive's duties. For purposes of this Agreement, "**Disability**" shall mean the absence of Executive from Executive's duties with the Company on a full-time basis for 180 consecutive business days (or for 180 business days in any consecutive 365 days) as a result of incapacity due to mental or physical illness that is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to Executive or Executive's legal representative.

(b) **Cause.** The Company may terminate Executive's employment during the Continuity Period with or without Cause. For purposes of this Agreement, "**Cause**" shall mean:

- (i) Executive's conviction of or plea of guilty or *nolo contendere* to a charge of commission of a felony; or
- (ii) the willful engaging by Executive in illegal conduct or gross misconduct in the performance of Executive's duties to the Company that is materially and demonstrably injurious to the Company.

For purposes of this provision, no act or failure to act, on the part of Executive, shall be considered "willful" unless it is done, or omitted to be done, by Executive in bad faith or without reasonable belief that Executive's action or omission was in the best interests of the Company and its Affiliates. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board, or if the Company is not the ultimate parent entity of the Company and is not publicly traded, the board of directors (or, for a non-corporate entity, equivalent governing body) of the ultimate parent of the Company (the "**Applicable Board**") or upon the instructions of the Chief Executive Officer of the Company or a senior officer of the Company and its Affiliates or based upon the advice of counsel for the Company and its Affiliates shall be conclusively presumed to be done, or omitted to be done, by Executive in good faith and in the best interests of the Company and its Affiliates. The cessation of employment of Executive shall not be deemed to be for Cause unless and until there shall have been delivered to Executive a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Applicable Board (excluding Executive if Executive is a member of the Applicable Board) at a meeting of the Applicable Board called and held for such purpose (after reasonable notice is provided to Executive and Executive is given an opportunity, together with counsel for Executive, to be heard before the Applicable Board), finding that, in the good faith opinion of the Applicable Board, Executive is guilty of the conduct described in subparagraph (i) or (ii) above, and specifying the particulars thereof in detail.

(c) **Good Reason.** The Executive's employment may be terminated during the Continuity Period by Executive for Good Reason or by Executive voluntarily without Good Reason. "**Good Reason**" means actions taken by the Company resulting in a material negative change in the employment relationship. For these purposes, a "material negative change in the employment relationship" shall include:

- (i) the assignment to Executive of duties inconsistent in any material respect with Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section 3(a), or a diminution in any material respect in such position, authority, duties or responsibilities or in the budget over which Executive retains authority (for this purpose, a material diminution in duties shall be deemed to have occurred if the Change in Control results in the Company becoming a wholly owned division, unit or subsidiary of the acquiring company, or otherwise ceasing to be a publicly traded company, and Executive is not serving in the position Executive held immediately prior to the Effective Date (or a superior position) with respect to the ultimate parent company or the ultimate parent company is not publicly traded);

(ii) a material diminution in the authorities, duties or responsibilities of the person to whom Executive is required to report, including a requirement that Executive report to an officer or employee instead of reporting directly to the Applicable Board;

(iii) the failure to provide, in all material respects, any element of the compensation and benefits required to be provided to Executive in accordance with any of the provisions of Section 3(b), including any decrease in Executive's Annual Base Salary;

(iv) the Company's requiring Executive (A) to be based at any office or location other than as provided in Section 3(a)(i)(B) resulting in a material increase in Executive's commute to and from Executive's primary residence (for this purpose an increase in Executive's commute by 25 miles or more shall be deemed material); or (B) to be based at a location other than the principal executive offices of the Company if Executive was employed at such location immediately preceding the Effective Date; or

(v) any other action or inaction that constitutes a material breach by the Company of this Agreement, including any failure by the Company to comply with and satisfy Section 10(c).

In order to invoke a termination for Good Reason, Executive shall provide written notice to the Company of the existence of one or more of the conditions described in clauses (i) through (v) within 90 days following Executive's knowledge of the initial existence of such condition or conditions, specifying in reasonable detail the conditions constituting Good Reason, and the Company shall have 30 days following receipt of such written notice (the "**Cure Period**") during which it may remedy the condition. In the event that the Company fails to remedy the condition constituting Good Reason during the applicable Cure Period, Executive's "separation from service" (within the meaning of Section 409A of the Code) must occur, if at all, within two years following the initial existence of such condition or conditions in order for such termination as a result of such condition to constitute a termination for Good Reason. The Executive's mental or physical incapacity following the occurrence of an event described above in clauses (i) through (v) shall not affect Executive's ability to terminate employment for Good Reason and Executive's death following delivery of a Notice of Termination for Good Reason shall not affect Executive's estate's entitlement to severance payments benefits provided hereunder upon a termination of employment for Good Reason.

(d) **Notice of Termination.** Any termination of employment by the Company for Cause, or by Executive for Good Reason, shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 11(b). For purposes of this Agreement, a "**Notice of Termination**" means a written notice that (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of

receipt of such notice, specifies the Date of Termination (which date shall be not more than 30 days after the giving of such notice) (subject to the Company's right to cure in the case of a resignation for Good Reason). The failure by Executive or the Company to set forth in the Notice of Termination any fact or circumstance that contributes to a showing of Good Reason or Cause shall not waive any right of Executive or the Company, respectively, hereunder or preclude Executive or the Company, respectively, from asserting such fact or circumstance in enforcing Executive's or the Company's rights hereunder.

(e) **Date of Termination.** "Date of Termination" means (i) if Executive's employment is terminated by the Company for Cause, or by Executive for Good Reason, the date of receipt of the Notice of Termination or any later date specified therein, as the case may be, (ii) if Executive's employment is terminated by the Company other than for Cause or Disability, the date on which the Company notifies Executive of such termination, (iii) if Executive resigns without Good Reason, the date on which Executive notifies the Company of such termination and (iv) if Executive's employment is terminated by reason of death or Disability, the date of death of Executive or the Disability Effective Date, as the case may be.

5. **Obligations of the Company Upon Termination.** (a) **By Executive for Good Reason; By the Company Other Than for Cause, Death or Disability.** If, during the Continuity Period, the Company shall terminate Executive's employment other than for Cause, Death or Disability or Executive shall terminate employment for Good Reason, then, subject to Executive's execution within 50 days following the Date of Termination, and non-revocation, of a release of claims in the form attached as Exhibit A (the "Release"), the Company shall pay to Executive the following:

(i) subject to Section 11(k), the Company shall pay to Executive in a lump sum in cash within 60 days after the Date of Termination (and, if earlier, within five days after the Release becomes effective and irrevocable) the aggregate of the following amounts:

(A) the sum of (I) Executive's Annual Base Salary through the Date of Termination to the extent not theretofore paid; (II) Executive's business expenses that are reimbursable pursuant to Section 3(b)(v) but have not been reimbursed by the Company as of the Date of Termination; (III) Executive's Annual Bonus for the fiscal year immediately preceding the fiscal year in which the Date of Termination occurs, if such bonus has not been paid as of the Date of Termination; (IV) any accrued vacation pay to the extent not theretofore paid (the sum of the amounts described in subclauses (I), (II), (III) and (IV), the "Accrued Obligations"); and (V) an amount equal to the product of (x) the Target Annual Bonus (or, if higher, the target annual bonus as in effect immediately prior to the Date of Termination) and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365 (the "Pro Rata Bonus"); provided, that notwithstanding the foregoing, if

Executive has made an irrevocable election under any deferred compensation arrangement subject to Section 409A of the Code to defer any portion of the Annual Base Salary or the Annual Bonus described in clause (I) or (III), then for all purposes of this Section 5 (including Sections 5(b) through 5(d)), such deferral election, and the terms of the applicable arrangement shall apply to the same portion of the amount described in such clause (I) or (III), and such portion shall not be considered as part of the "Accrued Obligations" but shall instead be an "Other Benefit" (as defined below);

(B) the amount equal to the product of (I) two and one half (2.5) and (II) the sum of (x) Executive's Annual Base Salary and (y) the Target Annual Bonus (or, if higher, the target annual bonus as in effect immediately prior to the Date of Termination);

(C) an amount equal to Company's and its Affiliates' contributions under the tax-qualified defined contribution plan and any excess or supplemental defined contribution plans sponsored by the Company or its Affiliates, in which Executive participates as of immediately prior to the Date of Termination (or, if more favorable to Executive, the plans as in effect immediately prior to the Effective Date) (collectively, the "**Savings Plans**") that Executive would receive if Executive's employment continued for the Restricted Period, assuming for this purpose that (I) Executive is fully vested in the right to receive employer contributions under such plans; (II) Executive's compensation during each year of the Restricted Period is equal to the Annual Base Salary and the Target Annual Bonus, and such amounts are paid in equal installments ratably over each year of the Restricted Period; (III) Executive received an Annual Bonus with respect to the year in which the Date of Termination occurs equal to the Pro Rata Bonus, only if a contribution in respect of the compensation described in this clause (III) has not already been credited to Executive under the Savings Plans; (IV) the amount of any such employer contributions is equal to the maximum amount that could be provided under the terms of the applicable Savings Plans for the year in which the Date of Termination occurs (or, if more favorable to Executive, or in the event that as of the Date of Termination the amount of any such contributions for such year is not determinable, the amount of contribution that could be provided under the Savings Plans for the plan year ending immediately prior to the Effective Date) for a participant whose compensation is as provided in clauses (II) and (III) above; and (V) to the extent that the employer contributions are determined based on the contributions or deferrals of Executive, disregarding Executive's actual contributions or deferral elections as of the Date of Termination and assuming that Executive had elected to participate in the Savings Plans and to defer that percentage of Annual Base Salary and/or Annual Bonus under the Savings Plans that would result in the maximum possible employer contribution; and

(D) an amount equal to the product of (I) the full amount (both the employer and employee portion) of the monthly premiums for coverage under the Company's or and its Affiliates' health care plans for purposes of continuation coverage under Section 4980B of the Code with respect to the maximum level of coverage in effect for Executive and his or her spouse and dependents as of immediately prior to the Date of Termination, based on the plans in which Executive participates as of immediately prior to the Date of Termination (or, if more favorable to Executive, the plans as in effect immediately prior to the Effective Date), and (II) the number of months in the Restricted Period;

(ii) the Company shall, at its sole expense as incurred, provide Executive with outplacement services the scope and provider of which shall be selected by Executive in Executive's sole discretion, but the cost thereof shall not exceed \$30,000; provided that such outplacement benefits shall end not later than the last day of the second calendar year that begins after the Date of Termination; and

(iii) except as otherwise set forth in the last sentence of Section 6, to the extent not theretofore paid or provided, the Company shall timely pay or provide to Executive any other amounts or benefits required to be paid or provided or that Executive is eligible to receive under any plan, program, policy or practice or contract or agreement of the Company and its Affiliates (such other amounts and benefits shall be hereinafter referred to as the "**Other Benefits**") in accordance with the terms of the underlying plans or agreements.

For the avoidance of doubt, if applicable, any amount payable pursuant to this Section 5(a) shall be determined without regard to any reduction in compensation that resulted in Executive's termination of employment for Good Reason. If Executive does not execute the Release within 50 days following the Date of Termination, or if Executive revokes the Release, Executive shall be entitled to only the compensation and benefits contemplated by Sections 5(a)(i)(A) (excluding the Pro Rata Bonus) and (iii).

(b) **Death.** If Executive's employment is terminated by reason of Executive's death during the Continuity Period, the Company shall provide Executive's estate or beneficiaries with the Accrued Obligations and the Pro Rata Bonus and the timely payment or delivery of the Other Benefits, and shall have no other severance obligations under this Agreement. The Accrued Obligations (subject to the proviso set forth in Section 5(a)(i)(A) to the extent applicable) and the Pro Rata Bonus shall be paid to Executive's estate or beneficiary, as applicable, in a lump sum in cash within 30 days of the Date of Termination. With respect to the provision of the Other Benefits, the term "Other Benefits" as utilized in this Section 5(b) shall include, and Executive's estate and/or beneficiaries shall be entitled to receive, benefits at least equal to the most favorable benefits provided by the Company and its Affiliates to the estates and beneficiaries of peer executives of the Company and such Affiliates under such plans, programs, practices and policies relating to death benefits, if any, as in effect with respect to other peer executives and their beneficiaries at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive's estate and/or Executive's beneficiaries, as in effect on the date of Executive's death with respect to other peer executives of the Company and its Affiliates and their beneficiaries.

(c) **Disability.** If Executive's employment is terminated by reason of Executive's Disability during the Continuity Period, the Company shall provide Executive with the Accrued Obligations and Pro Rata Bonus and the timely payment or delivery of the Other Benefits in accordance with the terms of the underlying plans or agreements, and shall have no other severance obligations under this Agreement. The Accrued Obligations (subject to the proviso set forth in Section 5(a)(i)(A) to the extent applicable) and the Pro Rata Bonus shall be paid to Executive in a lump sum in cash within 30 days of the Date of Termination. With respect to the provision of the Other Benefits, the term "Other Benefits" as utilized in this Section 5(c) shall include, and Executive shall be entitled after the Disability Effective Date to receive, without limitation, disability and other benefits (either pursuant to a plan, program, practice or policy or an individual arrangement) at least equal to the most favorable of those generally provided by the Company and its Affiliates to disabled executives and/or their families in accordance with such plans, programs, practices and policies relating to disability, if any, as in effect generally with respect to other peer executives and their families at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive and/or Executive's family, as in effect at any time thereafter generally with respect to other peer executives of the Company and its Affiliates and their families.

(d) **Cause; Other Than for Good Reason.** If Executive's employment is terminated for Cause during the Continuity Period, the Company shall provide Executive with Executive's Annual Base Salary (subject to the proviso set forth in Section 5(a)(i)(A) to the extent applicable) through the Date of Termination, and the timely payment or delivery of the Other Benefits, and shall have no other severance obligations under this Agreement. If Executive voluntarily terminates employment during the Continuity Period, excluding a termination for Good Reason, the Company shall provide to Executive the Accrued Obligations and the Pro Rata Bonus and the timely payment or delivery of the Other Benefits and shall have no other severance obligations under this Agreement. In such case, all the Accrued Obligations (subject to the proviso set forth in Section 5(a)(i)(A) to the extent applicable) and the Pro Rata Bonus shall be paid to Executive in a lump sum in cash within 30 days of the Date of Termination.

6. **Non-exclusivity of Rights.** Nothing in this Agreement shall prevent or limit Executive's continuing or future participation in any plan, program, policy or practice provided by the Company or any of its Affiliates and for which Executive may qualify, nor, subject to Section 11(h), shall anything herein limit or otherwise affect such rights as Executive may have under any other contract or agreement with the Company or its Affiliates. Amounts that are vested benefits or that Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company or any of its Affiliates at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

Without limiting the generality of the foregoing, Executive's resignation under this Agreement with or without Good Reason shall in no way affect Executive's ability to terminate employment by reason of Executive's "retirement" under any compensation and benefits plans, programs or arrangements of the Company or its Affiliates, including any retirement or pension plans or arrangements or to be eligible to receive benefits under any compensation or benefit plans, programs or arrangements of the Company or any of its Affiliates, including any retirement or pension plan or arrangement of the Company or any of its Affiliates or substitute plans adopted by the Company or its successors, and any termination that otherwise qualifies as Good Reason shall be treated as such even if it is also a "retirement" for purposes of any such plan. Notwithstanding the foregoing, if Executive receives payments and benefits pursuant to Section 5(a) of this Agreement, Executive shall not be entitled to any severance pay or benefits under any severance plan, program or policy of the Company and its Affiliates, unless otherwise specifically provided therein in a specific reference to this Agreement.

7. **Full Settlement; Legal Fees.** (a) **Full Settlement.** The Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action that the Company may have against Executive or others. In no event shall Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to Executive under any of the provisions of this Agreement and such amounts shall not be reduced whether or not Executive obtains other employment.

(b) **Legal Fees.** The Company agrees to pay as incurred (within 10 days following the Company's receipt of an invoice from Executive), at any time from the Effective Date through Executive's remaining lifetime (or, if longer, through the 20th anniversary of the Effective Date) to the full extent permitted by law, all legal fees and expenses that Executive may reasonably incur as a result of any contest (regardless of the outcome thereof) by the Company, Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof whether such contest is between the Company and Executive or between either of them and any third party, and (including as a result of any contest by Executive about the amount of any payment pursuant to this Agreement), plus in each case interest on any delayed payment at the applicable federal rate provided for in Section 7872(f)(2)(A) of the Code ("**Interest**") determined as of the date such legal fees and expenses were incurred.

8. **Treatment of Certain Payments.**

(a) Anything in the Agreement to the contrary notwithstanding, in the event the Accounting Firm (as defined below) shall determine that receipt of all Payments (as defined below) would subject Executive to the excise tax under Section 4999 of the Code, the Accounting Firm shall determine whether to reduce any of the Payments paid or payable pursuant to the Agreement (the "**Agreement Payments**") so that the Parachute Value (as defined below) of all Payments, in the aggregate, equals the Safe Harbor Amount (as defined below). The Agreement Payments shall be so reduced

only if the Accounting Firm determines that Executive would have a greater Net After-Tax Receipt (as defined below) of aggregate Payments if the Agreement Payments were so reduced. If the Accounting Firm determines that Executive would not have a greater Net After-Tax Receipt (as defined below) of aggregate Payments if the Agreement Payments were so reduced, Executive shall receive all Agreement Payments to which Executive is entitled hereunder.

(b) If the Accounting Firm determines that aggregate Agreement Payments should be reduced so that the Parachute Value of all Payments, in the aggregate, equals the Safe Harbor Amount, the Company shall promptly give Executive notice to that effect and a copy of the detailed calculation thereof. All determinations made by the Accounting Firm under this Section 8 shall be binding upon the Company and Executive and shall be made as soon as reasonably practicable and in no event later than 15 days following the date of Termination of Employment. For purposes of reducing the Agreement Payments so that the Parachute Value of all Payments, in the aggregate, equals the Safe Harbor Amount, only amounts payable under the Agreement (and no other Payments) shall be reduced. The reduction of the amounts payable hereunder, if applicable, shall be made by reducing the payments and benefits under the following sections in the following order: (i) cash payments that may not be valued under Treas. Reg. § 1.280G-1, Q&A-24(c) (“**24(c)**”), (ii) equity-based payments that may not be valued under 24(c), (iii) cash payments that may be valued under 24(c), (iv) equity-based payments that may be valued under 24(c) and (v) other types of benefits. With respect to each category of the foregoing, such reduction shall occur first with respect to amounts that are not “deferred compensation” within the meaning of Section 409A of the Code and next with respect to payments that are deferred compensation, in each case, beginning with payments or benefits that are to be paid the farthest in time from the Accounting Firm’s determination. All fees and expenses of the Accounting Firm shall be borne solely by the Company.

