

**AGREEMENT FOR  
PURCHASE AND SALE OF  
NCWCD WATER ALLOTMENT CONTRACT**

THIS AGREEMENT is made and entered into as of SEPTEMBER 17, 2005, by and between HOLCIM (US) INC, a Delaware corporation, (hereinafter the "Seller") and

\_\_\_\_\_, a \_\_\_\_\_ (hereinafter "Purchaser"). For and in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

**1. TRANSFER OF NORTHERN COLORADO WATER CONSERVANCY DISTRICT WATER ALLOTMENT CONTRACT.** Seller agrees to execute and pursue an application to the Board of Directors of the Northern Colorado Water Conservancy District ("NCWCD") to transfer to Purchaser water allotment contracts between Holcim (US) Inc. (f/k/a Holnam, Inc.) and NCWCD for \_\_\_\_\_ acre-foot units of water from the Colorado-Big Thompson Project (hereinafter referred to as the "Allotment Contract"), along with taking all other actions and executing all other documents reasonably required by the NCWCD to consider and approve the requested transfer of the Allotment Contract.

**2. PURCHASE PRICE AND EARNEST MONEY.**

**a. PURCHASER AGREES TO PAY THE SELLER:**

- (i) **HIGH BID PRICE:** .....\$ \_\_\_\_\_
- 10% BUYER'S PREMIUM**.....\$ \_\_\_\_\_
- SUB-TOTAL CONTRACT PRICE**.....\$ \_\_\_\_\_
- (ii) **LESS WRITTEN BID INCENTIVE DISCOUNT** .....\$( \_\_\_\_\_ )  
**(1.5% discount on the written opening bid amount of (\$ \_\_\_\_\_ )**
- TOTAL CONTRACT PRICE**.....\$ \_\_\_\_\_
- (iii) **EARNEST MONEY DEPOSIT (10%)**.....\$ \_\_\_\_\_
- (iv) **BALANCE OF PURCHASE PRICE:** .....\$ \_\_\_\_\_  
**Not including Purchaser's closing costs or financing costs, prepaids or prorations.**

**b. EARNEST MONEY.** Upon execution of this Agreement by Purchaser, Purchaser shall pay the sum stated in Paragraph 2(a)(iii) as an earnest money deposit and part payment of the purchase price.

(i) **DEPOSIT OF FUNDS.** The earnest money shall be deposited in an account maintained by Stewart Title of Larimer County ("Escrow Agent"), where it shall be held in escrow pending the closing of the transaction, as described in Section 3 below. Interest earned on the money so deposited, if any, shall accrue to Seller's benefit.

(ii) **APPLICATION OF FUNDS.** If the sale of the Allotment Contract is consummated, the full amount of the earnest money, plus accrued interest, shall be paid to Seller by the Escrow Agent. The full amount of the earnest money shall be credited against the purchase price of the Allotment Contract due at closing.

**c. U.S. GOOD FUNDS.** All amounts paid by Purchaser hereunder, including the earnest money deposit and payment at closing, plus Purchaser's closing costs, shall be in funds which comply with all applicable Colorado laws, which include cash, electronic transfer funds, certified check, savings and loan teller's check and cashier's check (referred to herein as "U.S. Good Funds"). **PURCHASER ACKNOWLEDGES AND AGREES THAT PURCHASER'S OBLIGATIONS UNDER THE AGREEMENT ARE NOT CONTINGENT UPON PURCHASER OBTAINING A LOAN FROM ANY LENDER. ACCORDINGLY, PURCHASER SHALL BE OBLIGATED TO PERFORM ITS OBLIGATIONS UNDER THE CONTRACT WHETHER OR NOT PURCHASER CAN OBTAIN A LOAN TO FINANCE THIS PURCHASE.**

**3. CLOSING AND SUBSEQUENT ACTIONS.**

**a.** The closing shall occur on September 27, 2005, at a time and place in Colorado to be designated by Seller.

**b.** At the closing, Seller shall deliver to Purchaser an executed application to the Board of Directors of the NCWCD to transfer the Allotment Contract to Purchaser, along with all other documentation reasonably required by the NCWCD to consider and approve the requested transfer of the Allotment Contract.

**c.** At the closing the Purchaser shall deposit with the Escrow Agent the amount stated in Paragraph 2(a)(iv) in U.S. Good Funds, which is the Total Contract Price for the Allotment Contract less the amount of the earnest money deposit.

