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**L. SELLERS**

DEC 29 2009

**EXAMINER**

\*\*Enter the email address for this business entity to be used for future annual report mailings. Enter only one email address please.\*\*

Email Address:

ibrahimd@gtlaw.com

**MERGER OR SHARE EXCHANGE**  
**CEMEX CONSTRUCTION MATERIALS FLORIDA, LLC**

Certificate of Status	0
Certified Copy	0
Page Count	08
Estimated Charge	\$85.00

2009 DEC 28 AM 8:00

SECRETARY OF STATE  
TALLAHASSEE, FLORIDASECRETARY OF STATE  
TALLAHASSEE, FLORIDA

09 DEC 28 AM 8:50

**FILED**

## ARTICLES OF MERGER

of

**RMC EWELL, INC.**  
(a Florida corporation)

with and into

**CEMEX Construction Materials Florida, LLC**  
(a Delaware limited liability company)

In accordance with the Florida Business Corporation Act (the "Act"), the undersigned domestic corporation and foreign limited liability company hereby adopt the following Articles of Merger:

**FIRST:** The Agreement and Plan of Merger attached hereto as Exhibit A and made a part hereof (the "Plan of Merger"), for merging (the "Merger") RMC EWELL, INC., a Florida corporation, with and into CEMEX Construction Materials Florida, LLC, a limited liability company organized and existing under the laws of the State of Delaware, meets the requirements of Section 607.1108 of the Act and was approved and adopted by the Board of Directors and sole shareholder of RMC EWELL, INC. in accordance with the applicable provisions of the Act.

**SECOND:** The Plan of Merger was approved by the sole member of CEMEX Construction Materials Florida, LLC in accordance with the applicable provisions of the Delaware Limited Liability Company Act.

**THIRD:** The effective date of the Merger contemplated hereby shall be at 1:30 p.m. EST on December 31, 2009.

**FOURTH:** The surviving entity in the Merger is CEMEX Construction Materials Florida, LLC, a limited liability company formed under the laws of the State of Delaware (the "Surviving Entity"), and the address of the principal office of the Surviving Entity is 920 Memorial City Way, Suite 100, Houston, Texas 77024.

**FIFTH:** The Surviving Entity:

- a) appoints the Secretary of State of the State of Florida as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of RMC EWELL, INC.; and
- b) agrees to promptly pay to the dissenting shareholders of RMC EWELL, INC. the amount, if any, to which they are entitled under Section 607.1302 of the Act.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have caused these Articles of Merger to be  
executed as of December 18, 2009.

RMC EWELL, INC., a Florida corporation

By: Leslie S. White  
Name: Leslie S. White  
Title: General Counsel and Assistant Secretary

CEMEX CONSTRUCTION MATERIALS FLORIDA, LLC,  
a Delaware limited liability company

By: Leslie S. White  
Name: Leslie S. White  
Title: Vice President, General Counsel and  
Assistant Secretary

DEL 86,272,384v4

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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FILED

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**EXHIBIT A**  
**[Agreement and Plan of Merger]**

DEL 84,272,354v4

## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "*Agreement*"), is dated as of December 8, 2009, by and between CEMEX Construction Materials Florida, LLC, a Delaware limited liability company ("*Acquiring Company*"), and RMC EWELL, INC., a Florida corporation ("*Target Company*"). Acquiring Company and Target Company are hereinafter sometimes collectively referred to as the "*Constituent Entities*."

### RECITALS

WHEREAS, Acquiring Company is a limited liability company duly formed and existing under the laws of the State of Delaware;

WHEREAS, Target Company is a corporation duly incorporated and existing under the laws of the State of Florida;

WHEREAS, the board of directors and the sole shareholder of Target Company and the sole member of Acquiring Company have authorized and approved this Agreement and the merger of Target Company with and into Acquiring Company (the "*Merger*"), upon the terms and subject to the conditions set forth in this Agreement in the manner required by applicable law; and

WHEREAS, for federal income tax purposes, it is intended that the Merger qualify as a tax-free "liquidation" within the meaning of Section 332 of the Internal Revenue Code of 1986, as amended.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained in this Agreement, the parties to this Agreement, intending to be legally bound, hereby agree as follows:

1. Merger. Upon the terms and subject to the conditions set forth in this Agreement, RMC EWELL, INC., a Florida corporation, shall be merged with and into CEMEX Construction Materials Florida, LLC, a Delaware limited liability company, pursuant to and in accordance with the applicable provisions of the Florida Business Corporation Act and the Delaware Limited Liability Company Act, 6 Del. C. §§ 18 - 101 *et seq.* (the "*Act*"), the separate corporate existence of RMC EWELL, INC. shall cease, and CEMEX Construction Materials Florida, LLC shall continue its existence as a Delaware limited liability company under the Act ("*Surviving Entity*").