(c) To the extent requested by Executive, the Company shall cooperate with Executive in good faith in valuing, and the Accounting Firm shall take into account the value of, services provided or to be provided by Executive (including Executive’s agreeing to refrain from performing services pursuant to a covenant not to compete or similar covenant, including under Section 9(b) of this Agreement, before, on or after the date of a change in ownership or control of the Company (within the meaning of Q&A-2(b) of the final regulations under Section 280G of the Code), such that payments in respect of such services may be considered reasonable compensation within the meaning of Q&A-9 and Q&A-40 to Q&A-44 of the final regulations under Section 280G of the Code and/or exempt from the definition of the term “parachute payment” within the meaning of Q&A-2(a) of the final regulations under Section 280G of the Code in accordance with Q&A-5(a) of the final regulations under Section 280G of the Code.

(d) The following terms shall have the following meanings for purposes of this Section 8:

(i) “**Accounting Firm**” shall mean a nationally recognized certified public accounting firm or other professional organization that is a certified public accounting firm recognized as an expert in determinations and calculations for purposes of Section 280G of the Code that is selected by the Company prior to a Change in Control for purposes of making the applicable determinations hereunder and is reasonably acceptable to Executive, which firm shall not, without Executive’s consent, be a firm serving as accountant or auditor for the individual, entity or group effecting the Change in Control.

(ii) “**Net After-Tax Receipt**” shall mean the present value (as determined in accordance with Sections 280G(b)(2)(A)(ii) and 280G(d)(4) of the Code) of a Payment net of all taxes imposed on Executive with respect thereto under Sections 1 and 4999 of the Code and under applicable state and local laws, determined by applying the highest marginal rate under Section 1 of the Code and under state and local laws which applied to Executive’s taxable income for the immediately preceding taxable year, or such other rate(s) as the Accounting Firm determines to be likely to apply to Executive in the relevant tax year(s).

(iii) “**Parachute Value**” of a Payment shall mean the present value as of the date of the change of control for purposes of Section 280G of the Code of the portion of such Payment that constitutes a “parachute payment” under Section 280G(b)(2) of the Code, as determined by the Accounting Firm for purposes of determining whether and to what extent the excise tax under Section 4999 of the Code will apply to such Payment.

(iv) “**Payment**” shall mean any payment or distribution in the nature of compensation (within the meaning of Section 280G(b)(2) of the Code) to or for the benefit of Executive, whether paid or payable pursuant to the Agreement or otherwise.

(v) “**Safe Harbor Amount**” shall mean 2.99 *times* Executive’s “base amount,” within the meaning of Section 280G(b)(3) of the Code.

(e) The provisions of this Section 8 shall survive the expiration of the Agreement.

9. **Restrictive Covenants.**

(a) **Confidential Information.** The Executive shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its Affiliates, and their respective businesses, which shall have been obtained by Executive during Executive’s employment by the Company or any of its Affiliates and which shall not be or become public knowledge (other than by acts by Executive or representatives of Executive in violation of this Agreement). After termination of Executive’s employment with the Company, Executive shall not, without the prior written consent of the Company or as may otherwise be required by law or legal process, communicate or divulge any such information, knowledge or data to anyone other than the Company and those persons designated by it. In no event shall an asserted violation of the provisions of this Section 9(a) constitute a basis for deferring or withholding any amounts otherwise payable to Executive under this Agreement, but the Company otherwise shall be entitled to all other remedies that may be available to it at law or in equity.

(b) **Noncompetition.** During the Restricted Period, in order to protect all secret or confidential information, knowledge or data relating to the Company or any of its Affiliates, and their respective businesses, which shall have been obtained by Executive during Executive's employment by the Company or any of its Affiliates and which shall not be or become public knowledge (other than by acts by Executive or representatives of Executive in violation of this Agreement), Executive agrees that to the fullest extent permitted by law, Executive shall not engage or be engaged in any aspect whatsoever of any the following lines of business: (i) the production (including any associated mining), distribution, marketing or sale of cement (including Portland, oil well cement and blended cements), slag, slag cement, masonry cement, fly-ash, pozzolan or clinker; (ii) the production, distribution or marketing of readymix concrete; (iii) the mining, extraction, production or marketing of crushed stone, sand, gravel and aggregates; (iv) the production (including any associated mining), distribution, marketing or sale of gypsum wallboard; (v) the production, distribution, marketing or sale of recycled paperboard; (vi) the mining, processing, drying, manufacturing, distributing or marketing of frac sand; or (vii) any other line of business engaged in by the Company or any of its Affiliates (each a "**Line of Business**" and collectively, the "**Business**"), either directly or indirectly as an individual, or as an employee, associate, partner, stockholder, consultant, owner, manager, agent or otherwise or by means of any corporate or other device, either on his own behalf in the Restricted Areas (as defined below) or on behalf of others who are engaged in any Line of Business (either directly or through an affiliate (including by virtue of having an affiliate in the Restricted Areas)) in the Restricted Areas. The "**Restricted Areas**" are, specific to each Line of Business, the geographic areas in which the Company or any of its Affiliates engages in the following activities for such Line of Business: (x) operates a manufacturing facility or other facility engaged in business operations; (y) engages in the distribution or sale of its products; or (z) is actively pursuing a strategic initiative (including a merger, acquisition or business expansion) that would reasonably be expected to result in the Company or any of its Affiliates engaging in the activities described in clause (x) or (y) above, of which (in the case of this clause (z)) the Company has informed Executive or in respect of which Executive have performed any services. In addition to any other remedies, the Company shall be entitled to specific performance and/or a temporary or permanent injunction prohibiting and enjoining Executive from violating the covenants set forth in this Section 9(b). For purposes of obtaining equitable relief, such as specific performance, a temporary restraining order, or an injunction (but not any relief to the extent it would involve the payment by Executive of monetary damages or the loss of a benefit under this Agreement), the Company need not prove, and Executive acknowledges and agrees that irreparable harm or injury will have occurred as a result of any breach of the covenants set forth in this Section 9(b).

10. **Successors.** (a) This Agreement is personal to Executive and without the prior written consent of the Company shall not be assignable by Executive other than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns. Except as provided in Section 10(c), without the prior written consent of Executive, this Agreement shall not be assignable by the Company.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

11. **Miscellaneous.**

(a) **Governing Law and Dispute Resolution.** This Agreement shall be governed by and construed in accordance with the laws of Texas, without reference to principles of conflict of laws. The parties irrevocably submit to the jurisdiction of any state or federal court sitting in or for Dallas, Texas with respect to any dispute arising out of or relating to this Agreement, and each party irrevocably agrees that all claims in respect of such dispute or proceeding shall be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the venue of any dispute arising out of or relating to this Agreement or the transactions contemplated hereby brought in such court or any defense of inconvenient forum for the maintenance of such dispute or proceeding. Each party agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. THE PARTIES HEREBY WAIVE A TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT OR ASSERTED BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT.

(b) **Notices.** All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Executive: To the most recent address on file with the Company.

If to the Company:
Eagle Materials Inc.
5960 Berkshire Lane
Dallas TX 75225
Attention: General Counsel

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) **Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(d) **Survivorship.** Upon the expiration or other termination of this Agreement or Executive's employment, the respective rights and obligations of the parties hereto shall survive to the extent necessary to carry out the intentions of the parties under this Agreement.

(e) **Section Headings; Construction.** The section headings used in this Agreement are included solely for convenience and shall not affect, or be used in connection with, the interpretation hereof. For purposes of this Agreement, the term "including" shall mean "including, without limitation."

(f) **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

(g) **Amendments; Waiver.** No provision of this Agreement shall be modified or amended except by an instrument in writing duly executed by the parties hereto. The Executive's or the Company's failure to insist upon strict compliance with any provision hereof or any other provision of this Agreement or the failure to assert any right Executive or the Company may have hereunder, including the right of Executive to terminate employment for Good Reason pursuant to Section 4(c)(i)-(v), shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(h) **At-Will Employment.** The Executive and the Company acknowledge that, except as may otherwise be provided under any other written agreement between Executive and the Company, the employment of Executive by the Company is "at will" and, subject to Section 1(e) of this Agreement, prior to the Effective Date, Executive's employment may be terminated by either Executive or the Company at any time prior to the Effective Date, in which case Executive shall have no further rights under this Agreement. From and after the Effective Date, except as specifically provided herein, this Agreement shall supersede any other employment agreement between the parties. For the avoidance of doubt, prior to the Effective Date, any other employment agreement between the parties shall continue to govern the relationship between the parties.

(i) **Entire Agreement.** This Agreement constitutes the entire agreement of the parties hereto in respect of the terms and conditions of Executive's employment with the Company and its Affiliates, including his severance entitlements, and, as of the Effective Date, supersedes and cancels in their entirety all prior understandings, agreements and commitments, whether written or oral, relating to the terms and conditions of employment between Executive, on the one hand, and the Company or its Affiliates, on the other hand. For the avoidance of doubt, this Agreement does not limit the terms of any benefit plans (including equity award agreements) of the Company or its Affiliates that are applicable to Executive, except to the extent that the terms of this Agreement are more favorable to Executive.

(j) **Tax Withholding.** The Company may withhold from any amounts payable under this Agreement such Federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(k) **Section 409A.**

(i) **General.** It is intended that payments and benefits made or provided under this Agreement shall not result in penalty taxes or accelerated taxation pursuant to Section 409A of the Code. Any payments that qualify for the "short-term deferral" exception, the separation pay exception or another exception under Section 409A of the Code shall be paid under the applicable exception. For purposes of the limitations on nonqualified deferred compensation under Section 409A of the Code, each payment of compensation under this Agreement shall be treated as a separate payment of compensation. All payments to be made upon a termination of employment under this Agreement may only be made upon a "separation from service" under Section 409A of the Code to the extent necessary in order to avoid the imposition of penalty taxes on Executive pursuant to Section 409A of the Code. In no event may Executive, directly or indirectly, designate the calendar year of any payment under this Agreement, and to the extent required by Section 409A of the Code, any payment that may be paid in more than one taxable year shall be paid in the later taxable year.

(ii) **Reimbursements and In-Kind Benefits.** Notwithstanding anything to the contrary in this Agreement, all reimbursements and in-kind benefits provided under this Agreement that are subject to Section 409A of the Code shall be made in accordance with the requirements of Section 409A of the Code, including, where applicable, the requirement that (A) any reimbursement is for expenses incurred during Executive's lifetime (or during a shorter period of time specified in this Agreement); (B) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during a calendar year may not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year; (C) the reimbursement of an eligible expense will be made no later than the last day of the calendar year following the year in which the expense is incurred; and (D) the right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.

(iii) **Delay of Payments.** Notwithstanding any other provision of this Agreement to the contrary, if Executive is considered a “specified employee” for purposes of Section 409A of the Code (as determined in accordance with the methodology established by the Company and its Affiliates as in effect on the Termination Date), any payment that constitutes nonqualified deferred compensation within the meaning of Section 409A of the Code that is otherwise due to Executive under this Agreement during the six-month period immediately following Executive’s separation from service on account of Executive’s separation from service shall instead be paid, with Interest (based on the rate in effect for the month in which the Executive’s separation from service occurs), on the first business day of the seventh month following his separation from service (the “**Delayed Payment Date**”), to the extent necessary to prevent the imposition of tax penalties on Executive under Section 409A of the Code. If Executive dies during the postponement period, the amounts and entitlements delayed on account of Section 409A of the Code shall be paid to the personal representative of his estate on the first to occur of the Delayed Payment Date or 30 calendar days after the date of Executive’s death.

(l) **Indemnification.** The Company shall indemnify Executive and hold him harmless to the fullest extent permitted by law and under the charter and bylaws of the Company (including the advancement of expenses) against, and with respect to, any and all actions, suits, proceedings, claims, demands, judgments, costs, expenses (including reasonable attorney fees), losses and damages resulting from Executive’s good faith performance of his duties and obligations with the Company and its Affiliates.

[Signature Page Follows]

IN WITNESS WHEREOF, Executive has hereunto set Executive's hand and, pursuant to the authorization from the Board and the Company have caused this Agreement to be executed in its name on its behalf, all as of the day and year first above written.

/s/ D. Craig Kesler

D. Craig Kesler

Eagle Materials Inc.

By: /s/ Michael Nicolais

Name: Michael Nicolais

Its: Chairman of the Board

[Change in Control Continuity Agreement Signature Page]

GENERAL RELEASE OF CLAIMS

This **GENERAL RELEASE OF CLAIMS** (this “**Agreement**”) is entered into on [•], 20[•], by and between Eagle Materials Inc., a Delaware corporation (the “**Company**”) and D. Craig Kesler (“**Executive**”).

1. General Release and Waiver of Claims.

(a) **Release.** In consideration of the payments and benefits afforded under the Change in Control Continuity Agreement, dated as of June 20, 2019, by and between the Company and Executive (the “**CIC Agreement**”) as specified on **Schedule I** attached hereto, and after consultation with counsel, Executive and each of Executive’s respective heirs, executors, administrators, representatives, agents, successors and assigns (collectively, the “**Releasors**”) hereby irrevocably and unconditionally release and forever discharge the Company and its subsidiaries and affiliates and each of their respective officers, employees, directors and agents (“**Releasees**”) from any and all claims, actions, causes of action, rights, judgments, obligations, damages, demands, accountings or liabilities of whatever kind or character (collectively, “**Claims**”) that the Releasors may have arising out of Executive’s employment relationship with and service as an employee, officer or director of the Company and its subsidiaries and affiliates, and the termination of any such relationship or service, in each case up to and including Executive’s date of termination, including, without limitation, any and all Claims of discrimination on the basis of race, religion, sex, age, color, national origin, ancestry, disability, medical condition or marital status or other employment claims for injury to Executive including, but not limited to any Claim arising under any of the following: the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Age Discrimination in Employment Act of 1967; the Older Worker Benefits Protection Act; the Americans with Disabilities Act of 1990; the Family and Medical Leave Act; the Employee Retirement Income Security Act of 1974; the Fair Labor Standards Act; the Equal Pay Act; the Genetic Information Nondiscrimination Act; Chapter 21 of the Texas Labor Code; the Texas Payday Act; the Texas Administrative Code; or any other similar local, state, or federal laws, in each case, as amended from time to time; provided, however, that notwithstanding anything contained herein to the contrary, this Agreement shall not affect: (i) the obligations of the Company set forth in the CIC Agreement, including without limitation under Sections 5, 6, 7, 8 and 11 of the CIC Agreement, or under any other benefit plan, agreement, arrangement or policy of the Company or its affiliates; (ii) any indemnification or similar rights Executive has as a current or former officer, director, employee or agent of the Company and its subsidiaries and affiliates, including, without limitation, any and all rights thereto under applicable law, the Company’s bylaws or other governance documents, or any rights with respect to coverage under any directors’ and officers’ insurance policies and/or indemnification agreements; (iii) any Claim the Releasors may have as the holder or beneficial owners of securities of the Company or its affiliates or other rights relating to securities or equity awards in respect of the common stock of the Company or its affiliates; (iv) rights to accrued but unpaid salary, paid time off, vacation or other compensation due through the date of termination

of employment; (v) any unreimbursed business expenses; (vi) benefits or the right to seek benefits under applicable workers' compensation and/or unemployment compensation statutes; and (vii) any Claims that may arise in the future from events or actions occurring after Executive's date of termination of employment or that Executive may not by law release through an agreement such as this.

(b) **Specific Release of ADEA Claims.** In further consideration of the payments and benefits provided to Executive under the Plan, the Releasers hereby unconditionally release and forever discharge the Releasees from any and all Claims that the Releasers may have as of the date Executive signs this Agreement arising under the Federal Age Discrimination in Employment Act of 1967, as amended, and the applicable rules and regulations promulgated thereunder ("ADEA"). By signing this Agreement, Executive hereby acknowledges and confirms the following: (i) Executive was advised by the Company in connection with Executive's termination of employment to consult with an attorney of Executive's choice prior to signing this Agreement and to have such attorney explain to Executive the terms of this Agreement, including, without limitation, the terms relating to Executive's release of claims arising under ADEA, and Executive has in fact consulted with an attorney; (ii) Executive was given a period of not fewer than [twenty-one (21)] [forty-five (45)] calendar days to consider the terms of this Agreement and to consult with an attorney of Executive's choosing with respect thereto; and (iii) Executive knowingly and voluntarily accepts the terms of this Agreement. Executive also understands that Executive has seven (7) calendar days following the date on which Executive signs this Agreement within which to revoke the release contained in this Section 1(b), by providing the Company a written notice of Executive's revocation of the release and waiver contained in this Section 1(b).

(c) **No Assignment.** Executive represents and warrants that Executive has not assigned any of the Claims being released under this Agreement.

2. **Proceedings.** Executive has not filed, and agrees not to initiate or cause to be initiated on Executive's behalf, any complaint, charge, claim or proceeding against the Releasees with respect to any Claims released under Section 1(a) or (b) before any local, state or federal agency, court or other body (each, individually, a "**Proceeding**"), and agrees not to participate voluntarily in any Proceeding involving such Claims; provided, however, and subject to the immediately following sentence, nothing set forth here in intended to or shall interfere with Executive's right to participate in a Proceeding with any appropriate federal, state, or local government agency enforcing discrimination or securities laws, nor shall this Agreement prohibit Executive from cooperating with any such agency in its investigation. To the maximum extent permitted by law, the Executive waives any right he may have to benefit in any manner from any relief (whether monetary or otherwise) arising out of any Proceeding, provided that the foregoing shall not apply to any legally protected whistleblower rights (including under Rule 21F under the Securities Exchange Act of 1934).

3. **Severability Clause.** In the event any provision or part of this Agreement is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire Agreement, will be inoperative.

4. **No Admission.** Nothing contained in this Agreement will be deemed or construed as an admission of wrongdoing or liability on the part of the Company.

5. **Governing Law and Venue.** This Agreement shall be governed by and construed and interpreted in accordance with the substantive laws of the State of Texas (without giving effect to any conflict-of-law rule or principle that would result in the application of the laws of any other jurisdiction). The parties agree to submit to the jurisdiction of the federal and state courts sitting in Dallas, Texas, for all purposes relating to the validity, interpretation, or enforcement of this Agreement

6. **Counterparts.** This Agreement may be executed in counterparts and each counterpart will be deemed an original.

7. **Notices.** All notices, requests, demands or other communications under this Agreement shall be in writing and shall be deemed to have been duly given when delivered in person or deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, to the party to whom such notice is being given as follows:

As to Executive:

Executive's last address on the books and records of the Company

As to the Company:

Eagle Materials Inc
5960 Berkshire Lane
Dallas TX 75225
Attention: General Counsel

Any party may change his, her or its address or the name of the person to whose attention the notice or other communication shall be directed from time to time by serving notice thereof upon the other party as provided herein.