**d.** On or before September 30, 2005, the Purchaser shall file the application to transfer the Allotment Contract,

along with all other documentation reasonably required by the NCWCD to consider and approve the requested transfer of the Allotment Contract, with the NCWCD, and the parties shall diligently seek approval of such application at the NCWCD Board of Directors meeting on October 14, 2005.

e. The purchase price of the Allotment Contract, plus all interest thereon, shall be paid to Seller by the Escrow Agent in U.S. Good Funds immediately after the transfer of the Allotment Contract to the Purchaser has been approved in writing by the Board of Directors of the NCWCD as shown by the issuance of a new water allotment contract for \_\_\_\_\_ acre-foot units to Purchaser by the NCWCD.

f. The Seller and Purchaser shall equally share the costs of closing, escrow fees, and fees and costs of the NCWCD for transfer of the Allotment Contract.

**4. LIMITED WARRANTY.** Seller warrants now, and shall warrant at closing, that it holds full ownership of the Allotment Contract, that the Allotment Contract is free and clear of all liens, mortgages, judgments, debts, encumbrances, leases, licenses, covenants, assessments, adverse claims, and any other burdens, except for unpaid assessments not yet due and owing, under the Colorado Water Conservancy Act, and the rules, regulations and policies of the NCWCD. **EXCEPT FOR THE LIMITED WARRANTY MADE ABOVE SELLER SPECIFICALLY DISCLAIMS ANY OTHER WARRANTY, INCLUDING ANY EXPRESS WARRANTY, ANY IMPLIED WARRANTY OF MERCHANTABILITY OF GOODS, AND ANY IMPLIED WARRANTY OF FITNESS OF GOODS FOR ANY PARTICULAR PURPOSE, ALL OF SUCH WARRANTIES ARE EXCLUDED.** Seller is responsible for payment of any assessments, fees or other charges levied on the Allotment Contract prior to closing.

**5. FAILURE OF APPROVAL BY THE NCWCD BOARD OF DIRECTORS.** In the event that the Board of Directors of the NCWCD does not approve the transfer of the Allotment Contract to Purchaser on or before November 11, 2005, the Purchaser and Seller, as applicable, shall withdraw the application to transfer the Allotment Contract to the NCWCD and Purchaser shall return to the Seller the documents described in paragraphs 3(b) and 3(d) above. Immediately after such documents have been returned to Seller, the Escrow Agent shall pay to Purchaser one-half of the funds deposited by Purchaser under paragraph 2(b)(1) above and all of the funds deposited by Purchaser under paragraph 3(c) above and shall pay to Seller the other one-half of the funds deposited by Purchaser under paragraph 2(b)(1) above. Thereafter, the Seller and Purchaser shall be released from all further obligations hereunder.

**6. NOTICES.** Notices under this Agreement, billings and other mailings to the parties shall be sent to the following addresses:

**If to Seller:**

Holcim (US) Inc.  
6211 Ann Arbor Road  
Dundee, Michigan 48131  
Attn: Real Estate Department

**With a copy to:**

Trout, Raley, Montano, Witwer & Freeman, P.C.  
1120 Lincoln Street, Suite 1600  
Denver, Colorado 80203  
Attn: Robert V. Trout

J. P. King Auction Company, Inc.  
108 Fountain Avenue  
Gadsden, Alabama 35901  
Attn: Julie Bryant

**If to Purchaser:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**7. (a) BROKERAGE.** Purchaser warrants and represents that Purchaser [ ] is [ ] is not represented by a buyer's broker in this transaction. If Purchaser is represented by a buyer's broker, the buyer's broker's name is:\_\_\_\_\_. The buyer broker must have performed all requirements of the Buyer Broker Guidelines ("Guidelines") and executed a Broker Registration form provided by J.P. King Auction Company, Inc. ("Auction Company" or "Auctioneer"). Failure to properly register or comply with the provisions of the Guidelines will disqualify the buyer broker from receiving any commission. Purchaser further warrants and represents that Purchaser has not contacted or communicated with any other real estate agent or broker about the possible purchase of the Allotment Contract other than Auctioneer or the buyer broker named above, and that to the best of Purchaser's knowledge there are no brokerage fees, commissions or sums due to any other broker or real estate agent. Purchaser shall indemnify Seller, Auction Company and Auction Company's Colorado broker, Craig King, against the claims of any real estate agent or broker not properly registered with Auctioneer, including any attorney's fees incurred by Seller or Auction Company as a result of such claim. This provision shall survive the closing and termination of this Agreement.