2. Effective Date. The Merger shall be effective at the time provided in the Certificate of Merger as filed with the Secretary of State of the State of Delaware (the "*Effective Time*").

3. Effect of the Merger. The Merger shall have the effects set forth in Section 18-209 of the Act.

4. Certificate of Formation; Limited Liability Company Agreement; Members of Acquiring Company. At the Effective Time: (a) the Certificate of Formation of Acquiring Company as in effect immediately prior to the Effective Time shall be, from and after the Effective Time, the certificate of formation of Surviving Entity until thereafter amended or cancelled in the manner provided by law; (b) the Limited Liability Company Agreement of Acquiring Company as in effect immediately prior to the Effective Time shall be, from and after the Effective Time, the Limited Liability Company Agreement of Surviving Entity until thereafter amended or terminated in the manner provided by law; and (c) the sole member of Surviving Entity shall remain the sole member of Surviving Entity.

5. Authorization. Prior to the Effective Time, each of the Constituent Entities shall take all such action (including, without limitation, obtaining the approval of this Agreement and the Merger by the sole member or board of directors and sole shareholder as applicable, of each of the Constituent Entities) necessary to consummate the Merger.

6. Cancellation of Shares. At the Effective Time: (i) all shares of capital stock of Target Company outstanding immediately prior to the Effective Time, shall by virtue of the Merger and without any action on the part of the holder thereof, be converted into the right to receive cash in the amount of \$1.00 (USD) and immediately after such conversion, such shares shall be cancelled; and (ii) each limited liability company interest in Acquiring Company outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, remain unchanged and continue to represent in the aggregate 100% of the outstanding limited liability company interests in Surviving Entity.

7. Amendment. At any time prior to the Effective Time, this Agreement may be amended, to the fullest extent permitted by applicable law, by an agreement in writing duly adopted and approved by the board of directors of Target Company and the sole member of Acquiring Company.

8. Abandonment. At any time prior to the Effective Time, this Agreement may be abandoned, to the fullest extent permitted by applicable law, by either the board of directors of Target Company or the sole member of Acquiring Company.

9. Managers. The management of the Acquiring Company is vested in a Board of Managers consisting of four (4) managers. The name and business address of each of the managers is:

Gilberto Pérez 920 Memorial City Way, Suite 100 Houston, Texas 77024	Frank Angelle 920 Memorial City Way, Suite 100 Houston, Texas 77024	Lealie S. White 920 Memorial City Way, Suite 100 Houston, Texas 77024	Karl H. Watson, Jr. 920 Memorial City Way, Suite 100 Houston, Texas 77024
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10. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the Merger, and supersedes all prior agreements, written or oral, with respect thereto.

11. Waivers and Amendments. This Agreement may not be amended, modified, superseded, cancelled, renewed, extended or waived except by a written instrument signed by the parties, or, in the case of a waiver, by the party waiving compliance.

12. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware, without regard to conflicts of laws principles thereof.

13. Headings. The headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

14. Severability of Provisions. The invalidity or unenforceability of any term, phrase, clause, paragraph, restriction, covenant, agreement or other provision of this Agreement shall in no way affect the validity or enforcement of any other provision or any part thereof.

15. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall constitute an original copy hereof, but all of which together shall be considered but one in the same document.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

ACQUIRING COMPANY:

CEMEX CONSTRUCTION MATERIALS  
FLORIDA, LLC, a Delaware limited  
liability company

By: Leslie S. White

Name: Leslie S. White

Title: Vice President, General Counsel and  
Assistant Secretary

TARGET COMPANY:

RMC EWELL, INC., a Florida corporation

By: Leslie S. White

Name: Leslie S. White

Title: General Counsel and Assistant  
Secretary