EXECUTIVE ACKNOWLEDGES THAT EXECUTIVE HAS READ THIS AGREEMENT AND THAT EXECUTIVE FULLY KNOWS, UNDERSTANDS AND APPRECIATES ITS CONTENTS, AND THAT EXECUTIVE HEREBY EXECUTES THE SAME AND MAKES THIS AGREEMENT AND THE RELEASE PROVIDED FOR HEREIN VOLUNTARILY AND OF EXECUTIVE'S OWN FREE WILL.

IN WITNESS WHEREOF, Executive has executed this Agreement on the date set forth below.

D. Craig Kesler

Dated as of: _____

CHANGE IN CONTROL CONTINUITY AGREEMENT

THIS CHANGE IN CONTROL CONTINUITY AGREEMENT (this “**Agreement**”) is made and entered into, as of June 20, 2019, by and between Eagle Materials Inc., a Delaware corporation (the “**Company**”) and Robert S. Stewart (“**Executive**”).

WHEREAS, the Board of Directors of the Company (the “**Board**”) has determined that it is in the best interests of the Company and its stockholders to assure that the Company will have the continued dedication of Executive, notwithstanding the possibility, threat or occurrence of a Change in Control (as defined below); and

WHEREAS, the Board believes it is imperative to diminish the inevitable distraction of Executive by virtue of the personal uncertainties and risks created by a pending or threatened Change in Control and to encourage Executive’s full attention and dedication to the Company currently and in the event of any threatened or pending Change in Control, and to provide Executive with compensation and benefits arrangements upon a Change in Control that ensure that the compensation and benefits expectations of Executive will be satisfied and that are competitive with those of other corporations.

NOW, THEREFORE, in order to accomplish the foregoing objectives and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows.

1. **Certain Definitions.**

(a) “**Affiliate**” shall mean an entity controlled by, controlling or under common control with another entity.

(b) “**Change in Control**” shall mean:

(i) An acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a “**Person**”) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended, or any successor thereto (the “**Exchange Act**”) of 35% or more of either (1) the then outstanding shares of common stock of the Company (the “**Outstanding Company Common Stock**”) or (2) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the “**Outstanding Company Voting Securities**”); provided, however, that for purposes of this subsection (i), the following acquisitions shall not constitute a Change in Control: (A) any acquisition directly from the Company; (B) any acquisition by the Company; (C) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any entity controlled by the Company; or (D) any acquisition by any entity pursuant to a transaction that complies with clauses (A), (B) and (C) of subsection (iii) of this Section 1(b);

(ii) A change in the composition of the Board such that the individuals who, as of the Effective Date, constitute the Board (the “**Incumbent Board**”) cease for any reason to constitute at least a majority of the Board; provided, however, that, for purposes of this Section 1(b), any individual who becomes a member of the Board subsequent to the date of this Agreement whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least a majority of those individuals who are members of the Board and who were also members of the Incumbent Board (or deemed to be such pursuant to this proviso) shall be considered as though such individual were a member of the Incumbent Board; provided further, that any such individual whose initial assumption of office occurs as a result of either an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board shall not be considered as a member of the Incumbent Board;

(iii) The consummation of a reorganization, merger, statutory share exchange or consolidation or similar transaction involving the Company or any of its subsidiaries or sale or other disposition of all or substantially all of the assets of the Company, or the acquisition of assets or securities of another entity by the Company or any of its subsidiaries (a “**Business Combination**”), in each case, unless, following such Business Combination: (A) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock (or, for a noncorporate entity, equivalent securities) and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors (or, for a noncorporate entity, equivalent securities), as the case may be, of the entity resulting from such Business Combination (including an entity that, as a result of such transaction, owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be; (B) no Person (excluding any entity resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or such entity resulting from such Business Combination) beneficially owns, directly or indirectly, 35% or more of, respectively, the then outstanding shares of common stock (or, for a noncorporate entity, equivalent securities) of the entity resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such entity except to the extent that such ownership existed prior to the Business Combination; and (C) at least a majority of the members of the board of directors (or, for a noncorporate entity, equivalent body or committee) of the entity resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

(iv) The approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

(c) “**Change in Control Period**” shall mean the period commencing on the date hereof and ending on the third anniversary of the date hereof; provided, however, that commencing on the date one year after the date hereof, and on each annual anniversary of such date (such date and each annual anniversary thereof shall be hereinafter referred to as the “**Renewal Date**”), unless previously terminated, the Change in Control Period shall be automatically extended so as to terminate three years from such Renewal Date, unless at least 60 days prior to the Renewal Date the Company shall give notice to Executive that the Change in Control Period shall not be so extended.

(d) “**Code**” shall mean the Internal Revenue Code of 1986, as amended.

(e) “**Effective Date**” shall mean the first date during the Change in Control Period on which a Change in Control occurs. Notwithstanding anything in this Agreement to the contrary, if (i) Executive’s employment with the Company is terminated by the Company, (ii) the Date of Termination is prior to the date on which a Change in Control occurs, and (iii) it is reasonably demonstrated by Executive that such termination of employment (A) was at the request of a third party that has taken steps reasonably calculated to effect a Change in Control or (B) otherwise arose in connection with or anticipation of a Change in Control, then for all purposes of this Agreement, the “**Effective Date**” means the date immediately prior to such Date of Termination.

(f) “**Restricted Period**” shall mean the period of 12 months following the Date of Termination.

2. **Continuity Period.** The Company hereby agrees to continue Executive in its employ, and Executive hereby agrees to remain in the employ of the Company subject to the terms and conditions of this Agreement, for the period commencing on the Effective Date and ending on the second anniversary of such date (the “**Continuity Period**”). The Continuity Period shall terminate upon Executive’s termination of employment for any reason.

3. **Terms of Employment.** (a) **Position and Duties.** (i) During the Continuity Period, (A) Executive’s position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be at least commensurate in all respects with the most significant of those held, exercised and assigned to Executive at any time during the 120-day period immediately preceding the Effective Date and (B) Executive’s services shall be performed at the location where Executive was employed immediately preceding the Effective Date or any office or location less than 25 miles from such location.

(ii) During the Continuity Period, and excluding any periods of vacation and sick leave to which Executive is entitled, Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to Executive hereunder, to use Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Continuity Period it shall not be a violation of this Agreement for Executive to (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions and (C) manage personal investments, so long as such activities do not significantly interfere with the performance of Executive's responsibilities as an employee of the Company in accordance with this Agreement. It is expressly understood and agreed that to the extent that any such activities have been conducted by Executive prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not thereafter be deemed to interfere with the performance of Executive's responsibilities to the Company.

(b) **Compensation.** (i) **Base Salary.** During the Continuity Period, Executive shall receive an annual base salary ("**Annual Base Salary**"), that shall be paid at an annual rate, at least equal to 12 times the highest monthly base salary paid or payable, including any base salary that has been earned but deferred, to Executive by the Company and its Affiliates in respect of the 12-month period immediately preceding the month in which the Effective Date occurs. The Annual Base Salary shall be paid at such intervals as the Company pays executive salaries generally. During the Continuity Period, the Annual Base Salary shall be periodically reviewed and increased in the same manner and proportion as the base salaries of other senior executives of the Company and Affiliates, but in no event shall such review and adjustment be more than 12 months after the last salary increase awarded to Executive prior to the Effective Date and thereafter at least annually. Any increase in Annual Base Salary shall not serve to limit or reduce any other obligation to Executive under this Agreement. Annual Base Salary shall not be reduced after any such increase and the term Annual Base Salary as utilized in this Agreement shall refer to Annual Base Salary as so increased.

(ii) **Annual Bonus.** In addition to Annual Base Salary, Executive shall be awarded, for each fiscal year ending during the Continuity Period, an annual bonus (the "**Annual Bonus**") in cash at least equal to the target annual bonus for which Executive was eligible as of immediately prior to the Effective Date (or, if the target annual bonus has not been established for such fiscal year, for the completed fiscal year immediately preceding the Effective Date) (the "**Target Annual Bonus**"). Each such Annual Bonus shall be paid no later than two and a half months after the end of the fiscal year for which the Annual Bonus is awarded, unless Executive shall elect to defer the receipt of such Annual Bonus pursuant to an arrangement that meets the requirements of Section 409A of the Code.

(iii) **Long Term Incentive Awards.** During the Continuity Period, Executive shall be entitled to participate in all long-term equity- and cash-based incentive plans and programs applicable generally to other peer executives of the Company and its Affiliates. For each fiscal year ending during the Continuity Period, Executive shall be awarded annual long-term incentive awards (the "**Annual LTI Award**") in respect of the common stock of the Company (or the ultimate parent entity of

the Company) or cash incentive awards, in each case on the same basis as other peer executives of the Company, at least equal to the target Annual LTI Award opportunity to which Executive was eligible as of immediately prior to the Effective Date or, if more favorable to Executive, the target Annual LTI Award opportunity provided generally at any time after the Effective Date to other peer executives of the Company and its Affiliates (the “**Target LTI Award Opportunity**”). The terms and conditions of the awards granted in respect of such Annual LTI Awards shall be no less favorable, in the aggregate, than the most favorable of those provided by the Company and its Affiliates for the awards granted to Executive under such plans and programs as in effect at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its Affiliates.

(iv) **Savings and Retirement Plans.** During the Continuity Period, Executive shall be entitled to participate in all savings and retirement plans, practices, policies and programs applicable generally to other peer executives of the Company and its Affiliates, but in no event shall such plans, practices, policies and programs provide Executive with savings opportunities and retirement benefit opportunities, in each case, less favorable, in the aggregate, than the most favorable of those provided by the Company and its Affiliates for Executive under such plans, practices, policies and programs as in effect at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its Affiliates.

(v) **Welfare and Insurance Benefit Plans.** During the Continuity Period, Executive and/or Executive’s family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare and insurance benefit plans, practices, policies and programs provided by the Company and its Affiliates (including medical, prescription, dental, disability, salary continuance, employee life, group life, accidental death and travel accident insurance plans and programs) (“**Company Welfare Benefit Plans**”) to the extent applicable generally to other peer executives of the Company and its Affiliates, but if the Company Welfare Benefit Plans provide Executive with benefits that are less favorable, in the aggregate, than the most favorable of such plans, practices, policies and programs in effect for Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, those provided generally at any time after the Effective Date (the “**Former Company Welfare Benefit Plans**”), the Company shall provide Executive with supplemental arrangements (such as individual insurance coverage purchased by the Company for Executive) such that the Company Welfare Benefit Plans together with such supplemental arrangements provide Executive with benefits that are at least as favorable, in the aggregate, as those provided by the Former Company Welfare Benefit Plans.

(vi) **Expenses.** During the Continuity Period, Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by Executive in accordance with the most favorable policies, practices and procedures of the Company and its Affiliates in effect for Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its Affiliates.

(vii) **Fringe Benefits.** During the Continuity Period, Executive shall be entitled to fringe benefits in accordance with the most favorable plans, practices, programs and policies of the Company and its Affiliates in effect for Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its Affiliates.

(viii) **Office and Support Staff.** During the Continuity Period, Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to personal secretarial and other assistance, at least equal to the most favorable of the foregoing provided to Executive by the Company and its Affiliates at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, as provided generally at any time thereafter with respect to other peer executives of the Company and its Affiliates.

(ix) **Vacation.** During the Continuity Period, Executive shall be entitled to paid vacation, in each case in accordance with the most favorable plans, policies, programs and practices of the Company and its Affiliates as in effect for Executive at any time during the 365-day period immediately preceding the Effective Date or, if more favorable to Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its Affiliates.

4. **Termination of Employment.** (a) **Death or Disability.** The Executive's employment shall terminate automatically upon Executive's death during the Continuity Period. If the Company determines in good faith that the Disability of Executive has occurred during the Continuity Period (pursuant to the definition of Disability set forth below), it may give to Executive written notice in accordance with Section 11(b) of its intention to terminate Executive's employment. In such event, Executive's employment with the Company shall terminate effective on the 30th day after receipt of such notice by Executive (the "**Disability Effective Date**"), provided that, within the 30 days after such receipt, Executive shall not have returned to full-time performance of Executive's duties. For purposes of this Agreement, "**Disability**" shall mean the absence of Executive from Executive's duties with the Company on a full-time basis for 180 consecutive business days (or for 180 business days in any consecutive 365 days) as a result of incapacity due to mental or physical illness that is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to Executive or Executive's legal representative.

(b) **Cause.** The Company may terminate Executive's employment during the Continuity Period with or without Cause. For purposes of this Agreement, "**Cause**" shall mean:

- (i) Executive's conviction of or plea of guilty or *nolo contendere* to a charge of commission of a felony; or
- (ii) the willful engaging by Executive in illegal conduct or gross misconduct in the performance of Executive's duties to the Company that is materially and demonstrably injurious to the Company.

For purposes of this provision, no act or failure to act, on the part of Executive, shall be considered "willful" unless it is done, or omitted to be done, by Executive in bad faith or without reasonable belief that Executive's action or omission was in the best interests of the Company and its Affiliates. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board, or if the Company is not the ultimate parent entity of the Company and is not publicly traded, the board of directors (or, for a non-corporate entity, equivalent governing body) of the ultimate parent of the Company (the "**Applicable Board**") or upon the instructions of the Chief Executive Officer of the Company or a senior officer of the Company and its Affiliates or based upon the advice of counsel for the Company and its Affiliates shall be conclusively presumed to be done, or omitted to be done, by Executive in good faith and in the best interests of the Company and its Affiliates. The cessation of employment of Executive shall not be deemed to be for Cause unless and until there shall have been delivered to Executive a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Applicable Board (excluding Executive if Executive is a member of the Applicable Board) at a meeting of the Applicable Board called and held for such purpose (after reasonable notice is provided to Executive and Executive is given an opportunity, together with counsel for Executive, to be heard before the Applicable Board), finding that, in the good faith opinion of the Applicable Board, Executive is guilty of the conduct described in subparagraph (i) or (ii) above, and specifying the particulars thereof in detail.

(c) **Good Reason.** The Executive's employment may be terminated during the Continuity Period by Executive for Good Reason or by Executive voluntarily without Good Reason. "**Good Reason**" means actions taken by the Company resulting in a material negative change in the employment relationship. For these purposes, a "material negative change in the employment relationship" shall include:

- (i) the assignment to Executive of duties inconsistent in any material respect with Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section 3(a), or a diminution in any material respect in such position, authority, duties or responsibilities or in the budget over which Executive retains authority (for this purpose, a material diminution in duties shall be deemed to have occurred if the Change in Control results in the Company becoming a wholly owned division, unit or subsidiary of the acquiring company, or otherwise ceasing to be a publicly traded company, and Executive is not serving in the position Executive held immediately prior to the Effective Date (or a superior position) with respect to the ultimate parent company or the ultimate parent company is not publicly traded);

(ii) a material diminution in the authorities, duties or responsibilities of the person to whom Executive is required to report, including a requirement that Executive report to an officer or employee instead of reporting directly to the Applicable Board;

(iii) the failure to provide, in all material respects, any element of the compensation and benefits required to be provided to Executive in accordance with any of the provisions of Section 3(b), including any decrease in Executive's Annual Base Salary;

(iv) the Company's requiring Executive (A) to be based at any office or location other than as provided in Section 3(a)(i)(B) resulting in a material increase in Executive's commute to and from Executive's primary residence (for this purpose an increase in Executive's commute by 25 miles or more shall be deemed material); or (B) to be based at a location other than the principal executive offices of the Company if Executive was employed at such location immediately preceding the Effective Date; or

(v) any other action or inaction that constitutes a material breach by the Company of this Agreement, including any failure by the Company to comply with and satisfy Section 10(c).

In order to invoke a termination for Good Reason, Executive shall provide written notice to the Company of the existence of one or more of the conditions described in clauses (i) through (v) within 90 days following Executive's knowledge of the initial existence of such condition or conditions, specifying in reasonable detail the conditions constituting Good Reason, and the Company shall have 30 days following receipt of such written notice (the "**Cure Period**") during which it may remedy the condition. In the event that the Company fails to remedy the condition constituting Good Reason during the applicable Cure Period, Executive's "separation from service" (within the meaning of Section 409A of the Code) must occur, if at all, within two years following the initial existence of such condition or conditions in order for such termination as a result of such condition to constitute a termination for Good Reason. The Executive's mental or physical incapacity following the occurrence of an event described above in clauses (i) through (v) shall not affect Executive's ability to terminate employment for Good Reason and Executive's death following delivery of a Notice of Termination for Good Reason shall not affect Executive's estate's entitlement to severance payments benefits provided hereunder upon a termination of employment for Good Reason.

(d) **Notice of Termination.** Any termination of employment by the Company for Cause, or by Executive for Good Reason, shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 11(b). For purposes of this Agreement, a "**Notice of Termination**" means a written notice that (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of

receipt of such notice, specifies the Date of Termination (which date shall be not more than 30 days after the giving of such notice) (subject to the Company's right to cure in the case of a resignation for Good Reason). The failure by Executive or the Company to set forth in the Notice of Termination any fact or circumstance that contributes to a showing of Good Reason or Cause shall not waive any right of Executive or the Company, respectively, hereunder or preclude Executive or the Company, respectively, from asserting such fact or circumstance in enforcing Executive's or the Company's rights hereunder.

(e) **Date of Termination.** "Date of Termination" means (i) if Executive's employment is terminated by the Company for Cause, or by Executive for Good Reason, the date of receipt of the Notice of Termination or any later date specified therein, as the case may be, (ii) if Executive's employment is terminated by the Company other than for Cause or Disability, the date on which the Company notifies Executive of such termination, (iii) if Executive resigns without Good Reason, the date on which Executive notifies the Company of such termination and (iv) if Executive's employment is terminated by reason of death or Disability, the date of death of Executive or the Disability Effective Date, as the case may be.