**(b) BROKERAGE COMMISSIONS/REFERRALS.** Upon the closing of the transaction contemplated herein, Seller shall pay Auction Company a commission pursuant to the terms of a separate agreement. If a buyer's broker is properly licensed and registered with the Auction Company, then at closing, the buyer's broker shall be paid a fee in accordance with the Buyer Broker Registration Form, with a commission/referral of THREE PERCENT (3%) on the written OPENING BID AMOUNT offered by the Purchaser at the auction, and a commission/referral of ONE PERCENT (1%) on the difference between the Purchaser's written opening bid amount and the Total Contract Price, as specified in Paragraph 2 herein, and also provided the buyer broker registered in accordance with the Guidelines on behalf of Purchaser in strict compliance with the terms and conditions of the auction (herein so called), immediately proceeding the execution of this Agreement. IF AN OPENING BID IS NOT WRITTEN ON THE BUYER BROKER REGISTRATION FORM, THEN A ONE PERCENT (1%) COMMISSION/REFERRAL FEE WILL BE PAID TO ANY BUYER BROKER ON THE TOTAL CONTRACT PRICE. In the event that the Board of Directors of the NCWCD does not approve the transfer of the Allotment Contract to Purchaser on or before November 11, 2005, notwithstanding anything to the contrary, contained or implied elsewhere herein, then no commission/referral fee shall be due and payable to the buyer broker.

**(c) AGENCY DISCLOSURE.** AUCTION COMPANY HAS ACTED AS AGENT FOR SELLER IN THIS TRANSACTION AND IS TO BE PAID A COMMISSION BY SELLER PURSUANT TO A SEPARATE WRITTEN AGREEMENT BETWEEN SELLER AND AUCTION COMPANY.

**8. BUYER'S INCENTIVE PROGRAM.** A credit equal to ONE AND ONE-HALF PERCENT (1.5%) of the written opening bid amount offered by the Purchaser, will be deducted from the Total Contract Price, provided Purchaser has completed the Buyer's Opening Bid Form and submitted to Auction Company, as required, and provided Purchaser closes on the Allotment Contract in compliance with the terms of this Agreement. If an opening bid amount is not written on the Buyer's Opening Bid Form and submitted to the Auction Company prior to the auction, then no credit will be given to Purchaser. A written opening bid amount [ ] was [ ] was not submitted to the Auction Company, in the amount of \$\_\_\_\_\_.

**9. ELIGIBILITY FOR TRANSFER OF ALLOTMENT CONTRACT.** Purchaser warrants and represents to Seller that it is fully knowledgeable about the rules, regulations and policies of the NCWCD regarding qualifications for and restrictions on holding allotment contracts for Colorado-Big Thompson Project water, including without limitation the Base Water Supply Policy, the Cap Policy, beneficial use requirements, and geographic restrictions. Purchaser further warrants and represents to Seller that it is and will be eligible for approval of a transfer of the Allotment Contract from Seller by the NCWCD Board of Directors on October 14, 2005, under all applicable rules, regulations and policies of the NCWCD.

**10. BREACH BY SELLER.** If Seller defaults in the performance of any of its obligations under this Agreement and closing fails to occur by reason thereof, Purchaser may terminate this Agreement and receive a refund of the Earnest Money Depositor seek specific performance of this Agreement. In no event shall Seller or Auction Company be liable for any damages including special, incidental or consequential damages, economic loss or attorney fees in connection with any such default.

**11. BREACH BY PURCHASER.** In the event the purchase and sale contemplated in this Agreement is not consummated because of Purchaser's default, the Seller reserves all rights allowed by law and this Agreement, including a suit for damages, specific performance or termination of this Agreement, with the Seller to retain the Earnest Money Deposit. Purchaser hereby waives and releases any right to and hereby covenants that it shall not sue Seller, Auction Company or Escrow Agent to recover the Earnest Money Deposit or any part hereof on the grounds that it is unreasonable in amount or that its retention by Seller is a penalty and not agreed upon as reasonable liquidated damages. Any action taken after default shall be solely at Seller's option.