5. Obligations of the Company Upon Termination. (a) **By Executive for Good Reason; By the Company Other Than for Cause, Death or Disability.** If, during the Continuity Period, the Company shall terminate Executive's employment other than for Cause, Death or Disability or Executive shall terminate employment for Good Reason, then, subject to Executive's execution within 50 days following the Date of Termination, and non-revocation, of a release of claims in the form attached as Exhibit A (the "Release"), the Company shall pay to Executive the following:

(i) subject to Section 11(k), the Company shall pay to Executive in a lump sum in cash within 60 days after the Date of Termination (and, if earlier, within five days after the Release becomes effective and irrevocable) the aggregate of the following amounts:

(A) the sum of (I) Executive's Annual Base Salary through the Date of Termination to the extent not theretofore paid; (II) Executive's business expenses that are reimbursable pursuant to Section 3(b)(v) but have not been reimbursed by the Company as of the Date of Termination; (III) Executive's Annual Bonus for the fiscal year immediately preceding the fiscal year in which the Date of Termination occurs, if such bonus has not been paid as of the Date of Termination; (IV) any accrued vacation pay to the extent not theretofore paid (the sum of the amounts described in subclauses (I), (II), (III) and (IV), the "Accrued Obligations"); and (V) an amount equal to the product of (x) the Target Annual Bonus (or, if higher, the target annual bonus as in effect immediately prior to the Date of Termination) and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365 (the "Pro Rata Bonus"); provided, that notwithstanding the foregoing, if

Executive has made an irrevocable election under any deferred compensation arrangement subject to Section 409A of the Code to defer any portion of the Annual Base Salary or the Annual Bonus described in clause (I) or (III), then for all purposes of this Section 5 (including Sections 5(b) through 5(d)), such deferral election, and the terms of the applicable arrangement shall apply to the same portion of the amount described in such clause (I) or (III), and such portion shall not be considered as part of the "Accrued Obligations" but shall instead be an "Other Benefit" (as defined below);

(B) the amount equal to the product of (I) two (2) and (II) the sum of (x) Executive's Annual Base Salary and (y) the Target Annual Bonus (or, if higher, the target annual bonus as in effect immediately prior to the Date of Termination);

(C) an amount equal to Company's and its Affiliates' contributions under the tax-qualified defined contribution plan and any excess or supplemental defined contribution plans sponsored by the Company or its Affiliates, in which Executive participates as of immediately prior to the Date of Termination (or, if more favorable to Executive, the plans as in effect immediately prior to the Effective Date) (collectively, the "**Savings Plans**") that Executive would receive if Executive's employment continued for the Restricted Period, assuming for this purpose that (I) Executive is fully vested in the right to receive employer contributions under such plans; (II) Executive's compensation during each year of the Restricted Period is equal to the Annual Base Salary and the Target Annual Bonus, and such amounts are paid in equal installments ratably over each year of the Restricted Period; (III) Executive received an Annual Bonus with respect to the year in which the Date of Termination occurs equal to the Pro Rata Bonus, only if a contribution in respect of the compensation described in this clause (III) has not already been credited to Executive under the Savings Plans; (IV) the amount of any such employer contributions is equal to the maximum amount that could be provided under the terms of the applicable Savings Plans for the year in which the Date of Termination occurs (or, if more favorable to Executive, or in the event that as of the Date of Termination the amount of any such contributions for such year is not determinable, the amount of contribution that could be provided under the Savings Plans for the plan year ending immediately prior to the Effective Date) for a participant whose compensation is as provided in clauses (II) and (III) above; and (V) to the extent that the employer contributions are determined based on the contributions or deferrals of Executive, disregarding Executive's actual contributions or deferral elections as of the Date of Termination and assuming that Executive had elected to participate in the Savings Plans and to defer that percentage of Annual Base Salary and/or Annual Bonus under the Savings Plans that would result in the maximum possible employer contribution; and

(D) an amount equal to the product of (I) the full amount (both the employer and employee portion) of the monthly premiums for coverage under the Company's or and its Affiliates' health care plans for purposes of continuation coverage under Section 4980B of the Code with respect to the maximum level of coverage in effect for Executive and his or her spouse and dependents as of immediately prior to the Date of Termination, based on the plans in which Executive participates as of immediately prior to the Date of Termination (or, if more favorable to Executive, the plans as in effect immediately prior to the Effective Date), and (II) the number of months in the Restricted Period;

(ii) the Company shall, at its sole expense as incurred, provide Executive with outplacement services the scope and provider of which shall be selected by Executive in Executive's sole discretion, but the cost thereof shall not exceed \$30,000; provided that such outplacement benefits shall end not later than the last day of the second calendar year that begins after the Date of Termination; and

(iii) except as otherwise set forth in the last sentence of Section 6, to the extent not theretofore paid or provided, the Company shall timely pay or provide to Executive any other amounts or benefits required to be paid or provided or that Executive is eligible to receive under any plan, program, policy or practice or contract or agreement of the Company and its Affiliates (such other amounts and benefits shall be hereinafter referred to as the "**Other Benefits**") in accordance with the terms of the underlying plans or agreements.

For the avoidance of doubt, if applicable, any amount payable pursuant to this Section 5(a) shall be determined without regard to any reduction in compensation that resulted in Executive's termination of employment for Good Reason. If Executive does not execute the Release within 50 days following the Date of Termination, or if Executive revokes the Release, Executive shall be entitled to only the compensation and benefits contemplated by Sections 5(a)(i)(A) (excluding the Pro Rata Bonus) and (iii).

(b) **Death.** If Executive's employment is terminated by reason of Executive's death during the Continuity Period, the Company shall provide Executive's estate or beneficiaries with the Accrued Obligations and the Pro Rata Bonus and the timely payment or delivery of the Other Benefits, and shall have no other severance obligations under this Agreement. The Accrued Obligations (subject to the proviso set forth in Section 5(a)(i)(A) to the extent applicable) and the Pro Rata Bonus shall be paid to Executive's estate or beneficiary, as applicable, in a lump sum in cash within 30 days of the Date of Termination. With respect to the provision of the Other Benefits, the term "Other Benefits" as utilized in this Section 5(b) shall include, and Executive's estate and/or beneficiaries shall be entitled to receive, benefits at least equal to the most favorable benefits provided by the Company and its Affiliates to the estates and beneficiaries of peer executives of the Company and such Affiliates under such plans, programs, practices and policies relating to death benefits, if any, as in effect with respect to other peer executives and their beneficiaries at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive's estate and/or Executive's beneficiaries, as in effect on the date of Executive's death with respect to other peer executives of the Company and its Affiliates and their beneficiaries.

(c) **Disability.** If Executive's employment is terminated by reason of Executive's Disability during the Continuity Period, the Company shall provide Executive with the Accrued Obligations and Pro Rata Bonus and the timely payment or delivery of the Other Benefits in accordance with the terms of the underlying plans or agreements, and shall have no other severance obligations under this Agreement. The Accrued Obligations (subject to the proviso set forth in Section 5(a)(i)(A) to the extent applicable) and the Pro Rata Bonus shall be paid to Executive in a lump sum in cash within 30 days of the Date of Termination. With respect to the provision of the Other Benefits, the term "Other Benefits" as utilized in this Section 5(c) shall include, and Executive shall be entitled after the Disability Effective Date to receive, without limitation, disability and other benefits (either pursuant to a plan, program, practice or policy or an individual arrangement) at least equal to the most favorable of those generally provided by the Company and its Affiliates to disabled executives and/or their families in accordance with such plans, programs, practices and policies relating to disability, if any, as in effect generally with respect to other peer executives and their families at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive and/or Executive's family, as in effect at any time thereafter generally with respect to other peer executives of the Company and its Affiliates and their families.

(d) **Cause; Other Than for Good Reason.** If Executive's employment is terminated for Cause during the Continuity Period, the Company shall provide Executive with Executive's Annual Base Salary (subject to the proviso set forth in Section 5(a)(i)(A) to the extent applicable) through the Date of Termination, and the timely payment or delivery of the Other Benefits, and shall have no other severance obligations under this Agreement. If Executive voluntarily terminates employment during the Continuity Period, excluding a termination for Good Reason, the Company shall provide to Executive the Accrued Obligations and the Pro Rata Bonus and the timely payment or delivery of the Other Benefits and shall have no other severance obligations under this Agreement. In such case, all the Accrued Obligations (subject to the proviso set forth in Section 5(a)(i)(A) to the extent applicable) and the Pro Rata Bonus shall be paid to Executive in a lump sum in cash within 30 days of the Date of Termination.

6. **Non-exclusivity of Rights.** Nothing in this Agreement shall prevent or limit Executive's continuing or future participation in any plan, program, policy or practice provided by the Company or any of its Affiliates and for which Executive may qualify, nor, subject to Section 11(h), shall anything herein limit or otherwise affect such rights as Executive may have under any other contract or agreement with the Company or its Affiliates. Amounts that are vested benefits or that Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company or any of its Affiliates at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

Without limiting the generality of the foregoing, Executive's resignation under this Agreement with or without Good Reason shall in no way affect Executive's ability to terminate employment by reason of Executive's "retirement" under any compensation and benefits plans, programs or arrangements of the Company or its Affiliates, including any retirement or pension plans or arrangements or to be eligible to receive benefits under any compensation or benefit plans, programs or arrangements of the Company or any of its Affiliates, including any retirement or pension plan or arrangement of the Company or any of its Affiliates or substitute plans adopted by the Company or its successors, and any termination that otherwise qualifies as Good Reason shall be treated as such even if it is also a "retirement" for purposes of any such plan. Notwithstanding the foregoing, if Executive receives payments and benefits pursuant to Section 5(a) of this Agreement, Executive shall not be entitled to any severance pay or benefits under any severance plan, program or policy of the Company and its Affiliates, unless otherwise specifically provided therein in a specific reference to this Agreement.

7. **Full Settlement; Legal Fees.** (a) **Full Settlement.** The Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action that the Company may have against Executive or others. In no event shall Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to Executive under any of the provisions of this Agreement and such amounts shall not be reduced whether or not Executive obtains other employment.

(b) **Legal Fees.** The Company agrees to pay as incurred (within 10 days following the Company's receipt of an invoice from Executive), at any time from the Effective Date through Executive's remaining lifetime (or, if longer, through the 20th anniversary of the Effective Date) to the full extent permitted by law, all legal fees and expenses that Executive may reasonably incur as a result of any contest (regardless of the outcome thereof) by the Company, Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof whether such contest is between the Company and Executive or between either of them and any third party, and (including as a result of any contest by Executive about the amount of any payment pursuant to this Agreement), plus in each case interest on any delayed payment at the applicable federal rate provided for in Section 7872(f)(2)(A) of the Code ("**Interest**") determined as of the date such legal fees and expenses were incurred.

8. **Treatment of Certain Payments.**

(a) Anything in the Agreement to the contrary notwithstanding, in the event the Accounting Firm (as defined below) shall determine that receipt of all Payments (as defined below) would subject Executive to the excise tax under Section 4999 of the Code, the Accounting Firm shall determine whether to reduce any of the Payments paid or payable pursuant to the Agreement (the "**Agreement Payments**") so that the Parachute Value (as defined below) of all Payments, in the aggregate, equals the Safe Harbor Amount (as defined below). The Agreement Payments shall be so reduced

only if the Accounting Firm determines that Executive would have a greater Net After-Tax Receipt (as defined below) of aggregate Payments if the Agreement Payments were so reduced. If the Accounting Firm determines that Executive would not have a greater Net After-Tax Receipt (as defined below) of aggregate Payments if the Agreement Payments were so reduced, Executive shall receive all Agreement Payments to which Executive is entitled hereunder.

(b) If the Accounting Firm determines that aggregate Agreement Payments should be reduced so that the Parachute Value of all Payments, in the aggregate, equals the Safe Harbor Amount, the Company shall promptly give Executive notice to that effect and a copy of the detailed calculation thereof. All determinations made by the Accounting Firm under this Section 8 shall be binding upon the Company and Executive and shall be made as soon as reasonably practicable and in no event later than 15 days following the date of Termination of Employment. For purposes of reducing the Agreement Payments so that the Parachute Value of all Payments, in the aggregate, equals the Safe Harbor Amount, only amounts payable under the Agreement (and no other Payments) shall be reduced. The reduction of the amounts payable hereunder, if applicable, shall be made by reducing the payments and benefits under the following sections in the following order: (i) cash payments that may not be valued under Treas. Reg. § 1.280G-1, Q&A-24(c) (“**24(c)**”), (ii) equity-based payments that may not be valued under 24(c), (iii) cash payments that may be valued under 24(c), (iv) equity-based payments that may be valued under 24(c) and (v) other types of benefits. With respect to each category of the foregoing, such reduction shall occur first with respect to amounts that are not “deferred compensation” within the meaning of Section 409A of the Code and next with respect to payments that are deferred compensation, in each case, beginning with payments or benefits that are to be paid the farthest in time from the Accounting Firm’s determination. All fees and expenses of the Accounting Firm shall be borne solely by the Company.

(c) To the extent requested by Executive, the Company shall cooperate with Executive in good faith in valuing, and the Accounting Firm shall take into account the value of, services provided or to be provided by Executive (including Executive’s agreeing to refrain from performing services pursuant to a covenant not to compete or similar covenant, including under Section 9(b) of this Agreement, before, on or after the date of a change in ownership or control of the Company (within the meaning of Q&A-2(b) of the final regulations under Section 280G of the Code), such that payments in respect of such services may be considered reasonable compensation within the meaning of Q&A-9 and Q&A-40 to Q&A-44 of the final regulations under Section 280G of the Code and/or exempt from the definition of the term “parachute payment” within the meaning of Q&A-2(a) of the final regulations under Section 280G of the Code in accordance with Q&A-5(a) of the final regulations under Section 280G of the Code.

(d) The following terms shall have the following meanings for purposes of this Section 8:

(i) “**Accounting Firm**” shall mean a nationally recognized certified public accounting firm or other professional organization that is a certified public accounting firm recognized as an expert in determinations and calculations for purposes of Section 280G of the Code that is selected by the Company prior to a Change in Control for purposes of making the applicable determinations hereunder and is reasonably acceptable to Executive, which firm shall not, without Executive’s consent, be a firm serving as accountant or auditor for the individual, entity or group effecting the Change in Control.

(ii) “**Net After-Tax Receipt**” shall mean the present value (as determined in accordance with Sections 280G(b)(2)(A)(ii) and 280G(d)(4) of the Code) of a Payment net of all taxes imposed on Executive with respect thereto under Sections 1 and 4999 of the Code and under applicable state and local laws, determined by applying the highest marginal rate under Section 1 of the Code and under state and local laws which applied to Executive’s taxable income for the immediately preceding taxable year, or such other rate(s) as the Accounting Firm determines to be likely to apply to Executive in the relevant tax year(s).

(iii) “**Parachute Value**” of a Payment shall mean the present value as of the date of the change of control for purposes of Section 280G of the Code of the portion of such Payment that constitutes a “parachute payment” under Section 280G(b)(2) of the Code, as determined by the Accounting Firm for purposes of determining whether and to what extent the excise tax under Section 4999 of the Code will apply to such Payment.

(iv) “**Payment**” shall mean any payment or distribution in the nature of compensation (within the meaning of Section 280G(b)(2) of the Code) to or for the benefit of Executive, whether paid or payable pursuant to the Agreement or otherwise.

(v) “**Safe Harbor Amount**” shall mean 2.99 *times* Executive’s “base amount,” within the meaning of Section 280G(b)(3) of the Code.

(e) The provisions of this Section 8 shall survive the expiration of the Agreement.

9. **Restrictive Covenants.**

(a) **Confidential Information.** The Executive shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its Affiliates, and their respective businesses, which shall have been obtained by Executive during Executive’s employment by the Company or any of its Affiliates and which shall not be or become public knowledge (other than by acts by Executive or representatives of Executive in violation of this Agreement). After termination of Executive’s employment with the Company, Executive shall not, without the prior written consent of the Company or as may otherwise be required by law or legal process, communicate or divulge any such information, knowledge or data to anyone other than the Company and those persons designated by it. In no event shall an asserted violation of the provisions of this Section 9(a) constitute a basis for deferring or withholding any amounts otherwise payable to Executive under this Agreement, but the Company otherwise shall be entitled to all other remedies that may be available to it at law or in equity.

(b) **Noncompetition.** During the Restricted Period, in order to protect all secret or confidential information, knowledge or data relating to the Company or any of its Affiliates, and their respective businesses, which shall have been obtained by Executive during Executive's employment by the Company or any of its Affiliates and which shall not be or become public knowledge (other than by acts by Executive or representatives of Executive in violation of this Agreement), Executive agrees that to the fullest extent permitted by law, Executive shall not engage or be engaged in any aspect whatsoever of any the following lines of business: (i) the production (including any associated mining), distribution, marketing or sale of cement (including Portland, oil well cement and blended cements), slag, slag cement, masonry cement, fly-ash, pozzolan or clinker; (ii) the production, distribution or marketing of readymix concrete; (iii) the mining, extraction, production or marketing of crushed stone, sand, gravel and aggregates; (iv) the production (including any associated mining), distribution, marketing or sale of gypsum wallboard; (v) the production, distribution, marketing or sale of recycled paperboard; (vi) the mining, processing, drying, manufacturing, distributing or marketing of frac sand; or (vii) any other line of business engaged in by the Company or any of its Affiliates (each a "**Line of Business**" and collectively, the "**Business**"), either directly or indirectly as an individual, or as an employee, associate, partner, stockholder, consultant, owner, manager, agent or otherwise or by means of any corporate or other device, either on his own behalf in the Restricted Areas (as defined below) or on behalf of others who are engaged in any Line of Business (either directly or through an affiliate (including by virtue of having an affiliate in the Restricted Areas)) in the Restricted Areas. The "**Restricted Areas**" are, specific to each Line of Business, the geographic areas in which the Company or any of its Affiliates engages in the following activities for such Line of Business: (x) operates a manufacturing facility or other facility engaged in business operations; (y) engages in the distribution or sale of its products; or (z) is actively pursuing a strategic initiative (including a merger, acquisition or business expansion) that would reasonably be expected to result in the Company or any of its Affiliates engaging in the activities described in clause (x) or (y) above, of which (in the case of this clause (z)) the Company has informed Executive or in respect of which Executive have performed any services. In addition to any other remedies, the Company shall be entitled to specific performance and/or a temporary or permanent injunction prohibiting and enjoining Executive from violating the covenants set forth in this Section 9(b). For purposes of obtaining equitable relief, such as specific performance, a temporary restraining order, or an injunction (but not any relief to the extent it would involve the payment by Executive of monetary damages or the loss of a benefit under this Agreement), the Company need not prove, and Executive acknowledges and agrees that irreparable harm or injury will have occurred as a result of any breach of the covenants set forth in this Section 9(b).

10. **Successors.** (a) This Agreement is personal to Executive and without the prior written consent of the Company shall not be assignable by Executive other than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns. Except as provided in Section 10(c), without the prior written consent of Executive, this Agreement shall not be assignable by the Company.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

11. **Miscellaneous.**

(a) **Governing Law and Dispute Resolution.** This Agreement shall be governed by and construed in accordance with the laws of Texas, without reference to principles of conflict of laws. The parties irrevocably submit to the jurisdiction of any state or federal court sitting in or for Dallas, Texas with respect to any dispute arising out of or relating to this Agreement, and each party irrevocably agrees that all claims in respect of such dispute or proceeding shall be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the venue of any dispute arising out of or relating to this Agreement or the transactions contemplated hereby brought in such court or any defense of inconvenient forum for the maintenance of such dispute or proceeding. Each party agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. THE PARTIES HEREBY WAIVE A TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT OR ASSERTED BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT.

(b) **Notices.** All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Executive: To the most recent address on file with the Company.

If to the Company:
Eagle Materials Inc.
5960 Berkshire Lane
Dallas TX 75225
Attention: General Counsel

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) **Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(d) **Survivorship.** Upon the expiration or other termination of this Agreement or Executive's employment, the respective rights and obligations of the parties hereto shall survive to the extent necessary to carry out the intentions of the parties under this Agreement.

(e) **Section Headings; Construction.** The section headings used in this Agreement are included solely for convenience and shall not affect, or be used in connection with, the interpretation hereof. For purposes of this Agreement, the term "including" shall mean "including, without limitation."

(f) **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

(g) **Amendments; Waiver.** No provision of this Agreement shall be modified or amended except by an instrument in writing duly executed by the parties hereto. The Executive's or the Company's failure to insist upon strict compliance with any provision hereof or any other provision of this Agreement or the failure to assert any right Executive or the Company may have hereunder, including the right of Executive to terminate employment for Good Reason pursuant to Section 4(c)(i)-(v), shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(h) **At-Will Employment.** The Executive and the Company acknowledge that, except as may otherwise be provided under any other written agreement between Executive and the Company, the employment of Executive by the Company is "at will" and, subject to Section 1(e) of this Agreement, prior to the Effective Date, Executive's employment may be terminated by either Executive or the Company at any time prior to the Effective Date, in which case Executive shall have no further rights under this Agreement. From and after the Effective Date, except as specifically provided herein, this Agreement shall supersede any other employment agreement between the parties. For the avoidance of doubt, prior to the Effective Date, any other employment agreement between the parties shall continue to govern the relationship between the parties.

(i) **Entire Agreement.** This Agreement constitutes the entire agreement of the parties hereto in respect of the terms and conditions of Executive's employment with the Company and its Affiliates, including his severance entitlements, and, as of the Effective Date, supersedes and cancels in their entirety all prior understandings, agreements and commitments, whether written or oral, relating to the terms and conditions of employment between Executive, on the one hand, and the Company or its Affiliates, on the other hand. For the avoidance of doubt, this Agreement does not limit the terms of any benefit plans (including equity award agreements) of the Company or its Affiliates that are applicable to Executive, except to the extent that the terms of this Agreement are more favorable to Executive.

(j) **Tax Withholding.** The Company may withhold from any amounts payable under this Agreement such Federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(k) **Section 409A.**

(i) **General.** It is intended that payments and benefits made or provided under this Agreement shall not result in penalty taxes or accelerated taxation pursuant to Section 409A of the Code. Any payments that qualify for the "short-term deferral" exception, the separation pay exception or another exception under Section 409A of the Code shall be paid under the applicable exception. For purposes of the limitations on nonqualified deferred compensation under Section 409A of the Code, each payment of compensation under this Agreement shall be treated as a separate payment of compensation. All payments to be made upon a termination of employment under this Agreement may only be made upon a "separation from service" under Section 409A of the Code to the extent necessary in order to avoid the imposition of penalty taxes on Executive pursuant to Section 409A of the Code. In no event may Executive, directly or indirectly, designate the calendar year of any payment under this Agreement, and to the extent required by Section 409A of the Code, any payment that may be paid in more than one taxable year shall be paid in the later taxable year.

(ii) **Reimbursements and In-Kind Benefits.** Notwithstanding anything to the contrary in this Agreement, all reimbursements and in-kind benefits provided under this Agreement that are subject to Section 409A of the Code shall be made in accordance with the requirements of Section 409A of the Code, including, where applicable, the requirement that (A) any reimbursement is for expenses incurred during Executive's lifetime (or during a shorter period of time specified in this Agreement); (B) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during a calendar year may not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year; (C) the reimbursement of an eligible expense will be made no later than the last day of the calendar year following the year in which the expense is incurred; and (D) the right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.

(iii) **Delay of Payments.** Notwithstanding any other provision of this Agreement to the contrary, if Executive is considered a “specified employee” for purposes of Section 409A of the Code (as determined in accordance with the methodology established by the Company and its Affiliates as in effect on the Termination Date), any payment that constitutes nonqualified deferred compensation within the meaning of Section 409A of the Code that is otherwise due to Executive under this Agreement during the six-month period immediately following Executive’s separation from service on account of Executive’s separation from service shall instead be paid, with Interest (based on the rate in effect for the month in which the Executive’s separation from service occurs), on the first business day of the seventh month following his separation from service (the “**Delayed Payment Date**”), to the extent necessary to prevent the imposition of tax penalties on Executive under Section 409A of the Code. If Executive dies during the postponement period, the amounts and entitlements delayed on account of Section 409A of the Code shall be paid to the personal representative of his estate on the first to occur of the Delayed Payment Date or 30 calendar days after the date of Executive’s death.

(l) **Indemnification.** The Company shall indemnify Executive and hold him harmless to the fullest extent permitted by law and under the charter and bylaws of the Company (including the advancement of expenses) against, and with respect to, any and all actions, suits, proceedings, claims, demands, judgments, costs, expenses (including reasonable attorney fees), losses and damages resulting from Executive’s good faith performance of his duties and obligations with the Company and its Affiliates.

[Signature Page Follows]

IN WITNESS WHEREOF, Executive has hereunto set Executive's hand and, pursuant to the authorization from the Board and the Company have caused this Agreement to be executed in its name on its behalf, all as of the day and year first above written.

/s/ Robert S. Stewart

Robert S. Stewart

Eagle Materials Inc.

By: /s/ Michael Nicolais

Name: Michael Nicolais

Its: Chairman of the Board

[Change in Control Continuity Agreement Signature Page]

GENERAL RELEASE OF CLAIMS

This **GENERAL RELEASE OF CLAIMS** (this "**Agreement**") is entered into on [•], 20[•], by and between Eagle Materials Inc., a Delaware corporation (the "**Company**") and Robert S. Stewart ("**Executive**").

1. General Release and Waiver of Claims.

(a) **Release.** In consideration of the payments and benefits afforded under the Change in Control Continuity Agreement, dated as of June 20, 2019, by and between the Company and Executive (the "**CIC Agreement**") as specified on **Schedule I** attached hereto, and after consultation with counsel, Executive and each of Executive's respective heirs, executors, administrators, representatives, agents, successors and assigns (collectively, the "**Releasors**") hereby irrevocably and unconditionally release and forever discharge the Company and its subsidiaries and affiliates and each of their respective officers, employees, directors and agents ("**Releasees**") from any and all claims, actions, causes of action, rights, judgments, obligations, damages, demands, accountings or liabilities of whatever kind or character (collectively, "**Claims**") that the Releasors may have arising out of Executive's employment relationship with and service as an employee, officer or director of the Company and its subsidiaries and affiliates, and the termination of any such relationship or service, in each case up to and including Executive's date of termination, including, without limitation, any and all Claims of discrimination on the basis of race, religion, sex, age, color, national origin, ancestry, disability, medical condition or marital status or other employment claims for injury to Executive including, but not limited to any Claim arising under any of the following: the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Age Discrimination in Employment Act of 1967; the Older Worker Benefits Protection Act; the Americans with Disabilities Act of 1990; the Family and Medical Leave Act; the Employee Retirement Income Security Act of 1974; the Fair Labor Standards Act; the Equal Pay Act; the Genetic Information Nondiscrimination Act; Chapter 21 of the Texas Labor Code; the Texas Payday Act; the Texas Administrative Code; or any other similar local, state, or federal laws, in each case, as amended from time to time; provided, however, that notwithstanding anything contained herein to the contrary, this Agreement shall not affect: (i) the obligations of the Company set forth in the CIC Agreement, including without limitation under Sections 5, 6, 7, 8 and 11 of the CIC Agreement, or under any other benefit plan, agreement, arrangement or policy of the Company or its affiliates; (ii) any indemnification or similar rights Executive has as a current or former officer, director, employee or agent of the Company and its subsidiaries and affiliates, including, without limitation, any and all rights thereto under applicable law, the Company's bylaws or other governance documents, or any rights with respect to coverage under any directors' and officers' insurance policies and/or indemnification agreements; (iii) any Claim the Releasors may have as the holder or beneficial owners of securities of the Company or its affiliates or other rights relating to securities or equity awards in respect of the common stock of the Company or its affiliates; (iv) rights to accrued but unpaid salary, paid time off, vacation or other compensation due through the date of termination

of employment; (v) any unreimbursed business expenses; (vi) benefits or the right to seek benefits under applicable workers' compensation and/or unemployment compensation statutes; and (vii) any Claims that may arise in the future from events or actions occurring after Executive's date of termination of employment or that Executive may not by law release through an agreement such as this.

(b) **Specific Release of ADEA Claims.** In further consideration of the payments and benefits provided to Executive under the Plan, the Releasers hereby unconditionally release and forever discharge the Releasees from any and all Claims that the Releasers may have as of the date Executive signs this Agreement arising under the Federal Age Discrimination in Employment Act of 1967, as amended, and the applicable rules and regulations promulgated thereunder ("ADEA"). By signing this Agreement, Executive hereby acknowledges and confirms the following: (i) Executive was advised by the Company in connection with Executive's termination of employment to consult with an attorney of Executive's choice prior to signing this Agreement and to have such attorney explain to Executive the terms of this Agreement, including, without limitation, the terms relating to Executive's release of claims arising under ADEA, and Executive has in fact consulted with an attorney; (ii) Executive was given a period of not fewer than [twenty-one (21)] [forty-five (45)] calendar days to consider the terms of this Agreement and to consult with an attorney of Executive's choosing with respect thereto; and (iii) Executive knowingly and voluntarily accepts the terms of this Agreement. Executive also understands that Executive has seven (7) calendar days following the date on which Executive signs this Agreement within which to revoke the release contained in this Section 1(b), by providing the Company a written notice of Executive's revocation of the release and waiver contained in this Section 1(b).

(c) **No Assignment.** Executive represents and warrants that Executive has not assigned any of the Claims being released under this Agreement.

2. **Proceedings.** Executive has not filed, and agrees not to initiate or cause to be initiated on Executive's behalf, any complaint, charge, claim or proceeding against the Releasees with respect to any Claims released under Section 1(a) or (b) before any local, state or federal agency, court or other body (each, individually, a "**Proceeding**"), and agrees not to participate voluntarily in any Proceeding involving such Claims; provided, however, and subject to the immediately following sentence, nothing set forth here in intended to or shall interfere with Executive's right to participate in a Proceeding with any appropriate federal, state, or local government agency enforcing discrimination or securities laws, nor shall this Agreement prohibit Executive from cooperating with any such agency in its investigation. To the maximum extent permitted by law, the Executive waives any right he may have to benefit in any manner from any relief (whether monetary or otherwise) arising out of any Proceeding, provided that the foregoing shall not apply to any legally protected whistleblower rights (including under Rule 21F under the Securities Exchange Act of 1934).

3. **Severability Clause.** In the event any provision or part of this Agreement is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire Agreement, will be inoperative.

4. **No Admission.** Nothing contained in this Agreement will be deemed or construed as an admission of wrongdoing or liability on the part of the Company.

5. **Governing Law and Venue.** This Agreement shall be governed by and construed and interpreted in accordance with the substantive laws of the State of Texas (without giving effect to any conflict-of-law rule or principle that would result in the application of the laws of any other jurisdiction). The parties agree to submit to the jurisdiction of the federal and state courts sitting in Dallas, Texas, for all purposes relating to the validity, interpretation, or enforcement of this Agreement

6. **Counterparts.** This Agreement may be executed in counterparts and each counterpart will be deemed an original.

7. **Notices.** All notices, requests, demands or other communications under this Agreement shall be in writing and shall be deemed to have been duly given when delivered in person or deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, to the party to whom such notice is being given as follows:

As to Executive:	Executive's last address on the books and records of the Company
As to the Company:	Eagle Materials Inc 5960 Berkshire Lane Dallas TX 75225 Attention: General Counsel

Any party may change his, her or its address or the name of the person to whose attention the notice or other communication shall be directed from time to time by serving notice thereof upon the other party as provided herein.

EXECUTIVE ACKNOWLEDGES THAT EXECUTIVE HAS READ THIS AGREEMENT AND THAT EXECUTIVE FULLY KNOWS, UNDERSTANDS AND APPRECIATES ITS CONTENTS, AND THAT EXECUTIVE HEREBY EXECUTES THE SAME AND MAKES THIS AGREEMENT AND THE RELEASE PROVIDED FOR HEREIN VOLUNTARILY AND OF EXECUTIVE'S OWN FREE WILL.

IN WITNESS WHEREOF, Executive has executed this Agreement on the date set forth below.

Robert S. Stewart

Dated as of: _____

CHANGE IN CONTROL CONTINUITY AGREEMENT

THIS CHANGE IN CONTROL CONTINUITY AGREEMENT (this “**Agreement**”) is made and entered into, as of June 20, 2019, by and between Eagle Materials Inc., a Delaware corporation (the “**Company**”) and James H. Graass (“**Executive**”).

WHEREAS, the Board of Directors of the Company (the “**Board**”) has determined that it is in the best interests of the Company and its stockholders to assure that the Company will have the continued dedication of Executive, notwithstanding the possibility, threat or occurrence of a Change in Control (as defined below); and

WHEREAS, the Board believes it is imperative to diminish the inevitable distraction of Executive by virtue of the personal uncertainties and risks created by a pending or threatened Change in Control and to encourage Executive’s full attention and dedication to the Company currently and in the event of any threatened or pending Change in Control, and to provide Executive with compensation and benefits arrangements upon a Change in Control that ensure that the compensation and benefits expectations of Executive will be satisfied and that are competitive with those of other corporations.

NOW, THEREFORE, in order to accomplish the foregoing objectives and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows.

1. Certain Definitions.

(a) “**Affiliate**” shall mean an entity controlled by, controlling or under common control with another entity.

(b) “**Change in Control**” shall mean:

(i) An acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a “**Person**”) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended, or any successor thereto (the “**Exchange Act**”) of 35% or more of either (1) the then outstanding shares of common stock of the Company (the “**Outstanding Company Common Stock**”) or (2) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the “**Outstanding Company Voting Securities**”); provided, however, that for purposes of this subsection (i), the following acquisitions shall not constitute a Change in Control: (A) any acquisition directly from the Company; (B) any acquisition by the Company; (C) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any entity controlled by the Company; or (D) any acquisition by any entity pursuant to a transaction that complies with clauses (A), (B) and (C) of subsection (iii) of this Section 1(b);

(ii) A change in the composition of the Board such that the individuals who, as of the Effective Date, constitute the Board (the “**Incumbent Board**”) cease for any reason to constitute at least a majority of the Board; provided, however, that, for purposes of this Section 1(b), any individual who becomes a member of the Board subsequent to the date of this Agreement whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least a majority of those individuals who are members of the Board and who were also members of the Incumbent Board (or deemed to be such pursuant to this proviso) shall be considered as though such individual were a member of the Incumbent Board; provided further, that any such individual whose initial assumption of office occurs as a result of either an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board shall not be considered as a member of the Incumbent Board;

(iii) The consummation of a reorganization, merger, statutory share exchange or consolidation or similar transaction involving the Company or any of its subsidiaries or sale or other disposition of all or substantially all of the assets of the Company, or the acquisition of assets or securities of another entity by the Company or any of its subsidiaries (a “**Business Combination**”), in each case, unless, following such Business Combination: (A) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock (or, for a noncorporate entity, equivalent securities) and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors (or, for a noncorporate entity, equivalent securities), as the case may be, of the entity resulting from such Business Combination (including an entity that, as a result of such transaction, owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be; (B) no Person (excluding any entity resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or such entity resulting from such Business Combination) beneficially owns, directly or indirectly, 35% or more of, respectively, the then outstanding shares of common stock (or, for a noncorporate entity, equivalent securities) of the entity resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such entity except to the extent that such ownership existed prior to the Business Combination; and (C) at least a majority of the members of the board of directors (or, for a noncorporate entity, equivalent body or committee) of the entity resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

(iv) The approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

(c) “**Change in Control Period**” shall mean the period commencing on the date hereof and ending on the third anniversary of the date hereof; provided, however, that commencing on the date one year after the date hereof, and on each annual anniversary of such date (such date and each annual anniversary thereof shall be hereinafter referred to as the “**Renewal Date**”), unless previously terminated, the Change in Control Period shall be automatically extended so as to terminate three years from such Renewal Date, unless at least 60 days prior to the Renewal Date the Company shall give notice to Executive that the Change in Control Period shall not be so extended.

(d) “**Code**” shall mean the Internal Revenue Code of 1986, as amended.

(e) “**Effective Date**” shall mean the first date during the Change in Control Period on which a Change in Control occurs. Notwithstanding anything in this Agreement to the contrary, if (i) Executive’s employment with the Company is terminated by the Company, (ii) the Date of Termination is prior to the date on which a Change in Control occurs, and (iii) it is reasonably demonstrated by Executive that such termination of employment (A) was at the request of a third party that has taken steps reasonably calculated to effect a Change in Control or (B) otherwise arose in connection with or anticipation of a Change in Control, then for all purposes of this Agreement, the “**Effective Date**” means the date immediately prior to such Date of Termination.

(f) “**Restricted Period**” shall mean the period of 12 months following the Date of Termination.

2. **Continuity Period.** The Company hereby agrees to continue Executive in its employ, and Executive hereby agrees to remain in the employ of the Company subject to the terms and conditions of this Agreement, for the period commencing on the Effective Date and ending on the second anniversary of such date (the “**Continuity Period**”). The Continuity Period shall terminate upon Executive’s termination of employment for any reason.

3. **Terms of Employment.** (a) **Position and Duties.** (i) During the Continuity Period, (A) Executive’s position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be at least commensurate in all respects with the most significant of those held, exercised and assigned to Executive at any time during the 120-day period immediately preceding the Effective Date and (B) Executive’s services shall be performed at the location where Executive was employed immediately preceding the Effective Date or any office or location less than 25 miles from such location.

(ii) During the Continuity Period, and excluding any periods of vacation and sick leave to which Executive is entitled, Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to Executive hereunder, to use Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Continuity Period it shall not be a violation of this Agreement for Executive to (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions and (C) manage personal investments, so long as such activities do not significantly interfere with the performance of Executive's responsibilities as an employee of the Company in accordance with this Agreement. It is expressly understood and agreed that to the extent that any such activities have been conducted by Executive prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not thereafter be deemed to interfere with the performance of Executive's responsibilities to the Company.