**12. ENTIRE AGREEMENT; AMENDMENT.** This written Agreement and the Exhibits, Schedules, Attachments and Addenda, if any, attached hereto and made a part of this Agreement constitute the entire and complete agreement between the parties hereto and supersede any prior oral or written agreements between the parties with respect to the purpose of this Agreement. If there is a conflict between any Exhibit, Schedule, Attachment or Addenda, unless specifically stated otherwise in such document, the terms of this Agreement shall control. This Agreement may not be amended, altered, modified or discharged except by an instrument in writing signed by the Purchaser and Seller.

**13. HEADINGS.** The paragraphs or section headings herein are for convenience of reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations, and warranties herein, set forth, or limit the provisions or scope thereof.

**14. SEVERABILITY.** The invalidity of any provision of this Agreement shall not affect the validity or enforceability of any other provision set forth herein.

**15. ASSIGNMENT.** Purchaser may not assign this Agreement or Purchaser's rights hereunder without the prior written consent of Seller, which consent may be given or withheld in Seller's sole discretion.

**16. BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors, personal representatives, legal representatives, heirs and assigns.

**17. COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall have the

force and effect of an original, and all of which shall constitute but one document. Facsimile signatures shall be as valid as an original signature.

**18. ACKNOWLEDGEMENT.** The undersigned certifies that he or she is of legal age and has full legal capacity and authority to understand, execute and deliver this contract on behalf of himself or herself or legal entity. If Purchaser is purchasing the Allotment Contract on behalf of a for-profit entity, non-profit organization, or public agency, the Purchaser is executing this Agreement on behalf of such entity and Purchaser certifies to Seller that Purchaser has the authority to execute this Agreement on behalf of such entity, and that such entity shall be bound by the matters contained herein.

**19. ATTACHMENTS/EXHIBITS.** The following Attachments/Exhibits are attached hereto and fully incorporated herein by reference for all purposes.

Attachment I - Seller's Water Disclosure

**IN WITNESS WHEREOF**, the parties have duly executed this Contract, as of the day and year first above written.

**HOLCIM (US) INC.**

**PURCHASER:**

**BY:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**PURCHASER:**

**BY:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**PURCHASER:**

**BY:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

## ATTACHMENT I

### SELLER'S WATER DISCLOSURE

1. Purchasers of Colorado-Big Thompson waster allotment contracts must be approved for transfer by the Northern Colorado Water Conservancy District on or before November 11, 2005 or the contract for purchase of the contract unit with Seller will terminate according to its terms. Upon such termination, Purchaser will receive one-half of its earnest money deposit and the other one-half shall be paid to Seller. Therefore, purchasers of these allotment contracts should only bid on a contract unit if they have a use for the water that would be approved by the NCWCD. Purchasers are referred to the document entitled "Restrictions on the Ownership and Use of Water from the Colorado-Big Thompson Project" and the form of AGREEMENT FOR PURCHASE AND SALE OF NCWCD WATER ALLOTMENT CONTRACT for further information on these matters.
2. Closing shall occur on September 27, 2005.
3. On or before September 30, 2005 a purchaser shall file an application to transfer the allotment contract, along with all other documentation reasonably required by NCWCD to consider and approve the requested transfer of the allotment contract, with the NCWCD, and the parties shall diligently seek approval of such application at the NCWCD Board of Directors meeting on October 14, 2005.
4. In the contract, the purchaser will warrant and represent that it is fully knowledgeable about the rules, regulations and policies of the NCWCD regarding qualifications for and restrictions on holding allotment contracts, including without limitation the Base Water Supply Policy, the Cap Policy, beneficial use requirements, and geographic restrictions. The purchaser will further warrant and represent that it is and will be eligible for approval of a transfer of the allotment contract by the NCWCD Board of Directors on October 14, 2005 under all applicable rules, regulations and policies of the NCWCD.
5. Seller will warrant at closing that it holds full ownership of the allotment contract, that the allotment contract is free and clear of all liens, mortgages, judgments, debts, encumbrances, leases, licenses, covenants, assessments, adverse claims, and other burdens, except for unpaid assessments not yet due and owing, the Colorado Water Conservancy Act, and the rules, regulations and policies of NCWCD. **EXCEPT FOR THE LIMITED WARRANTY MADE ABOVE SELLER SPECIFICALLY DISCLAIMS ANY OTHER WARRANTY, INCLUDING ANY EXPRESS WARRANTY, ANY IMPLIED WARRANTY OF MERCHANTABILITY OF GOODS, AND ANY IMPLIED WARRANTY OF FITNESS OF GOODS FOR ANY PARTICULAR PURPOSE, ALL OF SUCH WARRANTIES ARE EXLUDED.**