(b) **Compensation.** (i) **Base Salary.** During the Continuity Period, Executive shall receive an annual base salary ("**Annual Base Salary**"), that shall be paid at an annual rate, at least equal to 12 times the highest monthly base salary paid or payable, including any base salary that has been earned but deferred, to Executive by the Company and its Affiliates in respect of the 12-month period immediately preceding the month in which the Effective Date occurs. The Annual Base Salary shall be paid at such intervals as the Company pays executive salaries generally. During the Continuity Period, the Annual Base Salary shall be periodically reviewed and increased in the same manner and proportion as the base salaries of other senior executives of the Company and Affiliates, but in no event shall such review and adjustment be more than 12 months after the last salary increase awarded to Executive prior to the Effective Date and thereafter at least annually. Any increase in Annual Base Salary shall not serve to limit or reduce any other obligation to Executive under this Agreement. Annual Base Salary shall not be reduced after any such increase and the term Annual Base Salary as utilized in this Agreement shall refer to Annual Base Salary as so increased.

(ii) **Annual Bonus.** In addition to Annual Base Salary, Executive shall be awarded, for each fiscal year ending during the Continuity Period, an annual bonus (the "**Annual Bonus**") in cash at least equal to the target annual bonus for which Executive was eligible as of immediately prior to the Effective Date (or, if the target annual bonus has not been established for such fiscal year, for the completed fiscal year immediately preceding the Effective Date) (the "**Target Annual Bonus**"). Each such Annual Bonus shall be paid no later than two and a half months after the end of the fiscal year for which the Annual Bonus is awarded, unless Executive shall elect to defer the receipt of such Annual Bonus pursuant to an arrangement that meets the requirements of Section 409A of the Code.

(iii) **Long Term Incentive Awards.** During the Continuity Period, Executive shall be entitled to participate in all long-term equity- and cash-based incentive plans and programs applicable generally to other peer executives of the Company and its Affiliates. For each fiscal year ending during the Continuity Period, Executive shall be awarded annual long-term incentive awards (the "**Annual LTI Award**") in respect of the common stock of the Company (or the ultimate parent entity of

the Company) or cash incentive awards, in each case on the same basis as other peer executives of the Company, at least equal to the target Annual LTI Award opportunity to which Executive was eligible as of immediately prior to the Effective Date or, if more favorable to Executive, the target Annual LTI Award opportunity provided generally at any time after the Effective Date to other peer executives of the Company and its Affiliates (the “**Target LTI Award Opportunity**”). The terms and conditions of the awards granted in respect of such Annual LTI Awards shall be no less favorable, in the aggregate, than the most favorable of those provided by the Company and its Affiliates for the awards granted to Executive under such plans and programs as in effect at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its Affiliates.

(iv) **Savings and Retirement Plans.** During the Continuity Period, Executive shall be entitled to participate in all savings and retirement plans, practices, policies and programs applicable generally to other peer executives of the Company and its Affiliates, but in no event shall such plans, practices, policies and programs provide Executive with savings opportunities and retirement benefit opportunities, in each case, less favorable, in the aggregate, than the most favorable of those provided by the Company and its Affiliates for Executive under such plans, practices, policies and programs as in effect at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its Affiliates.

(v) **Welfare and Insurance Benefit Plans.** During the Continuity Period, Executive and/or Executive’s family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare and insurance benefit plans, practices, policies and programs provided by the Company and its Affiliates (including medical, prescription, dental, disability, salary continuance, employee life, group life, accidental death and travel accident insurance plans and programs) (“**Company Welfare Benefit Plans**”) to the extent applicable generally to other peer executives of the Company and its Affiliates, but if the Company Welfare Benefit Plans provide Executive with benefits that are less favorable, in the aggregate, than the most favorable of such plans, practices, policies and programs in effect for Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, those provided generally at any time after the Effective Date (the “**Former Company Welfare Benefit Plans**”), the Company shall provide Executive with supplemental arrangements (such as individual insurance coverage purchased by the Company for Executive) such that the Company Welfare Benefit Plans together with such supplemental arrangements provide Executive with benefits that are at least as favorable, in the aggregate, as those provided by the Former Company Welfare Benefit Plans.

(vi) **Expenses.** During the Continuity Period, Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by Executive in accordance with the most favorable policies, practices and procedures of the Company and its Affiliates in effect for Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its Affiliates.

(vii) **Fringe Benefits.** During the Continuity Period, Executive shall be entitled to fringe benefits in accordance with the most favorable plans, practices, programs and policies of the Company and its Affiliates in effect for Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its Affiliates.

(viii) **Office and Support Staff.** During the Continuity Period, Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to personal secretarial and other assistance, at least equal to the most favorable of the foregoing provided to Executive by the Company and its Affiliates at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive, as provided generally at any time thereafter with respect to other peer executives of the Company and its Affiliates.

(ix) **Vacation.** During the Continuity Period, Executive shall be entitled to paid vacation, in each case in accordance with the most favorable plans, policies, programs and practices of the Company and its Affiliates as in effect for Executive at any time during the 365-day period immediately preceding the Effective Date or, if more favorable to Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its Affiliates.

4. **Termination of Employment.** (a) **Death or Disability.** The Executive's employment shall terminate automatically upon Executive's death during the Continuity Period. If the Company determines in good faith that the Disability of Executive has occurred during the Continuity Period (pursuant to the definition of Disability set forth below), it may give to Executive written notice in accordance with Section 11(b) of its intention to terminate Executive's employment. In such event, Executive's employment with the Company shall terminate effective on the 30th day after receipt of such notice by Executive (the "**Disability Effective Date**"), provided that, within the 30 days after such receipt, Executive shall not have returned to full-time performance of Executive's duties. For purposes of this Agreement, "**Disability**" shall mean the absence of Executive from Executive's duties with the Company on a full-time basis for 180 consecutive business days (or for 180 business days in any consecutive 365 days) as a result of incapacity due to mental or physical illness that is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to Executive or Executive's legal representative.

(b) **Cause.** The Company may terminate Executive's employment during the Continuity Period with or without Cause. For purposes of this Agreement, "**Cause**" shall mean:

- (i) Executive's conviction of or plea of guilty or *nolo contendere* to a charge of commission of a felony; or
- (ii) the willful engaging by Executive in illegal conduct or gross misconduct in the performance of Executive's duties to the Company that is materially and demonstrably injurious to the Company.

For purposes of this provision, no act or failure to act, on the part of Executive, shall be considered "willful" unless it is done, or omitted to be done, by Executive in bad faith or without reasonable belief that Executive's action or omission was in the best interests of the Company and its Affiliates. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board, or if the Company is not the ultimate parent entity of the Company and is not publicly traded, the board of directors (or, for a non-corporate entity, equivalent governing body) of the ultimate parent of the Company (the "**Applicable Board**") or upon the instructions of the Chief Executive Officer of the Company or a senior officer of the Company and its Affiliates or based upon the advice of counsel for the Company and its Affiliates shall be conclusively presumed to be done, or omitted to be done, by Executive in good faith and in the best interests of the Company and its Affiliates. The cessation of employment of Executive shall not be deemed to be for Cause unless and until there shall have been delivered to Executive a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Applicable Board (excluding Executive if Executive is a member of the Applicable Board) at a meeting of the Applicable Board called and held for such purpose (after reasonable notice is provided to Executive and Executive is given an opportunity, together with counsel for Executive, to be heard before the Applicable Board), finding that, in the good faith opinion of the Applicable Board, Executive is guilty of the conduct described in subparagraph (i) or (ii) above, and specifying the particulars thereof in detail.

(c) **Good Reason.** The Executive's employment may be terminated during the Continuity Period by Executive for Good Reason or by Executive voluntarily without Good Reason. "**Good Reason**" means actions taken by the Company resulting in a material negative change in the employment relationship. For these purposes, a "material negative change in the employment relationship" shall include:

- (i) the assignment to Executive of duties inconsistent in any material respect with Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section 3(a), or a diminution in any material respect in such position, authority, duties or responsibilities or in the budget over which Executive retains authority (for this purpose, a material diminution in duties shall be deemed to have occurred if the Change in Control results in the Company becoming a wholly owned division, unit or subsidiary of the acquiring company, or otherwise ceasing to be a publicly traded company, and Executive is not serving in the position Executive held immediately prior to the Effective Date (or a superior position) with respect to the ultimate parent company or the ultimate parent company is not publicly traded);

(ii) a material diminution in the authorities, duties or responsibilities of the person to whom Executive is required to report, including a requirement that Executive report to an officer or employee instead of reporting directly to the Applicable Board;

(iii) the failure to provide, in all material respects, any element of the compensation and benefits required to be provided to Executive in accordance with any of the provisions of Section 3(b), including any decrease in Executive's Annual Base Salary;

(iv) the Company's requiring Executive (A) to be based at any office or location other than as provided in Section 3(a)(i)(B) resulting in a material increase in Executive's commute to and from Executive's primary residence (for this purpose an increase in Executive's commute by 25 miles or more shall be deemed material); or (B) to be based at a location other than the principal executive offices of the Company if Executive was employed at such location immediately preceding the Effective Date; or

(v) any other action or inaction that constitutes a material breach by the Company of this Agreement, including any failure by the Company to comply with and satisfy Section 10(c).

In order to invoke a termination for Good Reason, Executive shall provide written notice to the Company of the existence of one or more of the conditions described in clauses (i) through (v) within 90 days following Executive's knowledge of the initial existence of such condition or conditions, specifying in reasonable detail the conditions constituting Good Reason, and the Company shall have 30 days following receipt of such written notice (the "**Cure Period**") during which it may remedy the condition. In the event that the Company fails to remedy the condition constituting Good Reason during the applicable Cure Period, Executive's "separation from service" (within the meaning of Section 409A of the Code) must occur, if at all, within two years following the initial existence of such condition or conditions in order for such termination as a result of such condition to constitute a termination for Good Reason. The Executive's mental or physical incapacity following the occurrence of an event described above in clauses (i) through (v) shall not affect Executive's ability to terminate employment for Good Reason and Executive's death following delivery of a Notice of Termination for Good Reason shall not affect Executive's estate's entitlement to severance payments benefits provided hereunder upon a termination of employment for Good Reason.

(d) **Notice of Termination.** Any termination of employment by the Company for Cause, or by Executive for Good Reason, shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 11(b). For purposes of this Agreement, a "**Notice of Termination**" means a written notice that (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of

receipt of such notice, specifies the Date of Termination (which date shall be not more than 30 days after the giving of such notice) (subject to the Company's right to cure in the case of a resignation for Good Reason). The failure by Executive or the Company to set forth in the Notice of Termination any fact or circumstance that contributes to a showing of Good Reason or Cause shall not waive any right of Executive or the Company, respectively, hereunder or preclude Executive or the Company, respectively, from asserting such fact or circumstance in enforcing Executive's or the Company's rights hereunder.

(e) **Date of Termination.** "Date of Termination" means (i) if Executive's employment is terminated by the Company for Cause, or by Executive for Good Reason, the date of receipt of the Notice of Termination or any later date specified therein, as the case may be, (ii) if Executive's employment is terminated by the Company other than for Cause or Disability, the date on which the Company notifies Executive of such termination, (iii) if Executive resigns without Good Reason, the date on which Executive notifies the Company of such termination and (iv) if Executive's employment is terminated by reason of death or Disability, the date of death of Executive or the Disability Effective Date, as the case may be.

5. **Obligations of the Company Upon Termination.** (a) **By Executive for Good Reason; By the Company Other Than for Cause, Death or Disability.** If, during the Continuity Period, the Company shall terminate Executive's employment other than for Cause, Death or Disability or Executive shall terminate employment for Good Reason, then, subject to Executive's execution within 50 days following the Date of Termination, and non-revocation, of a release of claims in the form attached as Exhibit A (the "**Release**"), the Company shall pay to Executive the following:

(i) subject to Section 11(k), the Company shall pay to Executive in a lump sum in cash within 60 days after the Date of Termination (and, if earlier, within five days after the Release becomes effective and irrevocable) the aggregate of the following amounts:

(A) the sum of (I) Executive's Annual Base Salary through the Date of Termination to the extent not theretofore paid; (II) Executive's business expenses that are reimbursable pursuant to Section 3(b)(v) but have not been reimbursed by the Company as of the Date of Termination; (III) Executive's Annual Bonus for the fiscal year immediately preceding the fiscal year in which the Date of Termination occurs, if such bonus has not been paid as of the Date of Termination; (IV) any accrued vacation pay to the extent not theretofore paid (the sum of the amounts described in subclauses (I), (II), (III) and (IV), the "**Accrued Obligations**"); and (V) an amount equal to the product of (x) the Target Annual Bonus (or, if higher, the target annual bonus as in effect immediately prior to the Date of Termination) and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365 (the "**Pro Rata Bonus**"); provided, that notwithstanding the foregoing, if

Executive has made an irrevocable election under any deferred compensation arrangement subject to Section 409A of the Code to defer any portion of the Annual Base Salary or the Annual Bonus described in clause (I) or (III), then for all purposes of this Section 5 (including Sections 5(b) through 5(d)), such deferral election, and the terms of the applicable arrangement shall apply to the same portion of the amount described in such clause (I) or (III), and such portion shall not be considered as part of the "Accrued Obligations" but shall instead be an "Other Benefit" (as defined below);

(B) the amount equal to the product of (I) two (2) and (II) the sum of (x) Executive's Annual Base Salary and (y) the Target Annual Bonus (or, if higher, the target annual bonus as in effect immediately prior to the Date of Termination);

(C) an amount equal to Company's and its Affiliates' contributions under the tax-qualified defined contribution plan and any excess or supplemental defined contribution plans sponsored by the Company or its Affiliates, in which Executive participates as of immediately prior to the Date of Termination (or, if more favorable to Executive, the plans as in effect immediately prior to the Effective Date) (collectively, the "**Savings Plans**") that Executive would receive if Executive's employment continued for the Restricted Period, assuming for this purpose that (I) Executive is fully vested in the right to receive employer contributions under such plans; (II) Executive's compensation during each year of the Restricted Period is equal to the Annual Base Salary and the Target Annual Bonus, and such amounts are paid in equal installments ratably over each year of the Restricted Period; (III) Executive received an Annual Bonus with respect to the year in which the Date of Termination occurs equal to the Pro Rata Bonus, only if a contribution in respect of the compensation described in this clause (III) has not already been credited to Executive under the Savings Plans; (IV) the amount of any such employer contributions is equal to the maximum amount that could be provided under the terms of the applicable Savings Plans for the year in which the Date of Termination occurs (or, if more favorable to Executive, or in the event that as of the Date of Termination the amount of any such contributions for such year is not determinable, the amount of contribution that could be provided under the Savings Plans for the plan year ending immediately prior to the Effective Date) for a participant whose compensation is as provided in clauses (II) and (III) above; and (V) to the extent that the employer contributions are determined based on the contributions or deferrals of Executive, disregarding Executive's actual contributions or deferral elections as of the Date of Termination and assuming that Executive had elected to participate in the Savings Plans and to defer that percentage of Annual Base Salary and/or Annual Bonus under the Savings Plans that would result in the maximum possible employer contribution; and

(D) an amount equal to the product of (I) the full amount (both the employer and employee portion) of the monthly premiums for coverage under the Company's or and its Affiliates' health care plans for purposes of continuation coverage under Section 4980B of the Code with respect to the maximum level of coverage in effect for Executive and his or her spouse and dependents as of immediately prior to the Date of Termination, based on the plans in which Executive participates as of immediately prior to the Date of Termination (or, if more favorable to Executive, the plans as in effect immediately prior to the Effective Date), and (II) the number of months in the Restricted Period;

(ii) the Company shall, at its sole expense as incurred, provide Executive with outplacement services the scope and provider of which shall be selected by Executive in Executive's sole discretion, but the cost thereof shall not exceed \$30,000; provided that such outplacement benefits shall end not later than the last day of the second calendar year that begins after the Date of Termination; and

(iii) except as otherwise set forth in the last sentence of Section 6, to the extent not theretofore paid or provided, the Company shall timely pay or provide to Executive any other amounts or benefits required to be paid or provided or that Executive is eligible to receive under any plan, program, policy or practice or contract or agreement of the Company and its Affiliates (such other amounts and benefits shall be hereinafter referred to as the "**Other Benefits**") in accordance with the terms of the underlying plans or agreements.

For the avoidance of doubt, if applicable, any amount payable pursuant to this Section 5(a) shall be determined without regard to any reduction in compensation that resulted in Executive's termination of employment for Good Reason. If Executive does not execute the Release within 50 days following the Date of Termination, or if Executive revokes the Release, Executive shall be entitled to only the compensation and benefits contemplated by Sections 5(a)(i)(A) (excluding the Pro Rata Bonus) and (iii).

(b) **Death.** If Executive's employment is terminated by reason of Executive's death during the Continuity Period, the Company shall provide Executive's estate or beneficiaries with the Accrued Obligations and the Pro Rata Bonus and the timely payment or delivery of the Other Benefits, and shall have no other severance obligations under this Agreement. The Accrued Obligations (subject to the proviso set forth in Section 5(a)(i)(A) to the extent applicable) and the Pro Rata Bonus shall be paid to Executive's estate or beneficiary, as applicable, in a lump sum in cash within 30 days of the Date of Termination. With respect to the provision of the Other Benefits, the term "Other Benefits" as utilized in this Section 5(b) shall include, and Executive's estate and/or beneficiaries shall be entitled to receive, benefits at least equal to the most favorable benefits provided by the Company and its Affiliates to the estates and beneficiaries of peer executives of the Company and such Affiliates under such plans, programs, practices and policies relating to death benefits, if any, as in effect with respect to other peer executives and their beneficiaries at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive's estate and/or Executive's beneficiaries, as in effect on the date of Executive's death with respect to other peer executives of the Company and its Affiliates and their beneficiaries.

(c) **Disability.** If Executive's employment is terminated by reason of Executive's Disability during the Continuity Period, the Company shall provide Executive with the Accrued Obligations and Pro Rata Bonus and the timely payment or delivery of the Other Benefits in accordance with the terms of the underlying plans or agreements, and shall have no other severance obligations under this Agreement. The Accrued Obligations (subject to the proviso set forth in Section 5(a)(i)(A) to the extent applicable) and the Pro Rata Bonus shall be paid to Executive in a lump sum in cash within 30 days of the Date of Termination. With respect to the provision of the Other Benefits, the term "Other Benefits" as utilized in this Section 5(c) shall include, and Executive shall be entitled after the Disability Effective Date to receive, without limitation, disability and other benefits (either pursuant to a plan, program, practice or policy or an individual arrangement) at least equal to the most favorable of those generally provided by the Company and its Affiliates to disabled executives and/or their families in accordance with such plans, programs, practices and policies relating to disability, if any, as in effect generally with respect to other peer executives and their families at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to Executive and/or Executive's family, as in effect at any time thereafter generally with respect to other peer executives of the Company and its Affiliates and their families.

(d) **Cause; Other Than for Good Reason.** If Executive's employment is terminated for Cause during the Continuity Period, the Company shall provide Executive with Executive's Annual Base Salary (subject to the proviso set forth in Section 5(a)(i)(A) to the extent applicable) through the Date of Termination, and the timely payment or delivery of the Other Benefits, and shall have no other severance obligations under this Agreement. If Executive voluntarily terminates employment during the Continuity Period, excluding a termination for Good Reason, the Company shall provide to Executive the Accrued Obligations and the Pro Rata Bonus and the timely payment or delivery of the Other Benefits and shall have no other severance obligations under this Agreement. In such case, all the Accrued Obligations (subject to the proviso set forth in Section 5(a)(i)(A) to the extent applicable) and the Pro Rata Bonus shall be paid to Executive in a lump sum in cash within 30 days of the Date of Termination.

6. **Non-exclusivity of Rights.** Nothing in this Agreement shall prevent or limit Executive's continuing or future participation in any plan, program, policy or practice provided by the Company or any of its Affiliates and for which Executive may qualify, nor, subject to Section 11(h), shall anything herein limit or otherwise affect such rights as Executive may have under any other contract or agreement with the Company or its Affiliates. Amounts that are vested benefits or that Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company or any of its Affiliates at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

Without limiting the generality of the foregoing, Executive's resignation under this Agreement with or without Good Reason shall in no way affect Executive's ability to terminate employment by reason of Executive's "retirement" under any compensation and benefits plans, programs or arrangements of the Company or its Affiliates, including any retirement or pension plans or arrangements or to be eligible to receive benefits under any compensation or benefit plans, programs or arrangements of the Company or any of its Affiliates, including any retirement or pension plan or arrangement of the Company or any of its Affiliates or substitute plans adopted by the Company or its successors, and any termination that otherwise qualifies as Good Reason shall be treated as such even if it is also a "retirement" for purposes of any such plan. Notwithstanding the foregoing, if Executive receives payments and benefits pursuant to Section 5(a) of this Agreement, Executive shall not be entitled to any severance pay or benefits under any severance plan, program or policy of the Company and its Affiliates, unless otherwise specifically provided therein in a specific reference to this Agreement.

7. **Full Settlement; Legal Fees.** (a) **Full Settlement.** The Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action that the Company may have against Executive or others. In no event shall Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to Executive under any of the provisions of this Agreement and such amounts shall not be reduced whether or not Executive obtains other employment.

(b) **Legal Fees.** The Company agrees to pay as incurred (within 10 days following the Company's receipt of an invoice from Executive), at any time from the Effective Date through Executive's remaining lifetime (or, if longer, through the 20th anniversary of the Effective Date) to the full extent permitted by law, all legal fees and expenses that Executive may reasonably incur as a result of any contest (regardless of the outcome thereof) by the Company, Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof whether such contest is between the Company and Executive or between either of them and any third party, and (including as a result of any contest by Executive about the amount of any payment pursuant to this Agreement), plus in each case interest on any delayed payment at the applicable federal rate provided for in Section 7872(f)(2)(A) of the Code ("**Interest**") determined as of the date such legal fees and expenses were incurred.

8. **Treatment of Certain Payments.**

(a) Anything in the Agreement to the contrary notwithstanding, in the event the Accounting Firm (as defined below) shall determine that receipt of all Payments (as defined below) would subject Executive to the excise tax under Section 4999 of the Code, the Accounting Firm shall determine whether to reduce any of the Payments paid or payable pursuant to the Agreement (the "**Agreement Payments**") so that the Parachute Value (as defined below) of all Payments, in the aggregate, equals the Safe Harbor Amount (as defined below). The Agreement Payments shall be so reduced

only if the Accounting Firm determines that Executive would have a greater Net After-Tax Receipt (as defined below) of aggregate Payments if the Agreement Payments were so reduced. If the Accounting Firm determines that Executive would not have a greater Net After-Tax Receipt (as defined below) of aggregate Payments if the Agreement Payments were so reduced, Executive shall receive all Agreement Payments to which Executive is entitled hereunder.

(b) If the Accounting Firm determines that aggregate Agreement Payments should be reduced so that the Parachute Value of all Payments, in the aggregate, equals the Safe Harbor Amount, the Company shall promptly give Executive notice to that effect and a copy of the detailed calculation thereof. All determinations made by the Accounting Firm under this Section 8 shall be binding upon the Company and Executive and shall be made as soon as reasonably practicable and in no event later than 15 days following the date of Termination of Employment. For purposes of reducing the Agreement Payments so that the Parachute Value of all Payments, in the aggregate, equals the Safe Harbor Amount, only amounts payable under the Agreement (and no other Payments) shall be reduced. The reduction of the amounts payable hereunder, if applicable, shall be made by reducing the payments and benefits under the following sections in the following order: (i) cash payments that may not be valued under Treas. Reg. § 1.280G-1, Q&A-24(c) (“**24(c)**”), (ii) equity-based payments that may not be valued under 24(c), (iii) cash payments that may be valued under 24(c), (iv) equity-based payments that may be valued under 24(c) and (v) other types of benefits. With respect to each category of the foregoing, such reduction shall occur first with respect to amounts that are not “deferred compensation” within the meaning of Section 409A of the Code and next with respect to payments that are deferred compensation, in each case, beginning with payments or benefits that are to be paid the farthest in time from the Accounting Firm’s determination. All fees and expenses of the Accounting Firm shall be borne solely by the Company.

(c) To the extent requested by Executive, the Company shall cooperate with Executive in good faith in valuing, and the Accounting Firm shall take into account the value of, services provided or to be provided by Executive (including Executive’s agreeing to refrain from performing services pursuant to a covenant not to compete or similar covenant, including under Section 9(b) of this Agreement, before, on or after the date of a change in ownership or control of the Company (within the meaning of Q&A-2(b) of the final regulations under Section 280G of the Code), such that payments in respect of such services may be considered reasonable compensation within the meaning of Q&A-9 and Q&A-40 to Q&A-44 of the final regulations under Section 280G of the Code and/or exempt from the definition of the term “parachute payment” within the meaning of Q&A-2(a) of the final regulations under Section 280G of the Code in accordance with Q&A-5(a) of the final regulations under Section 280G of the Code.

(d) The following terms shall have the following meanings for purposes of this Section 8:

(i) “**Accounting Firm**” shall mean a nationally recognized certified public accounting firm or other professional organization that is a certified public accounting firm recognized as an expert in determinations and calculations for purposes of Section 280G of the Code that is selected by the Company prior to a Change in Control for purposes of making the applicable determinations hereunder and is reasonably acceptable to Executive, which firm shall not, without Executive’s consent, be a firm serving as accountant or auditor for the individual, entity or group effecting the Change in Control.

(ii) “**Net After-Tax Receipt**” shall mean the present value (as determined in accordance with Sections 280G(b)(2)(A)(ii) and 280G(d)(4) of the Code) of a Payment net of all taxes imposed on Executive with respect thereto under Sections 1 and 4999 of the Code and under applicable state and local laws, determined by applying the highest marginal rate under Section 1 of the Code and under state and local laws which applied to Executive’s taxable income for the immediately preceding taxable year, or such other rate(s) as the Accounting Firm determines to be likely to apply to Executive in the relevant tax year(s).

(iii) “**Parachute Value**” of a Payment shall mean the present value as of the date of the change of control for purposes of Section 280G of the Code of the portion of such Payment that constitutes a “parachute payment” under Section 280G(b)(2) of the Code, as determined by the Accounting Firm for purposes of determining whether and to what extent the excise tax under Section 4999 of the Code will apply to such Payment.

(iv) “**Payment**” shall mean any payment or distribution in the nature of compensation (within the meaning of Section 280G(b)(2) of the Code) to or for the benefit of Executive, whether paid or payable pursuant to the Agreement or otherwise.

(v) “**Safe Harbor Amount**” shall mean 2.99 *times* Executive’s “base amount,” within the meaning of Section 280G(b)(3) of the Code.

(e) The provisions of this Section 8 shall survive the expiration of the Agreement.

9. **Restrictive Covenants.**

(a) **Confidential Information.** The Executive shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its Affiliates, and their respective businesses, which shall have been obtained by Executive during Executive’s employment by the Company or any of its Affiliates and which shall not be or become public knowledge (other than by acts by Executive or representatives of Executive in violation of this Agreement). After termination of Executive’s employment with the Company, Executive shall not, without the prior written consent of the Company or as may otherwise be required by law or legal process, communicate or divulge any such information, knowledge or data to anyone other than the Company and those persons designated by it. In no event shall an asserted violation of the provisions of this Section 9(a) constitute a basis for deferring or withholding any amounts otherwise payable to Executive under this Agreement, but the Company otherwise shall be entitled to all other remedies that may be available to it at law or in equity.

(b) **Noncompetition.** During the Restricted Period, in order to protect all secret or confidential information, knowledge or data relating to the Company or any of its Affiliates, and their respective businesses, which shall have been obtained by Executive during Executive's employment by the Company or any of its Affiliates and which shall not be or become public knowledge (other than by acts by Executive or representatives of Executive in violation of this Agreement), Executive agrees that to the fullest extent permitted by law, Executive shall not engage or be engaged in any aspect whatsoever of any the following lines of business: (i) the production (including any associated mining), distribution, marketing or sale of cement (including Portland, oil well cement and blended cements), slag, slag cement, masonry cement, fly-ash, pozzolan or clinker; (ii) the production, distribution or marketing of readymix concrete; (iii) the mining, extraction, production or marketing of crushed stone, sand, gravel and aggregates; (iv) the production (including any associated mining), distribution, marketing or sale of gypsum wallboard; (v) the production, distribution, marketing or sale of recycled paperboard; (vi) the mining, processing, drying, manufacturing, distributing or marketing of frac sand; or (vii) any other line of business engaged in by the Company or any of its Affiliates (each a "**Line of Business**" and collectively, the "**Business**"), either directly or indirectly as an individual, or as an employee, associate, partner, stockholder, consultant, owner, manager, agent or otherwise or by means of any corporate or other device, either on his own behalf in the Restricted Areas (as defined below) or on behalf of others who are engaged in any Line of Business (either directly or through an affiliate (including by virtue of having an affiliate in the Restricted Areas)) in the Restricted Areas. The "**Restricted Areas**" are, specific to each Line of Business, the geographic areas in which the Company or any of its Affiliates engages in the following activities for such Line of Business: (x) operates a manufacturing facility or other facility engaged in business operations; (y) engages in the distribution or sale of its products; or (z) is actively pursuing a strategic initiative (including a merger, acquisition or business expansion) that would reasonably be expected to result in the Company or any of its Affiliates engaging in the activities described in clause (x) or (y) above, of which (in the case of this clause (z)) the Company has informed Executive or in respect of which Executive have performed any services. In addition to any other remedies, the Company shall be entitled to specific performance and/or a temporary or permanent injunction prohibiting and enjoining Executive from violating the covenants set forth in this Section 9(b). For purposes of obtaining equitable relief, such as specific performance, a temporary restraining order, or an injunction (but not any relief to the extent it would involve the payment by Executive of monetary damages or the loss of a benefit under this Agreement), the Company need not prove, and Executive acknowledges and agrees that irreparable harm or injury will have occurred as a result of any breach of the covenants set forth in this Section 9(b).

10. **Successors.** (a) This Agreement is personal to Executive and without the prior written consent of the Company shall not be assignable by Executive other than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns. Except as provided in Section 10(c), without the prior written consent of Executive, this Agreement shall not be assignable by the Company.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

11. **Miscellaneous.**

(a) **Governing Law and Dispute Resolution.** This Agreement shall be governed by and construed in accordance with the laws of Texas, without reference to principles of conflict of laws. The parties irrevocably submit to the jurisdiction of any state or federal court sitting in or for Dallas, Texas with respect to any dispute arising out of or relating to this Agreement, and each party irrevocably agrees that all claims in respect of such dispute or proceeding shall be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the venue of any dispute arising out of or relating to this Agreement or the transactions contemplated hereby brought in such court or any defense of inconvenient forum for the maintenance of such dispute or proceeding. Each party agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. THE PARTIES HEREBY WAIVE A TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT OR ASSERTED BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT.

(b) **Notices.** All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Executive: To the most recent address on file with the Company.

If to the Company:
Eagle Materials Inc.
5960 Berkshire Lane
Dallas TX 75225
Attention: General Counsel

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) **Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(d) **Survivorship.** Upon the expiration or other termination of this Agreement or Executive's employment, the respective rights and obligations of the parties hereto shall survive to the extent necessary to carry out the intentions of the parties under this Agreement.

(e) **Section Headings; Construction.** The section headings used in this Agreement are included solely for convenience and shall not affect, or be used in connection with, the interpretation hereof. For purposes of this Agreement, the term "including" shall mean "including, without limitation."

(f) **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

(g) **Amendments; Waiver.** No provision of this Agreement shall be modified or amended except by an instrument in writing duly executed by the parties hereto. The Executive's or the Company's failure to insist upon strict compliance with any provision hereof or any other provision of this Agreement or the failure to assert any right Executive or the Company may have hereunder, including the right of Executive to terminate employment for Good Reason pursuant to Section 4(c)(i)-(v), shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(h) **At-Will Employment.** The Executive and the Company acknowledge that, except as may otherwise be provided under any other written agreement between Executive and the Company, the employment of Executive by the Company is "at will" and, subject to Section 1(e) of this Agreement, prior to the Effective Date, Executive's employment may be terminated by either Executive or the Company at any time prior to the Effective Date, in which case Executive shall have no further rights under this Agreement. From and after the Effective Date, except as specifically provided herein, this Agreement shall supersede any other employment agreement between the parties. For the avoidance of doubt, prior to the Effective Date, any other employment agreement between the parties shall continue to govern the relationship between the parties.

(i) **Entire Agreement.** This Agreement constitutes the entire agreement of the parties hereto in respect of the terms and conditions of Executive's employment with the Company and its Affiliates, including his severance entitlements, and, as of the Effective Date, supersedes and cancels in their entirety all prior understandings, agreements and commitments, whether written or oral, relating to the terms and conditions of employment between Executive, on the one hand, and the Company or its Affiliates, on the other hand. For the avoidance of doubt, this Agreement does not limit the terms of any benefit plans (including equity award agreements) of the Company or its Affiliates that are applicable to Executive, except to the extent that the terms of this Agreement are more favorable to Executive.

(j) **Tax Withholding.** The Company may withhold from any amounts payable under this Agreement such Federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(k) **Section 409A.**

(i) **General.** It is intended that payments and benefits made or provided under this Agreement shall not result in penalty taxes or accelerated taxation pursuant to Section 409A of the Code. Any payments that qualify for the "short-term deferral" exception, the separation pay exception or another exception under Section 409A of the Code shall be paid under the applicable exception. For purposes of the limitations on nonqualified deferred compensation under Section 409A of the Code, each payment of compensation under this Agreement shall be treated as a separate payment of compensation. All payments to be made upon a termination of employment under this Agreement may only be made upon a "separation from service" under Section 409A of the Code to the extent necessary in order to avoid the imposition of penalty taxes on Executive pursuant to Section 409A of the Code. In no event may Executive, directly or indirectly, designate the calendar year of any payment under this Agreement, and to the extent required by Section 409A of the Code, any payment that may be paid in more than one taxable year shall be paid in the later taxable year.

(ii) **Reimbursements and In-Kind Benefits.** Notwithstanding anything to the contrary in this Agreement, all reimbursements and in-kind benefits provided under this Agreement that are subject to Section 409A of the Code shall be made in accordance with the requirements of Section 409A of the Code, including, where applicable, the requirement that (A) any reimbursement is for expenses incurred during Executive's lifetime (or during a shorter period of time specified in this Agreement); (B) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during a calendar year may not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year; (C) the reimbursement of an eligible expense will be made no later than the last day of the calendar year following the year in which the expense is incurred; and (D) the right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.

(iii) **Delay of Payments.** Notwithstanding any other provision of this Agreement to the contrary, if Executive is considered a “specified employee” for purposes of Section 409A of the Code (as determined in accordance with the methodology established by the Company and its Affiliates as in effect on the Termination Date), any payment that constitutes nonqualified deferred compensation within the meaning of Section 409A of the Code that is otherwise due to Executive under this Agreement during the six-month period immediately following Executive’s separation from service on account of Executive’s separation from service shall instead be paid, with Interest (based on the rate in effect for the month in which the Executive’s separation from service occurs), on the first business day of the seventh month following his separation from service (the “**Delayed Payment Date**”), to the extent necessary to prevent the imposition of tax penalties on Executive under Section 409A of the Code. If Executive dies during the postponement period, the amounts and entitlements delayed on account of Section 409A of the Code shall be paid to the personal representative of his estate on the first to occur of the Delayed Payment Date or 30 calendar days after the date of Executive’s death.

(l) **Indemnification.** The Company shall indemnify Executive and hold him harmless to the fullest extent permitted by law and under the charter and bylaws of the Company (including the advancement of expenses) against, and with respect to, any and all actions, suits, proceedings, claims, demands, judgments, costs, expenses (including reasonable attorney fees), losses and damages resulting from Executive’s good faith performance of his duties and obligations with the Company and its Affiliates.

[Signature Page Follows]

IN WITNESS WHEREOF, Executive has hereunto set Executive's hand and, pursuant to the authorization from the Board and the Company have caused this Agreement to be executed in its name on its behalf, all as of the day and year first above written.

/s/ James H. Graass

James H. Graass

Eagle Materials Inc.

By: /s/ Michael Nicolais

Name: Michael Nicolais

Its: Chairman of the Board

[Change in Control Continuity Agreement Signature Page]

GENERAL RELEASE OF CLAIMS

This **GENERAL RELEASE OF CLAIMS** (this “**Agreement**”) is entered into on [•], 20[•], by and between Eagle Materials Inc., a Delaware corporation (the “**Company**”) and James H. Graass (“**Executive**”).

1. General Release and Waiver of Claims.

(a) **Release.** In consideration of the payments and benefits afforded under the Change in Control Continuity Agreement, dated as of June 20, 2019, by and between the Company and Executive (the “**CIC Agreement**”) as specified on **Schedule I** attached hereto, and after consultation with counsel, Executive and each of Executive’s respective heirs, executors, administrators, representatives, agents, successors and assigns (collectively, the “**Releasers**”) hereby irrevocably and unconditionally release and forever discharge the Company and its subsidiaries and affiliates and each of their respective officers, employees, directors and agents (“**Releasees**”) from any and all claims, actions, causes of action, rights, judgments, obligations, damages, demands, accountings or liabilities of whatever kind or character (collectively, “**Claims**”) that the Releasers may have arising out of Executive’s employment relationship with and service as an employee, officer or director of the Company and its subsidiaries and affiliates, and the termination of any such relationship or service, in each case up to and including Executive’s date of termination, including, without limitation, any and all Claims of discrimination on the basis of race, religion, sex, age, color, national origin, ancestry, disability, medical condition or marital status or other employment claims for injury to Executive including, but not limited to any Claim arising under any of the following: the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Age Discrimination in Employment Act of 1967; the Older Worker Benefits Protection Act; the Americans with Disabilities Act of 1990; the Family and Medical Leave Act; the Employee Retirement Income Security Act of 1974; the Fair Labor Standards Act; the Equal Pay Act; the Genetic Information Nondiscrimination Act; Chapter 21 of the Texas Labor Code; the Texas Payday Act; the Texas Administrative Code; or any other similar local, state, or federal laws, in each case, as amended from time to time; provided, however, that notwithstanding anything contained herein to the contrary, this Agreement shall not affect: (i) the obligations of the Company set forth in the CIC Agreement, including without limitation under Sections 5, 6, 7, 8 and 11 of the CIC Agreement, or under any other benefit plan, agreement, arrangement or policy of the Company or its affiliates; (ii) any indemnification or similar rights Executive has as a current or former officer, director, employee or agent of the Company and its subsidiaries and affiliates, including, without limitation, any and all rights thereto under applicable law, the Company’s bylaws or other governance documents, or any rights with respect to coverage under any directors’ and officers’ insurance policies and/or indemnification agreements; (iii) any Claim the Releasers may have as the holder or beneficial owners of securities of the Company or its affiliates or other rights relating to securities or equity awards in respect of the common stock of the Company or its affiliates; (iv) rights to accrued but unpaid salary, paid time off, vacation or other compensation due through the date of termination

of employment; (v) any unreimbursed business expenses; (vi) benefits or the right to seek benefits under applicable workers' compensation and/or unemployment compensation statutes; and (vii) any Claims that may arise in the future from events or actions occurring after Executive's date of termination of employment or that Executive may not by law release through an agreement such as this.

(b) **Specific Release of ADEA Claims.** In further consideration of the payments and benefits provided to Executive under the Plan, the Releasers hereby unconditionally release and forever discharge the Releasees from any and all Claims that the Releasers may have as of the date Executive signs this Agreement arising under the Federal Age Discrimination in Employment Act of 1967, as amended, and the applicable rules and regulations promulgated thereunder ("ADEA"). By signing this Agreement, Executive hereby acknowledges and confirms the following: (i) Executive was advised by the Company in connection with Executive's termination of employment to consult with an attorney of Executive's choice prior to signing this Agreement and to have such attorney explain to Executive the terms of this Agreement, including, without limitation, the terms relating to Executive's release of claims arising under ADEA, and Executive has in fact consulted with an attorney; (ii) Executive was given a period of not fewer than [twenty-one (21)] [forty-five (45)] calendar days to consider the terms of this Agreement and to consult with an attorney of Executive's choosing with respect thereto; and (iii) Executive knowingly and voluntarily accepts the terms of this Agreement. Executive also understands that Executive has seven (7) calendar days following the date on which Executive signs this Agreement within which to revoke the release contained in this Section 1(b), by providing the Company a written notice of Executive's revocation of the release and waiver contained in this Section 1(b).

(c) **No Assignment.** Executive represents and warrants that Executive has not assigned any of the Claims being released under this Agreement.

2. **Proceedings.** Executive has not filed, and agrees not to initiate or cause to be initiated on Executive's behalf, any complaint, charge, claim or proceeding against the Releasees with respect to any Claims released under Section 1(a) or (b) before any local, state or federal agency, court or other body (each, individually, a "**Proceeding**"), and agrees not to participate voluntarily in any Proceeding involving such Claims; provided, however, and subject to the immediately following sentence, nothing set forth here in intended to or shall interfere with Executive's right to participate in a Proceeding with any appropriate federal, state, or local government agency enforcing discrimination or securities laws, nor shall this Agreement prohibit Executive from cooperating with any such agency in its investigation. To the maximum extent permitted by law, the Executive waives any right he may have to benefit in any manner from any relief (whether monetary or otherwise) arising out of any Proceeding, provided that the foregoing shall not apply to any legally protected whistleblower rights (including under Rule 21F under the Securities Exchange Act of 1934).

3. **Severability Clause.** In the event any provision or part of this Agreement is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire Agreement, will be inoperative.

4. **No Admission.** Nothing contained in this Agreement will be deemed or construed as an admission of wrongdoing or liability on the part of the Company.

5. **Governing Law and Venue.** This Agreement shall be governed by and construed and interpreted in accordance with the substantive laws of the State of Texas (without giving effect to any conflict-of-law rule or principle that would result in the application of the laws of any other jurisdiction). The parties agree to submit to the jurisdiction of the federal and state courts sitting in Dallas, Texas, for all purposes relating to the validity, interpretation, or enforcement of this Agreement

6. **Counterparts.** This Agreement may be executed in counterparts and each counterpart will be deemed an original.

7. **Notices.** All notices, requests, demands or other communications under this Agreement shall be in writing and shall be deemed to have been duly given when delivered in person or deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, to the party to whom such notice is being given as follows:

As to Executive:	Executive's last address on the books and records of the Company
As to the Company:	Eagle Materials Inc 5960 Berkshire Lane Dallas TX 75225 Attention: General Counsel

Any party may change his, her or its address or the name of the person to whose attention the notice or other communication shall be directed from time to time by serving notice thereof upon the other party as provided herein.

EXECUTIVE ACKNOWLEDGES THAT EXECUTIVE HAS READ THIS AGREEMENT AND THAT EXECUTIVE FULLY KNOWS, UNDERSTANDS AND APPRECIATES ITS CONTENTS, AND THAT EXECUTIVE HEREBY EXECUTES THE SAME AND MAKES THIS AGREEMENT AND THE RELEASE PROVIDED FOR HEREIN VOLUNTARILY AND OF EXECUTIVE'S OWN FREE WILL.

IN WITNESS WHEREOF, Executive has executed this Agreement on the date set forth below.

James H. Graass
Dated as of: _____

June 20, 2019

Dave Powers
c/o Eagle Materials Inc.
5960 Berkshire Lane
Dallas TX 75225

Re: Advisory Services

Dear Dave:

On behalf of the Board of Directors (the "Board") of Eagle Materials Inc. (the "Company"), I want to thank you for your many years of service to the Company, during which you have demonstrated strong leadership and have made significant and meaningful contributions to the Company. We appreciate your willingness to provide continued support and expertise to the Company as an advisor after your retirement on July 1, 2019 (the "Retirement Date") as Chief Executive Officer of the Company, particularly during this important period in which the Company is implementing its previously announced plans to separate its wallboard business from its cement business pursuant to a tax-free spinoff.

This letter sets forth the arrangements between you and the Company with respect to your service after retirement as an advisor to the Company.

Service as a Director

Your retirement from active employment on your Retirement Date will not affect your status as a member of the Board, and following your Retirement Date, you will continue to serve as a director of the Company. You will receive an annual directors' fee of \$193,500 in cash (prorated for the period from July 1, 2019 through the date of the 2019 annual meeting of shareholders (approximately \$16,125)) and thereafter will receive the normal annual director fee provided to all non-executive directors.

Transition and Advisory Services

Following your Retirement Date, you agree to serve as an advisor to the Company for the period commencing on July 1, 2019 and ending on March 31, 2020, unless earlier terminated as provided below (the "Term").

As an advisor, you agree to perform the following services as reasonably requested by the Company (the "Services"): (1) provide support, advice, and counsel to the Chief Executive Officer of the Company regarding all aspects of the Company's businesses; (2) consult with the Chief Executive Officer of the Company, including with regard to leadership transition; (3) assist the Chief Executive Officer and the management team with any special projects, including specifically

with regard to the recently announced separation of the Company's wallboard business and the cement business and the exploration of alternatives for the Company's frac sand division; (4) perform such other services consistent with your experience and expertise as reasonably requested by the Board from time to time. You agree to be available to perform the Services during normal business hours, at times and on schedules that are reasonably consistent with your other personal or business activities and commitments. Notwithstanding the foregoing, the Company shall use its reasonable best efforts to ensure that the level of your Services shall not exceed 20% of the average level of services you performed over the 36-month period immediately preceding your Retirement Date, consistent with the intent that your termination of employment with the Company on your Retirement Date constitutes a "separation from service" (within the meaning of Section 409A of the Code).

During the Term, you will receive a total advisory fee of \$1,200,000 (the "Advisory Fee"). The Advisory Fee will be payable in cash in monthly installments of \$133,333.33 on the last day of each calendar month (or the following business day), with the first such payment for the month of July 2019 to be made on July 31, 2019. During the Term, the Company will also provide you travel and expense reimbursement on the same basis as provided to you immediately prior to your Retirement Date.

The Compensation Committee and the Board of Directors of the Company has approved your resignation as a "retirement" and the lapsing of all restrictions on all of your outstanding earned but unvested shares of restricted stock listed on Exhibit A hereto effective as of the Retirement Date such that such shares shall become payable on the Retirement Date.

Either the Company or you may terminate your Services hereunder at any time by providing the other party with 30 days' advance written notice of such termination. Upon such a termination for any reason, you shall have no further obligation to provide any Services and the Company shall pay to you any earned but unpaid Advisory Fee in respect of the period prior to the date of termination, as well as any unreimbursed travel and entertainment expense reimbursements, which payments will be made within 30 days following the date of termination (or, in the case of unreimbursed travel and entertainment expenses, within 30 days following the date of submission of the reimbursement request). In addition, if, during the Term, your Services are terminated (1) by the Company for any reason other than a Material Breach (as defined below) or (2) by you due to a Material Breach by the Company, (each of the terminations in clauses (1) and (2), a "Qualifying Termination"), you will also be entitled to receive (a) the Advisory Fee for the period from the date of termination through the end of the then-current Term (assuming you had not been terminated), which amounts shall be paid to you in cash in a lump sum within ten days following your date of termination.

For purposes of this letter, "Material Breach" means, with respect to a party, a material breach of this letter by such party, which breach remains uncured for 30 days after the receipt of written notice from the other party (delivered within 30 days of such other party first becoming aware of the existence of such condition or conditions constituting Material Breach) specifying in reasonable detail the conditions constituting Material Breach. A termination by you due to the Company's Material Breach must occur, if at all, within 30 days following the expiration of the 30 day cure period.

Restrictive Covenants

You acknowledge that, in the course of your employment with the Company, you have been provided with or had access to information concerning the Company or its subsidiaries and affiliates, including without limitation their respective products, manufacturing and production, maintenance and other operational methods and techniques, accounting information, financial information, customer information (including without limitation customer names and customer sales and financial information), trade secrets, contract terms, financial information and corporate strategies, expansion opportunities and strategies and methods of doing business, and that the Company and its subsidiaries and affiliates have developed, compiled and otherwise obtained, often at great expense, this information, which has great value to business and could have value to their respective competitors. In addition, during the Term, the Company will provide you with or grant you access to information of the type described above that also has great value to business and could have value to their respective competitors in order to enable you to carry out the Services. As used in this Agreement, the term "Proprietary and/or Financial Information" means the information of the type referred to in the two immediately preceding sentences. You agree that the Proprietary and/or Financial Information is the sole and exclusive property of the Company and its affiliates.

You agree to hold in strict confidence and not disclose any Proprietary and/or Financial Information, directly or indirectly, to anyone outside of the Company or use, copy, publish, summarize, or remove such Proprietary and/or Financial Information from the Company's premises control, unless you have the prior written consent of the Company. As part of the consideration for and inducement to entering this Agreement, the Company is expressly relying on the foregoing confidentiality covenant. The foregoing notwithstanding, nothing in this Agreement prohibits you from reporting possible violations of federal law or regulation to any governmental agency or entity, including but not limited to the Department of Justice, the Securities and Exchange Commission, Congress, and any agency Inspector General, or making other disclosures that are protected under the whistleblower provisions of federal law or regulation.

During the period (the "Restricted Period") ending on the first anniversary of your Retirement Date, in order to protect the Proprietary and/or Financial Information disclosed to you in the course of performing the Services, you agree that to the fullest extent permitted by law, you shall not engage or be engaged in any aspect whatsoever of any the following lines of business: (i) the production (including any associated mining), distribution, marketing or sale of cement (including Portland, oil well cement and blended cements), slag, slag cement, masonry cement, fly-ash, pozzolan or clinker; (ii) the production, distribution or marketing of readymix concrete; (iii) the mining, extraction, production or marketing of crushed stone, sand, gravel and aggregates; (iv) the production (including any associated mining), distribution, marketing or sale of gypsum wallboard; (v) the production, distribution, marketing or sale of recycled paperboard; (vi) the mining, processing, drying, manufacturing, distributing or marketing of frac sand; or (vii) any other line of business engaged in by the Company or any of its affiliates (each a "Line of Business" and collectively, the "Business"), either directly or indirectly as an individual, or as an employee, associate, partner, stockholder, consultant, owner, manager, agent or otherwise or by means of any corporate or other device, either on his own behalf in the Restricted Areas (as defined below) or on behalf of others who are engaged in any Line of Business (either directly or

through an affiliate (including by virtue of having an affiliate in the Restricted Areas)) in the Restricted Areas. The "Restricted Areas" are, specific to each Line of Business, the geographic areas in which the Company or any of its subsidiaries or affiliates engages in the following activities for such Line of Business: (1) operates a manufacturing facility or other facility engaged in business operations, (2) engages in the distribution or sale of its products, or (3) is actively pursuing a strategic initiative (including a merger, acquisition or business expansion) that would reasonably be expected to result in the Company or any of its subsidiaries or affiliates engaging in the activities described in clause (1) or (2) above, of which (in the case of this clause (3)) the Company has informed you or in respect of which you have performed any Services.

During the Restricted Period, in order to protect the Proprietary and/or Financial Information disclosed to you in the course of performing the Services, you agree you shall not solicit or initiate any contact with any customer, client or supplier of the Company or its subsidiaries or affiliates about which you possess Proprietary and/or Financial Information for purposes of obtaining business from such customer or client or arranging for or negotiating a supply relationship on behalf of any person or entity who is or may become in competition with the Company in any Line of Business or with the purpose or result of interfering with or adversely affecting the relationship between any such customer, client or supplier on the one hand and the Company or its subsidiaries or affiliates on the other hand.

During the Restricted Period, you agree you shall not solicit for employment, hire or attempt to hire any employee of the Company (or any of its subsidiaries or affiliates) or assist in such solicitation or hiring by any other person or entity, or encourage any employee to terminate his employment with the Company (or any of its subsidiaries or affiliates). This restriction shall not, however, operate to preclude you from engaging in any employment, occupation, consulting or other business activity which is unrelated to any Line of Business and as to which your participation therein does not give rise to a violation of the other provisions of this letter agreement. In addition, notwithstanding the foregoing, (i) a general solicitation of candidates that results in an application by a Company employee shall not be a violation of your covenant not to solicit or attempt to hire Company employees in this letter agreement.

If you breach any of the provisions of the covenants set forth under the heading "Restrictive Covenants" (collectively, the "Restrictive Covenants"), all payments by the Company under this letter agreement shall cease and no further payments shall be due.

In addition to any other remedies, the Company will be entitled to specific performance and/or a temporary or permanent injunction prohibiting and enjoining you from violating the Covenants. For purposes of obtaining equitable relief, such as specific performance, a temporary restraining order, or an injunction (but not any relief to the extent it would involve the payment by Rowley of monetary damages), the Company need not prove, and you acknowledge and agree that irreparable harm or injury will have occurred as a result of any breach of the Covenants.

Indemnification

Following your Retirement Date, the Company will continue to indemnify you against any actual or threatened action, suit or proceeding and to provide you with directors' and officers' insurance coverage through the Company's existing directors' and officers' insurance policy, with respect to your services as an executive officer and director of the Company and its subsidiaries prior to your Retirement Date and thereafter your service on the Board and as an advisor, in each case, to the maximum extent that such indemnification and directors' and officers' insurance coverage is provided to any person who is an executive officer or director of the Company or any of its subsidiaries.

Independent Contractor; Taxes; Section 409A

You agree that you are serving as a member of the Company's Board of Directors and performing the Services as an independent contractor and not as an employee of the Company and that, following your Retirement Date, you will not be eligible to continue to participate as an active employee in any employee benefit programs of the Company (other than as set forth herein). You acknowledge that, as an independent contractor, you will be responsible for the payment of all applicable taxes levied or based upon the compensation for your service as a member of the Board and an advisor following the Retirement Date and for all non-reimbursable expenses attributable to the rendering of the Services, including, without limitation, the payment of all federal, state, and local income taxes, employment taxes, and unemployment and workers' compensation payments.

It is the intent of the parties that any amounts payable under this letter shall be exempt from or otherwise comply with the provisions of Section 409A of the Code, and each payment under this letter shall be treated as a separate payment for purposes of Section 409A of the Code. The parties intend that the terms and provisions of this letter shall be interpreted and applied in a manner that satisfies the requirements and exemptions of Section 409A Code and, to the maximum extent permitted, this letter shall be interpreted so as to comply with Section 409A of the Code. With respect to any provision of this letter that provides for reimbursement of costs and expenses, the right to reimbursement or benefits may not be exchanged for any other benefit, and the amount of expenses eligible for reimbursement (or in-kind benefits paid) in one year shall not affect amounts reimbursable or provided as in-kind benefits in any subsequent year. All expense reimbursements paid pursuant to this letter that are taxable income to you shall in no event be paid later than the end of the calendar year next following the year in which you incur the expense.

Miscellaneous

This letter will be binding upon, inure to the benefit of, and be enforceable by, as applicable, the parties hereto and their respective personal or legal representatives, successors, assigns, heirs, and legatees. Neither party shall assign, transfer or subcontract this letter or any of its obligations hereunder without the other party's express, prior written consent. Notwithstanding the foregoing, the Company may assign this letter, subject to its terms, to a successor to the Company by merger or other business combination or to a purchaser of all, or substantially all, of the Company's assets.

This letter constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous representations, proposals, discussions, and communications, whether oral or in writing with respect to the subject matter hereof. This letter will be governed by and construed in accordance with the laws of the State of Texas, without reference to principles of conflict of laws. The parties hereto irrevocably agree to submit to the jurisdiction and venue of the courts of the State of Texas in any action or proceeding brought with respect to or in connection with this letter. This letter may not be amended or modified other than by a written agreement executed by the parties hereto.

[Signature Page Follows]

To confirm the foregoing terms are acceptable to you, please execute and return the copy of this letter, which is enclosed for your convenience.

Very truly yours,

EAGLE MATERIALS INC.

By: /s/ Michael Nicolais

Name: Michael Nicolais

Title: Chairman of the Board

ACKNOWLEDGED AND AGREED:

/s/ David Powers

David Powers

EXHIBIT A

<u>Grant Date</u>	<u>Number of Shares of Restricted Stock</u>
06/10/15	986
05/20/16	4,883
05/20/16	4,128
05/18/17	9,298
05/18/17	8,054
05/17/18	13,298
05/17/18	12,354
TOTAL	53,001